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**SATISFYING THE URGE TO PUNISH: EXPLORING ATTITUDES
TOWARDS RESTORATIVE JUSTICE AS AN ALTERNATIVE TO
INCARCERATION**

A dissertation submitted in partial satisfaction
Of the requirements for the degree of

DOCTOR OF PHILOSOPHY

In

PSYCHOLOGY

by

Shirin Bakhshay

December 2020

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Abstract

Satisfying the Urge to Punish:

Exploring Attitudes Towards Restorative Justice as an Alternative to Incarceration

Shirin Bakhshay

Decades of research have documented America's reliance on mass incarceration and called for an overhaul of sentencing and penal policy to address the failures of our current criminal justice system. This dissertation claims that restorative justice is a viable alternative to incarceration that can both respond to some of these critiques and meet the public demand for justice. A series of studies using multiple methods were conducted in order to explore public attitudes regarding restorative justice and identify the circumstances under which the public would be more willing to endorse restorative justice over custodial sanctions. An on-line experiment with 189 participants examined the impact that social historical background information and race of the criminal perpetrator had on sentence choice, empathy, and criminal justice attitude measures. A second on-line experiment with 253 participants used sentence outcome as an independent variable and examined its impact on justice satisfaction, empathy, and criminal justice attitude measures. Both experimental studies demonstrated that social historical information had a powerful effect—participants who were provided with social historical information about the criminal perpetrator were more likely to choose a restorative justice outcome, were more satisfied with that outcome, felt more empathetic towards the criminal perpetrator, and had higher external attributions for crime. In a separate, related study, five focus groups were

conducted (with 29 total participants) to explore whether lay persons regarded restorative justice as a fair criminal justice outcome, what sources of resistance might impede its future implementation, and what strategies might be devised to build support for this transformative reform. Qualitative analyses of the focus group discussions highlighted persistent psychological barriers to the use of restorative justice practices and provided insights into how those barriers might be overcome. Surprisingly, across all three studies, and contrary to much prior research on criminal sentencing, the race of the criminal perpetrator did not appear to affect the results. The lack of a race effect in this context can and should be explored in future studies. Overall, the findings from this research represent important social psychological contributions to the study of punishment, criminal justice policy, and meaningful penal reform.

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Chapter 1. Introduction

Mass incarceration is a failed penal policy that has not significantly contributed to reductions in crime or recidivism and has resulted in the warehousing, stigmatization, and further criminalization of scores of individuals, disproportionately devastating communities of color. We are in a cultural moment where cries for abolition are heard as more legitimate and more necessary. But in order to move away from our reliance on mass incarceration, we need to replace it with something that can meet the social-psychological demand for justice. This dissertation makes the claim that restorative justice can satisfy this urge and asks what it would take to build public support for more widespread use of restorative justice practices in place of custodial sentences.

The United States has long been committed to mass incarceration despite the myriad negative consequences for those in the criminal justice system, the communities from which they come, and American society as a whole. For more than 30 years, from the late 1970s until at least 2009, the number of state and federal prisoners in the United States steadily increased, in part because more people convicted of crimes were subject to custodial as opposed to non-custodial sanctions and in part because sentence lengths rapidly increased (Carson & Anderson, 2016; Tonry, 2016). This same 30-year period witnessed the abandonment of the rehabilitative ideal and the rise of the “penal harm” movement, in which we incarcerated people at unprecedented rates in overcrowded, harsh and sometimes abusive conditions of confinement (e.g., Haney, 2006; Simon, 2013). These practices

have been explicitly punitive, borne largely out of “tough on crime” rhetoric and measures (Blumstein et al., 2005). And they coincided with a rise in “penal populism,” whereby politicians relied on perceived public demand to institute ever-increasing punishments for criminal perpetrators (Indermaur, 2008; Kirby & Jacobson, 2013).

The last decade has seen a shift in attention to the problem of mass incarceration and some attempts at reform, but little substantive progress. Federal and state lawmakers have enacted legislation, such as the First Step Act, aimed at reducing the number of incarcerated individuals and moving away from punitive sentences for, particularly, non-violent offenders. Yet, despite these reforms and reductions in the overall rate of incarceration, we still incarcerate more of our citizens than any other country in the world, at a rate of 698 per 100,000 residents, and have a staggering 2.3 million people currently in prison or jail (Sawyer & Wagner, 2020). These reforms have done little to alter the penal landscape for the vast majority of individuals pursued by the criminal justice system (Campbell & Schoenfeld, 2020); and most of the changes in the last decade have been tailored to specific populations and do not do enough to address the social costs associated with hyperincarceration of communities of color and extreme, punitive sentences for those individuals considered to be violent and dangerous (Seeds, 2017). Despite the language of reform, little real change has occurred for those impacted by our penal policy and long-standing commitment to an incarceration-first approach to punishment.

In addition to being overly punitive, mass incarceration poorly serves broader penological goals. The stated aim of the current penal system is to reduce crime and improve public safety by punishing and conveying social condemnation for criminal acts, incapacitating potentially dangerous criminals, and deterring future wrongdoing (Tonry, 2016). However, decades of research have demonstrated that punitive prison sentences do not have these intended consequences. For example, increasing criminal penalties does not reduce crime (National Research Council, 2014). Crime and incarceration rates have been “decoupled,” such that incarceration rates continued to rise, regardless of the impact on crime. Incarceration is not an effective deterrent and while people in prison are prevented from engaging in criminal acts while there, incapacitation is a temporary solution (Bagaric & Alexander, 2011). Prisons fail to provide inmates with impactful, if any, rehabilitative services or assistance with re-entry (Gromet & Darley, 2009; Haney, 2008a). As a result, the vast majority of people sent to prison return to their communities with worse social skills, few to no job skills, and little to no ability to productively participate in their communities (Haney, 2008a; Pager, 2008). Recidivism remains a serious issue, largely because of the lack of rehabilitative programming, with research documenting that prison itself is a risk factor (Gibbons & Katzenbach, 2006; Haney, 2012; Powers, 2020).

Given the persistence of mass incarceration and the toll it has taken on American society, it is clear that the system needs more than small-scale reforms. We need to rethink the meaning and purpose of punishment and to move away from our reliance on incarceration as a solution to crime. We need a penal policy that both

punishes criminal perpetrators, communicating the moral outrage and condemnation felt by society, while also addressing the root causes of crime and providing tools to help criminal perpetrators successfully reintegrate into their communities. As Angela Davis eloquently states, “[t]he most difficult and urgent challenge today is that of creatively exploring new terrains of justice, where the prison no longer serves as our major anchor” (2003, p. 21).

To accomplish this task, we must seriously interrogate public and policy notions of both “punishment” and “justice” and consider how to achieve a just outcome that serves the larger interests of ensuring public safety and improving community health without relying solely on incarceration.

Restorative justice is one promising alternative to incarceration that is already being used successfully in certain jurisdictions and with certain categories of crime (Sliva & Lambert, 2015). Restorative justice refers to both a different punishment process and a different concept of “justice”—one concerned with repairing the harm to the victim and restoring the community as opposed to exacting retribution (Gromet, 2009). In some progressive jurisdictions, individuals who have pled guilty or been convicted of a crime, typically a low-level nonviolent crime, are diverted before sentencing and referred for participation in a restorative justice conference (Sliva & Lambert, 2015). This process replaces what would otherwise be a traditional punishment, such as incarceration and/or probation, and so offers a pathway forward with less reliance on carceral practices. The success of restorative justice practices depends in large part on public participation in and support of the

process. One of the key components of restorative justice is considering the community to be an interested party with a voice in the process, a stake in the outcome, and a responsibility to help all parties heal. As such, public awareness and support for restorative justice practices are critically important.

While restorative justice has been popular among criminal justice reformers for a long time, it has received relatively little public attention. Many people are unfamiliar with restorative justice practices and what they do know is often inaccurate and misleading. Similarly, while there is a robust body of research on restorative justice practices—both developing it as a theory and examining how it functions (see, e.g., Braithwaite, 2002; Daly, 2002)—there is comparatively little research that examines public attitudes towards and support for restorative justice practices. Most research on restorative justice focuses on how it is being used and the experiences of those that have gone through the process. And most prior research on public attitudes towards punishment has focused on understanding why some people are more “punitive” than others; that is, why they support longer prison sentences (e.g., King & Maruna, 2009; Tyler & Boeckmann, 1997). Prior research generally has not examined what a different sort of punishment might look like or how the desire to see “justice done” might be satisfied through means other than custodial sentences (Gromet & Darley, 2006; Roberts & Stalans, 2004). It is time to reframe the question of punitiveness and investigate not just why some people are more or less punitive, but also whether alternatives to incarceration can satisfy those punitive urges and what factors may influence attitudes towards and decisions about punishment.

In this dissertation, I employ multiple methods to explore public attitudes towards punishment, justice, and restorative justice specifically, and examine whether certain factors—including social contextual information about criminal perpetrators—can influence lay punishment attitudes and support for restorative justice outcomes. My goal is to understand the conceptual and cognitive barriers to endorsement of non-custodial solutions and to test whether a long-absent feature of the criminal justice process—providing contextual, humanizing information about criminal perpetrators—can increase support for those solutions.

In Chapter 2, I provide an overview of the literature and theory underlying my research questions. This research is primarily derived from two lines of thought—a Durkheimian understanding of the social significance and expressive function of punishment and the enduring prevalence of the crime master narrative as an ongoing conceptual barrier to criminal justice reform (Durkheim, 1933; Haney, 1995). In the first section of Chapter 2, I explore the social, legal and psychological theories of punishment, highlighting Durkheim’s expressive theory of punishment as solidarity creating and sustaining in order to establish the critical importance of a penal policy that attends to the public’s need for justice and punishment. Then, I discuss the theory and research on restorative justice, suggesting that it has the potential to both reduce our reliance on incarceration and fulfill the social need for justice. Next, I discuss the persistence of the crime master narrative and provide a counternarrative founded upon the research into criminogenic risk factors and the power of social contextual information to situate and contextualize crime and the individuals who

engage in it. Lastly, I discuss the role of public opinion in criminal justice policy and explain the importance of public support to lasting penal reform.

In Chapters 3 and 4, I describe the methods and results from two experimental studies that investigated the impact of social contextual information and race of the criminal perpetrator on lay punishment attitudes, feelings of empathy, and sentencing outcomes. In Chapters 5, 6, and 7, I describe the methods and results from a focus group study that explored public attitudes and beliefs about punishment generally and restorative justice specifically, including suggestions for how to increase public support for restorative justice practices in place of incarceration. Finally, Chapter 8 includes concluding thoughts and suggestions for future directions.

Chapter 2. Review of Literature

This chapter lays the theoretical foundation for the empirical studies that follow. First, I provide an overview of punishment theory, surveying the psychosocial and legal rationales for punishment, and the empirical studies that have investigated predictors and correlates of punitiveness. Second, I describe restorative justice practices and their current standing in the criminal justice system, followed by a discussion of the empirical research that has been done on support for restorative justice so far. Third, I discuss the crime master narrative and the counternarrative. In this section I focus on the importance of social history, both for understanding the social and environmental factors that contribute to criminal behavior and building empathy towards those individuals who engage in crime, as well as in the context of death penalty mitigation evidence. I also discuss the research specific to how social history is evaluated based on the race of the criminal defendant and discuss racial disparities in the criminal justice system more generally. Fourth, I talk about the incredibly important role of the public and public attitudes to criminal justice and penal policy and the criminal justice reform movement. Finally, I provide an overview of my studies and guiding research questions, which are described in detail in Chapters 3 through 7.

The Urge to Punish

Most laypeople view punishment as a necessary response to crime and equate punishment with incarceration (Gromet et al., 2012; Spohn, 2002). The punitive response to crime dominates the American criminal justice system as well as public

and scholarly discourse on crime and punishment (Simon, 2007). This is due in part because people have an instinctive desire to punish criminal perpetrators and are driven by retributive concerns (Carlsmith et al., 2002; Carlsmith & Darley, 2008; Carvalho & Chamberlen, 2018). Retributive or “just deserts” theory is premised on the notion that a criminal perpetrator deserves to be punished in proportion to the severity of their crime and that punishment is both a morally justified and necessary response to crime. Retributive punishment aims to make the criminal perpetrator suffer and to symbolically reinforce the values of the group (Carlsmith & Darley, 2008; Okimoto & Wenzel, 2009). Research has documented that crime provokes moral outrage because it is perceived as a violation of group norms, values, and laws (Carlsmith, 2006; Carlsmith et al., 2002). This outrage, in turn, inspires the retributive urge to punish (Carlsmith and Darley, 2008; Fiske & Tetlock, 1997).

Social Theories of Punishment

Emile Durkheim famously asserted that: “Passion . . . is the soul of punishment” (1933, p. 86). For Durkheim, and the many social theorists that followed in his wake, punishment is a collective response to a criminal violation of society’s sacred, moral values—a primarily emotional response, and one born of vengeance (Garland, 1990). While this is by no means a complete (or particularly accurate) explanation of the social meaning of punishment, it does capture something about why the urge to punish is so pervasive, which has been supported in a plethora of empirical work on retributive motives for punishment (Carlsmith & Darley, 2008; Oswald et al., 2009).

Social theories of punishment address punishment's role in governing social relations and conveying meaning about social values, norms, and boundaries. Most sociologists argue that punishment's main purpose is its role in orienting social life outside prison—as an institution that polices social categories, conveys meaning about community norms and values, and acts as a force of social control (e.g., Garland, 1990; 2001). Of course, punishment also has a crime control function, if only a surprisingly minor one. Scholars have advanced a number of psycho-legal theories that examine the nature of this function; and there is a body of research exploring their empirical validity. These theoretical understandings are further complicated by the factors impacting individual attitudes towards punishment and individual-level punishment decisions, which are the subject of much psychological research. Together, these inquiries can help explicate the punishment puzzle—both the stated, overt rationales for punishment and the unstated, possibly unconscious reasons why we make particular punishment decisions and, as a country, have moved in such a punitive direction (Simon & Sparks, 2013; Zimring, 2001). Most relevant to the research presented here is a recognition that the meaning of punishment goes far beyond its immediate crime control or public safety functions. It has a deep social meaning and provides us with a symbolic sense of safety, comfort, and social cohesion, which is arguably why punishment has endured in its present form despite all the research documenting its crime control failings.

Legal Theories of Punishment

There are two prominent legal theories—utilitarianism and retributivism—that provide the formal justification for our system of criminal punishment. Unlike the social theories of punishment, which aim to describe the social meaning of punishment, the legal rationales are prescriptive and focus on what the goals of punishment should be. Utilitarianism and retributivism advance different punitive objectives and, therefore, different penal forms, and research has investigated whether these theories actually explain the punishment decisions of both legal and lay decision-makers.

Utilitarianism

Utilitarianism is based on the Benthamian notion that the benefits of punishment should outweigh its cost, both to society and the individual object of that punishment. Punishment is only morally justified if, on balance, it stands to benefit society (Bagaric, 2000). Utilitarianism is forward-looking; that is, concerned with crime prevention and other social impacts that punishment will have in the future. In its purest form, culpability and even guilt are irrelevant considerations. All that matters is the prevention of future crimes (Carlsmith & Darley, 2008; Vidmar, 2001). Thus, taken to its logical extreme, utilitarianism permits punishment of the innocent if the larger impact on society is positive. This is one of the main criticisms of utilitarianism as a rationale for punishment—it decouples legal responsibility and punitive consequences (Bagaric, 2000).

Bentham believed that punishment for nonutilitarian purposes was unjust:

[G]eneral prevention ought to be the chief end of punishment, as it is its real justification. If we could consider an offence which has been committed as an isolated fact, the like of which would never recur, punishment would be useless. It would be only adding one evil to another (Bentham, 1962, p. 20; Darley et al., 2000, p. 660).

Thus, Bentham argued that punishment should be sufficient to deter future crime, and no more. This is known as the principle of parsimony—that punishment should be the least harsh and restrictive sanction as is necessary to achieve its goal (Tonry, 1996). Inflicting pain is only justified in the name of a greater good; one which outweighs the pain. While few scholars would suggest that pure utilitarianism drives penal policy, it does correspond to one of the main stated rationales for punishment—deterrence. While most experts and lay people alike will identify deterrence as the chief rationale for punishment, empirical research has documented that retribution, not deterrence, generally motivates individual punishment decisions as well as many of the punitive policies enacted in the last fifty years.

Retributivism

Retributive or “just deserts” theory is premised on the notion that a criminal actor *deserves* to be punished for their crime and that punishment is both a morally justified and necessary response to crime. Criminal conduct offends social norms and sparks moral outrage, which inspires an urge to punish the criminal actor in order to restore equilibrium. Retribution is about righting a wrong; it implies a balance that can only be restored through punishment (Carlsmith et al., 2002; Spohn, 2002). In this way, punishment has a nullifying impact—it is “the undoing of evil” (Vidmar, 2001, p. 36). Retribution is exclusively backward-looking, concerned with the

amount of harm done by the criminal and their blameworthiness, not the potential impact on future behavior. In its purest form, it is completely divorced from any crime control function and the incidental impacts of punishment on crime are just that—incidental. As will be discussed further below, there is a plethora of empirical research documenting that people have retributive motives for imposing a punishment in response to crime.

Empirical Research on Attitudes Towards Punishment

Retributive Motives

Regardless of the normative legal debates over which goals punishment should pursue, research has documented that retributive concerns motivate an intuitive punitive response and influence specific punishment decisions (e.g., Carlsmith & Darley, 2008; Carlsmith et al., 2002; Darley, 2009; Darley et al., 2000; Keller et al., 2010; Vidmar, 2001). In a series of experimental, policy-capturing studies, Darley, Carlsmith and Robinson (2000) found that: participants' default judgments reflected just desert considerations, the amount of punishment assigned to criminals varied as a function of the moral seriousness of the crime, and participants' punitive responses were sensitive to information bearing on just deserts considerations, but not utilitarian ones. The severity of the sentence imposed was determined by perceptions of the seriousness of the offense and the degree of moral outrage the offense provoked (Carlsmith et al., 2002). Other studies have found that, in the absence of information, participants are most concerned with learning about the seriousness of the crime, followed by the perpetrator's motives and intent, in making

punishment assessments (Carlsmith, 2006). Still other research has documented that even if participants endorse utilitarian punishment goals, their individual-level punishment decisions are influenced by retributive, not utilitarian, concerns (Carlsmith et al., 2002). These findings have been replicated in subsequent studies by the authors as well as other researchers (see e.g., Keller et al., 2010; Vidmar, 2001).

Carlsmith and Darley's (2008) research supports Durkheim's theory that crime provokes moral outrage, which inspires the punitive response (see also Carlsmith et al., 2002). They found that people report quick judgments that certain acts are morally wrong and deserving of punishment, but they are unable to explain the reasoning behind those judgments (Carlsmith & Darley, 2008). These intuitive moral judgments can be overridden with deliberate reasoning. Thus, Carlsmith and Darley (2008) propose a dual-process system of punishment wherein retributive desire to punish is automatic, and the reasoning process that might override that judgment is employed selectively and often in ways that are congruent with their intuitions (Darley, 2009). Other related research suggests that the deliberate reasoning people engage in is driven by retributive considerations as well, and that moral outrage mediates the impact of retributive considerations on punishment decisions (Carlsmith et al., 2002). The authors found support for a path model wherein consideration of both the seriousness of the crime and the criminal actor's culpability determined their level of moral outrage, which determined the severity of the recommended punishment. Similarly, Fiske and Tetlock (1997) found that measures of moral outrage in response to crime substantially predict punitiveness.

And Weiner (2006) found that endorsement of retributive goals was related to greater judgments of responsibility and feelings of anger. It therefore seems that both our automatic intuitions and our reasoned judgments about punishment reflect retributivist considerations.

The Expressive Theory of Punitiveness

The expressive theory of punitiveness is loosely based on Durkheim's social theory of punishment (Durkheim, 1933) and states that punishment serves a symbolic, as opposed to instrumental, function (Tyler & Boeckmann, 1997). The theory suggests that punitiveness is a socio-emotional reaction to the abstract concerns specific to late modernity—such as economic insecurity, anxiety regarding social change, and the decay of traditional values (e.g., Garland, 2001; King & Maruna, 2009; Tyler and Boeckmann 1997). These fears and insecurities rooted in uncontrollable social change are transformed into anxiety about and anger towards the specific problem of crime and channeled towards safe targets—the demonized “others” that comprise the criminal class (Gaubatz, 1995; Haney, 2003; 2008b). Punitive reactions towards criminals are a form of “legitimized anger” toward a blameworthy target (Chancer & Donovan, 1994). By singling out an “other” for punishment, social group members reinforce their core values and group status (Solomon et al., 2000), and are able to soothe their anxiety (Ryberg & Roberts, 2014). Thus, anxiety and insecurity about the social order are replaced by indignation and anger directed at specific, morally appropriate targets (Hirtenlehner, 2011). Several empirical studies have found support for the expressive theory of punishment as an

explanation for punitive attitudes (e.g., King & Maruna, 2009; Tyler and Boeckmann; 1997).

The expressive theory of punitiveness suggests that it is important for punishment to explicitly serve its symbolic function and address people's emotional needs (Chancer & Donovan, 1994; Gaubatz, 1995). Still, more work needs to be done to probe the emotional side of punitiveness, and particularly responses to emotionally-sensitive information, such as sympathetic background information that is meant to induce empathy (Indermaur & Hough, 2002). Freiberg (2001) cautions against trying to push for criminal justice reform by appealing to rational, instrumental concerns such as the current system's failure to reduce crime and exorbitant costs, because they do not address the public desire for punishment. The challenge is to develop reform measures which can compete with the "tough on crime" narrative at the symbolic level and address emotional and affective needs as well as concerns about social cohesion (Freiberg, 2001). Focusing on humanizing criminal actors and inducing empathy may be able to address some of the expressive dimensions of punishment.

Empathy and Punishment

Research into the role that empathy plays in attitudes towards punishment is surprisingly scarce. Most of this work is in the context of capital cases, finding that empathy is negatively correlated with death penalty support (e.g., Lynch & Haney, 2015; Unnever et al., 2005). The other area of research that has received attention is empathy towards the victims of crime (e.g., Deitz et al., 1982; Weir & Wrightsman,

1990). Relatively little research has addressed the impact of empathy towards the criminal defendant on juror decision-making or punishment attitudes more broadly. Batson et al. (1997) found that empathy could be induced towards convicted murderers, in turn affecting attitudes towards them. Johnson et al. (2002) found that inducing empathy towards criminal defendants increased situational attributions for crime and leniency. Another study found that sympathy for the criminal defendant is related to support for rehabilitation, as opposed to punishment (Johnson, 2009). Research in other domains has further documented that inducing empathy can have a significant impact on behavioral and judgmental processes, including greater willingness to help and preferential treatment towards empathy targets, and changed attitudes towards members of stigmatized groups (Batson et al., 1997; Johnson et al., 2002). These studies suggest that empathy may play an important role in impacting attitudes towards punishment and, specifically, mollifying punitive impulses.

Attributions for Crime

There are two different attributions for crime—dispositional (or internal) and situational (or external). Those who believe in dispositional attributions see crime as the result of individual defects and/or autonomous, freely chosen behavior. Those who believe in situational attributions for crime understand crime as being, at least somewhat, the product of social forces, including risk factors and criminogenic environments. Research has established that belief in individual attributions for crime is linked to punitive attitudes (Johnson, 2009; Maruna & King, 2009). In a study of Canadian subjects, Hartnagel and Templeton (2012) found that belief in internal,

dispositional attributions for crime was correlated with endorsement of deterrence, incapacitation, and retribution as sentencing goals. Respondents who believed in situational attributions for crime rated rehabilitation as the more important sentencing goal. These results are consistent with other findings on the relationship between attributions for crime and punitiveness (e.g., Alicke, 2000; Tetlock et al., 2010). Research has also documented that when participants believe the cause of a crime is both internal and controllable, they became angrier, and subsequently more punitive (Tetlock et al., 2010).

This line of work demonstrates that the default response to crime for many is to focus on the criminal actor and his/her internal traits. Thus, it may be possible to redirect this emphasis on the individual by putting his/her actions into context. That is, if people know more about the individual actor and have some way to make sense of their actions, their focus on individual punishment may shift. But no research has directly tested the impact of the inclusion of social historical information on punitiveness. While research has documented that external attributions, which would include the belief that social and environmental risk factors contribute to criminal behavior, tend to make people less punitive, it has not explored whether the mere presentation of this kind of information also impacts attitudes towards punishment and sentencing preferences.

Restorative Justice as an Alternative Punishment

Restorative justice, sometimes called victim-offender mediation (VOM), is one alternative to incarceration that is promising as a way to reduce our reliance on

punitive sentences and change public conceptions of justice. It is defined as “the practice of bringing together those who have a stake in a particular offense to repair the harms caused by the crime and promote restoration and reconciliation, to the extent possible, between victim, offender, and community” (Sliva & Lambert, 2015, p. 82). Restorative justice is not concerned with punishment of a criminal perpetrator per se, but rather with repairing the harm caused, reintegrating the individual back into their community and giving all involved parties a voice in the justice process (Gromet, 2009). It brings together all stakeholders affected by a criminal action (e.g., criminal perpetrators, their families, victims and their families, affected communities, and state actors such as the police) in a shared space to discuss what has been done and how they have been affected, and, together with a facilitator, to come to an agreement about how the criminal perpetrator can repair the harm they caused in what is known as a “restorative justice conference” (Strang & Braithwaite, 2001).

One central feature of restorative justice conferences is the criminal perpetrator’s admission of responsibility and apology to the victim and community. The victim also has a chance to explain how they were affected by the criminal act, giving them more of a voice than in traditional criminal justice processes. Beyond this, restorative justice conferences usually conclude with an agreed upon set of mandatory actions that the criminal actor must undertake to repair the harm they caused. These often include the payment of restitution to the victim, community service, and participation in counseling or rehabilitative programming. While retributive justice is driven by the principle of proportionality—which states that the

punishment must be proportional to the severity of the harm—there is a parallel concept of restorative proportionality. This states that the seriousness of the crime should determine the “degree of restorative effort required by the offender” (Walgrave & Geudens, 1996, p. 376). This means that the requirements of the restorative justice process—an in-person meeting, apology, restitution, community service, and/or mandatory counseling—become more onerous the more serious the crime (Roberts & Stalans, 2004).

Unlike traditional custodial punishment, restorative justice aims to separate the bad act from the actor, which is known as “reintegrative shaming” (Braithwaite, 2002). This enables the parties to condemn the act without condemning and expelling the person who commit the act. They can be restored as a law-abiding member of the community. The process is also intended to help build a relationship between the criminal perpetrator and their community, thereby reducing the likelihood that the criminal actor will recidivate (Gromet et al., 2012).

Restorative justice can take place at various points in the criminal justice process. It can occur as a diversionary practice—either prior to a criminal disposition or a criminal sentence. In these situations, individuals who take responsibility for having committed a crime may avoid a criminal conviction or charge on their record and almost always avoid serving a sentence. Restorative justice can also take place post-adjudication as part of a criminal perpetrator’s overall sentence. In these cases, it can be used as part of an individual’s parole application or request for a sentence reduction.

Historical Origins and Overview of Current Use

Restorative justice has been practiced in various forms for many years. The current form practiced in the United States today has its origins in indigenous practices used by the Maori in New Zealand and the First Nations people in Canada (Van Ness & Strong, 2014). Perhaps the most famous example of restorative justice in practice is the South African Truth and Reconciliation Commission (TRC), which was created to help the nation come to terms with the horrific violence and human rights abuses that happened during apartheid and move forward. Given the number of victims and perpetrators of violence during apartheid, formal criminal proceedings would have overwhelmed the system and continued to divide the nation. Thus, the TRC was created in 1995 to provide a forum for victims to offer testimony about their experiences and for perpetrators to come forward, testify regarding their actions, and seek amnesty (Boraine, 2000; Leebaw, 2001). Although the process has its critics, it is largely considered a success and is credited with facilitating the transition of power (Allais, 2011).

In the modern American context, restorative justice began as a field of practice in the 1970s (McCold, 2006). It was originally used in the criminal justice context as a way to deal with conflict resolution and offender restitution, but was adapted to apply in other contexts—most notably in school settings. In 1994, the American Bar Association (ABA) endorsed VOM and in 2008 the ABA provided grants to develop restorative justice initiatives. Restorative justice has recently seen a growth in formal use, particularly in the juvenile context. One of the most high-

profile developments has been the creation of the DC Restorative Justice Program in 2016, which created a restorative justice unit within the Attorney General's office. While this is an important step in the right direction, restorative justice diversion has been reserved for "suitable" juveniles and so is not an available option for the vast majority of individuals who engage in crime.

Currently, a majority of states (35) have statutes that provide for diversion from the criminal justice adjudication process to restorative justice procedures. Thus, there is some institutional endorsement of restorative practices and provision for diversion out of traditional criminal justice pathways. However, the statutory provisions are, for the most part, not well administered or funded. States delegate authority to the local counties to provide for restorative justice options, if they choose and in certain circumstances, but do not provide clear administrative guidelines and typically do not include funding mechanisms. Thus, while the increase in legislative support for restorative justice practices either in place of or in addition to traditional criminal justice processes is encouraging, it is largely ideological and symbolic and has not resulted in more widespread use of restorative justice as a diversionary practice.

While restorative justice is not a new response to crime, there is relatively limited research on its effectiveness. This is partly a result of the fact that effectiveness—as it relates to reduced crime and recidivism rates—is difficult to measure and examine and partly because restorative justice has not, until recently, been widespread enough in its use to generate large data sets. The research that has

been done demonstrates that it can be an effective tool for reducing crime and recidivism, and increasing both criminal perpetrator and victim satisfaction with the criminal justice process (Braithwaite, 2002; Gromet et al., 2012; Latimer et al., 2005; Strang, 2002; Strang et al., 2013). With regard to recidivism, restorative justice advocates have argued that the process of sitting through a conference, seeing how one's actions affect the victim directly and feeling and expressing remorse makes criminals less likely to commit another crime than if they go through traditional criminal justice processes (Sherman, 2003). One consistent finding is restorative justice procedures are most effective for crimes high, rather than low, in severity, including violent crime (Sered, 2019; Sherman, 2003). The results of studies documenting lower levels of recidivism and increased satisfaction with the process are somewhat limited in their utility because of the self-selection bias inherent in the process. That is, almost uniformly, the parties to a restorative justice conference must opt in. They cannot be forced to participate. This means that those individuals who participate in restorative justice processes have already chosen to be part of the process and are unlike other criminal perpetrators in this way. Nevertheless, the findings demonstrating increased satisfaction and lower levels of recidivism are meaningful and speak to the possibilities of a more robust restorative justice system. Of course, another major benefit of the restorative justice response to crime is that it relieves the burden on penal institutions by reducing the number of criminals who are incarcerated and funneling them into rehabilitation programs that are typically more successful at addressing some of the underlying causes of crime (Braithwaite, 2002).

While there are many advocates of restorative justice as an alternative or supplement to traditional custodial punishment and it has gained more popularity in the last decade (Sliva & Lambert, 2015), there are current limits to its applicability, particularly when it comes to serious and violent crime. That is, those in the system willing to use restorative justice conferences to resolve criminal issues are typically only willing to do so for relatively minor crimes and for juvenile or young, first-time criminal perpetrators (O’Neil, 2016; Roberts & Stalans, 2004). And even with minor crimes, there is not widespread support for restorative justice in place of the traditional criminal justice response as opposed to it being a supplement to a formal custodial sentence. This is in large part due to conventional societal notions of punishment and justice and fear of individuals who have committed crimes who are allowed to remain in their communities.

Empirical Research on Support for Restorative Justice

Previous empirical studies of attitudes towards restorative justice are informative, but limited. Research shows that when individuals are exposed to a number of different punishment options and primed with concerns for the victim and community, they may respond well to restorative justice options, particularly if the crimes at issue are relatively minor (Gromet, 2009; Gromet & Darley, 2006). Similarly, when participants are asked to consider additional justice goals besides punishing criminal actors, such as restoring victims, they are more likely to choose a restorative justice approach in response to crime (Gromet & Darley, 2009). Other research has documented that individuals respond positively to restorative justice as a

response to minor crime, but not serious, violent crime (Doble & Greene, 2000), and people are more willing to accept restorative justice as a viable alternative when there is still an option to assign retributive punishments (Gromet & Darley, 2006). Political ideology has also been found to predict receptiveness to restorative justice as a legitimate alternative to traditional punishment, with self-identifying liberals more likely to endorse restorative justice measures (Gromet & Darley, 2009).

A belief that the criminal perpetrator can be rehabilitated has been found to be critical to endorsement of restorative justice practices (Bilz, 2002; Paul, 2019). Bilz (2002) found that people who are most supportive of restorative justice measures are the ones who believe in the possibility of rehabilitation for criminal perpetrators more generally. Similarly, Paul (2019) found that survey participants who believed that criminal perpetrators are redeemable were more likely to support restorative justice outcomes and were more willing to participate in them personally. When criminal perpetrators successfully participate in restorative justice conferences and complete the agreed upon requirements (e.g., apologizing, making restitution, and doing community service), it demonstrates, at least in part, that they can become a law-abiding member of the community. And research has found that evidence of successful participation in restorative justice conferences increases receptivity to restorative practices and reduces the desire to impose additional punitive sanctions (Gromet & Darley, 2006). Restorative justice approaches are perceived to be more appropriate for first-time criminals than for recidivists (Bilz, 2002; Roberts & Stalans, 2004), which is consistent with the idea that they can be rehabilitated through the

process, while repeat criminal perpetrators are seen as less likely to change their behavior. Relatedly, specific evidence that the criminal actor has apologized and expressed remorse for their actions increases receptivity to restorative justice measures and decreases punitiveness (Roberts & Stalans, 2004; Robinson et al., 1994). Again, expressions of remorse are seen as indicia of rehabilitative potential (Zhong et al., 2014).

Much of the research on restorative justice focuses on the victim and their perceptions of restorative processes. For example, research has documented that there are different dimensions of justice for individual victims of crime, one of which—the need to restore the primacy of shared values—can be met through the restorative justice process (Wenzel et al., 2008). Research has also found that victim satisfaction attenuates people’s desire to inflict retributive punishment on criminal actors in addition to restorative justice because participants infer that the victims felt closure and the criminals experienced value reform, both of which increased their satisfaction with restorative justice processes (Gromet et al., 2012).

Some studies have documented that restorative justice is better received when the victim and the criminal actor have a shared sense of identity (Gromet & Darley, 2009; Wenzel et al., 2010). The group value model theory (Lind & Tyler, 1988; Roberts & Stalans, 2004) may explain this outcome. The group value model assumes people place importance on their status and membership in social groups and that procedures that reaffirm group membership are viewed positively. This model requires that all parties have an opportunity to be heard and are treated with dignity in

order for processes to be perceived as just. Restorative justice processes meet these criteria and provide a more equitable environment for victims and criminal perpetrators to interact and discuss their actions and feelings. Finally, the group value model emphasizes the importance of group membership status. The assumption that people value group belonging is central to the restorative justice process, which requires that the criminal perpetrator perform reparative acts to regain their group status (Braithwaite, 1989; Roberts & Stalans, 2004). While group value model theory has important implications for community support of restorative justice approaches, it also presents a potential hurdle in situations where the victim and perpetrator do not share a common racial identity (Smith, 2006).

Other research has examined public support for alternative sanctions not in the restorative justice context, but which are generally included in the restorative justice model. For example, prior research has found that support for incarceration declines when the criminal defendant is required to make restitution to the victim (Doble & Greene, 2000; Pranis & Umbreit, 1992; Roberts & Stalans, 2004). And there is a similar preference for community service over incarceration for some types of crimes (Doob & Roberts, 1988; Roberts & Stalans, 2004).

While this research is promising and suggests ways to frame restorative justice as a punishment response that is compelling to the public, it is a comparatively new area of study with several gaps. Most research on restorative justice has overlooked public opinion (Roberts & Stalans, 2004), focusing instead on the perspectives of people who have been involved in restorative justice conferences

(e.g., Strang et al., 2006; Van Camp & Wemmers, 2013). This is an important omission, given that community buy-in and participation is integral to restorative practices. Specifically, no studies have investigated the role that perceptions of the criminal perpetrator based on their social history have on attitudes towards restorative justice. No work to the author's knowledge has specifically asked whether having more contextualizing information about the criminal perpetrator can increase receptivity towards restorative justice practices. In the same vein, no studies have examined the relationship between empathy towards the criminal perpetrator and support for restorative justice approaches. Moreover, there is very little qualitative work in this arena (e.g., Choi et al., 2011) and almost none that deals with public perceptions of the restorative justice process, as opposed to the experience of those who have participated in restorative justice conferences, primarily victims (e.g., Herman, 2005; Louw & van Wyk, 2016; Van Camp & Wemmers, 2013).

The Role of Social Context

Psychological Individualism and the Crime Master Narrative

Psychological individualism has long dominated how we think about criminality in the United States (Haney, 1982; 2006). A belief in psychological individualism implies “that individuals [are] the exclusive causal locus of behavior and that social deviance [arises] largely from some defect inside the person” (Haney, 2006, p. 32). Thus, crime is perceived to be caused by individual actors, either as a product of their free, autonomous choice, or some defect in their personality. This belief supports the broader “crime master narrative,” which understands criminal

behavior in purely individualistic terms, as the product of the perpetrators' innate badness and their free and autonomous choice to do harm, largely or wholly devoid of social context (Haney, 2008b; 2020). The logical inference from this narrative is that the criminal perpetrator is "solely responsible, completely morally blameworthy, and entirely deserving of the sentence imposed upon him" (Haney & Greene, 2004, p. 146). Thus, criminality is thought of as a problem of the individual bad actor, not the social or structural environment, to be dealt with either by transforming the individual through correction or expelling them through confinement. In this way, psychological individualism contributes to internal attributions for crime and, hence, punitiveness.

Adherence to a "crime master narrative" ensures that criminal perpetrators in general are divorced from any humanizing information and portrayed as fundamentally "other" (Haney, 2008b; Haney & Greene, 2004). This is compounded by the types of information about criminal perpetrators the public is given access to—superficial details that "underscore their deviance and that facilitate their dehumanization" (Haney, 1995, p. 549). Unsurprisingly, research has found that the public views criminals as dangerous "others" who are in a different category from law-abiding citizens (Roberts & Stalans, 1997). This othering enables the perception of criminals as appropriate targets for anger, anxiety and, subsequently, punishment (Chancer & Donovan, 1994; Gaubatz, 1995).

The Social Context of Crime and Criminogenic Risk Factors

The belief that crime is the product of individual bad actors divorced from any context is particularly problematic given what we know about the causes of crime.

The social contextual revolution in psychology has demonstrated the powerful impact that environmental and other contextual factors have on crime, by “shaping the chances and choices of a life” (Franz et al., 1994, p. 328; Haney, 2006). Specifically, research has documented the role that criminogenic risk factors play in impacting the lives, and subsequent behavior, of individuals that commit crime (Haney, 1995; 2020).

Criminogenic risk factors are those potentially harmful experiences that greatly increase the likelihood that people exposed to them will engage in criminal behavior in the future (Greene et al., 2000; Haney, 2003). They include family-based risk factors, such as child maltreatment (specifically child abuse and neglect), exposure to violence, family conflict and substance abuse, unstable living conditions, and parental criminality (Crouch & Milner, 1993; Dodge et al., 1990; Haney, 1995; Wolfe, 1987). There are also community-based risk factors, such as poverty and neighborhood disadvantage, and school-related risk factors, such as frequent transitions, truancy and dropping out (Greene et al., 2000). Poverty is a particularly powerful risk factor, both in its own right because of the way chronic economic adversity psychologically impacts parents and children and because of its connection to other risk factors, including child abuse and neglect (Greene et al., 2000; Haney, 1995; Kruttschnitt et al., 1994). Risk factors are cumulative. The more risk factors a person is exposed to and the longer the length of time, the more harmful the impacts. Early social historical risk factors are particularly important both because of the length of time of exposure and the vulnerability of the individual at the time of

exposure. Even a relatively mild risk factor can have profound effects on an individual's life course, depending upon their resilience and other coping mechanisms (Haney, 1995).

Masten and Garmezy's (1985) risk factor model of development explicitly notes that the mere presence of risk factors is statistically associated with higher rates of crime. Other research has documented the clear correlation between experiences of violence as a child and aggressive and violent adult behaviors (Hawkins et al., 2000). Of course, it is important to acknowledge that individuals respond to the presence of risk factors differently—some people are more vulnerable to the effects of risk factors and some have protective factors that shield them from the impact of being exposed to criminogenic risk factors. Nonetheless, research has documented that these contextual factors are often present in the lives of criminal perpetrators and provide an explanation for much of their behavior (Haney, 1995; 2020).

Bridging the “Empathic Divide”

Given what we know about the social contextual causes of crime, it is important to try to address the crime master narrative and bridge the “empathic divide” between criminal perpetrators and the general public. The “empathic divide” describes “the cognitive and emotional distance between” criminal defendants and the lay public (Haney, 2003, p. 1582). This “divide” makes it difficult to relate to and understand criminal perpetrators and is made worse by the way in which criminality is typically understood, as a product of innate badness and freely chosen behavior.

Overcoming it is the key to a more compassionate form of justice; one which may include more than purely retributive punishment (Haney, 2003).

As has been alluded to, one way to combat the master crime narrative and bridge the “empathic divide” is through the presentation of social historical information about criminal perpetrators. Research has documented that when individuals have more information about the crime and the criminal justice system, they are less punitive (Chapman et al., 2002; Roberts et al., 2003; Roberts et al., 2012). Other research on empathy has documented that empathetic responses are not automatic, but are socially constructed through a person’s affective connection with others (Unnever & Cullen, 2009). Thus, by providing people with humanizing contextual information, it may be possible to alter their perceptions of criminal perpetrators, so that they are no longer seen as distant “others” and, as such, are not targets for harsh, punitive treatment.

Mitigation Evidence and the Death Penalty

In light of the well-established science regarding criminogenic risk factors, presentation of evidence that explains a criminal defendants’ life history and provides contextualizing, humanizing information about who they are and their worth beyond their crime has become an essential part of death penalty litigation. In the penalty phase of capital trials, the defense presents “mitigation evidence” meant to provide a social historical picture of the capital defendant’s life and to contextualize their actions. The goal is to provide the jury with a portrait of the defendant beyond their crime that outlines the criminogenic risk factors they were exposed to and provides

some explanation for their actions, hopefully influencing the jury's ultimate sentencing decision (life or death) (Lynch & Haney, 2011; Haney, 1995). The Supreme Court has recognized the moral and legal imperative to present this kind of information to jurors who are deciding on a life or death sentence verdict and the presentation of mitigation evidence has become a key component of death penalty trials (*Lockett v. Ohio*, 1978).

The legal practice that has evolved since the 1970s requiring the presentation of mitigating evidence in penalty phase capital trials has been supported by a wealth of research on the impact of mitigation evidence on jurors. Studies have found that simulated jurors are more likely to assign a capital defendant to a life sentence verdict over a death sentence when provided with mitigation evidence regarding their life history (Barnett et al., 2004; Holleran et al., 2016; Lynch & Haney, 2009). The impact that mitigation evidence has on sentencing determinations varies according to a number of factors, including the type of mitigation evidence presented, the race of the defendant, and the race of the juror. But several decades of research have demonstrated the powerful psychological impact of learning about a capital defendants' life history on juror attitudes and case outcomes.

Race and Mitigation Evidence

As with many aspects of the criminal justice system, mitigation evidence has been found to have differing impacts on juror perceptions of criminal defendants and their sentencing decisions based on the race of the criminal defendant (Brewer, 2004; Lynch & Haney, 2000). Lynch and Haney (2000) found that certain types of

mitigation evidence—specifically a history of child abuse, mental health issues, and substance abuse—were viewed as less mitigating when the capital defendant was black, as opposed to white. They also found that simulated jurors were more likely to misinterpret and misuse the mitigating evidence as aggravating if the defendant was black. Combined with the plethora of research documenting racial disparities that disproportionately impact black capital defendants (Baldus et al., 1997), these findings illustrate just one more of the many ways that black defendants face bias in the criminal justice system. Because of the research documenting the different ways that jurors interpret mitigation evidence based on the race of the capital defendant, it is important to consider how these same biases may operate in non-capital cases.

The Role of Social Context in Non-Capital Cases

While much work has been done on the importance of social historical information, particularly in the death penalty context (see, e.g., Haney, 1995), very few empirical studies have examined its impact on sentence choice and punishment-related attitudes outside the capital context. This is because mitigation-type evidence regarding a criminal defendants' social historical background is typically not introduced in non-capital trials—for evidentiary and procedural reasons—and is very much at odds with the way criminality is normally presented by the news and entertainment media. But the prior research suggests that this type of information could play a similar role in humanizing criminal defendants in other types of criminal cases and could therefore be one critical way to build support for restorative justice measures that seek to restore criminal perpetrators, not simply punish them.

The expressive theory of punishment holds that because of their devalued social status and “otherness” criminal perpetrators are perceived as appropriate targets for punishment. This raises the possibility that by changing the perception of criminal perpetrators, by humanizing them through the presentation of relatable, contextual information, people’s feelings about the appropriate punishment for their criminal acts and goals of punishment may also change. Because criminals are currently so demonized (Haney, 2010), it is easy, particularly in research studies, to view them through a one-dimensional lens and to distance ourselves from them. But by providing more contextual information about criminal perpetrators, we may be able to change the perception of them as “other” and, in turn, change their status as blameworthy targets.

The literature on attributions of blame also sheds some light on ways in which providing people with social contextual information about criminal perpetrators may impact their judgements regarding punishment. The dual process account of blame attribution suggests that people have an intuitive, rapid response to criminal wrongdoing that is punitive in nature. But this response can be overridden by a controlled reasoning process. Thus, if individuals have more information to add to and temper their intuitive, retributive response to the crime, it may affect their judgment and the punishment they see as fair (Greene, 2007; Gromet & Darley, 2009). All of this suggests that one way to impact attitudes towards punishment and, importantly, receptivity towards restorative justice, is through the presentation of

social contextual background information meant to foster empathy towards criminal perpetrators.

The Importance of Public Opinion to Criminal Justice Policy and Reform

Public support is key to lending legitimacy to the criminal justice system and public attitudes impact criminal justice policy both directly and indirectly (Roberts & Stalans, 2004; Roberts et al., 2003; Tyler, 2006). Building public support for restorative justice practices is even more important given the crucial role that the public plays in facilitating the reintegration of those individuals who have committed crimes. As discussed above, public attitudes towards punishment are not monolithic—they are nuanced and subject to change given different sorts of information (King & Maruna, 2009; Roberts et al., 2003). While there is considerable debate over the role that public opinion plays in actually driving criminal justice and penal policy, the perceived rise in “penal populism” or “populist punitiveness” has, at a minimum, served to legitimize the persistence of harsh sentences and our unfailing reliance on incarceration (Enns, 2014). Given this, understanding public attitudes towards punishment broadly and restorative justice in particular and developing strategies to influence public opinion are necessary to the larger project of penal policy reform.

Penal Populism

Penal populism refers to the phenomenon of adopting criminal justice policies based on what legislators believe to be the public’s desire for evermore punitive sanctions as opposed to, for example, relying on criminal justice experts (Pratt, 2007;

Ryberg & Roberts, 2014). Populist penal policies are championed because of their public support, not their effectiveness (King & Maruna, 2009; Kirby & Jacobson, 2013). Lobbyists and politicians have capitalized on increased public fears about crime and lack of faith in the criminal justice system, creating a “tough on crime” rhetoric that they then exploit to win political support, despite empirical evidence that punishment is not an effective crime control measure (King & Maruna, 2009; Pratt, 2007; Ryberg & Roberts, 2014).

Penal populism has dominated the culture of punishment in the United States for some time, with a close relationship between punitive policy and popular attitudes towards punishment, although the direction of the relationship is unclear (Costelloe et al., 2009; Roberts et al., 2003). Two scholars have suggested that public opinion is responsible, at least in part, for driving mass incarceration (Enns, 2014; Pickett, 2019), and is therefore crucial to ending it. In his analysis of public opinion towards crime and incarceration rates, Enns (2014) found that public punitiveness preceded shifts in congressional attention to criminal justice issues, controlling for other variables. He argues that political actors are incentivized to respond to public opinion on criminal justice issues and have done so as the public has become ever more punitive.

The Relationship Between Public Opinion and Criminal Justice Policy

Some scholars have questioned the direction of the relationship between public opinion and criminal justice policy (e.g., Beckett, 1997; Gottschalk, 2006; Weaver, 2007), or challenged the notion of increasing public “punitiveness”

(Matthews, 2005). However, these critiques often focus on policy-specific public opinion, which changes frequently and is sensitive to the current political and social discourse (Stimson, 2018). But research has documented that politicians and policy makers are responsive to “policy mood,” the social and cultural dimensions of public opinion related to key policy areas (Stimson, 2004; 2018). Public policy mood influences the way politicians approach policy and exerts a consistent pressure on political actors. With respect to penal policy, the public policy mood has, at least in part, accounted for the persistence of punitive penal policy. Ramirez (2013) traced punitive policy mood and found that punitiveness began consistently rising in the late 1960s and did not taper off until the early 2000s. Enns (2014) demonstrated that the rise in public punitiveness impacted the national incarceration rate between 1960 and 2010. These and other more recent studies suggest that the relationship between public opinion and criminal justice policy is complex and bidirectional (King et al., 2017).

In addition to the diffuse influence the public has on setting criminal justice policy mood, public opinion both directly and indirectly impacts specific criminal justice policies and outcomes (Roberts & Stalans, 2004; Roberts et al., 2003). The public can influence penal policy through direct democratic processes, such as ballot initiatives and referendums. For example, the notorious 1994 California Three Strikes law was born out of the public initiative process (Pickett, 2019; Karch & Cravens, 2014). Then, in 2012, Californians voted to make important changes to the law (Kaplan, 2012). Even more recently in 2016, Californians voted to keep the death

penalty and to speed up the death penalty appeals process through a set of ballot initiatives (Stern, 2016).

Public opinion can also indirectly shape criminal justice policy by influencing politicians' support for different policies and practices (Enns, 2016; Shapiro, 2011; Stimson, 2004). Public opinion regarding crime and punishment is important to legislators, who are largely charged with setting penal policy. Legislators are reluctant to make changes not supported by their constituents (Roberts & Stalans, 2004). Also, elected judges, prosecutors, and other criminal justice officials may be responsive to public opinion (Enns, 2016; Huber & Gordon, 2004), fearing being seen as "soft on crime" (Baum, 2003). Even nonelected legal actors may be responsive to public opinion regarding criminal justice issues because of concerns about institutional legitimacy (Pickett, 2019). Thus, assessing public attitudes towards restorative justice and other community-based alternatives and investigating ways to increase public support for them have important policy implications (Gromet & Darley, 2006; Roberts & Stalans, 2004).

There is a growing body of research that suggests that the public should have more of a role in setting criminal justice policy (Indermaur, 2008; Robinson & Darley, 1997). These scholars articulate a relationship between the perceived fairness and legitimacy of the criminal justice system and compliance with the rule of law (Robinson & Darley, 1995; Tyler, 1990). They argue that the moral authority of the system relies, to some extent, on punishment outcomes that reflect the moral intuitions of the community (Robinson & Darley, 1997). One way to achieve this

congruence and promote the overall legitimacy of the system is through greater public engagement with and involvement in criminal justice system reforms. Loader (2010) and Indermaur (2008) go even further, arguing that meaningful public engagement is necessary to challenge and change current penal policy. These calls for greater public involvement are particularly relevant in the restorative justice context, where community buy-in is key to the process. Restorative justice explicitly sees the community as a stakeholder in the process and so building community support for restorative justice approaches is necessary to its success.

Current Study

This dissertation has twin aims. The first is to move beyond the study of punitiveness as it has been operationalized in most of the literature and try to understand attitudes towards and satisfaction with alternatives to incarceration, such as restorative justice measures, as a legitimate and just response to crime. The second is to more deeply probe these attitudes and investigate the factors, specifically social historical information and race of the criminal perpetrator, that make people not just less punitive, but also more willing to support alternatives to prison. My study design and analysis were guided by the following, main research questions:

1) **Does social historical information and race of the criminal perpetrator impact sentence choice, specifically receptivity to and satisfaction with restorative justice?** Although previous research has established that having more information about a case reduces punitiveness (Roberts et al., 2003), it has not specifically investigated the role that the kind of social historical information,

typically used as mitigation evidence in capital cases, has on punitiveness and, importantly, receptivity to non-custodial sanctions. Based on previous literature that discusses the importance of social contextual information and the role of empathy in affecting behavior, it is hypothesized that participants provided with social historical information about a criminal perpetrator will be more likely to choose a restorative justice or split sentence outcome and be more satisfied with that that outcome than participants who are not provided with social historical information. It is also hypothesized that this relationship will be affected by the race of the criminal perpetrator, such that participants will select a harsher punishment in conditions with a black criminal perpetrator, regardless of the presence of absence of social historical information.

2) **Does social historical information and race of the criminal perpetrator interact with sentence to impact satisfaction with restorative justice?** This question builds off the previous one and inquires into participants' attitudes and feelings regarding pre-determined sentences. It is hypothesized that participants provided with social historical information about a criminal perpetrator will be more satisfied with a restorative justice outcome and less satisfied with a prison sentence. It is also hypothesized that participants that are not provided with social historical information about a criminal perpetrator will be more satisfied with a prison sentence than a restorative justice outcome. Again, it is hypothesized that these relationships will be affected by the criminal perpetrator's race, such that participants will be more satisfied with a prison sentence than a restorative justice outcome for black criminal

perpetrators, regardless of whether they are provided with social historical information.

3) **What is the purpose of punishment and what makes it fair?** These questions explore participants' understanding of punishment and their justice goals. What does punishment mean to lay persons? What makes a particular punishment fair to the parties involved? These questions were analyzed using qualitative thematic analysis to get a better understanding of how lay participants ideas about punishment and justice align and/or misalign with legal and policy goals and gain insight into whether there is a place for restorative justice within the meaning of punishment.

4) **Can restorative justice satisfy the public's need for punishment and what are the limits on public endorsement of restorative justice practices?** These questions explore focus group participants' views regarding restorative justice as an alternative to traditional custodial sanctions and whether they understand restorative justice practices to be a form of punishment. It is important to understand participants' emotional and expressive response to restorative justice and other community-based alternatives to incarceration in light of the established research on the retributive drive to punish (see Carlsmith & Darley, 2008), and the requirement that alternatives to incarceration fulfill an expressive function as well (Freiberg, 2001; Tyler & Boeckmann, 1997). Additionally, while in practice restorative justice is typically reserved for low-level, non-violent offenders, it is important to get a sense of what the public sees as the appropriate domain for restorative justice and whether there is cognitive space to see it as a response to serious and/or violent crime.

5) **What are the main barriers to support for restorative justice and how might they be overcome?** It is not enough to simply ask whether restorative justice can supplant traditional custodial sanctions, it is necessary to know what participants' concerns are regarding this option in order to be able to address them. This question inductively explores the sources of resistance to reform and participants' ideas for how to move beyond them. What suggestions do participants have for how to frame restorative justice and build community engagement and support? The answers to these questions offered insight into how to move forward in a realistic way and preempt some of the criticisms that the public may have regarding more widespread use of restorative justice practices in place of incarceration.

This study employs multiple methods to answer these questions and develop additional lines of inquiry that aim to theorize the possibilities and limitations of a non-custodial model of justice. The findings can contribute to social psychological knowledge of the public's attitudes towards punishment and restorative justice, with a specific focus on the impact of social contextual information on these attitudes; as well as legal and policy considerations around criminal justice reform and ending our reliance on mass incarceration.

Chapter 3: Experimental Study #1

This chapter and the following one present the results from two experiments that examine public attitudes regarding criminal sentences, including restorative justice, and how those attitudes are impacted by both the race of the criminal perpetrator and whether the public is provided with social contextual information about the criminal perpetrator. While many studies have documented the impact that the presentation of mitigation evidence has on death penalty case outcomes (e.g., Barnett et al., 2004; Espinoza & Willis-Esqueda, 2015; Haney, 1995; Lynch & Haney, 2011), no studies to the author's knowledge have directly assessed the impact that social contextual information about a criminal perpetrator or defendant can have on sentencing preferences outside the death penalty context or, specifically, how that information may affect attitudes towards restorative justice outcomes, as opposed to traditional custodial sanctions.

The first study tests whether social historical information and race of the criminal perpetrator impact participants' sentence choices for a criminal perpetrator who has committed a mid-range crime—felony robbery. The second study builds off the first by introducing a third independent variable—sentence (either a three-year prison term or restorative justice conference)—and assessing participants' satisfaction with the pre-determined sentence and whether participant satisfaction and empathy vary according to experimental condition.

The primary goal of these studies is to examine the relative importance of social historical information to participants' judgments about criminal perpetrators

and the sentences they should receive and to assess whether contextualizing information can make participants more receptive to alternatives to incarceration. A secondary goal is to determine whether the race of the criminal perpetrator interacts with social historical information to affect participants' sentence choices and criminal justice attitudes. More generally, these experiments aim to examine punitive attitudes, sentencing decisions, and the factors that impact those attitudes and decisions while employing a broader conception of punitiveness. Most research in the field of sentencing and punitiveness thinks about these constructs on a spectrum of prison time (more to less) or harsh prison conditions (harsher to more lenient) (see, e.g., Carlsmith & Darley, 2008; Maruna & King, 2009; but see Okimoto & Wenzel, 2009). Our society's incarceration first approach to criminal justice is assumed and embedded in this research. With the present studies, I tried to expand upon the concepts of "punishment" and "punitiveness" to include non-custodial sanctions, specifically restorative justice, as a way to explore whether lay participants would accept a categorically different outcome—one that does not include incarceration—as a fair response to crime.

Experiment #1

The first experiment primarily examined the impact that social historical information and race of the criminal perpetrator had on participants' sentence choice and their empathetic feelings. I included several other dependent measures to explore aspects of the participants' attitudes, beliefs, and demographic factors and how those vary according to experimental condition. Two independent variables—social

historical information (provided or not provide) and race (African American or white) of the criminal perpetrator—resulted in four experimental conditions.

Based on previous literature that discusses the importance of social contextual information and the role of empathy in affecting behavior, I hypothesized that people who learn about a criminal perpetrator’s difficult childhood and adolescence will be more likely to select a restorative justice outcome as a sentence for a felony crime than people who are given no background information about the criminal perpetrator. Because racial inequities permeate every aspect of the criminal justice system and defendant race is often a way for people to make snap judgements regarding a defendant’s value, future dangerousness, and rehabilitative potential, I also hypothesized that social historical contextual information will affect participants’ sentencing choices differently for white versus African American criminal perpetrators. I expected that the social contextual information will result in more leniency for white perpetrators than for African American perpetrators. I also hypothesized that participants who are provided with social contextual information about the criminal perpetrator will have higher empathetic feelings towards him than those who are given no background information.

Method

Participants

One hundred and eighty-nine Qualtrics panel participants completed the study. Participants had to be over the age of 18 and U.S. citizens in order to participate. Participants were recruited by Qualtrics via email. The email invitation informed

them the study was for research purposes only, would take approximately 20 minutes to complete, and explained the incentives available. The email invitation included a link to the study. Qualtrics compensates participants who successfully complete studies using a combination of rewards and points with various partners. I paid Qualtrics \$5.00 for each participant that successfully completed the experiment and questionnaire.

The sample was overwhelming female (76.7%) and European-American (84.7%). The sample was fairly diverse in terms of political affiliation (28.6% Republican, 35.4% Democrat, and 22.8% Independent). Detailed demographic information is summarized in Table 1.

Table 1.

Demographic characteristics of experiment #1 participants (N = 189)

Demographic variable	<i>n</i>	%
Gender		
Female	145	77
Male	44	23
Race or ethnicity		
White or European American	160	85
Black or African American	9	5
Asian or Asian American	8	4
Hispanic or Latinx	7	4
Native American, Hawaiian, or Islander	2	1
Other	3	2
Education		
Some high school	5	3
High school graduate	31	16
Some college	49	26
Associate's degree	21	11
Bachelor's degree	54	29
Graduate degree	22	12
Professional degree	7	4

Annual household income			
	Less than \$14,999	19	10
	\$15,000 to 24,999	13	7
	\$25,000 to 49,999	40	21
	\$50,000 to 74,999	45	24
	\$75,000 to 99,999	28	15
	\$100,000 to 149,999	25	13
	More than \$150,000	19	10
Political Affiliation			
	Democrat	67	35
	Republican	54	29
	Independent	43	23
	Other	12	6
	I don't have one	13	7
Political Ideology			
	Very conservative	27	14
	Conservative	19	10
	Somewhat conservative	28	15
	Moderate	55	29
	Somewhat liberal	17	9
	Liberal	30	16
	Very liberal	13	7
Age			
	18 - 24	22	12
	25 - 34	18	10
	35 - 44	23	12
	45 - 54	27	14
	55 - 64	30	16
	65 - 74	55	29
	75 - 84	12	6
	85 or older	2	1
Do you have children?			
	Yes	106	56
	No	83	44

Procedure

Participants clicked on an email link which sent them to the online experiment on Qualtrics. At the outset, participants confirmed they met the criteria for participation and read and signed an informed consent. Participants were then

randomly assigned to one of the four experimental conditions. Participants either read a brief description summarizing aspects of the social history of a criminal perpetrator and a brief description of a crime he committed (crime vignette) or they only read a brief description of the crime, depending on condition. After reading through the crime vignette, participants were told that the criminal perpetrator had been arrested, charged, and convicted of the crime. The experimental stimuli for all four conditions are found in Appendix A.

After reading through the crime vignette, participants were provided a short description of various sentence options and asked to select the sentence they believed to be appropriate (see Appendix B). Then, they completed the rest of the questionnaire, which is described in detail below.

In order to be included in the sample, participants had to successfully complete both an attention and manipulation check. Only those participants who correctly answered the three attention check items and the two manipulation checks were included in the analyses presented below. The manipulation check items asked participants about their level of agreement with the following statements on a 5-point Likert scale: “The perpetrator in this case had a difficult childhood and adolescence” and “The perpetrator in this case was exposed to a number of negative influences as a child/adolescent.” I included an “I don’t know” option that those in the absence of social history conditions had to select to be included in the final analyses.

Materials

Vignette

The crime vignette is a brief description of a first-degree felony robbery, which carries a potential three to nine-year prison sentence under California criminal law (CA penal code 211). Previous research has established that this type of crime is considered to be mid-range (Gromet & Darley, 2006). This vignette was adapted from a prior study examining people's attitudes towards restorative justice as a response to crime (Gromet & Darley, 2006).

Independent Variables

Social History Manipulation. The first independent variable is whether participants learned about the social history of the criminal perpetrator. In the social history condition, participants were provided with a brief description of the criminal perpetrator's childhood which included mention of several established criminogenic risk factors common among serious criminal perpetrators, including childhood neglect, childhood abuse, unstable living environment, and dropping out of school (Greene et al., 2000; Haney, 1995). In the no social history condition, participants did not learn anything about the criminal perpetrator's background other than his age and race.

Race. The second independent variable is the criminal perpetrator's race, white or African American. In the "white" condition, participants were told that the criminal perpetrator is "Jake, a 25-year old white man living in San Francisco, CA." In the "African American" condition, participants are told that the criminal actor is

“Jamal, a 25-year old African American man living in San Francisco, CA.” Other than name and racial description, the vignette is identical.

Dependent Variables

Sentence Choice. The primary dependent variable is the punishment participants choose to impose upon the criminal perpetrator—either a three-year prison sentence, a one-year jail sentence combined with participation in a restorative justice conference (split sentence), or participation in a restorative justice conference (including apology, payment of restitution, participation in anger management workshop and mandated community service) with no prison or jail time. Participants were provided with brief descriptions of each sentence and then asked to choose the sentence they believe the perpetrator should receive. The description of the sentence options is found in Appendix B. After selecting the sentence, participants completed the remainder of the questionnaire.

Justice Satisfaction Scale. The justice satisfaction scale asks participants how satisfied they are with their chosen outcome. This is assessed using a single item on a seven-point Likert scale ranging from “not at all” to “very” adapted from Gromet et al. (2012). In addition to asking about overall satisfaction, it asks whether participants are satisfied that the outcome is just for the victim, defendant, and community on the same seven-point Likert scale to determine whether these items were consistent or varied by target.

Belief in Rehabilitative Potential. Belief in the defendant’s rehabilitative potential was assessed using the following single-item: “How confident are you that

the perpetrator can be rehabilitated?” on the same seven-point Likert scale. I included this measure because participants would presumably be more inclined to choose the restorative justice outcome if they thought the criminal perpetrator could be rehabilitated and thus safely reintegrate into society. This measure has been used in similar studies assessing public attitudes towards criminal perpetrators and has been found to be related to punitiveness (Maruna & King, 2009).

Empathy. The other primary dependent variable of interest is participants’ feelings toward the criminal perpetrator—specifically whether they were induced to feel empathetically towards him. In order to determine whether the manipulation evoked empathy towards the criminal perpetrator, I included two validated measures of empathy, one for state (induced as a result of the experimental manipulation) and one for trait. The empathy state measure includes a set of 15 emotion labels, with six items that tap into empathy (sympathy, soft-heartedness, warmth, compassion, tenderness, and moving). Participants were asked to indicate the extent to which they currently feel each emotion on a seven-point Likert scale ranging from “not at all” to “extremely.” This scale has been used in several different studies aimed at assessing empathetic feelings towards a specific target (Batson et al., 1997; Tarrant et al., 2009). Internal consistency of the scale was excellent ($\alpha = .92$). The empathy trait measure includes 14 items on a five-point Likert scale intended to assess participants’ everyday empathic feelings. This scale has also been used in conjunction with the empathy state measure (Batson et al., 1997). It had good internal reliability ($\alpha = .86$).

I also included two questions that assessed the participants' specific feelings towards the criminal perpetrator, to assess the effectiveness of the experimental manipulation stimuli and examine whether learning about his social history would make participants empathize with him. The questions, "I can relate to the perpetrator in this case" and "I feel for the perpetrator in this case" were answered on a five-point Likert scale. Responses to the two questions were averaged to come up with a combined empathy towards the criminal perpetrator score.

Attitudes Towards Criminals. To supplement the validated empathy measures above, I also assessed participants' emotional reaction to criminals generally using a modified version of the Attitudes Towards Prisoner scale (Melvin et al., 1985). A combination of these measures has been used to assess empathy in previous studies (Batson et al., 1997; Tarrant et al., 2009). The Attitudes Towards Prisoner scale (Melvin et al., 1985) is a 31-item scale that measures how positively or negatively people feel towards prisoners. The items have been altered so that the word "prisoner" is replaced by "criminal" throughout.¹ Participants were asked to indicate how much they agree with each statement about their feelings towards criminals on a five-point Likert scale from "strongly disagree" to "strongly agree." Internal consistency for this sample was excellent ($\alpha = .94$).

¹ Two items from the original scale were not included in the analysis because they were not applicable to criminals. The following items were removed: "Bad prison conditions just make a prisoner more bitter," and "Prisoners should be under strict, harsh discipline."

Causes of Crime. To assess attributions for crime, two causes of crimes subscales from Ortet-Fabregat and Perez's Attitudes Towards Crime scale (1992) were used: one measuring hereditary and individual causes of crime (HICC) and the other social and environmental causes of crime (SECC). Participants were asked to indicate how much they agreed with each statement about crime on a five-point Likert scale from "strongly disagree" to "strongly agree." The subscales each include nine items.² The HICC subscale includes items such as, "A person becomes a criminal because it is carried in the blood" and "Criminals cannot change their destiny." The SECC subscale includes items such as, "Most criminals received a poor quality of education at school" and "Crime is fundamentally due to a shortage of economic and labor resources." Both subscales had good internal reliability ($\alpha = .83$ for HICC and $\alpha = .74$ for SECC).

Punitiveness. Punitiveness is typically understood to mean support for harsher criminal sanctions and penal policies (Hogan et al., 2005; Maruna & King, 2009). I used the Cambridge University Public Opinion Project (CUPOP) Punitiveness scale to measure how harshly participants believe an offender should be punished (Maruna & King, 2009). The CUPOP Punitiveness scale is a composite that draws upon other studies exploring punitive attitudes and which best approximates

² The following edits were made to these subscales. Three items in the original scale about drugs and mental illness were not included because it was unclear whether they should be considered social or individual causes of crimes. The following item was omitted because it was culturally inapplicable in the United States; "Many gypsies commit crimes because they carry it in the blood." The following question was edited to increase clarity. "Most criminals have poor cultural and educational levels" was changed to "Most criminals received a poor quality of education at school."

my conceptual definition. The scale includes eight items, assessed on a six-point Likert scale, ranging from “strongly disagree” to “strongly agree.” The sample had good internal consistency ($\alpha = .83$).

System Justification. System justification theory posits that some individuals have a strong ideological motive to justify and rationalize the existing social order and view it as legitimate and fair (Jost et al., 2004). Decades of research has validated this theory and demonstrated correlations between system justification beliefs and many beliefs and attitudes, including political ideology, social dominance orientation, and attitudes towards crime. Many previous studies on attitudes towards crime and criminal perpetrators have included a measure of system justification, demonstrating that people who are more punitive are typically higher in system justification beliefs (e.g., Costelloe et al., 2009; Hogan et al., 2005). I used a modified version of the system justification scale (Kay & Jost, 2003), with 8 items on a nine-point Likert scale. Internal consistency for this scale was good ($\alpha = .83$).

Belief in Meritocracy. Meritocracy is theorized as a social system in which those who are the most capable and talented do the best in society. Those who endorse the belief that our society is a meritocracy see social inequalities as the legitimate outcome of innate and earned differences among individuals. Similar to system justification, endorsement of meritocracy is hypothesized to correlate with more punitive attitudes towards criminal perpetrators. To assess this, I used a four-item scale, measured on a seven-point Likert scale (Horberg et al., 2013). The sample had decent internal consistency ($\alpha = .71$).

Demographics

Participants were asked to provide a range of demographic data, including their age, gender, race, level of educational, household income, political affiliation, and political ideology.

Results

The results presented below begin with a descriptive summary of participants' sentence choice frequencies by condition. These are followed by the results of a binomial logistic regression where the dependent variable has been collapsed into two categories to determine whether experimental condition predicted sentence choice. Lastly, the results of a two-way analysis of variance (ANOVA) comparing the effect of the conditions on several dependent variables of interest, including empathy, are presented.

Sentence Choice Frequencies

Across all conditions, participants most often selected a split sentence (51%). They also selected the pure restorative justice option more frequently than the prison sentence (32% versus 17%). Participants in conditions 1 and 3 (absence of social history) selected the three-year prison sentence more often than the restorative justice conference (28% versus 17% in condition 1; 21% versus 19% in condition 3). Participants in conditions 2 and 4 (presence of social history) selected the pure restorative justice conference more often than the prison sentence (49% versus 9% in condition 2; 42% versus 13% in condition 4). Table 2 summarizes the frequency of sentences chosen by participants according to condition.

Table 2.

Sentence outcome frequency by condition

Condition	3-year prison sentence		Split sentence		Restorative justice conference		Total
1 – Absence of social history/White criminal perpetrator	13	28%	25	54%	8	17%	46
2 – Presence of social history/White criminal perpetrator	4	9%	20	43%	23	49%	47
3 – Absence of social history/African American criminal perpetrator	10	21%	29	60%	9	19%	48
4 – Presence of social history/African American criminal perpetrator	6	13%	22	46%	20	42%	48
Total	33	17%	96	51%	60	32%	189

Inferential Statistical Findings

Binomial Logistic Regressions

Regression #1. Binomial logistic regression analysis was used in order to examine the effects of both presence/absence of social historical information and race of the criminal perpetrator on participants’ sentence choice. Two of the outcome variables—the three-year prison sentence and split sentence—were combined into one dummy variable to compare against the restorative justice outcome variable so that the model predicted the effect of condition on sentence choice as if there were only two options—one including a prison term and one that was categorically

different from a traditional custodial sentence (restorative justice). In this way, the regression analyzed the effect of the experimental manipulation on participants' choice to either pick a sentence consistent with the traditional penal system (prison or a split sentence with a reduced jail sentence) or to pick an outcome that is conceptually different in that it does not include any custodial component.

The logistic regression model was statistically significant, $\chi^2(2) = 16.73, p < .001$. The model explained 11.9% (Nagelkerke R^2) of the variance in sentence outcome and correctly classified 68.3% of cases. Those who did not receive any social historical information about the criminal perpetrator were less likely to choose the restorative justice outcome, with an odds ratio of .267, 95% CI [.137, .518], Wald $\chi^2(1) = 15.26, p < .001$. The race of the criminal perpetrator did not significantly predict sentence choice.

This analysis confirmed my first hypothesis that participants who received social historical information about the criminal perpetrator would be more likely to choose a more lenient sentence, specifically a restorative justice conference. The results do not support my second hypothesis that social historical information would have a different impact on participants' sentence choices depending on the race of the criminal perpetrator.

Regression #2. A second binomial logistic regression analysis was conducted to assess the effect of condition on sentence choice between the three-year prison sentence and the restorative justice conference, omitting the split sentence outcome from the analysis. The logistic regression model was statistically significant, $\chi^2(2) =$

15.12, $p = .001$. The model explained 20.6% (Nagelkerke R^2) of the variance in sentence outcome and correctly classified 71.0% of cases. Those who did not receive any social historical information about the criminal perpetrator were less likely to choose the restorative justice outcome than the prison sentence, with an odds ratio of .172, 95% CI [.068, .436], Wald $\chi^2(1) = 13.75$, $p < .001$. Again, the race of the criminal perpetrator did not significantly predict sentence choice.

Regression #3. I also added in the empathy state variable to the model as a predictor variable to see if it impacted the analysis. Again, the logistic regression model was statistically significant, $\chi^2(3) = 38.01$, $p > .001$. The model explained 46.1% (Nagelkerke R^2) of the variance in sentence outcome and correctly classified 80.6% of cases. Those who did not receive any social historical information about the criminal perpetrator were less likely to choose the restorative justice outcome than the prison sentence, with an odds ratio of .288, 95% CI [.098, .840], Wald $\chi^2(1) = 5.19$, $p = .02$. Participants with higher empathy state scores were more likely to choose the restorative justice outcome, with an odds ratio of 2.44, 95% CI [1.56, 3.76], Wald $\chi^2(1) = 16.38$, $p < .001$. For every 1-point increase in empathy state score, participants were 2.44 times more likely to choose the restorative justice outcome over the prison sentence. Once again, the race of the criminal perpetrator did not significantly predict sentence choice.

ANOVAs

A two-way ANOVA was conducted to examine the effect of the experimental conditions on several additional dependent variables of interest.

Empathy. First, I compared participants' scores on the empathy measures and found a significant main effect of social history on empathy state scores. Participants who received social historical information ($M = 3.78, SD = 1.53$) scored significantly higher on the empathy state scale than participants who did not receive any social historical information ($M = 2.62, SD = 1.42$), $F(1, 185) = 28.79, p < .001, \eta^2_p = .135$. There was no significant main effect of race of criminal perpetrator on empathy state nor was there a significant interaction effect between social history and race of criminal perpetrator.

There was a significant main effect of social history on empathy towards the criminal perpetrator. Participants who received social historical information ($M = 2.98, SD = .98$) scored significantly higher on my empathy towards the criminal perpetrator measure than participants who did not receive any social historical information ($M = 1.86, SD = 1.26$), $F(1, 185) = 47.13, p < .001, \eta^2_p = .203$. There was no significant main effect of race of criminal perpetrator on empathy towards the criminal perpetrator nor was there a significant interaction effect between social history and race of criminal perpetrator. Scores on the empathy trait measure were largely consistent between conditions and there were no significant effects of condition on the empathy trait measures.

There was also a significant main effect of social history on participants' assessment of the criminal perpetrator's potential for rehabilitation. Participants who received social historical information ($M = 3.75, SD = 1.07$) scored significantly higher on the belief in the criminal perpetrator's rehabilitative potential than

participants who did not receive any social historical information ($M = 3.11$, $SD = 1.02$), $F(1, 185) = 17.50$, $p < .001$, $\eta^2_p = .086$. There was no significant main effect of race of criminal perpetrator nor was there a significant interaction effect between social history and race of criminal perpetrator.

Analyses of variance between conditions on the justice satisfaction measures detected no significant effects from either independent variable. Across all four conditions, participants' justice satisfaction scores were relatively high ($M = 5.55$, $SD = 1.29$) and largely consistent. These results are unsurprising because participants chose the sentence and so would have been relatively happy with their choice. Thus, they had relatively consistent scores across all the justice satisfaction measures, regardless of experimental condition. Also, overall satisfaction scores did not vary much according to the target (justice for the victim versus justice for the perpetrator, e.g.) participants were asked about.

Criminal justice attitudes. After analyzing participants' scores on the criminal justice attitude measures, only one—the Causes of Crime subscale—yielded significant effects. There was a significant main effect of social history on the Causes of Crime HICC subscale. Participants who received social historical information ($M = 1.83$, $SD = .68$) scored significantly higher on the HICC subscale, meaning that they were in greater agreement with internal attributions for crime (hereditary and individual), than participants who did not receive any social historical information ($M = 1.58$, $SD = .44$), $F(1, 185) = 8.42$, $p = .004$, $\eta^2_p = .044$. There was no significant main effect of race of criminal perpetrator on the hereditary subscale scores nor was

there a significant interaction effect between social history and race of criminal perpetrator.

There was also a significant main effect of social history on the Causes of Crime SECC subscale. Participants who received social historical information ($M = 2.89, SD = .66$) scored significantly higher on the social subscale, meaning that they were in greater agreement with external attributions for crime (social and environmental), than participants who did not receive any social historical information ($M = 2.49, SD = .62$), $F(1, 185) = 18.96, p < .000, \eta^2_p = .093$. There was no significant main effect of race of criminal perpetrator on the social subscale nor was there a significant interaction effect between social history and race of criminal perpetrator.

There were no significant effects of condition on the Attitudes Towards Criminals (ATC) or punitiveness measures. However, participants in the social history conditions (conditions 2 and 4) had higher scores on the ATC scale ($M = 85.23, SD = 17.25; M = 84.79, SD = 19.23$) than participants in the no social history conditions (conditions 1 and 3) ($M = 81.15, SD = 16.01; M = 80.40, SD = 20.69$). Participants in condition 1 (no social history/white criminal perpetrator) also had the highest mean punitiveness scores ($M = 3.49, SD = 1.00$) overall. While these differences are not statistically significant, they illustrate a trend that may be worth further inquiry.

Discussion

I hypothesized that participants who learned about the criminal perpetrators' social history would be more likely to sentence them to participate in a restorative justice conference than to a prison term and that they would have higher empathetic feelings towards the criminal perpetrator. The results supported both of these hypotheses. The results of the binomial logistic regression demonstrate that those participants who were provided with social contextual information were more likely to choose a pure restorative justice outcome. The results of the ANOVAs also show that participants who read social historical information, and who therefore had some context in which to understand the criminal perpetrator, felt more empathetic in the moment, more empathetic towards the criminal perpetrator specifically, and were more likely to agree that he could be rehabilitated. They also had higher external attributions for crime than participants who did not learn anything about the criminal perpetrators' background. All of these findings support the importance of social contextual understanding and how it can impact peoples' decision-making regarding crime and punishment. While researchers have long known that this kind of information is critical in death penalty cases, it is worth noting that even in cases where there is a three-year prison sentence on the table—as opposed to a death sentence—social context matters to the way people think about criminal perpetrators and the consequences they should face. These results are consistent with other studies looking at the impact of social context on death penalty attitudes and

outcomes (e.g., Lynch & Haney, 2011), as well as studies regarding empathy as an important factor in decision-making (Batson et al., 1997).

Moreover, in death penalty cases, the mitigation evidence presented is typically very robust, with direct testimony from the defendant's friends and family members. This type of evidence presents a rich narrative of the defendant's life that is intended to be, and often is, very impactful. Here, the social historical evidence presented consisted of a short summary paragraph listing details from the criminal perpetrator's childhood and adolescence. Compared to the presentation of mitigation evidence or the way in which these details might be presented in a story, film, or book, this information was relatively sparse. Yet, it still impacted participants' feelings of empathy and their sentence choices. That a small manipulation was able to yield an effect suggests that if people learned about social historical risk factors more often and in more organic and detailed ways, their feelings towards criminal perpetrators may be even more impacted.

The role that social contextual information plays in affecting how people think about the causes of crime is also important. Here, the results found that participants who learned about the criminal perpetrator's social history had higher scores on both the hereditary (HICC) and social (SECC) causes of crime subscales. The finding that having information about someone's social history leads to greater endorsement of social/environmental causes of crime was expected because the information provides the logical inferential basis for understanding the social factors that can lead to crime. However, the finding that learning about someone's social history also leads to

greater endorsement of genetic/internal causes of crime was unexpected and runs somewhat contrary to the idea that learning this information would make people more aware of the social causes of crime and more sympathetic and empathetic towards the perpetrator. Perhaps this finding reflects the fact that learning more about people who engage in crime made participants more thoughtful in thinking about the causes of crime and while they still attributed crime to internal, fixed factors, they were also more understanding of the social and environmental factors that cause crime. It is also possible that, while this information led participants to have a greater understanding of the social causes of crime, it activated their stereotypes of people who engage in crime as damaged and irredeemable, which would explain greater endorsement of the internal causes of crime. Lastly, it is possible that learning about someone's social history makes them more sympathetic and understanding of social and environmental factors, but that those same social and environmental factors—poverty, instability, and abuse—are understood through a lens that sees them as the product of fixed, inheritable traits. If true, this may undercut some of the value in learning about someone's social history and suggests that in addition to presenting more social contextual information about criminal perpetrators it is important to provide an explanation of how criminogenic risk factors affect behavior in order to work against assumptions about inherent criminal propensities. Additional research could tease apart and explore these hypotheses more fully.

One major takeaway from this study is the percentage of participants who chose a restorative justice outcome (32%), regardless of experimental condition. That

more participants chose a restorative justice outcome than a prison sentence (17%) suggests that people are willing to entertain different types of criminal justice outcomes. Our penal system is still deeply committed to incarceration, despite the last decade of calls for criminal justice reform and an end to mass incarceration. While penal policy is largely a function of state legislative policy and institutional policies and recommendations, the public “tough on crime” stance and seeming endorsement of harsh punishment suggests that the general public is still committed to incarceration as the primary response to crime. These findings indicate that if non-custodial options such as restorative justice were more widely available, publicized, and used, the public would be supportive of them.

Typically, when crime stories are reported, there is no discussion of restorative justice as a potential criminal justice outcome. It may be outside of the public’s consciousness as a viable option. But in this study, where restorative justice is described and made available as a possible sentence, more participants selected it than a three-year prison term. And far more participants selected a split sentence with a restorative justice component (51%) than a pure prison sentence (17%). These findings are important because of the implications for criminal justice policy and for highlighting the fact that, if given the choice, at least some members of the public would be satisfied with a restorative justice outcome.

A majority of participants (51%) selected the split sentence option, with a reduced prison sentence combined with a restorative justice component. While restorative justice is gaining in both popularity and use, it is most often something on

top of a traditional sentence—for example a program that inmates can participate in while incarcerated. It is much less common as a stand-in for a traditional sentence or a way to reduce a criminal sentence. These results suggest that there may be a public appetite for restorative justice as a formal component of criminal sentences in order to reduce extremely long, punitive prison sentences. This idea goes against much of the theoretical work that has been done on restorative justice, which sees it as something entirely distinct from punishment and has argued that restorative justice should not be corrupted by being formally incorporated into the criminal justice system (see Braithwaite, 1998, 2002; Strang & Braithwaite, 2001; Daly, 2000). Despite this line of thought, these findings suggest that the public may see restorative justice as one part of a fair and legitimate punishment. As such, it may be an important step en route to challenging our system of mass incarceration.

Finally, contrary to my hypothesis, the results did not find the race of the criminal perpetrator to be a significant predictor of sentence choice or to significantly impact empathy or criminal justice attitudes. The lack of findings is surprising. Racial inequalities exist at every level of the criminal justice system—from policing, to determinations of guilt, to sentencing outcomes (Jefferson Exum, 2020; Kovera, 2019; Tonry, 2011). Yet in this study, the race of the perpetrator did not significantly affect outcomes. There are a number of potential explanations for these findings. First and foremost, it is possible that the race manipulation was not effective enough to impact participants' decisions and attitudes. Because of the online nature of the study combined with the relatively sparse information about the race of the

perpetrator (one mention of his racial identity and a name signifier), it is likely that the experimental manipulation was not powerful enough to significantly impact participants. In much of the research focused on race and the criminal justice system, researchers use images or videos to supplement racial identity information in order to create a more powerful impact (see Eberhardt et al., 2006; Lynch & Haney, 2000). Adding an image of the criminal perpetrator to the experimental stimuli may have yielded significant findings.

There are other considerations that may explain, at least in part, the lack of findings related to the race of the criminal perpetrator manipulation. It is possible that in the wake of a decade of increased attention to racial disparities in the criminal justice system lay people are more attuned to them and may try to counteract them in their explicit, conscious judgments when presented with a concrete criminal justice scenario. Alternatively, it is possible that the traditional racial stereotypes regarding crime and criminal perpetrators have shifted so that people are focused on criminal types—people who seem predisposed to crime, who are otherwise disadvantaged, and who may be seen as “damaged goods”—which are not exclusively concerned with race. Whatever the explanation behind these results, it is important to focus on this question in future work and tease apart the way in which a criminal perpetrator’s race impacts how people perceive them and their future dangerousness.

The results from experiment #1 and, specifically, the question of whether members of the public are willing to endorse restorative justice as an alternative to

custodial sanctions is more fully explored in Chapters 5 and 6, which detail the results of the focus group study.

Chapter 4: Experimental Study #2

The second experiment builds off the first and investigates whether social historical information interacts with both race of the criminal perpetrator and sentence outcome to impact participants' self-reported satisfaction with the sentence and other dependent measures. While experiment #1 was primarily interested in whether participants would choose a restorative justice outcome (as opposed to a custodial sanction) for the criminal perpetrator, and exploring whether the perpetrator's race and/or social history would impact that decision, experiment #2 is primarily concerned with participants' subjective feelings regarding restorative justice, as compared to prison, as the criminal justice outcome for a moderately serious crime. To achieve this, the experiment includes a pre-determined sentence as part of the experimental manipulation and the analysis focuses on whether participants were satisfied with the sentence (either a three-year prison term or restorative justice conference).

A 2x2x2 factorial design with three independent variables—social historical information (provided or not), race of the criminal perpetrator (African American or white), and sentence (three-year prison term or restorative justice conference)—yielded eight experimental conditions. The primary research question is whether social historical information about a criminal perpetrator interacts with sentence to impact participants' satisfaction with non-custodial sanctions and their empathy towards the criminal perpetrator. I hypothesized that participants provided with social historical information about a criminal perpetrator will be more satisfied with a

non-custodial sentence (restorative justice outcome) and less satisfied with a custodial sentence (three-year prison term). Again, race of the criminal perpetrator is included as another independent variable because of the proven racial disparities in criminal justice outcomes and, particularly, in sentencing decisions. I hypothesized that participants would be more satisfied with the restorative justice outcome for the white criminal perpetrator, across all conditions but especially when provided with social historical information about him, than for the African American perpetrator.

Method

Participants

Two hundred and fifty-three Qualtrics panel participants completed the study. Participants were recruited via Qualtrics in the exact same manner as those recruited for experiment #1. They had to meet the same eligibility requirements and were compensated in the same way. Participants who participated in experiment #1 were excluded from completing experiment #2 to prevent contamination of the data.

The sample was again overwhelmingly female (71.1%) and European-American (87.7%). The sample was also older, with 70% of participants over age 55 and 51% over age 65. The sample was fairly diverse in terms of political affiliation (37.5% Republican, 32.8% Democrat, and 20.9% Independent). Detailed demographic information is summarized in Table 3.

Table 3.

Demographic characteristics of experiment #2 participants (N = 253)

Demographic variable	<i>n</i>	%
Gender		
Female	180	71
Male	73	29
Race or ethnicity		
White or European American	222	88
Black or African American	15	6
Asian or Asian American	7	3
Hispanic or Latinx	4	2
Native American, Hawaiian, or Islander	1	.5
Other	4	2
Education		
Some high school	4	2
High school graduate	56	22
Some college	55	22
Associate's degree	31	12
Bachelor's degree	65	26
Graduate degree	35	14
Professional degree	7	3
Annual household income		
Less than \$14,999	32	13
\$15,000 to 24,999	35	14
\$25,000 to 49,999	70	28
\$50,000 to 74,999	36	14
\$75,000 to 99,999	35	14
\$100,000 to 149,999	30	12
More than \$150,000	15	6
Political Affiliation		
Democrat	83	33
Republican	95	38
Independent	53	21
Other	4	2
I don't have one	18	7
Political Ideology		
Very conservative	38	15
Conservative	41	16

	Somewhat conservative	21	8
	Moderate	98	39
	Somewhat liberal	17	7
	Liberal	26	10
	Very liberal	12	5
Age			
	18 - 24	11	4
	25 - 34	14	6
	35 - 44	27	11
	45 - 54	25	10
	55 - 64	47	19
	65 - 74	103	41
	75 - 84	24	9
	85 or older	2	1
Do you have children?			
	Yes	159	63
	No	94	37

Procedure

As with experiment #1, participants were emailed a link to the online experiment. Participants first confirmed they met the criteria for participation and signed an informed consent. They were then randomly assigned to one of the eight conditions. Participants read the exact same vignette as in experiment #1. In the absence of social historical information conditions, they read only a brief description of the crime. In the presence of social historical information conditions, they read a description summarizing aspects of the criminal perpetrators' childhood and adolescence. This manipulation, as well as the race of the criminal perpetrator manipulation are identical to those in experiment #1.

After reading through the crime vignette, participants were told that the criminal perpetrator had been arrested, convicted, and sentenced for first-degree felony robbery. In the prison sentence conditions, participants were told that the

criminal perpetrator was sentenced to a three-year prison term. In the restorative justice outcome conditions, participants were provided with a brief description of restorative justice practices and then told that the criminal perpetrator had been sentenced to participate in a restorative justice conference, pay restitution, participate in mandatory counseling, and complete community service. The full experimental stimuli for all eight conditions, including a description of the sentence imposed, are provided in Appendix C.

After reading through the experimental stimuli, participants completed the survey questionnaire, which is almost identical to that used in experiment #1, with slightly different attention and manipulation checks. Similar to experiment #1, in order to be included in the final sample participants had to successfully complete attention and manipulation checks. Only those participants who correctly answered the three attention check items and the two manipulation checks were included in the analyses presented below.

Materials

The crime vignette and social history manipulation are the same as those from experiment #1. The sentence manipulation consisted of a brief description of either the prison term or restorative justice conference (see Appendix C). The questionnaire participants were asked to complete is almost identical to that from experiment #1, except for omitting the question asking which sentence participants would impose and slight changes to the attention and manipulation checks. It includes all the same

dependent measures and an additional question asking participants whether they believe the sentence imposed in this case is too lenient.

Internal consistency of the dependent measures for the sample were excellent or good. They are provided in the Table 4, below.

Table 4.

Internal Reliability for Dependent Measures

Scale	α
Empathy (State)	.91
Empathy (Trait)	.86
Attitudes Towards Criminals	.73
Causes of Crime HICC Subscale	.87
Causes of Crime SECC Subscale	.78
Punitiveness	.80
System Justification	.82
Belief in Meritocracy	.74

Results

I conducted a three-way ANOVA to examine the main effects and interactions between my three independent variables on the dependent variables and determine whether the observed descriptive differences are statistically significant. While there

were no three-way interactions, there were several significant main effects and a few two-way interactions consistent with my predicted results, discussed below.³

Justice Satisfaction

I hypothesized that participants in the prison sentence conditions (1, 2, 3, and 4) would be more satisfied in general with the criminal justice outcome in this case than those in the restorative justice conditions (5, 6, 7, 8) on the basis of their familiarity with prison and prior research on lay sentencing attitudes. Additionally, because many people are unaware of or unfamiliar with restorative justice in general and do not typically understand it to be a potential criminal justice outcome, it was hypothesized that they would be less satisfied with this option because it is not consistent with most portrayals, both in the news and entertainment media, of the criminal justice system. However, there were no significant differences in justice satisfaction scores between participants in the prison sentence conditions as opposed to the restorative justice conditions. Rather, the results are more nuanced and complicated than that.

Both the presence/absence of social historical information and sentence were found to significantly impact participants' justice satisfaction ratings. There was a main effect of presence of social historical information on overall satisfaction with the sentence outcome, $F(1, 245) = 7.76, p = .006, \eta^2_p = .031$, satisfaction with the outcome specifically for the victim, $F(1, 245) = 9.93, p = .002, \eta^2_p = .039$,

³ Given the number of dependent variables, I only report statistically significant results. All other results were insignificant.

satisfaction with the outcome specifically for the perpetrator, $F(1, 245) = 9.06, p = .003, \eta^2_p = .036$, and satisfaction with the outcome specifically for the community, $F(1, 245) = 7.24, p = .008, \eta^2_p = .029$. When participants were provided with social historical information, they were more satisfied with the restorative justice outcome, across all the justice satisfaction measures.

There was also a main effect of sentence on overall satisfaction with the outcome, $F(1, 245) = 6.29, p = .013, \eta^2_p = .025$, satisfaction with the outcome specifically for the victim, $F(1, 245) = 5.90, p = .016, \eta^2_p = .024$, and satisfaction with the outcome specifically for the perpetrator, $F(1, 245) = 5.25, p = .023, \eta^2_p = .021$. Participants in the restorative justice outcome conditions were more satisfied when they were provided with social historical information about the criminal perpetrator than when they were not given that information, across all the justice satisfaction measures. Thus, it seems that participants were more satisfied with a restorative justice outcome when they knew something about the criminogenic risk factors the criminal perpetrator was exposed to as a child.

There was also a significant two-way interaction between presence/absence of social history and sentence on overall justice satisfaction, $F(1, 245) = 7.80, p = .006, \eta^2_p = .031$, satisfaction with the outcome for the victim, $F(1, 245) = 8.81, p = .003, \eta^2_p = .035$, satisfaction with the outcome for the perpetrator, $F(1, 245) = 7.25, p = .008, \eta^2_p = .029$, and satisfaction with the outcome for the community, $F(1, 245) = 6.57, p = .011, \eta^2_p = .026$. In order to further probe these interactions, I analyzed the simple main effects (reported below). For all four justice satisfaction measures, the

simple main effects follow the same pattern. Where participants were not given any social historical background information, they were more satisfied with the prison sentence outcome than the restorative justice conference outcome. Where participants were told the criminal perpetrator was sentenced to a restorative justice outcome, they were more satisfied when they were provided with social historical information.

Satisfaction with the Outcome in General

Among participants that were not provided with social historical information, participants who were told the criminal perpetrator received a three-year prison term were more satisfied with the outcome ($M = 5.22, SE = .22$) compared to participants who were told the criminal perpetrator received a restorative justice sentence ($M = 4.06, SE = .22$), $F(1, 245) = 13.87, p < .001, \eta^2_p = .054$. Among participants who were told that the criminal perpetrator received a restorative justice outcome (as opposed to prison sentence), participants who were provided with social historical information were more satisfied with the outcome ($M = 5.28, SE = .22$) compared to participants who were not provided with that information ($M = 4.06, SE = .22$), $F(1, 245) = 15.77, p < .001, \eta^2_p = .06$.

Satisfaction with the Outcome for the Victim

Among participants that were not provided with social historical information, participants who were told the criminal perpetrator received a three-year prison term were more satisfied with the outcome for the victim ($M = 5.10, SE = .24$) compared to participants who were told the criminal perpetrator received a restorative justice

sentence ($M = 3.84, SE = .23$), $F(1, 245) = 14.38, p < .001, \eta^2_p = .055$. Among participants who were told that the criminal perpetrator received a restorative justice outcome (as opposed to prison sentence), participants who were provided with social historical information were more satisfied with the outcome for the victim ($M = 5.27, SE = .23$) compared to participants who were not provided with that information ($M = 3.84, SE = .23$), $F(1, 245) = 18.96, p < .001, \eta^2_p = .072$.

Satisfaction with the Outcome for the Perpetrator

Among participants that were not provided with social historical information, participants who were told the criminal perpetrator received a three-year prison term were more satisfied with the outcome for the perpetrator ($M = 5.02, SE = .24$) compared to participants who were told the criminal perpetrator received a restorative justice sentence ($M = 3.86, SE = .23$), $F(1, 245) = 12.26, p = .001, \eta^2_p = .048$.

Among participants who were told that the criminal perpetrator received a restorative justice outcome (as opposed to prison sentence), participants who were provided with social historical information were more satisfied with the outcome for the perpetrator ($M = 5.19, SE = .23$) compared to participants who were not provided with that information ($M = 3.86, SE = .23$), $F(1, 245) = 16.47, p < .001, \eta^2_p = .063$.

Satisfaction with the Outcome for the Community

Among participants that were not provided with social historical information, participants who were told the criminal perpetrator received a three-year prison term were more satisfied with the outcome for the community ($M = 4.89, SE = .26$) compared to participants who were told the criminal perpetrator received a restorative

justice sentence ($M = 3.81, SE = .25$), $F(1, 245) = 9.19, p = .003, \eta^2_p = .036$. Among participants who were told that the criminal perpetrator received a restorative justice outcome (as opposed to prison sentence), participants who were provided with social historical information were more satisfied with the outcome for the community ($M = 5.13, SE = .25$) compared to participants who were not provided with that information ($M = 3.81, SE = .25$), $F(1, 245) = 13.98, p < .001, \eta^2_p = .054$.

Contrary to my hypothesis, there was no main effect of race of the criminal perpetrator on justice satisfaction nor was there a significant interaction effect including race of the criminal perpetrator on any of the justice satisfaction measures.

Belief in Rehabilitative Potential and Belief Regarding Sentence

In order to assess the impact of the experimental conditions on participants' feelings regarding the criminal perpetrator and opinion about the pre-determined sentence imposed, they were asked whether they believed that the criminal perpetrator could be rehabilitated and whether they believed the sentence imposed is too lenient.

Consistent with the hypothesized results, there was a significant main effect of presence of social historical information on participants' belief in the criminal perpetrators' rehabilitative potential, $F(1, 245) = 13.96, p < .001, \eta^2_p = .054$. Participants who were provided with social historical information rated the criminal perpetrator as having more potential to be rehabilitated than those who were not provided with social historical information. This suggests that having some

contextualizing background information regarding the criminal perpetrator may have made participants more willing to see the criminal perpetrator as redeemable.

There was a significant main effect of presence of social historical information on participants' belief that the sentence imposed on the criminal perpetrator was too lenient, $F(1, 245) = 7.46, p = .007, \eta^2_p = .03$, such that participants who did not receive social historical information were more likely to agree that the participants sentence was too lenient. As expected, there was a significant main effect of sentence, where participants in the restorative justice condition were more likely to agree that the sentence was too lenient than those in the prison term condition, $F(1, 245) = 7.46, p = .007, \eta^2_p = .03$. Participants in conditions 5 and 7 (no social history/restorative justice outcome) had the highest mean scores on the agreement that the sentence imposed was too light measure ($M = 3.41, SD = 1.19; M = 3.50, SD = 1.37$). Thus, participants who were not provided with any contextualizing background information about the criminal perpetrator and who learned that he had been sentenced to participate in a restorative justice conference were more likely to agree that the sentence was too light than participants in other conditions.

Empathy

Similar to the results from experiment #1, participants in conditions where they were provided with a description of the criminal perpetrator's social history (conditions 2, 4, 6, and 8) had higher empathy state scores and, importantly, higher scores on the measure of empathy towards the criminal perpetrator in this case than

participants who did not receive any information about the criminal perpetrators' social history. There was a significant main effect of presence of social historical information on participants' empathy state scores, $F(1, 245) = 11.04, p = .001, \eta^2_p = .043$. Participants who were provided with social historical information had higher empathy state scores than those who were not provided with this information. There was also a main effect of presence of social historical information on participants' scores on the measure of empathy towards the criminal perpetrator in this case, $F(1, 245) = 77.19, p < .001, \eta^2_p = .24$, such that participants who received social historical information had higher scores on this measure.

Interestingly, there was a significant two-way interaction between social history and the race of the criminal perpetrator on the measure of empathy towards the criminal perpetrator, $F(1, 245) = 4.47, p = .036, \eta^2_p = .018$. In order to better understand the interaction, I analyzed the simple main effects. Among participants that were not provided with social historical information, participants who were told the criminal perpetrator was African American had higher scores on my measures of empathy towards the criminal perpetrator ($M = 2.08, SE = .14$) compared to participants who were told the criminal perpetrator was white ($M = 1.54, SE = .14$), $F(1, 245) = 7.89, p = .005, \eta^2_p = .031$. Thus, in the absence of background information, participants were more empathetic towards the African American criminal perpetrator than the white criminal perpetrator.

For both race of criminal perpetrator conditions (African American and white), participants who were provided with social historical information were more

empathetic towards the criminal perpetrator than participants who were not. Among participants who were told that the criminal perpetrator was white, participants who were provided with social historical information had higher scores on my measure of empathy towards the perpetrator ($M = 3.02, SE = .14$) compared to participants who were not provided with that information ($M = 1.54, SE = .14$), $F(1, 245) = 58.65, p < .001, \eta^2_p = .193$. Similarly, among participants who were told that the criminal perpetrator was African American, participants who were provided with social historical information had higher scores on my measure of empathy towards the perpetrator ($M = 2.98, SE = .14$) compared to participants who were not provided with that information ($M = 2.08, SE = .14$), $F(1, 245) = 22.54, p < .001, \eta^2_p = .084$.

As with experiment #1, scores on the empathy trait measure were largely consistent across conditions and there were no significant differences in scores on this measure between conditions.

Criminal Justice Attitudes

There was a significant main effect of presence of social historical information on participants' scores on the Causes of Crime SECC subscale, $F(1, 245) = 10.80, p = .001, \eta^2_p = .042$. Participants who were provided with social historical information (conditions 2, 4, 6, and 8) had higher scores on the SECC subscale than those who were not provided with this information. This means that participants who were given social historical information had greater endorsement of external attributions for crime than those who were provided no information about the criminal perpetrator.

There was significant main effect of sentence on both punitiveness, $F(1, 245) = 6.53, p = .011, \eta^2_p = .026$, and system justification scores, $F(1, 245) = 13.51, p < .001, \eta^2_p = .052$. Participants who were told that the criminal perpetrator received a prison sentence had higher punitiveness scores, meaning they endorsed harsher punishments, and had higher system justification scores, meaning they were more likely to agree that our society is fair and just, than those participants who were told that the criminal perpetrator received a restorative justice outcome. As one of the few significant results based on sentence condition, this finding has interesting implications. It suggests that those participants who were told that the criminal perpetrator was sentenced to prison (as opposed to participate in a restorative justice conference) were primed to be more punitive in their general attitudes and to feel more comfortable with the status quo. It also suggests that for those participants who learned that the criminal perpetrator had been sentenced to participate in a restorative justice conference, the experimental manipulation may have made them more open to less punitive options and less supportive of the status quo given that an alternative was presented to them.

Discussion

Similar to experiment #1, my hypotheses regarding the impact of social historical information on justice satisfaction and empathy were largely confirmed. But my hypotheses related to the race of the criminal perpetrator were not supported. These findings again illustrate the importance of social historical information and context to participants' feelings regarding criminal perpetrators and criminal justice

outcomes. And they offer a similar puzzle regarding how the race of the criminal perpetrator interacts with background contextual information to affect participants' feelings and attitudes.

The present findings highlight two important trends. First, when participants were not provided with social historical background information about the criminal perpetrator, they were more satisfied with a prison sentence outcome as compared to a restorative justice outcome. Similar to the way information about crime is often relayed to the public, with little to no context, participants were more satisfied with a punishment that is familiar—a prison sentence. Second, when participants were told that the criminal perpetrator was sentenced to participate in a restorative justice conference, they were more satisfied when they were given some social historical context about the perpetrator than when they were not. These findings help confirm the importance of social contextual information to judgments regarding criminal perpetrators and the punishments they should receive.

These trends held across all justice satisfaction measures; whether the question directed the participants' focus to justice in general, for the victim, for the perpetrator, and for the community. I included all these different measures because I was interested in whether participants would feel differently about the justice implications when asked to consider different groups. But participants responses were relatively uniform across the different justice satisfaction measures. This may mean that participants were not sufficiently primed to think about different groups, as other research has documented that when primed to consider different justice targets,

participants' justice concerns shift (Gromet & Darley, 2009). It may also be that asking participants to think about satisfaction of the sentence outcome for other groups was too cognitively taxing a task or possibly confusing, without a fuller explanation; leading them to rely on their own sense of satisfaction as a proxy for how the various target groups might feel. This would explain consistency across these measures.

Relatedly, participants who were provided with social historical information were more likely to believe the criminal perpetrator could be rehabilitated than those who were not given any information. This is important because it demonstrates the power of social historical information in providing some way for participants to think about or understand who the criminal perpetrator is beyond their crime and to imagine whether they might be able to be redeemed. In this study, participants were not given any information to suggest the criminal perpetrator was more or less likely to be rehabilitated. Nevertheless, participants made a cognitive and conceptual leap when provided with some background information, suggesting that they could imagine the person engaging in redemptive work based on knowing something about their background.

Another important finding is that participants who were not provided with any social historical information were more likely to agree that the restorative justice outcome was too lenient than those who were provided with that information. The social historical information was relatively sparse, and did not include images or video to bring the criminal perpetrator to life or the kind of detailed descriptions and

testimony that generally are presented as mitigation evidence, but still participants were impacted by the presence or absence of this information in the way they thought about the appropriate punishment for the criminal perpetrator.

The presence or absence of social historical information also affected participants' empathetic feelings—both their state feelings and their empathy towards the specific criminal perpetrator in the case. This result is consistent with the findings from experiment #1. Reading a brief description of the criminal perpetrator's background made participants more empathetic, at least temporarily. Additionally, there was a noteworthy interaction between the presence/absence of social historical information and the race of the criminal perpetrator. When no background information was provided, participants felt more empathetically towards a criminal perpetrator they were told was African American, as opposed to white. This unexpected result may be explained by a heightened awareness of racial disparities or a presumption that an African American criminal perpetrator had a disadvantaged childhood (without being explicitly told that). More research to probe the meaning of this finding is needed to tease out the underlying explanation.

In both the African American and the white criminal perpetrator conditions, participants who were provided with social historical information felt more empathetic towards the perpetrator than those who were provided with no information. This finding is expected and consistent with other findings documenting an increase in empathy when participants were provided with background information, regardless of the perpetrator's race.

The presence of social contextual information only meaningfully impacted participants' responses for one of the criminal justice attitude measures—the causes of crime SECC subscale. Participants who were provided with social historical information scored higher on the social subscale than participants who were not. This indicates that learning about the criminogenic risk factors the criminal perpetrator was exposed to in this case made participants more aware of the social and environmental causes of crime, perhaps priming them to be more thoughtful about the reasons why people engage in crime.

Finally, sentence was found to have impacted participants' scores on the punitiveness and system justification scales. Participants who were told the criminal perpetrator was sentenced to a three-year prison term were more punitive and had higher system justification scores than participants who were told the criminal perpetrator was sentenced to participate in a restorative justice outcome. While this finding was not predicted, it makes sense given the other findings that indicate that participants in the prison sentence conditions were primed to think more about prison as a justified outcome. Having been told that the criminal perpetrator was sentenced to a three-year prison sentence may have accorded with participants' understanding about how the justice system typically works. Given that consistency, it makes sense that those participants would have endorsed harsher punishments (on the punitiveness scale) and higher system justification beliefs. By contrast, participants who were told that the criminal perpetrator was sentenced to a restorative justice outcome may have been primed to think more critically about the system and the notoriously harsh

punishments imposed on prisoners in the U.S. Additional research into these questions can help shed light on the psychological mechanisms responsible for the present findings.

As with experiment #1, I was surprised by the lack of findings related to the race of the criminal perpetrator. I expected race to play a larger role in impacting participants' satisfaction with the outcomes, as well as their empathetic feelings. As with experiment #1, the lack of findings demands additional attention. It is important to consider the reasons why race did not play a larger role in participants' feelings regarding the sentence and their empathy towards the criminal perpetrator. It is very possible that the race manipulation was not effective or not effective enough given the limitations inherent in a study of this design, without images or video to accompany racial identity labels and name signifiers. It is also possible that the race variable on its own would have significantly impacted the outcome variables, but the social historical manipulation was stronger and more impactful. It is worth considering these questions in future work and trying to better understand how the race of the perpetrator affects peoples' perceptions when they are provided with a social history that documents criminogenic risk factors.

The main purpose of experiment #2 was to probe participants' self-reported feelings regarding different justice outcomes and see how those feelings were impacted by both social historical information and the criminal perpetrator's race. I was again encouraged by the findings that illustrate, for the most part, satisfaction with the outcomes, including the restorative justice outcomes. As with experiment

#1, my findings indicate that the lay public may be more willing to accept alternatives to incarceration if they are made aware of them. Lay perceptions of restorative justice and whether it can meet the public's need for justice in response to crime are more deeply analyzed in Chapters 5 and 6.

Limitations and Conclusions

The experimental studies were limited in several ways. First, both experiments had limited ecological validity. Due to some of the constraints of the online experimental format, the experimental manipulations were only able to roughly approximate the variables of interest. Here, I was trying to manipulate participants' empathetic response towards a criminal perpetrator after learning about his social history and racial background. The manipulation was relatively sparse and not immersive. In real life, people learn about criminal perpetrators through news stories and accounts from legal proceedings, generally providing richer detail, images, and narratives. While these descriptions are often inaccurate and sensationalized (Bakhshay & Haney, 2018), they can provide a deeper understanding of the context surrounding both the crime and criminal perpetrator. And in court proceedings where mitigation evidence is presented, it is done through detailed testimony from friends and family. The truncated description used in the present studies is very far from the real-world way in which people learn about criminal perpetrators. Nevertheless, the manipulation caused the hypothesized results—by and large those participants who learned more about the criminal perpetrator's history and the criminogenic risk factors he was exposed to were more empathetic and more

lenient than those who did not. Thus, while the manipulations were sparse, they were effective, which suggests that if people are given more humanizing information about criminal perpetrators in real life they may be even more empathetic. Future studies can improve upon this limitation by using more realistic materials, such as videotaped excerpts of a criminal trial or snippets of a television program or news segment documenting a crime.

A second limitation of the experimental studies was the way in which the sentences were described to participants, who likely did not have much familiarity with them. I wanted to ask participants about restorative justice practices, both as a categorical alternative to prison and as a proxy for leniency in sentencing, but most people are not familiar with restorative justice and those who are typically do not know much about how it works. By contrast, most people in our society have a working understanding, albeit an imperfect one, of how prison/jail functions. This means that most participants likely knew about one sentence outcome but not another. I provided participants with a description of restorative justice conferences to help inform their decision. But whether they understood it or understood it well enough to make a truly informed decision is unclear. Thus, these results should be understood in the context of imperfect information.

Third, because this was an online study, participant engagement was likely more limited than had the study been conducted in person. This concern goes to the overall ecological validity of the study. While in-person simulations are typically more immersive, particularly in the criminal procedure context (Diamond, 1997),

online studies are increasingly the dominant mode of data collection and there have been significant improvements to the software used to conduct these studies which improve the overall experience for participants (Boas et al., 2020; Clifford & Jerit, 2014). Similarly, while there are greater concerns regarding online participants' level of engagement and the accuracy of their responses than with in-person participants, the use of Qualtrics panel participants was an intentional way to try to address this concern, at least in part. Because of the way in which Qualtrics panel participants are recruited, compensated, and tracked, they tend to be more engaged and provide more accurate responses than other online participants (Boas et al., 2020).

A fourth limitation concerns the overall representativeness of the samples. While the samples were fairly diverse in terms of political affiliation and age distribution, they were not representative along gender and racial/ethnic metrics. Across both experiments, over three quarters of the sample identified as female and almost 90% of the sample identified as European-American. That the samples were comprised primarily of European-American women clearly limits their generalizability to the general public. However, the results still reveal something important about the impact of the experimental stimuli on the sample. Moreover, while other forms of recruitment and in-person administration of the experiments might have yielded a more representative sample and potentially more thoughtful responses, research supports the validity of using platforms such as Qualtrics and Amazon's Mechanical Turk, especially for research where it is important to have a politically diverse sample (Boas et al., 2020; Buhrmester et al., 2011). Nevertheless,

future research and additional analyses of the present data set should try and address the overrepresentation of women in the sample and the underrepresentation of non-White participants, particularly those who identify as Latinx. Given these issues, additional analyses looking at demographic differences, particularly gender differences, will be conducted.

A related limitation of the study is the way participants were recruited, which may have biased results. Participants were all part of Qualtrics panels, which means that they agreed to respond to surveys sent by Qualtrics in exchange for compensation. While the sample was relatively diverse, and Qualtrics panel participants are generally more diverse than other online samples (Boas et al., 2020), the participants are individuals who are generally familiar with research and this may mean that they are not representative of the American public along this dimension.

Despite the limitations inherent in a simulated, online experiment, the experimental studies resulted in several notable findings that speak to the importance of social historical information to lay sentencing determinations and criminal justice attitudes. The presence of social historical information impacted participants' sentence choices in experiment #1 in an appreciable way. In the conditions where social historical information about the criminal perpetrator was provided, participants were more likely to choose a restorative justice outcome. In experiment #2, participants were more satisfied with the restorative justice outcome when they had social historical information about the criminal perpetrator to inform their judgments. These findings are important because they emphasize how critical contextual

information is in rounding out a criminal perpetrator or defendant, even in a typical mid-range crime such as robbery.

The fact that the race of the criminal perpetrator had little impact on outcomes or attitudes, aside from the empathy towards the criminal perpetrator, is also worth examining. These results do not support my hypotheses and are inconsistent with the harsh realities of the current system, where people of color are treated more harshly and punitively at every point in the system (Hetey & Eberhardt, 2018; Kovera, 2019; Mauer, 2010). That the race of the perpetrator did not play much, if any, role in my findings suggests a number of different theories for future inquiry. It is likely that the race of the criminal perpetrator manipulation was not powerful enough to have a significant impact. With minimal information, and no picture, participants may have focused on social historical information and the details of the crime and simply not tapped into the racial heuristics that are often at work when people make criminal justice determinations. It is also possible that participants were more concerned with the criminal archetype—someone who made bad choices or was a product of a bad environment—than a racial archetype, which is why the social history manipulation produced significant findings. Without more information, it is difficult to tease apart the explanation for these findings in light of the persistent racial disparities in criminal justice outcomes. Future work will need to try to address this puzzle more fully.

More generally, the experimental findings demonstrate more than I expected that lay participants are willing to endorse non-custodial criminal justice outcomes.

In experiment #1, more participants selected a restorative justice outcome than a traditional prison sentence. And in experiment #2, participants were largely satisfied with the restorative justice outcome as the criminal justice sentence imposed on the criminal perpetrator when that was the sentence they were presented with. This suggests that when community-based alternatives are available and publicized, the public may be supportive of them as legitimate criminal justice outcomes and alternatives to the current system. The continued institutional reliance on incarceration may be more a function of a lack of imagination than a public mandate for harsh punishment. As the next two chapters illustrate, members of the public are largely aware of the many flaws in the current criminal justice system and understand that there is a problem with mass incarceration in this country. When they are made aware of alternatives to incarceration, such as restorative justice practices, lay people are more open to those alternatives than current sentencing policy and practice would suggest. Chapters 5 and 6 explore these ideas in greater detail and examine the circumstances in which lay participants are more supportive of restorative justice practices and what obstacles present the biggest challenge for criminal justice and penal reformers.

Chapter 5. Focus Group Study Method and Deductive Results

The present study aims to understand public perceptions of punishment and justice and to probe whether participants feel that restorative justice approaches can serve as sufficient responses to criminal actions. This research is focused on lay understandings of the purpose of punishment and understanding whether restorative justice approaches can fulfill those purposes and meet the symbolic needs of the community. What do participants think the purpose of punishment is or should be? Do participants feel that restorative justice approaches can achieve these goals? What are the barriers to support for restorative justice? What suggestions do participants have for improving restorative justice processes? These questions were explored through focus groups with San Mateo County community members. The focus groups were also intended to spur further ideas for experimental analysis. By asking participants for their suggestions, I generated new ideas for how to sway attitudes regarding restorative justice practices.

Method

Participants

Twenty-nine San Mateo County community members participated in one of five focus groups. A summary of participant demographics can be found in Table 5. Participants were recruited via nonprobability sampling from San Mateo County.

San Mateo County is a populous California county (approximately 766,000 residents) with a relatively diverse population, with 38.9% white, 30.1% Asian, 24.3% Latinx, and 2.7% African-American residents (U.S. Census Bureau, 2018).

The median household income in 2018 was \$113,776 and the percentage of the population with a bachelor's degree or higher is 49.9% (U.S. Census Bureau, 2018). San Mateo County has a lower crime rate than the state of California for both violent (249.5 versus 450.7) and property crime (1,959.1 versus 2,491.0) (Public Policy Institute of California, 2017).

Participants were recruited in person at three locations—the weekend Farmer's Market, the College of San Mateo (a local community college), and outside a movie theatre-restaurant complex located on Third Street in downtown San Mateo. Additionally, flyers were posted at local businesses in the downtown district, including a Peet's Coffee, and at the College of San Mateo. Participants were also recruited online using both Facebook and Nextdoor advertising for San Mateo County community members. Interested individuals were directed to complete a brief screening questionnaire, which took approximately two minutes to complete. Questions inquired about age, gender, racial and ethnic identity, education level, county residence, whether participants worked in law enforcement and/or corrections, and contact information (see Appendix D for focus group screening questionnaire). In the case of in-person recruitment, screeners were completed on a tablet. I reviewed responses to determine eligibility and assign participants to a focus group. Participants were eligible if they were over the age of 18, were San Mateo County residents, and were not in the law enforcement/corrections field. Individuals who identified as people of color and/or had lower levels of education were prioritized for selection to attempt to diversify focus groups and highlight the feedback of

marginalized community members. Potential participants were contacted by phone or email with an invitation to participate. I then corresponded with interested participants to organize them into focus groups and arrange days and times for our discussion.

Table 5. *Demographic characteristics of focus group participants (N=29)*

Demographic Variable		<i>n</i>	%
Gender	Female	18	62%
	Male	11	38%
Race or ethnicity	White or European American	18	62%
	Asian American	7	24%
	Latinx	3	10%
	Prefer not to answer	1	3%
Education	Postgraduate or professional degree	13	45%
	Bachelor's degree	9	31%
	Some college but no degree	5	17%
	High school diploma or GED	2	7%
Parental status	Identify as parent or guardian	18	62%
Marital status	Married or long-term partnership	18	62%
	Single	7	24%

	Divorced	2	7%
	Widowed	2	7%
Political affiliation	Democrat	19	66%
	Independent	6	21%
	Republican	3	10%
	Prefer not to answer	1	3%
		<i>M</i>	<i>SD</i>
Age (in years)		56.1	14.6

Procedure

Each focus group included five to six participants and lasted approximately 90 minutes. All focus groups were facilitated by me, utilizing the same protocol (see Appendix E for focus group protocol). At each focus group, two undergraduate research assistants were present to take notes and assist with any logistical issues. Three of the focus groups were held in private rooms in a community center in a residential area near the College of San Mateo, and two were held in a meeting room at the San Mateo Public Library in downtown San Mateo.

After reviewing the informed consent, participants were asked to create a name tag with their chosen pseudonym and complete a brief demographic questionnaire (see Appendix F). Once all focus group participants had signed the informed consent and completed the demographic questionnaire, I provided an overview of the discussion. I introduced myself, my research assistants, and my project. I also provided each focus group with the same set of information regarding

the criminal justice system in general and restorative justice practices in particular to provide some context for our discussion. I then explained I would be working off of a script to guide our conversations and turned on the recording device.

Focus group questions explored lay understandings of the goals of punishment and the meaning of justice in the criminal context, attitudes towards restorative justice practices, barriers to support for restorative justice practices as opposed to incarceration, and suggestions for how barriers can be overcome (see Appendix E for protocol). Snacks and beverages were provided, and participants received a \$30 Amazon gift card as a token of gratitude for their time. Focus groups were audio-recorded and transcribed by professional transcribers Landmark Associates. Participant-selected pseudonyms were replaced with new pseudonyms to ensure confidentiality.

Analytic Strategy

Focus group transcripts were analyzed both inductively and deductively, focusing on both explicit responses to questions posed during the focus groups and overarching themes. Thematic analysis was used for both analyses, which the goal of understanding participants' attitudes towards justice, punishment, and potential for criminal justice reform.

The focus group transcripts were analyzed using thematic analysis (Braun & Clarke, 2006), in which patterns of meaning are identified to derive themes (Denzin & Lincoln, 2000; Polkinghorne, 1988), and qualitative content analysis (Schreier, 2012). Two trained undergraduates and I coded the data using consensus coding (see

Langhout et al., 2011), whereby we met regularly to discuss our interpretation of the data and coding scheme and, when we had differing opinions, we discussed and came to an agreement regarding how data should be coded. This process strengthened the analysis by allowing for multiple perspectives and experiences to influence and inform our interpretation of the data. Consensus coding helped establish the methodological integrity of our analysis by enhancing the theoretical bases and transparency of our findings (Levitt et al., 2018).

The first step in analysis was to do a preliminary read of the transcripts to gain familiarity with the data. I read through all the transcripts and took detailed notes on emergent themes, discrepancies, and differences both within and between focus groups (Josselson, 2011). Next, each research assistant and I independently conducted a round of preliminary coding on the same transcript, which was given an inductive, in-depth reading to generate a broad list of codes and themes. Data was coded using the qualitative data analysis program Dedoose, version 8.0.42. After this initial round of coding, we collaboratively created a codebook to describe patterns of meaning identified in the data. We decided to code the transcripts along two dimensions: first, we coded the responses to questions the focus group participants were asked. This did not result in a straight-forward codebook with each question asked having a clear answer, but rather required interpretation and collapsing questions that addressed the same concept. This resulted in a level 1 codebook. We also coded for broader themes that pervaded the entire focus group discussions and did not necessarily track the explicit questions that focus group participants were

asked. These inductively-derived thematic codes were captured in a level 2 codebook. Each transcript was coded twice using each codebook.

All five transcripts were coded independently by both myself and one of the two research assistants. We then met to discuss our results and, where they was disagreement, we came to a consensus regarding the appropriate code to apply. Regular team meetings were held to refine codes and discuss interpretation issues and emerging analyses. After all the transcripts were coded, I condensed and reorganized codes into higher-order responses and themes.

Deductive Results

Each focus group responded to a set of pre-scripted questions. While the majority of their responses veered away from directly answering the questions posed, their responses provide insight into how they conceive of justice and punishment and how they view restorative justice as a potential alternative to incarceration. I collapsed several of the questions posed into higher-order questions and present the responses to five questions: 1) What is the purpose of punishment, 2) What makes a punishment fair?, 3) What is the meaning of justice?, 4) Is restorative justice ever the appropriate response to serious crime?, and 5) What suggestions do you have for improving restorative justice processes? The focus group participants varied in their responses to these questions within and between focus groups. Nevertheless, several clear patterns emerged.

What is the Purpose of Punishment?

Participants' responses clustered around the two socio-legal understandings of the purpose of punishment—instrumental and symbolic. Most participants identified the purpose of punishment as instrumental in order to *protect the public*. Jonathan, an 83-year old European-American grandfather, described the purpose as “protection of society at large from people who would do—give society ill, do people in the community ill.” Brian, a 48-year old Asian American father, echoed the same sentiment while trying to distance himself from the retributive aspect of punishment:

The retribution part sort of makes me squirm, a little uncomfortable with the idea that there's some values that we're going to propose in a certain way, and I rather think of it as we're protecting, as you said, society at large from these actors or these actions.

Public safety and protection were generally linked to warehousing or *incapacitating* “dangerous” persons. Every focus group discussed the importance of removing people who commit crime in the name of public safety. In these conversations, participants generally defaulted to conceiving of punishment as incarceration and spoke in terms of how prison/jail might achieve these goals. For example, Sharon, a 69-year old widow, stated that the purpose of punishment includes “getting the person off the street so that he or she does not do whatever it was that they did to someone else to protect the rest of us.” This notion that punishment was meant to remove unwanted or dangerous people from society was echoed by many participants. Vicky, a 65-year old former lawyer, said “Well, it is tricky. Because th- the primary purpose—in my mind, the major purpose is to just get them out of society, because they are a ri—they propose a risk of, you know, arm-

armed robbery of someone else.” Bernie, a 58-year old single, European American man, stated:

I think, that it takes somebody who’s a criminal that could be dangerous or peddling drugs and takes ‘em outta their, uh, networking and all like this for a certain amount of time to—it disrupts it quite a bit, I think.

Jeff, a 52-year old married man with no children, called it “protecting-- removing negative elements from society until they pay their debt to society,” thereby conflating public safety with the removal of people who commit crime.

Many participants also fixated on another instrumental purpose of punishment—*deterrence*. For example, in response to a question about the purpose of punishment, Juan, a 52-year old Latinx father, and Becca, a 33-year old single, Latinx woman, provided these representative responses:

Juan: A deterrent to future criminal behavior. Okay.

Becca: I agree. I agree deterrent. I mean, people are gonna, you know, hopefully, think twice before they do something that’s gonna put them in jail, or the possibility of any sort of punishment.

Several participants also spoke about the purpose of punishment as *retribution*, but they distanced themselves from endorsing that view explicitly. For example, Jonathan stated:

I think, well, it's partially a deterrent of course and it's partially a means of society getting retribution. I'm not saying that I—how that should balance out, or what it should be, I'm just saying that's what I think the basis of it is.

Steven, a 67-year old married father, remarked:

I think for a lot of people, it’s retribution, but legally, it’s—I don’t think that’s what it’s supposed to be about. It’s just punishment for

behavior that society deemed unacceptable, but a lot of people, it's payback for a lot of people I think.

As will be discussed below, this contradicted the force of many of the participants' other statements, which indicated a clear retributive motive for punishment.

Participants also stated that the purpose of punishment is rehabilitation and reintegration of criminal perpetrators into their communities. Jeff's comment below is illustrative:

But absolutely, I would think that part of the punishment phase, is what I'd call that, should be seeing how we can reintegrate people back into the system as well. So that would be a very important piece of it, not just to drop people in some desert island somewhere and say you can't be a part of things. Definitely rehabilitation needs to be a big part of it in my mind.

Some participants also focused on restoring victims. For example, Shawn, a 44-year old Asian American father, and Juan had the following exchange:

Shawn: Uh, well, I think, uh, deterrent might be 10 percent and 90 percent rehabilitation—

Juan: It should restore victims. . . You know, to help restore people to where they were prior to, I- I think that's fair. I think that's the law. I mean, it's- it's that way in civil cases.

As will be discussed in greater detail below, participants discussed these purposes with a keen awareness that the current criminal justice system was not very effective in meeting these goals and that the goals were often contradictory.

Discussing deterrence, Peter, a 55-year old European-American father, stated:

No, I-I'd-I'd agree that it—it's—ideally, it's a deterrent. Um, I think the problem is that, once criminals get into prison or jail, it becomes like the-the Disneyland for criminals, and they learn a lot more once they get in there. And so, it's not actually a very good deterrent.

And Sam, a 25-year old student, made the following representative comment regarding rehabilitation:

I only see rehabilitation happening outside of prison. How can it possibly happen in prison? When you're removed from society, you're no longer allowed to participate in the place that you will eventually be returned to. Uh, you know, some of these folks spend 2, 5, 10, 15, 30 years in prison. And we say, "Okay. You've served your sentence. Go back."

Despite recognizing that punishment often fails to achieve its goals, several participants explicitly acknowledged the importance of a *symbolic sense of safety* that punishment confers, even if it is not effective. Katerina, a 50-year old mother, exemplified this sentiment:

Yeah, I think it's also psychological for the collective cautiousness. . . So it's- it's necessary from the point of view that the community feels that there's a structure and an organized base of rules. And they might not always work, and they're in fact if there's a guarantee that it won't always work. But that they will work most of the time. And for the average person, it gives peace of mind and peace of—you know, it gives the community a sense of security and of order. Which is important for us to function anyway as individuals and collectively as well.

She went on to elaborate that this is part of the reason why society needs to incarcerate people convicted of committing crimes—to provide the illusion of safety.

It- it has to be something that- that gives the community the feeling of safety. So the feeling of safety comes from the fact that you know the person who let's say, um, robbed and killed a shopkeeper is not amongst us anymore. Or for a period of time, it's not—he's not gonna be around us. And we kind of get this temporarily collective feeling of yeah, things are okay. He's been locked up. So alternative forms of punishment that are—do not address the safety concern of the community are lacking a bit and, you know, effectiveness I think for us. Even for the illusion of safety and order.

Other participants made similar points. Juan stated: “It’s just a community sense. If we don’t have law and order, people don’t feel safe.” And Sam highlighted the performative aspect of punishment:

The first question you asked, like what - what is criminal punishment currently, and what should it be? The first thing that came to my mind is that it's performative. It's to show the rest of society that justice has been served. “Look. They're locked up. You don't have to worry about them anymore. We did the thing. You can go on feeling good about your day.”

These comments foreshadow the kinds of discussions that followed whereby participants were very critical of the current punishment system, yet invariably expressed the feeling that prison was necessary, at least in some cases, based on persistent stereotypes and myths about criminality.

What Makes Punishment Fair?

Participants thought a wide-range of factors were relevant to the fairness of a particular punishment. Participants emphasized that punishment should be proportionate to the crime. In discussing proportionality, participants focused on the severity of the crime and, in particular, the level of harm caused by the criminal perpetrator, which is consistent with the literature examining peoples’ retributive motives for punishment (Carlsmith et al., 2002). Regarding the severity of the harm caused, Diane, a 66-year old retired teacher, said, “That’s very relevant.” And Ty, a 31-year old single European American man, focused on the “[d]amage that is done.”

Participants were also very focused on motive and the context surrounding the crime. For example, participants tended to feel differently about crime committed out

of greed or hate as opposed to need or justifiable anger. For example, Bernie made the following comparison:

Well, you know, people steal for a variety of reasons, and if a person is stealing because, you know, somebody in their family needs chemotherapy, and they have no health insurance, well, that's different than they're stealing cuz they'd like to go to the Bahamas for the week. So, a lotta different crimes, you could take into account some of the motivations, if you can find out if they're honest or not, I think, personally, and then, uh, see what the punishment to fit the crime would be then.

And Katerina stated:

The profile of the- of the perpetrator like mental health, physical health, addictions, background, social circumstances. Was it—did you steal because you couldn't eat, and you had to steal the, you know, food or whatever? I mean, very simplistic example. But I mean, what are the factors that drove the person to that? And again, pattern obviously is a big- a big sign of how deeply, uh, are you into the criminal kind of—side of things.

These distinctions map on to participants' distinct beliefs about crime as something that can happen randomly to anyone versus crime that is the product of criminogenic conditions and circumstances. Participants whose default understanding of crime consists primarily of random acts that target anyone focused on the severity of the crime and the harm caused as important factors. But participants whose default understanding of crime includes attention to criminogenic risk factors focused more on the context of the crime as relevant to the fairness of the punishment. These findings are in line with previous research that demonstrates that lay people are generally most focused on things like motive and severity of harm in making punishment decisions (Carlsmith & Darley, 2008).

Participants were also very interested in whether the hypothetical criminal perpetrator was a recidivist. In response to my questions or other participant responses, many focus group participants would ask if we were discussing a repeat offender. This seemed to be the driving factor for many participants in determining the fairness of a sentence and their willingness to entertain alternatives to incarceration. Brian stated, “Yeah, if it's a repeat—like if they appear to be a danger to society, then incarceration, and some point of separating from society would—is gonna be appropriate.” And Ty stated, “I mean, has this happened before? Or have—like are you fitting into society? Is this a reoccurring thing with you?”

Participants were generally split and oftentimes inconsistent about whether a person's background or social context should affect their punishment. On the one hand, there was fairly widespread acknowledgment that social context can affect someone's life course and can be a proximate cause of crime, suggesting that some criminal perpetrators should be given leniency. For example, Katerina explained:

It should be flagged that nobody is 100 percent responsible for what they did. I find that this is unfair because nobody is on their own ever. The influences, negative and positive are there. So why when a crime is committed, a person shouldn't take 100 percent responsibility. That's why I'm against capital punishment. So I think the punishment should reflect the fact that the individual is a product of its time, of its culture, of its particular family makeup.

Sam remarked, “I don't believe that any person commits a crime who hasn't experienced significant trauma.” And Jeff expressed support for taking into account the role of criminogenic risk factors:

I'm thinking about stories we see in the press recently, of a woman that killed someone, and when we delved into her past, she was heavily

victimized throughout her life since childhood. Had a fairly narrow range of actions or latitude in life to change her station. And that—I remember hearing that the court was looking at her background and weighing that against the sentencing, and that seems valid to me.

On the other hand, participants were generally interested in consistent outcomes, driven by the severity of the crime, not the person’s background. For instance, Sam stated: “I think background shouldn't be a factor for punishment, but it should be a consideration for rehabilitation.” Shawn felt outside factors should not affect punishment decisions. He explained, “I think punishment should be—should be sort of, um, equal and not decided by the judge.” Brian talked about the difficulty of considering context and ensuring consistent outcomes:

Brian: Yeah, I mean, I think I agree with [taking background into consideration]. How it would play out, I think it's very tough to make sure it's fair and equal.

Interviewer: Mm-hmm. So, fairness and equal sort of punishment across the same crime, those are important values to you when you're thinking about—

Brian: Yes.

The emphasis on consistent outcomes was somewhat contradictory to participants’ focus on context and the need to take each crime on a case-by-case basis. But, overall, most participants felt that inconsistent punishments, particularly those driven by socioeconomic or racial factors, were problematic. Participant comments related to racial and socioeconomic disparities will be presented in greater detail below.

What is the Meaning of Justice?

Participants provided a range of responses regarding the meaning of justice, as opposed to punishment specifically. Some participants felt that justice by necessity

included punishment or some element of pain and/or deprivation. Similarly, some participants felt that justice included retribution, although several did not actually endorse this view themselves. Rather, they stated that that is how “society” views justice or acknowledged that they were uncomfortable with this conception of justice.

For example, Jonathan, who is, as noted earlier, a 83-year old grandfather, stated:

The problem with the term justice is you can't get away from the idea that, when you talk about justice, by definition, in my concept of it, there's a retribution component of it. So there's something a little bit distasteful about that part.

Jonathan later went on to elaborate:

[M]y fear is just that, in society at large, at many—much of society looks at justice as a form of retribution. And I think that—I think the overwhelming support for the death penalty for example reflects that attitude in society.

Jeff similarly tried to articulate what society thinks justice is, but acknowledged that he did not have a better definition. He said:

It's commonly defined as an eye for an eye in some cultures and in some parts of our country. I'm not really onboard with that myself, but I struggle to say exactly what it would be, if it's not like for like.

Sharon, who I previously described as a 69-year old widow, focused on the incapacitation of the criminal perpetrator, stating: “justice for the family, or the friends, or the person it's happened to is that they can breathe easier. Good. The person is off the streets. So, that's justice.” And Brian returned to the idea that justice and punishment are fairly synonymous, remarking:

And I think in some people's minds, justice includes some kind of punishment. And then there's also the phrase, punishment that fits the crime, and that can be taken all sorts of ways and it's very subjective.

But I think, some people's mind, justice includes the element of punishing . . .

Many participants focused on the issue of proportionality—defining justice as a consequence that is proportionate to the crime committed. Steven, previously described as a 67-year old married father, stated: “Justice would be, um, a consequence commensurate with the crime, consistent, proportionate.” Some participants went even further with this idea, stating that justice would be a consequence that is both proportionate to and connected to the type and severity of the crime committed. For example, participants suggested working in the Emergency Room of a hospital as justice for committing an assault so that the criminal actor both paid some debt to society while better understanding the harm they caused. Janice, a 52-year old single, Asian American woman, and Lisa, a 64-year old mother, had the following exchange articulating a similar idea:

Janice: It was one of those locks that they, um—they honestly like because they broke the lock, but he had registered his bike. Six months later, they found the people who did it, and he got his bike back. And what the people had to do was their consequence was community service in the City of Davis taking care of and refurbishing the bike racks.

Lisa: Hmm.

Janice: That, to me, seemed like—

Lisa: Yeah, that’s good.

Janice: - an appropriate consequence for their behavior.

Lisa: There was some kind of a connection.

Others felt justice was about “righting a wrong” or making society whole.

Brian stated:

I think we talk about justice being repayment of the debt to society that you took, but it's—nobody really agrees on what, you know, it's very hard to put a real price on that because it's not all money. And there's different levels, so that's—but ultimately it's you're trying to make society whole again.

Relatedly, some participants mentioned justice as healing, restoration, and the generally improvement of society so that all people are better off. For example,

Diane and Sam both felt that justice included repair and restoration:

Diane: Undoing the wrong, just as an example.

Sam: [T]he criminal actor returns as a productive member of society with no intent to commit further crime. And I totally understand that like intent and productive member of society, those are like very subjective terms. But I think at the end of the day, that's what I want.

And Christy, a 21-year old Asian American student, said, “I think ideally it's like healing or like fixing.”

Some participants felt that justice involved an expression of remorse from the criminal perpetrator and “learning a lesson.” They also remarked that this may include some element of “pain,” but that the goal should be self-improvement through remorse, not pain for pain’s sake. The following discussion between members of one focus group exemplifies this position:

Jeff: I was trying to decompose justice in my head and there were three things that came out real quickly. One of them has to do with remorse or regret, which could be seen as a kind of pain perhaps, a learning of a lesson, you know, acknowledging that that was a wrong choice of action, and then potentially some sort of repayment might be required. Pain per se though, overt pain, other than that of recognizing

one's own guilt and having true remorse to that end, is about as far as I feel comfortable going with it.

Christy: I think that is kind of necessary, so you see what you did wrong, you see the pain, like inflicted, which in turn would be painful probably.

Jeff: It's not pain for pain's sake though, right?

Christy: No, it's—

Jeff: - yeah, to their own awareness, right? Sort of righting the wrong.

Brian: Yeah, that's what—I was gonna say that. You could include that in a broad sense of punishment. It may not involve physical pain, but some sense that that person sees what he or she did wrong and how he or she wronged society, and is sorry for it.

Overall, participants drew a distinction between punishment and justice, articulating the belief that justice is a broader concept than punishment. They felt that justice both does and should include a more holistic understanding of consequence. Still, most participants felt that justice included punishment within its meaning.

Is Restorative Justice Ever the Appropriate Response to Serious Criminal Conduct?

Participants fell into two camps when discussing this question—those that thought restorative justice could be an appropriate consequence and those who did not. Participants who felt that restorative justice could be an appropriate outcome for serious crime generally focused on two, related aspects of restorative justice that are absent from traditional criminal justice processes: 1) the emphasis on forgiveness and psychological well-being, and 2) its potential to rehabilitate people and provide criminal perpetrators with a chance at redemption.

In discussing the merits of restorative justice, participants focused on the role of forgiveness for both parties, primarily victims. Participants discussed the importance of forgiveness as a part of the overall healing process and the ability to find closure after being victimized. Participants also noted that forgiveness and emotional healing are absent from traditional criminal justice processes and incarceration. Juan, who, as mentioned earlier, is a 52-year old Latinx father, made a representative comment to this effect in the following exchange with other participants in his focus group:

Juan: One of the things that I was gonna say is this system allows for forgiveness to actually occur. Whereas, the current system seems like, well, you're just gonna get punished. You're never gonna see this victim again, and—

Sarah: Except at your parole hearings.

Juan: Right, except at—

Ty: Where you're gonna come up and you say, “No, don't let them out.”

Juan: Right, and—and there's no chance of any kind of forgiveness or closure or anything like that with the two parties involved. And that step in the healing process really is a big deal. The ability to forgive and the ability to be forgiven is huge when it comes to these kinds of things, any kind of slight, really. [*Laughter*] So with the system as it is now, there's no chance for that, but this other way of doing things, there is. You know, I would absolutely want to see society go that direction.

The following interchange between Julia, a 50-year old Asian American mother, and Lisa also highlights the importance of forgiveness:

Julia: Yeah. It could—it could—it could be the moment that changes that person's trajectory. You have to—if you—it's one thing to feel

sorry. It's another to actually say it to the person that you injured out loud with witnesses around.

Lisa: With witnesses and—

Julia: That's a huge psychological thing. Like you don't even know you're carrying a burden until you express it, and then it all shifts,

Lisa: 'Cause that's the other outcome is forgiveness, and that's huge, too, especially if you're the person, the guilty party.

Sam was similarly focused on the role of forgiveness as a reason she supported restorative justice approaches, emphasizing the subjective experience of the parties involved:

Uh, honestly, if the person who's committed the crime and the victim or the victim's family of the crime are able to come together to make a plan to be able to forgive because that's healing, and to be able to be forgiven, I think that if all of the parties involved are satisfied with the outcome, then it should be fine.

Janice explained her support for restorative justice in terms of its potential to rehabilitate people, which she noted is lacking in most prison settings:

And I think there's growth in that, which is what it should be. It shouldn't just be, you've done this, now you spend five years in prison. And, like you said, it's—it's the person that goes back in. It's not like it's working to make anything better by putting them there.

Juan expressed a similar sentiment when discussing his support for restorative justice, remarking, "I mean, I think people getting out of prison are starving for a second chance. And if society doesn't give it to them, what's gonna become of it?" This focus on forgiveness and rehabilitation suggests an opportunity to redirect some of the emotional responses to crime away from anger and vengeance towards forgiveness and redemption.

Several participants recognized that incarceration in prison and jail is so flawed and ineffective that some alternative, such as restorative justice, must be pursued. These participants were more focused on supporting an alternative to the current system than restorative justice approaches specifically. Nevertheless, they acknowledged the need for something different and the opportunity for change and evolution afforded by an alternative approach. Jeff, a 52-year old married European American man, as previously noted, stated: “I would be in favor of it. It seems to me that we've been following generally the same model for hundreds of years, centuries, and having some innovation and fresh thinking seems to work.” Juan remarked:

I mean, but I think that's a step in the right direction. Our prisons are crowded enough as it is. And we don't need people whose self-destructive behavior has now led them to be in this system, where I don't see how that's gonna help them.

Joces, a 57-year old Asian American woman, agreed with the need for alternatives and expressed that she was open to them, stating:

I have to know what are the alternative for the jail time and prison time. Because I'm not really fond of putting so many people in jail, especially there we have a problem with that. So if there is a good alternative, I will—[trails off].

Despite this awareness, most participants thought that restorative justice would only be appropriate for some crimes, but could not work for serious, violent crime. Sharon's statement regarding violent versus low-level crime typifies this perspective: “But it would have to be a low-level crime. It would have to be where, you know, somebody wasn't hurt. Uh, well, of course, somebody would be hurt, you

know, emotionally, I guess. But, you know, physically.” Later, Sharon further elaborated on her position:

Sharon: I think once you have used a weapon, whether it be a gun, or a knife, or something like that, you know, you've gotta have—you've got to go and atone for something for what it was that you did. And, uh, again, I guess it comes back to how many other times you have done this. Is this the first time? You know. And what can we do - what can we do to, uh—

Interviewer: Let's say it is the first time.

Sharon: Then - then again, they still—you've still gotta be incarcerated,—because otherwise, you know, they think, “Oh, no big deal. Just blow it off, and go out, and do it again.” And the pr—the thing is, somebody goes and points a gun at me or, you know, anybody, I mean, you are not—you're gonna be traumatized for the rest of our life.

Similarly, John, a 71-year old Latinx grandfather, commented:

But it seems to me that restorative justice procedures really, probably, work well with lower level crimes. But when you get to serious violent crimes where somebody's really harmed or dead or whatever, um, thinking through how a restorative justice response to that might be—I have difficulty kinda getting there.

And Peter, discussing a hypothetical violent crime stated, “But there would have to be a minimum kind of a something—prison sentence or, um, incarceration that serves as a deterrent.” Participants espousing this view typically were not opposed to restorative justice, but felt that it was not an appropriate response to serious crime for reasons that clustered around three conceptual barriers: 1) it is not punitive enough to act as an effective deterrent, 2) it would not increase public safety because “dangerous criminals” would still be on the street and potentially able to harm others, and 3) some criminal actors do not have the personality type or traits necessary for it

to be effective—they are irredeemable and cannot be rehabilitated. These barriers to the widespread use of restorative justice will be discussed in greater detail below.

What Suggestions Do You Have for Improving Restorative Justice Processes?

Participants' suggestions for ways to improve restorative justice processes to both increase general support and to make them feel more personally comfortable centered on three areas: 1) process, 2) public education, and 3) threat of traditional punishments.

With respect to the process, participants suggested a robust risk assessment procedure that focused on eligibility requirements. They were concerned with the idea that those criminal perpetrators with “irredeemable” personalities or who were interested in fooling the system should be rooted out and not allowed to participate.

Mabel, a 71-year old mother, made the following, illustrative comment regarding risk assessment:

Risk assessment, psychological testing. I mean just getting through established processes, getting a better handle on who people are, you know, personality and stuff. I—I just think that would be very helpful, and that we would increase the odds of people being successful if we knew more about them. And we could also then, um, you know—as programs were developed, they could be developed to work with varying personalities, you know, so that people who aren't the best candidates for restorative justice might have some other option that works for them.

As will be elaborated in a later section, almost all participants endorsed the belief that some criminal perpetrators cannot be rehabilitated and must therefore be incarcerated.

In addition to risk assessments, participants were focused on ongoing monitoring and follow-up to ensure that the parties were abiding by the terms of their

restorative justice agreement and engaging in real reform. Judy, a 73-year old widow with some prior familiarity with restorative justice, expressed her support for it while focusing on the importance of follow up for the involved parties: “You know, it's powerful. But it needs follow up. You need to continue to check in with them. So, you have these restorative circles. Then, you check in. Another couple weeks. And how's it going?” Sam expressed a similar sentiment, but emphasized the importance of follow up to ensure accountability:

I think to your point earlier, there - there has to be—and it sounds like there is, a - a consistent follow-up process. A system. It's not just you come in the room once, and everybody says, “I'm sorry.” And, “You hurt me.” And you walk back out the door. But - but there's like a really aggressive follow-up process.

Becca, who is a 33-year old Latinx woman as described above, expressed the hesitancy that many participants felt around restorative justice as the only consequence for criminal perpetrators and the need for “monitoring” to address safety concerns.

I—for me to feel comfortable with it, I would need to know that there's like heavy monitoring. Like there is accountability. And that, you know, if they're getting this chance, I wanna make sure that they're actually following through and doing everything that they're supposed to do to prove that they can, you know, live in society and function like the rest of us, you know.

Some participants also felt that restorative justice could only be effective if combined with mandatory therapy or mental health treatment. For example, Sam said, “I think there also has—in addition to some type of subject matter expert on criminal law, um, a - a really robust process of, um, behavioral counseling and therapy.”

Many participants were generally support of restorative justice, but felt that both they and the general public did not know enough about how it works and the data on its effectiveness. They suggested publicizing success stories and utilizing data to increase public support. They also suggested that if more people better understood restorative justice and all it entails, instead of the narrow understanding they have based on media portrayals, they would be more inclined to see it as something that can substitute for traditional punishments. As part of this, participants suggested raising awareness about where and how it is currently being used, since most participants did not know it was used in many California jurisdictions. For example, Steven, who I previously described as a 67-year old, married European American, stated:

I think we—you need better marketing. You know, I pay attention, but I'm, uh—I kind of only was vaguely aware. And—and I think if—if there—if there were a way to communicate (A) its availability and (B) its success rate, and—and have people say, you know, “I—I was sure this wouldn't work. I met this guy face-to-face. We connected, and—and I forgave him.” If—if—if you could get those stories out more, I think that would make a huge difference. I—I—I just don't think there's much awareness at all.

Ty, earlier described as a 31-year old single man, focused on the need for more information and to better understand the process, stating: “More information. I think we as a group, we don't really even know—we're all against the idea of incarceration it seems like. But not everybody knows what that process is really like.” Jeff emphasized the importance of highlighting victims' stories as a way to publicize the effectiveness of restorative justice. He stated:

I think that if restorative justice had a way to demonstrate the victim satisfaction with the outcome in a broad, sort of marketing way, marketing. So that people, that are not especially tuned in and that really want to see eye for an eye, can hear from the victim, “I have been restored.”

Several participants talked about the need to “rebrand” restorative justice.

They noted that many people hear the term “restorative justice” and associate it with liberal, soft-on-crime politics. For many, the term alone takes restorative justice out of the realm of possibility. By rebranding it as something more akin to a community-based punishment, participants thought those with mainstream views would be more open to restorative justice practices. For example, Jeff stated: “[I]t would probably help its case if it were made to look as maximally punitive as possible.” The clearest example of this can be seen in the following exchange between several participants from the same focus group:

John: In-order to get a larger percentage of the public behind something like this, maybe they should rebrand it as restorative punishment.

Sandy: Psychologically, yes. That makes a big difference.

John: Because I—you know, I think that it’s just a real strong on people that—

Sandy: Mm-hmm.

John: People need to be punished

Sandy: Mm-hmm.

Bridgette: Consequences.

John: I may not agree with that, and it’s a reality, and, uh, something like restorative justice may, you know, be—

Shawn: S—almost too nice. *[Laughs]*.

John: - improperly—

Bridgette: Sounds a little—sounds a little—

John: - branded.

Bridgette: Yeah.

Sandy: Like you're doing the criminal a favor.

Bridgette: Yeah.

I followed up on this point to get more insight into their thinking, and they continued to explain:

Sandy: Actually, Jo—John made a really good point. The just—the—to hear it—

John: But-but I was actually being sarcastic.

Sandy: I know. *[Laughing]*

John: Yeah, okay.

Sandy: I know you were, but psychologically—

John: Mm-hmm, mm-hmm.

Sandy: - for somebody that may th—think like me, that felt a more, uh, comfort zone with a fence up—

Bridgette: Mm-hmm.

Sandy: - with-with some protection—

John: Mm-hmm.

Sandy: - uh, for-for my community.

Shawn: Yeah.

Sandy: Um, it did make a big difference when you say it the way you did—

Bridgette: Mm-hmm.

Shawn: Yeah.

Sandy: - because I felt like—I felt safer—

Shawn: Uh-huh.

Sandy: - with the idea that just—

Shawn: Yeah.

Sandy: Just psychologically—

Shawn: Yeah.

Sandy: - but it did make a difference.

John suggested using a different label to assuage the concerns of more punitive or conservative members of society, and did so in a sarcastic manner. But several other members of the focus group, particularly Sandy, a 61-year old mother, genuinely felt that that made a difference in how they thought of restorative justice and their willingness to support it. Sandy's self-awareness and admittance of the way the label change to be more punitive affected her was very telling.

Lastly, most participants felt comfortable using restorative justice as a first response, but defaulting to incarceration if the criminal perpetrator fails to follow through or recidivates. Participants thought that incarceration should remain an option, mostly to bolster the deterrent effect of the overall consequence. Participants were adamant that if the individual failed to abide by the terms of the conference or

stepped out of line, their chance at redemption should be over. Bridgitte, a 56-year old parks director and mother, illustrated this point:

For me, it's-it's monitoring and enforcing, you know, and with-with some pretty swift consequences if somebody does not follow the p—the, uh—the mutually agreed upon program 'cause I will be frustrated if then, als—you know, a year in, or whatever—that's—let's say it's a five-year restoration program. Let's say, a year in, somebody's "fallin' off the wagon", and then they get, you know—then they get kinda put into the system, and then it's another year. They don't hear and blah, blah, blah, blah. I would—I would wanna know like, no, you don't get three s—you don't get three chances to do the re—this restorative justice program. You get one chance, if you don't, then you're...

Similarly, Steven expressed concern about recidivism and limiting someone's chances to participate in restorative justice.

Steven: But maybe there should be, uh, like, um, your punishment is X, but we'll put you in this program. And if you violated, if you—we—if you recid—uh, or recidivism or whatever with—with your crime, then it's 2X. Then you go in for 2X or whatever. So maybe if—if—if—if there were a feeling that, if we give this person a chance, and they blow it, they pay for that somehow. May—maybe set it up something like that or something that—

Mabel: Three—three strikes?

Steven: Yeah, yeah. [Laughter] Let's not go there, but—but yeah, so we gave you—we—we—we gave you a chance. We offered this opportunity. Uh, you didn't—you didn't take it, so—

And Sharon stated, "You give 'em one chance. If they don't take that chance, and they don't make something of themselves, then, that's [it]." These comments were relatively common and reflected both participants' openness towards restorative justice, as well as their conceptual reliance on incarceration as a fallback option.

Overall, participants were eager to engage with my questions and their explicit answers suggested some comfort with restorative justice approaches, particularly for the majority of participants who were concerned about the fairness and effectiveness of the current criminal justice system. Beyond the direct answers they provided, participants discussed their thoughts regarding crime, criminal perpetrators, and the criminal justice and punishment system more generally. These conversations offered several, additional insights into how participants view criminality and punishment and what the real obstacles to supporting an alternative to incarceration may be. These results are presented in the next chapter.

Chapter 6. Focus Group Study Inductively-Derived Results

After using deductive qualitative analysis to code participants' responses to the scripted questions, we conducted an inductive thematic analysis of the transcripts to better understand themes that permeated the participants' attitudes and beliefs about punishment and restorative justice practices. Participants' discussions focused primarily on the things that they perceived as barriers to support for restorative justice approaches. Other common themes emerged, including psychological individualism, flaws and inefficiencies in the current criminal justice system, the cost of punishment, and socioeconomic and racial disparities in criminal justice outcomes.

Barriers to Support for Restorative Justice

Participants described four main conceptual barriers to their support for restorative justice approaches: 1) restorative justice as not punitive or "painful" enough to serve as a true consequence, 2) restorative justice as ineffective at deterring crime and keeping the public safe, 3) restorative justice practices as inappropriate for certain types of criminal perpetrators, including "sociopaths," recidivists, and those who are not authentic about the process or their desire to change, and 4) lack of data regarding restorative justice's "effectiveness." These barriers were mostly mentioned during our discussions around serious, violent crime. Most participants did not have these same concerns for first-time, low-level criminal perpetrators, although the distinctions they drew between the different categories were largely incorrect.

Restorative Justice as Not Punitive or “Painful” Enough

Several participants described restorative justice as not punitive enough or not a form of punishment at all. While most participants expressed support for restorative justice for some types of crimes, many felt it was not actually a form of punishment. Sometimes they would explain why this was an issue for them, but more often this was a barrier to support on its own. For example, when discussing her interpretation of justice and punishment, Sandy, a 61-year old divorced mother, described restorative justice thusly: “I think it’s a form of therapy—a form of, um—justice would be a-a sentencing, to me—I mean, in-in thinking about it. Um, where restorative justice is just a matter of, uh, therapeutic.” Steven, a 67-year old European American father, generally endorsed restorative justice, but stated, “I—I—I can imagine there would be a—a—a significant group of people who would think that—that—that’s not adequate retribution.” Shawn, a 44-year old Asian American father, made a comment that reflects this balance of endorsing restorative justice, but feeling that it is distinct from punishment and therefore something more serious needs to accompany it in order to be a real consequence: “I-I think, um, m—I-I bel—I’ll—I believe in restorative justice, but I bel—also believe in punishment, um, or at least let the criminal understand some what’s ahead of ‘em. [*Chuckles*].”

Other participants, such as Vicky, a 65-year old retired lawyer, felt that restorative justice had to be combined with traditional punishments in order to be sufficient:

My answer to your question is, there may be punishment in—with this process, but—so, c—discussing the situation with the fam—the

victim, and the family, and all that, I don't consider that punishment. So then, it - it—there might be punishment if the recommendation is for certain punitive measures. And so, it just depends.

When pressed, Vicky elaborated on what she thought was required for justice: “There needs to be sacrifice. How's that? . . . I don't like the word punishment either, but there needs to be some kind of sacrifice.” Some participants elaborated on this sentiment by stating that punishment needs to include an element of “pain.” They were not suggesting physical pain but the pain of deprivation and loss. Bridgitte, a 56-year old mother and parks director, had a particularly strong articulation of this view:

I have not been or my loved ones than the victim of a violent crime, but if I even try to put myself in those shoes, I would need there to be some kind of pain— and something, and whether that's—maybe it doesn't have to be for life, but it should be s—and-and that reveals my character—[*Laughing*] . . . but I'm saying I-I would have a hard time, I think, as the—as a victim to—and like, oh, great. You got put, you know out on a trailer on a farm, and-and, you know—okay, fine you're workin' hard, but you-you get to be free.

A bit later in the conversation, Bridgitte further elaborated, stating, “I-I obvio—it—I-I—I—and I think it would certainly depend on the circumstances, but say, if somebody hurt one of my kids, there's gonna need to be some pain. [*Laughs*].” Jeff, a 52-year old father, had a similar view, although he distanced himself from this position, stating:

I could imagine, I come from the Midwest, just sort of different from the general vibe out here, and I'm thinking about the people I grew up with would take a fairly dim view, I believe, of restorative justice, because it's not punitive enough, for example, they want more pain in there.

While some understood going through a restorative justice process as a potentially painful experience, most participants did not and fixated on the need for punishment to be more “punitive” in order to qualify as a true consequence.

Restorative Justice as Ineffective at Deterring Crime and Keeping the Public Safe

The most consistent objection to the use of restorative justice in more serious cases was that it would fail to achieve the instrumental goals of deterrence and public safety. Many participants brought up the issue of deterrence when seriously considering restorative justice as an alternative criminal justice outcome. Participants expressed concern that because restorative justice does not feel punitive in the way we are used to, criminal perpetrators would not perceive it as a real punishment and would not learn a lesson or avoid future criminal conduct. For example, Jeff stated:

I struggle a little bit with seeing how restorative justice could address deterrent precisely, unless people were to know in advance, you know, before committing some sort of crime, that restorative justice had a penalty if they didn't want to suffer.

Sam, a 25-year old student, discussed the message she thought criminal perpetrators would take away from a restorative justice outcome, stating:

I think if - if someone were to commit an armed robbery, and be told, “You can go home, but wear an ankle monitor, and we're gonna help you there,” I don't think that carries the message that, “You messed up. You made a bad choice. And you have to atone for that.” I think there has to be some level of, um—you know, I think for - for a lot of folks, jail time is the only thing that keeps them from preventing a crime. If they knew that they got to go home and go into a rehabilitation plan, that would probably increase some amount of crime.

These comments are representative of many participants' primary objection to use of restorative justice practices in place of incarceration.

Similar to their preoccupation with deterrence, participants were concerned that restorative justice did not serve the goal of public safety because it did not remove "dangerous" people from communities, unlike incarceration where they cannot engage in criminal acts while incapacitated (outside of the institution) or harm the communities they come from. For example, regarding those who engage in violent crime, Vicky stated, "I think that person does have to be removed, at least for a while, from society. Because that's—they're really a danger." And Mabel, a 71-year old mother, stated, "I think that's why you have prisons. . . . There are some people that need to be separated."

The participants who focused on public safety saw themselves as being careful, like Jonathan, an 83-year old grandfather, who stated, "Again, taking a more conservative viewpoint, which I don't appreciate myself that much for, I think you have to err on the side of caution." They also felt that the public interest in safety was more important to consider than what might be best for the criminal perpetrator, having determined that people who commit serious crime pose an ongoing threat. For example, Julia, a 50-year old Asian American mother, stated:

How do you—then you're just letting someone victimize yet another person, and then how is that justice for a community? Right? You're—you know that this person is just a bad seed, and nothing good is gonna come of it, prison. I mean you want to protect the community, and I would say that the community outweighs what this guy thinks should be justice for him.

Part of participants' concerns were motivated by their belief that people who commit serious crimes are unlikely to be rehabilitated—they present an ongoing danger to society, despite any attempt at rehabilitation or restoration that restorative justice might produce—because they are fundamentally bad, as Julia stated, and criminal. Many participants made comments reflecting one-dimensional perceptions of criminal actors as “bad” or “dangerous,” as elaborated below.

Restorative Justice Practices Are Not Appropriate for Certain Types of Criminal Perpetrators

Many participants felt that restorative justice practices would either not be appropriate or not be effective for certain types of criminal perpetrators, specifically: sensationalized versions of criminal perpetrators (e.g., sociopaths), recidivists or “repeat offenders,” and those individuals who would not be sincere, genuine, or authentic during the restorative justice process.

Sensational Accounts of Criminal Perpetrators

When discussing restorative justice specifically or the criminal justice system in general, many participants utilized sensational descriptions of criminal perpetrators. Participants used the terms “evil,” “sociopath,” “psychopath,” “serial killer,” and talked about certain categories of crimes, such as child rape, to describe the kinds of criminal perpetrators who needed to be incarcerated and were incapable of redemption. For example, Mabel stated: “I think some people are more amenable to treatment than others. I think sociopaths have a very hard time changing that behavior.” And Lisa, a 64-year old mother, later remarked, “If there’s a psychopath

on the loose, forget it.” Becca, a 33-year old Latinx woman, stated, “There’re some people like these serial killers and they just feel nothing. Then you just sit there and it’s like a waste of everybody’s time and effort.”

For these bogeymen of crime, participants felt that restorative justice could never be appropriate, both because the individuals cannot be redeemed and because they would manipulate the process and lie to get through it. Participants felt that these kinds of extreme individuals would not and could not benefit from restorative justice processes and expressed concern that they would be very hard to identify. For example, Julia and Steven had the following exchange focusing on the idea of “evil people”:

Julia: I mean—I mean—I mean, obviously, like serial murders or people who have been highly, um, recidivistic and very violent crimes, you probably would not.

Steven: And—and I think the people who—for whom that would be a satisfying experience, I think it’d be tough to get them to kind of like say—to sit down and say, you know, “I—I did wrong.” I mean I—I just—I think there’s—I think there’s evil people, and I think there’s people who couldn’t be less interested in rehabilitation if you—if you will.

Later in the conversation, Steven further elaborated stating:

I mean their life’s good, you know, and what—why—why in the world would I want to change this? So, uh, I—I think our—our predisposition is to think of—of people who—who have strayed from the straight and narrow because of lack of resources or—or whatever, but there’s—there’s a group out there that are evil and are bad and are incorrigible. And—and I think that’s the challenge for restorative justice, identifying them. Um and—and—and, uh, I just don’t think they would be receptive and—and—and the process would be healing if you will for the offender.

In a separate focus group, Juan, a 52-year old Latinx father, expressed the same concern about identifying the types of people he believed were not appropriate candidates for restorative justice:

How do you weed out the true socio and psychopaths, who are gonna be dangerous until the moment they're put in the ground? You know this serial child rapist kind of people. How do you separate them and say, you know, obviously, you know putting them face to face in the room with the victim is not gonna do a damn thing. Because that person could care less about the victim. He's a true sociopath. So again, you'd have to have systems in place to weed—uh, to mete that out properly.

And Lisa conveyed her belief that certain types of people were incapable of change, stating:

When you—when you—when you—when you kind of really wrap your head around that type of person and fully understand that they aren't capable of change, period. They just can't change the way they think. Their brains are wired the way they're wired. They're always—they're never gonna ever feel remorse for anything. They just don't have that capability. Well, if they are set free, they will again repeat, right?

These concerns were related to participants' fears that these types of criminal perpetrators would manipulate the process and take advantage of any opportunity.

For example, Sarah, a 57-year old European American woman, stated:

I—I think a play—piggyback on that is that when you have somebody who is a sociopath, and they know that they can get away with it by just saying the right words, they can say the right words and get away with it. And those are the people, I think, that are very high-risk of repeating the same behavior again.

Participants frequently brought up high-profile cases with sensational crimes.

These examples seemed to represent the archetypal irredeemable criminal personality

for many participants as well as the type of criminal conduct they feared. For example, Mabel stated:

I totally get the Charles Manson thing, totally get that, uh, and there are other people besides him that are exactly the same and need to just be put away [laughter] 'cause they will wreak havoc no matter what. That's just their psyche.

Referring to other notorious, high-profile crimes, Sandy stated:

I think justice like for Scott Peterson being locked up is a great thing. And others of his, you know—the same p- same type of people. Uh, there's—what was that little girl's name up in Petaluma years ago? Uh, the guy—they—Polly Klaas. Yeah, and - and he's in—on death row. Whether or not he'll be executed, I have no idea. But I mean, they are off the streets. And they are away. And they're in their little cells for 23 hours a day. And, for me, I'm - I'm very happy with that.

And Joces, a 57-year old Asian American woman, said, “Well, some kind of crime which can be very extremely violent and like some—I think I heard of some crime, someone go into somebody's house and kill every family member, which may be for sex or whatever, including children.” These concerns about extreme types of criminal perpetrators were clearly informed by sensationalized media representations of crime. Nevertheless, these results demonstrate the ongoing belief in irredeemable criminal personalities and highlight an ongoing obstacle to endorsement of a system of punishment that does not involve incarceration and incapacitation.

Recidivists

Some participants also felt that restorative justice was not appropriate for recidivists. They believed that someone who had previously committed a crime had demonstrated that they could not abide by the laws and norms of society. Becca clearly articulated this position, stating:

Um, I mean it—I guess it kind of depends on like the person and how many—like how many crimes have they committed? Are they a repeat offender? Is it their first time? Um, I think for people who are repeat offenders, obviously there's something that, you know, is not clicking with them. So I don't think that there should be a chance for them to like meet with the victim and find a way to you know, make it right without being in prison. I think that that's where you need to be if you can't control yourself. So I have a problem with the repeat offenders being released 'cause obviously something is not right, you know. They're not able to conform to social norms.

Some participants expressed the view that they were willing to give criminal perpetrators a second chance—by having them participate in restorative justice processes instead of going to prison/jail—but if they failed once, their chance was over. Sharon, a 69-year old European American widow, exemplified this attitude:

I think the first time, and I keep going back to this, the younger ones, the first time, it's much more apropos—to go and know some things about that, and give the person a chance to maybe turn his or her life around. And go a different—maybe go on a different path, rehab path, if you wanna call it that. But be given a chance to do that. If they come back again, then, you know, all bets are off. Because they're - they've, you know, blown it. They didn't wanna do it.

These findings indicate the strong bias most participants felt towards persons convicted of committing multiple crimes and the limits of their belief in redemption and rehabilitation.

One interesting finding related to this was that participants stated that some repeat or serious criminal perpetrators needed to be incarcerated, but once they had served their sentence, participants felt they should be given the tools to reenter society. For example, Dorothy, a 63-year old mother, in referring to potentially hiring someone who was formerly incarcerated, stated: “But you can't ask people about if they have a felony or not. It's like, if they're out of jail, they've served their

time, and it's none of our business." This is the normative model of how punishment and justice work in our society—"doing one's time" is an appropriate punishment, despite the fact that the actual sentence length may be arbitrarily determined, which satisfies the need for consequences. Notably, some participants very clearly bought into the idea that once someone pays their debt (via prison/jail time served) they should be welcomed back into society, despite concerns around irredeemability.

Authenticity

Participants also described their concern that criminal perpetrators would not be sincere or "authentic" during the restorative justice process, regardless of whether they were "sociopaths." There was a general sense that some criminal perpetrators are manipulative and would fake their way through a restorative justice conference to avoid a prison/jail term. The following exchange highlights this concern:

Becca: I think that's—that's the part that would be the hardest is how do you—how do you know?

Juan: Yeah.

Becca: Like how do you—how can you tell like a sociopath? You know. They're really good at, you know, acting like, "Oh I am sorry."

Juan: Manipulative. Yeah.

Bridgitte also expressed concerns around authenticity and questioned how one could trust what the criminal perpetrator was saying. She stated:

Yeah. Yeah, I was with you, that I would have a hard time believing, uh, that your commitment, you know, the criminal sitting at the table, they'd be willing to say anything and agree to anything—um, to avoid jail or prison time. And so, I would wanna know, how's the monitoring gonna go? How's the enforcement gonna go?

Participants were very focused on genuine expressions of responsibility and remorse as key aspects of the restorative justice process and felt that without a way to tell who was being truly authentic, this may be lost. In response to this concern, some participants suggested punishing criminal perpetrators who did not follow through on the terms of their restorative justice conference with a prison/jail term, and that this threat of future punishment could act as a deterrent. Christy, a 21-year old Asian American student, made remarks typifying the emphasis participants placed on remorse and personal change, as well as the belief that for those not interested or capable of change, incarceration should still be an option:

I think in my head, restorative justice works when the criminal kind of reforms him or herself. And so they have to kind of feel, at least like be able to recognize what they did wrong and like maybe feel remorse, then change their actions. Otherwise, it's like not really effective for the community, the criminal just goes back and like harms the community again. So I think maybe jail would be necessary if someone is unwilling or unable to change their behavior.

Jonathan echoed this view, and focused on his fear that some types of criminal perpetrators are incapable of remorse and change, stating:

Part of the problem seems to be, bringing the remorse, is, I don't know this for a fact, but some people are so angry, they've been brought up in such malignant environments that anger and violence is built into their psyches. And how do you deal with people like that? Many of them aren't capable of remorse. I'm not saying that they're all like that. I fear that there are some people who are incapable of remorse.

Jonathan elaborated upon this sentiment later in our discussion, stating:

I think that some people, rather than feeling remorse, feel just the opposite. I think that some people who commit crimes are glorified by it, feel that their manhood has been elevated, . . . but his manhood has been elevated by the crimes that they commit.

Some participants referred to specific people when making this point, such as Larry Nassar, who infamously was convicted of abusing scores of young gymnasts. Joces stated:

I mean, I agree with what he said, like the case in Portland, was that the gymnastic doctor, Nassar, he had no remorse, even though he has abused how many hundreds of young girls. Even the judge sentenced him to how many years in prison. He—no apology, he make no apology to all the victims or their family.

These findings combined illustrate the pervasive and persistent beliefs about criminal personalities—dangerous, innate, and irredeemable—that continue undermine support for progressive criminal justice reform.

Lack of Data Regarding Restorative Justice’s “Effectiveness”

Participants also raised questions and concerns around the effectiveness of restorative justice practices. Several made objections to it on the basis that it would not be effective, but then stated they would support it if they saw data of its effectiveness or that it “works.” Participants varied in terms of what they meant by effectiveness—some meant effective at deterring crime generally, some meant effective at reducing the recidivism of individual criminal perpetrators, and some meant increasing public safety in general—and often they talked about effectiveness in a very vague way where it was unclear what sort of data would satisfy them. For example, Brian, a 48-year old Asian American father, stated, “And I think that restorative justice could be punishment if it's effective. If it's not effective, then that's not a punishment.” Jeff stated, “Show the data, right? Show that it actually does work,” without any additional elaboration. The clearest articulation of support

contingent upon evidence of effectiveness came from Jonathan, who stated: “If it works, I think if it prevents people from committing more crimes and if it’s humanitarian—humanitarian, if we can deal with the crime issue in a humanitarian way, that would be very satisfying to me.”

After hearing some data on its effectiveness, several participants stated that was good, but they needed more data before they would support it and they needed to actually evaluate the evidence. Sarah, a 57-year old European American woman, was very specific about what it would take for her to support the use of restorative justice practices as an alternative to incarceration. She stated: “We need numbers. . . . Is it working? Where is it working? Did they use it? South Africa--apartheid was a big thing. America doesn’t seem to learn from what any other country does.” Later in our conversation, she returned to this idea:

I said if we saw the numbers and how it was working. And it’s gonna have to have pilot programs that expand and people get awareness and the community had more confidence in that. I think that’s a big—that’s a confidence issue now. Just like talking to them, it’s gotta be deeper. We gotta have more information.

Some participants were unwilling to endorse restorative justice at all without more information. Margaret, a 77-year old European American grandmother, had the most telling comment in this vein, stating “I think it sounds well and good, and I do believe in fairy tales, but I have no opinion until I see the results.” These findings raise an interesting contradiction in participants’ thinking, where they accept incarceration without evidence of its “effectiveness” or even, as will be discussed

below, with knowledge that it is ineffective, but are unwilling to support restorative justice for failing to meet some evidentiary threshold.

Flaws in Current Criminal Justice/Penal System

Across all the focus groups, the majority of participants were aware of many of the flaws and problems with our current criminal justice system. Participants' awareness of these flaws made them very critical of the current system. They were frustrated by the issues they saw as plaguing the system and seemed to generally agree that prison was not working. Participants also held some inaccurate or misinformed ideas about how the criminal justice system works, but for the most part their discussions reflect insight into the harms of punishment, particularly incarceration, and structural inequalities that lead to both racial and class disparities.

Several participants made comments highlighting the ways in which they believe our current prison system is harmful and damaging to incarcerated individuals. For example, Katerina, a 50-year old mother, made the follow comment about "traditional" punishment, such as prison:

If we go with the traditional, what happens is, it's really—like we're shooting ourselves on the foot. Because we send them, we pay for them. They come out, zero effect most of the times. Again, we're not talking about exceptions. They- they come out to the society more damaged than back in the prison. More money. It's like damage everywhere you look.

Juan focused on the issue of overcrowding and mass incarceration, stating:

Because we have the highest pro capita incarceration rate of any western society or developed nation. And I think that we're a little too arrogant not looking at other people and see what works in other places. I mean, I know there's a lot of side, social stuff in there, uh, that- that- that may excuse some numbers. But in general, I think we

need to be looking at what's working in other places in the world and trying to maybe at least come up with some alternatives. So yeah, we have way too many people—way too many people out there.

In a separate focus group discussion, Steven also focused on the issue of overcrowding when expressing his support for incarcerating fewer people.

And—and, you know, give—given that over—overcrowding is—is off the charts, and given that the only culture more toxic than the prison population is the guard population, putting, you know—getting people out of that environment as quickly as possible has to be a positive thing for just about everybody.

Relatedly, some participants spoke to the fact that prison does not benefit society.

Talking specifically about prison, Ty, a 31-year old single man, stated: “And I don't think it does anything. It doesn't correct behavior. You just live in a cage. Like that's not moving society forward.”

Other criticisms of the current system focused on its failure to deter crime or prevent recidivism. Some even understood prison to be a risk factor for recidivism.

For example, Brian commented:

But there's also the recidivism rate, repeat offenders, the likelihood, and that's part of the challenge. But the—putting them in prison almost guarantees recidivism at this rate, or there's a higher chance that they're going to commit crimes by going the current incarceration route.

And Juan remarked:

You know, they call it the gladiator academy. Or you know they call it, you know, where people go into prison, and they come out worse criminals than when they went in. Now they're, you know, they're working out. They're bigger. They're stronger. And on top of that, they've been, um, you know, they've been—what is that line from the movie Blow? He says, “I went in with a masters in weed and I came out with a PhD in cocaine.”

Vicky, a 65-year old retired lawyer, made a similar comment reflecting not merely on the fact that incarcerated individuals may learn more problematic behaviors in prison, but also may be harmed in ways that may make them act out.

And even if they aren't, the problem is, you go into prison, and if you weren't a great criminal when you went in, you often are a better one when you get out. And a angrier one if you've been raped, or beat up, and all the bad things that happen in prison.

Despite the widespread acknowledgment that prison is ineffective and often detrimental, participants generally had a hard time envisioning a system oriented around a different punishment principle. Some participants, like Sam, explicitly acknowledged this difficulty stating “I'm like fundamentally struggling with the concept of punishment without incarceration. Like i-, it's so embedded into not just our society, but like human society at this stage. It's probably been done since forever.” Not everyone was as explicit as Sam, but several participants would offer criticisms of incarceration that were coupled with statements about its necessity. For example, Ty stated:

Yeah, I—I'm really—I'm kind of lost on it because the prison system as it exists is just terrible, you know, and so saying anybody should be subjected to that is not where I wanna go, you know, but I do believe there needs to be some form of more traditional consequences for people who are just not suited to, uh, restorative justice. I mean there has to be an alternative 'cause that's just not gonna be a successful process for everyone.

In another focus group, Vicky made a number of comments representative of this contradictory position. First, Vicky expressed her skepticism regarding restorative justice, stating “I don't think it's that likely to—I think he's just as likely—50/50 likely to do what he did again.” But she then critiqued the current system, stating:

“This—and - and, of course, I'm not agreeing that prison is working now.” Minutes later, Vicky reiterated her belief that incarceration is necessary for some criminal perpetrators, while acknowledging that it does not help rehabilitate them:

I think that person does have to be removed, at least for a while, from society. Because that's—they're really a danger. But what happens to them when they are in a prison or wherever—whatever better place they could be put shouldn't be just punishment and just boredom.

Jonathan, described above as an 83-year old grandfather, exemplified this opinion—that prison is necessary, but ineffective as it currently exists.

Maybe there's a way to—maybe the question is whether we should jail people or not, but maybe the question is, what should we do with them after they're in jail, so there isn't a chance of recidivism, which answers the question for me of whether they should be in jail, yes, they should be in jail, . . . but the question is, how do you reduce the recidivism -- recidivism rate? And that depends on what we do with them when they are in jail. And it also depends on, if you don't put them in jail, aside from recidivism when they get out of jail, if you don't put them in jail, what is the risk for society they don't commit a similar crime during the time when they're sort of undergoing restorative justice? I don't know the answer to that. . . . So that's what society needs to work on. I did not—I hadn't thought of it before, but if you talk about that, that seems to be the route but not necessarily—not necessarily—not to jail those people, but to jail them effectively.

This response typifies participants' preoccupation with the instrumental goals of punishment—deterrence and public safety. Viewed through this lens, participants had a difficult time envisioning a different punishment regime despite their broad understanding of the issues with incarceration.

Psychological Individualism

Psychological individualism is the belief that criminal perpetrators are bad people who freely and autonomously chose to engage in bad acts (Haney, 2003;

2020). It is an individual responsibility model of behavior that negates the impact of social contextual factors on behavior, thus rendering criminal actors solely responsible for their actions. Several participants espoused views aligned with psychological individualism and focused on the importance of individual responsibility and, by extension, acceptance of responsibility and the consequences that come with it. These comments focused on the choice or control that criminal perpetrators have over their behavior and negated the role of social and environmental factors. Talking about continuing to engage in crime, Sandy, described above as a 61-year old mother, stated: “If they’re wanting to do it, they’re gonna do it no matter what.” She later remarked, “But I also [*coughing*] believe that there is the ability for people to change if they want to change. A lot of it is their character.” Sandy’s comments reflect her belief in individuals’ total control over their actions and that the decision to both engage in crime and to stop is mostly a matter of choice. In response to a question about stealing, Sandy said, “I think they made a criminal choice to steal.” And she later stated, “I think a person has the choice to do the right thing.”

Other participants echoed this viewpoint. For example, Bridgitte, a 56-year old parks director and mother, as previously noted, stated:

Okay, so two people who grew up in the projects in Southside of Chicago. Do those people—do you feel that, when they are the—you know, they have the choice to steal a loaf of bread and a steak or not. They’re making that choice, and so, at that moment . . .

Becca, a 33-year old Latinx woman, faulted criminal perpetrators for their lack of personal control, stating, “I think [prison], that’s where you need to be if you can’t control yourself.” She elaborated:

I mean, if you grow up and you're like abused or something. And then you grow up and you abuse your kids and—I mean, I think there's only so much I can blame on your history. I mean, you make your own choices. You are your own person. You know what's right and wrong.

Peter, a 55-year old father, struck a similar tone: “I thi—I think by, um—by using the examples of-of violent crime, um, maybe complicate the question because there is always this question of free will in the violent crime, and there's always extenuating circumstance.”

Participants that made statements consistent with psychological individualism typically acknowledged the criminogenic risk factors that many criminal perpetrators are exposed to, but they minimized their importance in one of two ways. First, they claimed that social context was not relevant in thinking about criminal liability because not everyone who was exposed to criminogenic risk factors goes on to commit crimes. For example, Sandy stated:

I think that everybody has the opportunity to do right and wrong. So, you have a criminal that—you-you look at their background, and they went to—through this horrific childhood, and then you look at this person, and they had a ter—horrific childhood [coughing], but this one goes on to commit crimes, and this one does not, and that's a-a character . . .

Margaret, a 77-year old grandmother, made a similar comment, drawing upon her personal experience to then discount the criminogenic risk factors faced by others.

She stated:

And—well—and this - this—like you say, they've grown up in poverty. They've grown—if that is the premise, my siblings and I should be criminals, and we're not. Five of us. Law-abiding citizens. And we had every reason to go the other way. So, that—I—when I hear that as an excuse, it makes my blood boil.

Second, participants claimed that at a certain point in time familial and social factors are no longer relevant because they are too distant to explain current behavior. For example, Juan, a 52-year old Latinx father, discussed the difference between a teenager's criminal actions versus a grown man's, stating:

I mean, as a victim of child abuse for example, if he lashes out and beats somebody up when he's a teenager, is that the same as, you know, a 40-year-old man who should know better than getting into a bar fight, for example?

Sam put it succinctly, discussing someone who endured a difficult childhood: "By 25, they ought to know better." These statements highlight the pervasiveness of psychological individualism in coloring how the public views criminal perpetrators and suggests that by continuing to endorse an individual responsibility model of behavior the public will be less inclined to support punishment options that require community buy-in and participation in someone's reintegration.

Interestingly, some participants who clearly endorsed this view of human behavior felt that acceptance of responsibility and expressions of remorse, which are fundamental aspects of restorative justice, were very important aspects of criminal punishment. The focus on accepting responsibility for one's actions and expressing authentic remorse made some participants more supportive of restorative justice practices who were otherwise dismissive of the social contextual factors that motivate crime. For example, in expressing her support for restorative justice, Becca focused on how the process might inspire the criminal perpetrator to change, stating, "Like that somebody has faith in them, and that they can change their lives. And it makes them want to do better. And it makes them want to actually, you know, turn

themselves around.” Bridgitte talked about accepting responsibility for one’s actions as important to her support for restorative justice. She stated:

Um, I would be—I think I would be more sympathetic to a criminal who was able to take responsibility for their actions, you know, acknowledge what they had done, um, and express some remorse. Now, somehow, that would have to be figured out whether that was authentic or not . . .

While the prevalence of psychological individualism as the lens through which participants understand crime raises concerns, it also provides an opportunity for emphasizing the importance of personal responsibility during restorative justice processes as one way to bolster support.

Cost, Class, Race and Punishment

Participants discussed two other issues that were less directly relevant to their thoughts about restorative justice, but nevertheless impacted their thinking around punishment and justice more generally—the cost of various punishment practices and the role of factors such as race and socioeconomic status in the criminal justice system.

The Cost Associated with Punishment and the Criminal Justice System

Several participants discussed the cost of punishment as very relevant to their attitudes regarding incarceration and community-based alternatives. Participants remarked that it would be cheaper to keep people out of prison and talked about the exorbitant costs of incarceration. For example, Juan stated:

And I think there’s too many people that are gonna slip through the cracks and end up spending the rest of their life—and that’s a big burden on the taxpayers too. You know, we pay a lot of taxes to keep these people locked up and then they fail.

Peter, referring to restorative justice, commented, “It’s not like a really cheap option, I shouldn’t think, but it’s probably cheaper than keeping somebody in a big jail.” Ty expressed his view that punishment in general is about generating money, stating, “I think it’s very financial. I think the point of, um, having a punishment currently is to get money for the local state government.” Diane, 66-year old retired teacher and grandmother, expressed a similar view remarking, “Our prison industrial complex is just—it's just that. It's a money maker.”

Several participants suggested that the public would be more supportive of restorative justice approaches if they understood how much money it would save taxpayers. For example, Mabel, Julia, and Steven had the following exchange:

Mabel: I think sometimes once you put dollar signs in front of things, if you show something is cheaper and effective, as opposed to how much it costs to keep someone in prison, which is very expensive, that kind of conservative group tends to listen to money things.

Julia: Well, you have to tag the dollar sign onto it, cost savings.

Mabel: Yeah.

Steven: Yeah, so—so we could do this, or we could spend \$280,000 sending this guy to prison for three years. Your call.

Many participants criticized the current prison system and its costs, acknowledging the need to invest in other things. For example, while Sharon, a 69-year old widow, was not very supportive of restorative justice practices, she remarked on the exorbitant and unsustainable costs of incarceration, stating:

[T]h- the prison systems are very expensive. And for a variety of reasons. Well, of course, the large populations and everything. But also, you know, you have to have prison guards. And you have to have

a whole administration to run the prison. And when you do that, then, you're talking about, uh, you know, uh, health benefits, retirement benefits, legacy costs that all of these people are going to get that—so, you've built another layer of, uh, bureaucracy. And that's what you're—how can you keep all—building all these prisons, and doing this? I don't know. I mean, there's just not an answer. I don't think there really is an answer that you can get to.

Bridgitte and Shawn talked about how resources should be prioritized, stating:

Bridgitte: Yeah, I mean, I'm—I'm concerned about that, but, um—but, on the flipside, I don't want the state to build more prisons. The, uh—the amount of money that it costs to keep somebody incarcerated for a year is ridiculous and—in my opinion. Um, and, you know, we've got a homeless problem. . . . We've got education issues—all those, uh—we got housing problems. I would rather—

Shawn: Money could be better spent.

Janice, a 52-year old single Asian American woman, and the other members of her focus group expressed a similar sentiment:

Janice: Well, it still takes time because the studies have all shown if you put more money into preschool and elementary school and high schools—

Lisa: Yeah.

Janice: You're gonna put less money into prisons later, too.

Mabel: Absolutely.

Lisa: Right.

Janice: But what do they always fund? They fund the prison system, and they cut the educational system, un—until our new governor, hopefully, is going to pass this. [Knocking on table].

These comments illustrate that, while not all participants agreed that restorative justice was an appropriate or fair criminal justice outcome, most agreed that the

current prison system and incarceration first approach to punishment is unsustainable and costs the state too much.

Criminal Justice Disparities Based on Socioeconomic Status

Somewhat related to the discussions of the cost of incarceration and cost-savings associated with restorative justice were discussions regarding the disparities in criminal justice outcomes depending on the socioeconomic status of the criminal perpetrator in question. There was widespread agreement among participants that the criminal justice system is not fair, and is driven in large part by social inequalities. One general statement to this effect came from Juan, who stated: “It just—how can there be justice in a system that punishes poverty?” Ty addressed a similar concern, discussing the way in which fines can further criminalize and harm justice-involved individuals. He stated:

And so, I’m not- I’m not against you know the fines and- and that. What I’m—what I’m against is imposing it on people who can’t afford to pay it. Which means that in addition to having a criminal record, now they’re in debt. [*Laughter*]. And so, how is it you’re serving the community by keeping people down, certain people. Put together people who can’t afford. . . .

In addition to discussing the way that the criminal justice system targets poverty, many participants talked about the advantages of money in securing justice and the disparities between those criminal defendants that can afford lawyers and those that cannot. Mabel relayed a story regarding her son, who was the victim of a crime, and the person who was convicted of the crime, stating:

I think, if you have a lot of money, and the lawyer you hire depends on your outcome. . . . Uh, and I think, you know, if the kid—I think the kid who did the thing deserved some kind of punishment, but I think

because he had the public defender 'cause he couldn't afford an attorney, was gonna get something way different than if they could've afforded a better attorney.

Juan made a similar comment describing his son's experience with the criminal justice system:

There is very little justice, I believe in this country because like I said, it's- it's kind of for sale. If you can afford justice, you can get justice. And I—and I'm—I had a personal experience that- that changed my view completely on that where my son was accused of a serious crime. And he got a court appointed lawyer who told him to plead guilty, and do a year in county. And I told that lawyer, "Well, you're fired," 'cause you know my idiot son here doesn't have a penny to his name, but that's not the case for me. So I went out and I hired him a \$10,000—that was the first half of it. He wanted 20,000 if it went to trial. A \$10,000 lawyer. Very good. . . . They went- they went- they went to the back just the D.A., the judge, and my lawyer and he walked out 10 minutes later, and he said, "We're all done here. Go home." And I said, "This is what we call justice." One guy told him to do a year. A year of his life in jail because he was a court appointed lawyer. And this guy, for 10 grand just got him off. And I thought, "Well."

Steven, a 67-year old father, summed it up thusly, "[B]oy, if—if you didn't have money, getting caught in the legal justice system, it would just be—it would be—I don't wanna use a criminal analogy here, but it would be dreadful."

Other participants focused on the way that those with resources can take advantage of the legal system. For example, Jeff, a 51-year old European American father stated, "A lot of people will say rich people get off easier, and whether or not it's true, it doesn't feel fair to people, and that's part of I think why people are very—don't feel the system is very fair." And Joces, a 57-year old Asian American woman, remarked:

Some people abuse it, they hire a rich—I mean they are rich, they hire very high-powered lawyers to defend them and present all those factors, and that arouse the emotion of the court or the judge and give a lenient sentences. If it's because the criminal happened to be, have a rich family to protect him for the just amount of punishment.

Juan used the Menendez Brothers as an example to offer a similar critique. He stated:

I mean, like I remember, not to be cynical, but I remember when the Menendez brothers were—they were awaiting sentencing. And the big question was, are they gonna get life in prison, or are they gonna—are they gonna get what they—what most people feel they deserve? At the time, the chair, the gas chamber, whatever it was. And somebody asked me, and I said, “They will never ever be on death row.” And somebody said, “How can you be so sure?” I said, “Because there’s no rich people on death row. It’s just minorities and poor white trash.” And that’s it. If you go—if you take the numbers, and you do the statistical work, you will find that there’s no wealthy people on death row. Because they got money for lawyers. They got money for doctors. They have money for everything. So again, does the punishment fit the crime? And it also depends on, apparently in this country, where you stand in a society.

Comparing an impoverished family to one with resources, Diane remarked, “what kind of an attorney are they gonna get that might not be able to do them justice, where some jackass hot - hotshot who commits a murder, they can get off with a good attorney.” These comments were widespread among both participants who supported the use of prison and those who did not.

These findings show that there is acute awareness regarding the role that socioeconomic disparities play in criminal justice outcomes and that participants’ confidence in the criminal justice system has been largely undermined as a result. Again, while these views did not necessarily track with participants’ support for restorative justice practices, they suggest an opportunity for framing the need for reform in a way that could garner widespread support.

Criminal Justice Disparities Based on Race

Similar to the discussions regarding socioeconomic inequalities, some focus group participants also talked about race-based inequalities in the system, acknowledging that outcomes often differ based on the race or ethnicity of the criminal perpetrator. While not a prominent feature of the focus group discussions, several participants acknowledged racial disparities in justice outcomes. For example, Juan stated, “I don’t know where I read this in a newspaper. Something about a study that was done. And they were like, ‘If you are a person of color, you are 75 percent more likely to be convicted.’ Why is that?” Vicky, a 65-year old retired lawyer, talked about the role of judges, stating, “I worry about the discretion that judges have. Because they abuse it a lot. Because racial things come into it. And so, we have, you know, a far larger number of blacks in prison re- than are represented in society.”

Other participants discussed both race and class as arbitrary factors that should not, but do, influence criminal justice outcomes. For example, Shawn, a 44-year old Asian American father, noted:

[M]ost crimes are socioeconomic, um, and race, socioeconomic. Um, whether or not the judge actually consider all the factors—a lot has to do with the criminal’s background—race—whether he has an attorney advocating for him, you know, so . . .

Later in the conversation, Shawn elaborated on the impact that unequal treatment can have on justice-involved individuals, stating:

And I just—and then, um, there’s another factor is that, um, it also creates a lot of hatred, you know, uh, from the inmates themselves. Most of—most of them are minorities. They feel like they’re getting

railroaded by white judge— okay? Um, whereas another white inmate of the same type of crime got less time and . . .

Sam, a 25-year old student, used the example of the white, Stanford student Brock Turner, who was convicted of sexual assault and given a six-month jail sentence, to make her point about discriminatory punishment, stating:

Whereas, um, you know, I could very much imagine that a, um, person of color who, uh, you know, both parents were in prison during their childhood, and they dropped out of high school, that that person had committed the same crime as Brock Turner would have suffered a very much more severe punishment.

Much later in the focus group discussion, Sam returned to this theme and contrasted an ideal system with the system we currently have. She stated:

And so, an- and I think maybe what it is is that incarceration serves a purpose when it's applied equally and justly to all peoples, depending on the crime that they commit, right? But we know that that's not the case. There are Brock Turners who are experiencing punishment in a different way than other people who commit the same crime. So, in that role, incarceration is problematic.

Expressing her frustration at the inequalities, Bridgitte, a 56-year old mother and parks director, remarked:

I think it's frustrating that, you know, the definitions of the crimes and all that and then the possible spectrum of sentences that someone can have for these different crimes that, um, you know—the violent assault can result in a, you know, three months of-of jail time for one person and a lifetime for another, um, depending on whatever factors and, you know, skin color or whatever—quality of, you know, representation and that stuff. I find that infuriating.

John, a 71-year Latinx grandfather, summarized his understanding of the system thusly: “I think we have to recognize that, um, our criminal justice system is as much an attempt at social cons—control—of groups that the larger culture's afraid of than it

is payback for something you did wrong.” Most of these comments took place during discussions about the purpose of punishment and whether it can actually succeed in achieving its stated goals. These findings demonstrate a widespread understanding that the criminal justice system is not equal and fair in ways that undermine its utility and effectiveness, as well as its legitimacy.

While most comments that dealt with race acknowledged the mistreatment or unequal treatment of racial minorities, a few focus group members alluded to race in more covert, problematic ways and engaged in the othering of criminal perpetrators. In one particularly stark statement, Margaret, a 77-year old European American mother, said:

I think there're crimes so vicious—I believe in the death penalty. I think the only thing you can do is kill the animal. That's my take of it. I've had several ins-, friends who were victimized. Changed their whole life. Killed their kids. Killed—it's—where I'm directly involved with those people. Those people are not salvageable. They're—those people should be put to death. Nothing is going to save them. Make them turn around.

While she was not necessarily discussing race at this point, her language suggests a dehumanization of criminal perpetrators that is often part and parcel of the distancing and dehumanization of African-American and Latinx community members. The following participant statement exemplifies the kind of underlying racial stereotypes some people hold in connection with criminal perpetrators. Sharon stated:

You know, I think it was—I've heard them say that back in the 1960s, the black people - black people had 25 percent of the children born out of wedlock. Now, it's 75 to 80 percent. So, there's nobody at home. They're just having children, and they become the criminals of tomorrow.

Other participants made comments that were more subtle, but still engaged in the “us-them” rhetoric of distancing from criminal perpetrators. For example, Becca, a 33-year old single, Latinx woman, stated:

And that, you know, if they’re getting this chance, I wanna make sure that they’re actually following through and doing everything that they’re supposed to do to prove that they can, you know, live in society and function like the rest of us, you know.

Sharon used similar distancing language, stating, “You can't help these people once they get to a certain point. Whether it is a criminal, or whether it is a homeless person, . . .” While the use of race, racial proxies, and othering language occurred relatively infrequently, it was an underlying current that motivated some participants who felt that criminal actors often could not be rehabilitated or did not deserve the chance to be.

Chapter 7. Focus Group Study Discussion

The findings from this study are largely consistent with previous research on punishment attitudes and provide insight into some of the deeply entrenched ways of thinking that continue to pose obstacles for transformative criminal justice reform. The results also suggest additional ways to build public support for reform and restorative justice practices, in particular, and to leverage the public's increased awareness of some of the issues that plague the penal system and contribute to mass incarceration.

Lay Understandings of the Purpose Punishment

Both the deductively and inductively-derived findings demonstrate that participants believe the purpose of punishment is both instrumental and symbolic. But, as previous research has found (see e.g., Carlsmith & Darley, 2008), when asked explicitly, many participants felt the purpose of punishment to be the satisfaction of the instrumental goals of deterrence and public safety. This explicit emphasis on public safety belies many participants' focus on "punishment," "deservingness," or "pain;" notions that are consistent with a belief in retributive punishment (Vidmar, 2001). Participants' belief in retributive punishment became clear when we discussed what makes punishment fair. In response to this question, several participants focused exclusively on retributive concerns—the severity of the harm caused, the motive behind the crime, and the character of the criminal perpetrator (Carlsmith et al., 2002). When asked about the meaning of justice, participants similarly talked about more abstract, symbolic concerns, such as "consequences," and feeling that the

criminal perpetrator got what they “deserved.” Again, the compartmentalization of the rationale for our current punishment system—public safety on the one hand and the symbolic sense that justice has been done on the other—is consistent with previous research on punishment theory and attitudes.

While most of the participants were talking about punishment and incarceration as synonymous unless the conversation was explicitly about restorative justice, I directly asked whether the goals of punishment are tied to its most common current form—prison/jail. Many participants felt that prison/jail was necessary to fulfill all the goals discussed, both instrumental and symbolic. Some participants expressed a great deal of support for community-based alternatives and restorative justice approaches as well. But even for these participants, prison/jail was thought to be particularly necessary to achieve deterrence. Participants that were very concerned with public safety felt that prison/jail was necessary to incapacitate criminal perpetrators.

Some participants did acknowledge that one important goal of punishment is restoration, rehabilitation, and healing communities. But when it seemed that this goal conflicted with the goals of deterrence or public safety, because incarceration cannot actually achieve rehabilitation, participants prioritized public safety. This demonstrates that even for those participants who understood punishment to be a part of a broader justice system that needs to address prevention and rehabilitation, their own sense of personal safety—largely reliant on incapacitation models of punishment—trumped other concerns.

Suggestions for Increasing Support for Restorative Justice

Participants provided a number of concrete suggestions for ways to bolster public support of restorative justice. These suggestions generally had in common a focus on the symbolic sense of safety (Gaubatz, 1995). That is, participants' suggestions were generally things that related to feeling safer or feeling more in control of what would happen to the criminal perpetrator. For example, participants talked about "monitoring" and "follow up" as ways to make them feel that criminal perpetrators who participated in restorative justice conferences were not just being left to their own devices. Several participants were also clear that they wanted a punitive option should the criminal perpetrator fail to comply with the terms of the restorative justice conference or recidivate. This finding illustrates that participants were relatively open to restorative justice as an option, but they wanted measures in place to help them feel a sense of control and, similar to incarceration, that the criminal perpetrator involved would be surveilled.

Participants' emphasis on monitoring is interesting given that the current system of monitoring—probation and parole—does not do a very good job of increasing public safety and decreasing recidivism. In fact, these monitoring systems serve as a means of pulling justice-involved individuals back into the carceral net and create a revolving door between prison/jail and the outside world (Rios, 2011). Nevertheless, the idea of monitoring and surveillance was very important to participants.

One of the most interesting findings was participants' suggestion that restorative justice be "rebranded" or relabeled to seem more punitive or more in line with traditional punishments. Most focus groups honed in on the need for greater awareness, education, and publicizing of restorative justice approaches—emphasizing the importance of narrative accounts of success stories. In some of these conversations it was clear that participants felt it was important to normalize restorative justice and include it as one of several punishment options, as opposed to something outside of the traditional criminal justice system. But one focus group explicitly talked about rebranding restorative justice to sound more punitive. While this explicit discussion only occurred once, it was revealing and demonstrated the power of language and the importance of connecting restorative justice and other reform approaches to current criminal justice system practices in order to broaden their appeal beyond progressive reform circles.

Crime Master Narrative

Throughout the focus group discussions, participants' objections to restorative justice approaches centered on common themes, chief among them a continued belief in the crime master narrative (Haney, 2006; 2020). While many participants articulated an understanding of the social contextual causes of crime and external attributions for criminal behavior, most, if not all, participants also held on to the belief that some people are dangerous, evil, irredeemable and the threat those people pose justifies the existence of custodial punishments. As discussed above, several participants made comments consistent with a belief in psychological individualism,

that criminal perpetrators are able to make free, autonomous choices and are doing so when they engage in crime (Haney, 2020). These ideas were coupled with a deep-seated belief in the existence of truly “evil,” psycho- or sociopathic individuals. Some participants made more extreme comments than others, but most agreed that some criminal perpetrators cannot be trusted or rehabilitated, thereby justifying the use of incarceration.

The persistent belief in irredeemable criminality is fundamentally at odds with the premise behind restorative justice and suggests a long road ahead for those interested in reducing our reliance on mass incarceration. While many participants were supportive of reducing the number of people in prison and considering alternatives for young, non-violent, first-time offenders, even the most enthusiastic supporters of restorative justice reached their limit when considering archetypal criminal perpetrators—“Charles Manson types” or sociopaths. This finding highlights the importance of continuing to educate the public about the types of people who make up the vast majority of the criminal justice system and to build upon the growing sense that justice-involved individuals are often limited by their environment and circumstances. Building empathy and understanding of people who engage in crime will be key to overcoming this cognitive hurdle to endorsing restorative justice.

It is worth noting that while psychological individualism undercuts the ability to see crime as the product of social and environmental factors, the focus on individual responsibility actually presents an opportunity for generating support for

restorative justice approaches. Those participants who made comments consistent with psychological individualism were very focused on the idea that criminal perpetrators need to take responsibility for their actions and express genuine remorse for the consequences of those actions. Traditional criminal justice processes do not require nor typically afford criminal perpetrators the opportunity to explicitly accept responsibility for what they have done or express remorse. The adversarial system, and the plea bargaining that determines outcomes for most criminal cases, does not provide space for this sort of reckoning. Because this is so lacking in the current system and because it is such a central component of restorative justice, it may afford a way to build a coalition of support among not just those who oppose incarceration but also those who value personal responsibility and accountability. Restorative justice practices are focused on responsibility, remorse, and forgiveness; things many participants said were very important to them. In this way, restorative justice may be able to overcome some of the obstacles participants identified as barriers to support.

Similarly, the relatively common understanding of the social contextual causes of crime displayed by several participants—while often undercut by statements consistent with the crime master narrative—presents an opportunity to challenge the dominant understanding of criminality espoused and reinforced by politicians and the media. Participants' understanding of the social contextual causes of crime and the empathy and understanding that some participants expressed for those who had come from situations that limited their life choices was an unexpected takeaway from the study, and shows that the public is becoming more aware of and

conversant in counternarratives about crime. While there were still a few participants that dismissed social context entirely, most understood that crime is not simply a choice that bad people make, but is often connected to uncontrollable environmental and circumstantial factors. This awareness presents a chance to emphasize the social factors that contribute to crime and to cultivate the public's sense of empathy and understanding, instead of dismissiveness and fear.

Cognitive Dissonance

These findings highlight the way in which participants held two often contradictory beliefs regarding punishment, a form of dissonance around our punishment system (Aronson, 1992). This most frequently occurred when participants discussed the current flaws in our prison system—including that incarceration is harmful, damaging, and can turn incarcerated individuals into “better criminals,” that it is not effective at deterring or preventing crime, and that it is riddled with racial and socioeconomic inequities—yet maintained that incarceration was necessary. While participants almost uniformly agreed that punishment should deter crime and promote public safety, most often through the incapacitation of “dangerous” criminal perpetrators, participants also understood that the current punishment system largely fails to achieve these goals and creates many other issues. Yet, participants' awareness of the current system's shortcomings did not manage to change the majority of participants' views about the continued need for incarceration.

This reflects a pattern of cognitive dissonance (Aronson, 1992; Harmon-Jones & Mills, 1999) that many participants engaged in; justifying their continued belief in

the need for prison for some criminal perpetrators, specifically serious or violent offenders, not on the premise that prison actually promotes public safety, but rather through a continued belief in dangerous criminal personalities that cannot be dealt with any other way. Our discussions made clear that while most participants felt prison and jail ultimately failed in their stated goals, the threat of “sociopaths” or “dangerous” criminals on the street was too high a cost. They endorsed an imperfect form of incapacitation over risking public safety. Participants’ willingness to fall back on the idea that we need punishment to keep us safe represents the prototypical response to any push for transformative criminal justice reform. Reliance on the issue of safety as a counterpoint to the need for criminal justice reform is a reminder of how much work needs to be done to change the course of the debate around reform so that incarceration is not viewed as the safe choice.

One other instance of dissonance in participants’ discussions was their focus on the need for data regarding restorative justice’s effectiveness, while simultaneously acknowledging and then disregarding the evidence that prison/jail are not effective at reducing crime, recidivism, or improving public safety. Participants expressed support for restorative justice assuming that it would actually result in some form of behavior modification and have a deterrent impact. They wanted evidence and to know more specifics about studies on restorative justice and the jurisdictions where it has been used. Yet, they did not require any of this sort of evidence of effectiveness when evaluating the current system and, in fact, were well-aware of all the ways it is ultimately ineffective in meeting these instrumental goals.

Based on these findings, it appears that participants felt more comfortable with traditional custodial punishment both because it is a system that they understand, even if it is flawed, and because it comports with long-standing societal notions regarding retributive punishment. Even if imperfectly executed, prison does serve the goal of condemning criminal perpetrators and subjecting them to some amount of pain and/or deprivation. Restorative justice, on the other hand, may include painful aspects and be difficult for criminal perpetrators to participate in, but seeks to serve a fundamentally different purpose—to heal, restore, and reintegrate those who have committed crimes into their communities. This difference in fundamental purpose, while attractive to many focus group participants in the abstract, became harder to support when contrasted with traditional punishment practices.

Overall, the results of my focus group study are encouraging—they demonstrate a growing public awareness of the myriad issues with the criminal justice system and a desire to engage in positive social change. Many participants were eager to consider restorative justice as an alternative to what they described as a broken, unequal criminal justice system; but again, only for “appropriate” criminal perpetrators. Participants drew a very bright line between violent and non-violent crimes. This is a major hurdle that restorative justice advocates are trying to overcome, as research shows that restorative justice is often more successful with those who have committed violent, serious crimes (Sered, 2019). Despite this limitation, the findings are promising because most participants were supportive of some incorporation of restorative justice practices into the criminal justice system. This

willingness to entertain a different outcome and awareness that the current system does not work is an opportunity to address some of the major concerns about restorative justice that participants raised and to incorporate some of their suggestions into criminal justice reform policy proposals.

In the final analysis, the most serious obstacle to supporting restorative justice remains the continued dominance of the crime master narrative. In order to overcome the deeply ingrained notions about criminality, punishment, and safety fostered by this narrative, it is imperative that we continue to challenge misconceptions and myths and provide the public both with information that humanizes criminal perpetrators and generates empathy and understanding, as well as information about the expense and ineffectiveness of the current penal system. We are in a moment of national reckoning where our racist structures and systems, chief among them the criminal justice system, are being critiqued and called into question. It is important that we seize upon this momentum to continue pushing for penal system reform. But it is necessary to remember that for large swaths of the public what matters most is their own symbolic sense of safety. Any penal reform proposals must try to address this need, while simultaneously challenging the race and class-based inequities of the system and the dominant narratives that perpetuate it.

Limitations and Conclusions

The present study was limited in a number of ways. First and foremost, the study took place in San Mateo County, with participants who had both the time and inclination to participate in a 90-minute focus group discussion on criminal justice

issues. As Table 5 demonstrates, participants were unrepresentatively well-educated and from a higher socioeconomic class than the general population. Thus, the participant discussions cannot be generalized to the population at large and reflect the specific views of the narrow set of community members that participated in them. While I was intentional about including a diverse array of community members and managed to have a fair amount of racial/ethnic and gender diversity, particularly in comparison to the county's demographic make-up, my sample is not representative of California and certainly not of the country as a whole. Participants' high level of education attainment in particular makes them stand out as an unrepresentative group. While this limits the generalizability of the findings, it does not limit their utility in providing insight into how this particular group of community members thinks and feels about restorative justice. It is also important to note that criminal justice policy is often set at the local level, which makes local input more relevant and more necessary to understand.

A second limitation of this study is that the topic we discussed, restorative justice, is not a concept everyone is familiar with and necessarily has an opinion on. Many participants knew about restorative justice, but many did not and so were being asked to provide their views on a topic that they had relatively little familiarity with. This impacted the flow of the conversation and required that I provide a fair amount of background information throughout. The information I provided, as well as my position as an "expert" on restorative justice, may have impacted participants'

responses. And those participants who did know about restorative justice often took up more space in the conversation.

Relatedly, as is true of focus group discussions in general, the conversation was impacted by those participants who were more willing to voice their opinion. These participants often steered the conversation in certain directions and resulted in some participants providing relatively little to the conversations. While this limitation is endemic to the format, it did have the effect of tamping down some of the generative conversation participants engaged in.

Despite these limitations, the focus group discussions were enlightening and hopeful. One of the most important takeaways from the conversations was that every participant, regardless of how they felt about restorative justice, felt that the current criminal justice and penal system is ineffective and needs to be reformed. This was true regardless of individual levels of familiarity with the system or political ideology. Thus, while the way forward is still rife with obstacles and psychological hurdles, the public demand for reform can act as a catalyst for change.

Participants' willingness to engage with the concept of restorative justice was also very promising. Even the most skeptical of participants agreed that restorative justice should be used if not in place of then in tandem with other forms of punishment to give victims more closure and criminal perpetrators more opportunities. While the goal of the project was to understand people's responses to the idea of restorative justice as an alternative to incarceration, one potential avenue

forward is restorative justice as a piece of the puzzle that, in the short term, can help reduce punitive sentences.

Lastly, my findings suggest that one of the biggest obstacles to widespread criminal justice reform remains the idea of the sensationalized criminal perpetrator, whose criminal pathologies are intractable. The prevalence with which some version of a “sociopath” was discussed indicates that it is so deeply ingrained in our collective psyche that it will remain a roadblock to envisioning a truly different form of justice. But in this finding lies an opportunity as well—to focus on changing the dominant view of criminality and replacing it with stories that evoke empathy and hope as opposed to fear.

The findings from this study suggest several additional lines of inquiry. First, I would like to expand upon this study by conducting focus groups in other California counties and comparing results across counties. This would both deepen my understanding of these issues, increase the generalizability of the findings, and provide helpful comparisons along demographic and socioeconomic lines. Second, I would like to take some of the things participants said were key to their willingness to support restorative justice practices and experimentally test whether they do, in fact, increase participants’ support. Specifically, I plan to follow up on the idea that restorative justice could be labeled in a way to make it more appealing to those who hold more traditional or conservative beliefs about criminal justice. I also plan to explore the impact of different narrative accounts and media representations of restorative justice conferences on support for restorative justice practices.

Participants were largely aligned in suggesting that if there were more publicity around restorative justice success stories, there would be more support for them, and I plan to test the veracity of these statements. All of these ideas are in service of exploring additional ways to bolster support for criminal justice reform and restorative justice practices and end our reliance on mass incarceration.

Chapter 8. Conclusion

Punishment is a deeply social phenomenon and how it is understood has profound implications both for the individuals caught in our criminal justice system and for society as a whole. For many if not most Americans, punishment is synonymous with justice. But as the present study indicates, our collective understanding of both punishment and justice can evolve to include restoration and reintegration, and ultimately an end to mass incarceration.

In order to bring about transformative criminal justice reform, it is not enough to document the many problems with mass incarceration. As this research clearly shows, many people understand that our criminal justice system is deeply flawed and our penal policies are not designed to reduce crime or rehabilitate those who engage in it. Academics and reformers need to go beyond highlighting the racial disparities and, ironically, the injustices that plague our justice system. They need to acknowledge and tap into peoples' deeply-held need to see justice done. They can meet that need both by offering a form of justice that is expressive and affective, while simultaneously working to humanize and contextualize the lives of the people who are most likely to be punished by the current system.

This dissertation is a starting point for both of these endeavors. By focusing on the role that social historical information plays in impacting peoples' criminal justice attitudes and judgments, this study adds to the wealth of data that demonstrates that learning about someone's social history can generate empathy for them, increase belief in their redeemability, and ultimately lead to them being sentenced less

punitively. This data is important because it demonstrates the powerful impact of even a modest amount of social historical information to affect judgments and decision-making in non-capital criminal contexts. Future work can continue to investigate the impact that social historical information has on both lay and legal decision-makers, building the case for its use in more contexts and procedural points as a way to temper punitive outcomes.

This research also demonstrates that there is greater support for restorative justice approaches than previously believed and provides guidance on how best to advance a decarceration agenda that still meets the public's need for justice. Both the experimental and focus group study results indicate that people are willing to endorse restorative justice as an alternative to incarceration when given more complete, meaningful information and offered the opportunity to do so. The focus group study, in particular, provides insight into ways to address some of the concerns that participants raised in order to build broad support for restorative justice and other non-custodial sanctions.

In addition to the results presented and discussed here, these data represent a preliminary starting point for conducting future analyses, answering additional criminal justice questions, and refining some of the initial findings. It is imperative to return to the question of whether and how the race of the criminal perpetrator impacts support for restorative justice practices and the interpretation of social historical background information. It also will be important to further analyze the role of demographic factors to better determine the ways that different gender, racial, and

political identities affected participants' reactions to the experimental stimuli. Lastly, it will be important to analyze the impact of empathy in mediating criminal justice attitudes and sentencing decisions.

As discussed in earlier chapters, these studies had a number of limitations. The ecological validity and impact of the experimental studies were limited by the nature of the manipulation and the online survey methodology utilized. The experimental study samples were also not representative of the general population, with women overrepresented and people of color, particularly those identifying as Latinx, underrepresented. Yet, despite these limitations, the experiments yielded a number of important, statistically significant findings, which suggests that similar studies utilizing an in-person, more immersive and impactful format might produce even stronger, more robust results. The focus group studies were also limited, primarily in their generalizability. However, they nonetheless generated suggestive findings regarding lay attitudes toward punishment and restorative justice. They provided important insights about the potential bases of community support for alternatives to incarceration. Future focus group-based research should broaden its geographic scope, strive for more representative samples, and conduct cross-county comparisons.

Despite these limitations, this research makes an important contribution to both policy and theoretical discussions about how lay persons regard legal punishment. It illustrates the central role played by the way that persons understand the nature of criminality, provides some insight into how persistent misconceptions

may be combatted, and suggests approaches to the reform of current penal policy that still satisfy the public's need to punish. These findings help fill an important gap between the theoretical discourse on punishment theory and the practical considerations of the criminal justice and penal reform agenda.

This research also gives lie to the widespread belief that restorative justice is regarded as too progressive or too utopian an option for most Americans. Among other things, it identified the key role of social historical information in increasing support for restorative justice and thereby provided an academic and public policy roadmap for future criminal justice reform. Ultimately, it serves as a framework for rethinking the purpose and goals of punishment and building public support for broad reforms that rely less on incarceration and are more likely to advance the interests of justice-involved individuals, their communities, and society as a whole.

Appendix A

Experimental Stimuli for Experiment #1

Condition #1

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator's punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief information about the crime.

Jake is a 25-year old white man living in San Francisco, California. Last March, Jake was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jake approached him and said, "Gimme all your money." When Kevin hesitated, Jake drew a handgun from his pocket and repeated his demand, saying, "Gimme all your money now." Kevin quickly handed him the cash and Jake turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jake a few blocks away and discovered the gun and \$500 in cash on him. Jake was charged and convicted of felony robbery.

Condition #2

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator's punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief information about the perpetrator and the crime.

Jake is a 25-year old white man living in San Francisco, California. As a child, Jake was raised by a single, working mother. She tried her best but was rarely home for dinner and often worked late nights, leaving Jake to fend for himself and his younger sister. They often went hungry. Jake's mother sometimes had to choose between paying the rent and groceries.

Jake and his family were forced to move several times after being evicted from their apartment and he had a hard time adjusting to his new schools, which were in low-income, high-crime areas. When he was 12, Jake's mother remarried a man who was physically abusive to both his mother and him. Jake tried to protect his mother, but would often get yelled at, hit, and threatened by his stepfather. By 15, Jake had

moved out on his own. He struggled in school and eventually dropped out without completing high school.

Last March, Jake was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jake approached him and said, “Gimme all your money.” When Kevin hesitated, Jake drew a handgun from his pocket and repeated his demand, saying, “Gimme all your money now.” Kevin quickly handed him the cash and Jake turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jake a few blocks away and discovered the gun and \$500 in cash on him. Jake was charged and convicted of felony robbery.

Condition #3

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator’s punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief information about the crime.

Jamal is a 25-year old African American man living in San Francisco, California. Last March, Jamal was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jamal approached him and said, “Gimme all your money.” When Kevin hesitated, Jamal drew a handgun from his pocket and repeated his demand, saying, “Gimme all your money now.” Kevin quickly handed him the cash and Jamal turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jamal a few blocks away and discovered the gun and \$500 in cash on him. Jamal was charged and convicted of felony robbery.

Condition #4

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator’s punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief

information about the perpetrator and the crime.

Jamal is a 25-year old African American man living in San Francisco, California. As a child, Jamal was raised by a single, working mother. She tried her best but was rarely home for dinner and often worked late nights, leaving Jamal to fend for himself and his younger sister. They often went hungry. Jamal's mother sometimes had to choose between paying the rent and groceries.

Jamal and his family were forced to move several times after being evicted from their apartment and he had a hard time adjusting to his new schools, which were in low-income, high-crime areas. When he was 12, Jamal's mother remarried a man who was physically abusive to both his mother and him. Jamal tried to protect his mother, but would often get yelled at, hit, and threatened by his stepfather. By 15, Jamal had moved out on his own. He struggled in school and eventually dropped out without completing high school.

Last March, Jamal was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jamal approached him and said, "Gimme all your money." When Kevin hesitated, Jamal drew a handgun from his pocket and repeated his demand, saying, "Gimme all your money now." Kevin quickly handed him the cash and Jamal turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jamal a few blocks away and discovered the gun and \$500 in cash on him. Jamal was charged and convicted of felony robbery.

Appendix B

Sentence Options for Experiment #1

Now that you have read about the crime, please read about the possible criminal sentences for felony robbery. Afterwards, you will be asked what sentence you believe the perpetrator should receive.

Prison/jail sentence: A prison or jail sentence involves involuntary confinement in a state or local county correctional facility for a set period of time.

Restorative justice conference: Restorative justice is a community-based alternative to incarceration in prison or jail. It involves a third-party facilitator, the victim, and the perpetrator. During the conference, the perpetrator and victim meet with the facilitator, where the victim is given the opportunity to describe the harm that they have suffered as a result of the perpetrator's actions. The perpetrator listens, takes responsibility for their actions, and offers an apology. The parties then come to a mutually agreed upon plan for how the perpetrator can repair the harm done to the victim and society more broadly, which usually involves repayment of any stolen money or goods and community service.

Split sentence: A split sentence is a mix of incarceration and restorative justice. It involves involuntary confinement in a state or county correctional facility for a reduced amount of time AND participation in a restorative justice conference and completion of the agreed upon terms of the conference.

Please read the following sentence options and select the option you believe the perpetrator in this case should receive.

1. 3-year prison sentence
2. 1-year jail sentence AND restorative justice conference, resulting in agreement to repay \$500, attend a non-violence workshop once a week for 3 months, and perform 100 hours of community service.
3. Restorative justice conference, resulting in agreement to repay \$500, attend a non-violence workshop once a week for 3 months, and perform 100 hours of community service. No prison or jail sentence.

Appendix C

Experimental Stimuli for Experiment #2

Condition #1

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator's punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief information about the crime and the sentence imposed.

Jake is a 25-year old white man living in San Francisco, California. Last March, Jake was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jake approached him and said, "Gimme all your money." When Kevin hesitated, Jake drew a handgun from his pocket and repeated his demand, saying, "Gimme all your money now." Kevin quickly handed him the cash and Jake turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jake a few blocks away and discovered the gun and \$500 in cash on him. Jake was charged and convicted of felony robbery.

A prison sentence in a state correctional facility is one possible sentence that can be imposed for a felony crime. In this case, the judge sentenced Jake to serve three years in a California state prison.

Condition #2

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator's punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief information about the perpetrator, the crime, and the sentence imposed.

Jake is a 25-year old white man living in San Francisco, California. As a child, Jake was raised by a single, working mother. She tried her best but was rarely home for dinner and often worked late nights, leaving Jake to fend for himself and his younger sister. They often went hungry. Jake's mother sometimes had to choose between paying the rent and groceries.

Jake and his family were forced to move several times after being evicted from their

apartment and he had a hard time adjusting to his new schools, which were in low-income, high-crime areas. When he was 12, Jake's mother remarried a man who was physically abusive to both his mother and him. Jake tried to protect his mother, but would often get yelled at, hit, and threatened by his stepfather. By 15, Jake had moved out on his own. He struggled in school and eventually dropped out without completing high school.

Last March, Jake was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jake approached him and said, "Gimme all your money." When Kevin hesitated, Jake drew a handgun from his pocket and repeated his demand, saying, "Gimme all your money now." Kevin quickly handed him the cash and Jake turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jake a few blocks away and discovered the gun and \$500 in cash on him. Jake was charged and convicted of felony robbery.

A prison sentence in a state correctional facility is one possible sentence that can be imposed for a felony crime. In this case, the judge sentenced Jake to serve three years in a California state prison.

Condition #3

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator's punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief information about the crime and the sentence imposed.

Jamal is a 25-year old African American man living in San Francisco, California. Last March, Jamal was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jamal approached him and said, "Gimme all your money." When Kevin hesitated, Jamal drew a handgun from his pocket and repeated his demand, saying, "Gimme all your money now." Kevin quickly handed him the cash and Jamal turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jamal a few blocks away and discovered the gun and \$500 in cash on him. Jamal was charged and convicted of felony robbery.

A prison sentence in a state correctional facility is one possible sentence that can be imposed for a felony crime. In this case, the judge sentenced Jamal to serve three years in a California state prison.

Condition #4

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator's punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief information about the perpetrator, the crime, and the sentence imposed.

Jamal is a 25-year old African American man living in San Francisco, California. As a child, Jamal was raised by a single, working mother. She tried her best but was rarely home for dinner and often worked late nights, leaving Jamal to fend for himself and his younger sister. They often went hungry. Jamal's mother sometimes had to choose between paying the rent and groceries.

Jamal and his family were forced to move several times after being evicted from their apartment and he had a hard time adjusting to his new schools, which were in low-income, high-crime areas. When he was 12, Jamal's mother remarried a man who was physically abusive to both his mother and him. Jamal tried to protect his mother, but would often get yelled at, hit, and threatened by his stepfather. By 15, Jamal had moved out on his own. He struggled in school and eventually dropped out without completing high school.

Last March, Jamal was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jamal approached him and said, "Gimme all your money." When Kevin hesitated, Jamal drew a handgun from his pocket and repeated his demand, saying, "Gimme all your money now." Kevin quickly handed him the cash and Jamal turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jamal a few blocks away and discovered the gun and \$500 in cash on him. Jamal was charged and convicted of felony robbery.

A prison sentence in a state correctional facility is one possible sentence that can be

imposed for a felony crime. In this case, the judge sentenced Jamal to serve three years in a California state prison.

Condition #5

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator's punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief information about the crime and the sentence imposed.

Jake is a 25-year old white man living in San Francisco, California. Last March, Jake was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jake approached him and said, "Gimme all your money." When Kevin hesitated, Jake drew a handgun from his pocket and repeated his demand, saying, "Gimme all your money now." Kevin quickly handed him the cash and Jake turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jake a few blocks away and discovered the gun and \$500 in cash on him. Jake was charged and convicted of felony robbery.

Participation in a restorative justice conference is one possible sentence that can be imposed for a felony crime. Restorative justice is a community-based alternative to incarceration in prison or jail. It involves a third-party facilitator, the victim, and the perpetrator. During the conference, the victim describes the harm that they have suffered as a result of the perpetrator's actions. The perpetrator listens and offers an apology and explanation for their actions. The parties then come to a mutually agreed upon plan for how the perpetrator can repair the harm done to the victim and society more broadly, usually involving repayment of any stolen money or goods and community service.

In this case, the judge sentenced Jake to participate in a restorative justice conference with his victim, Kevin, which resulted in an agreement that Jake repay Kevin \$500, attend a non-violence workshop once a week for 3-months, and perform 100 hours of community service.

Condition #6

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator's punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief

information about the perpetrator, the crime, and the sentence imposed.

Jake is a 25-year old white man living in San Francisco, California. As a child, Jake was raised by a single, working mother. She tried her best but was rarely home for dinner and often worked late nights, leaving Jake to fend for himself and his younger sister. They often went hungry. Jake's mother sometimes had to choose between paying the rent and groceries.

Jake and his family were forced to move several times after being evicted from their apartment and he had a hard time adjusting to his new schools, which were in low-income, high-crime areas. When he was 12, Jake's mother remarried a man who was physically abusive to both his mother and him. Jake tried to protect his mother, but would often get yelled at, hit, and threatened by his stepfather. By 15, Jake had moved out on his own. He struggled in school and eventually dropped out without completing high school.

Last March, Jake was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jake approached him and said, "Gimme all your money." When Kevin hesitated, Jake drew a handgun from his pocket and repeated his demand, saying, "Gimme all your money now." Kevin quickly handed him the cash and Jake turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jake a few blocks away and discovered the gun and \$500 in cash on him. Jake was charged and convicted of felony robbery.

Participation in a restorative justice conference is one possible sentence that can be imposed for a felony crime. Restorative justice is a community-based alternative to incarceration in prison or jail. It involves a third-party facilitator, the victim, and the perpetrator. During the conference, the victim describes the harm that they have suffered as a result of the perpetrator's actions. The perpetrator listens and offers an apology and explanation for their actions. The parties then come to a mutually agreed upon plan for how the perpetrator can repair the harm done to the victim and society more broadly, usually involving repayment of any stolen money or goods and community service.

In this case, the judge sentenced Jake to participate in a restorative justice conference with his victim, Kevin, which resulted in an agreement that Jake repay Kevin \$500, attend a non-violence workshop once a week for 3-months, and perform 100 hours of community service.

Condition #7

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator's punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief information about the crime and the sentence imposed.

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As Kevin began walking back to his car, Jamal approached him and said, "Gimme all your money." When Kevin hesitated, Jamal drew a handgun from his pocket and repeated his demand, saying, "Gimme all your money now." Kevin quickly handed him the cash and Jamal turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jamal a few blocks away and discovered the gun and \$500 in cash on him. Jamal was charged and convicted of felony robbery.

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In this case, the judge sentenced Jamal to participate in a restorative justice conference with his victim, Kevin, which resulted in an agreement that Jamal repay Kevin \$500, attend a non-violence workshop once a week for 3-months, and perform 100 hours of community service.

Condition #8

You are going to read a description of a crime that recently occurred. Then, you will be asked a series of questions about the perpetrator's punishment and your feelings and beliefs about crime, perpetrators, and related social issues. Below is some brief information about the perpetrator, the crime, and the sentence imposed.

Jamal is a 25-year old African American man living in San Francisco, California. As a child, Jamal was raised by a single, working mother. She tried her best but was rarely home for dinner and often worked late nights, leaving Jamal to fend for himself and his younger sister. They often went hungry. Jamal's mother sometimes had to choose between paying the rent and groceries.

Jamal and his family were forced to move several times after being evicted from their apartment and he had a hard time adjusting to his new schools, which were in low-income, high-crime areas. When he was 12, Jamal's mother remarried a man who was physically abusive to both his mother and him. Jamal tried to protect his mother, but would often get yelled at, hit, and threatened by his stepfather. By 15, Jamal had moved out on his own. He struggled in school and eventually dropped out without completing high school.

Last March, Jamal was hanging around near an ATM in downtown San Francisco around 7 pm. He saw Kevin, a man in his mid-30s who was wearing a business suit, walk up to the ATM. He watched Kevin take a sizable amount of cash out of the ATM.

As Kevin began walking back to his car, Jamal approached him and said, "Gimme all your money." When Kevin hesitated, Jamal drew a handgun from his pocket and repeated his demand, saying, "Gimme all your money now." Kevin quickly handed him the cash and Jamal turned and ran away down the street. Kevin headed to his car and called the police.

The police were able to apprehend Jamal a few blocks away and discovered the gun and \$500 in cash on him. Jamal was charged and convicted of felony robbery.

Participation in a restorative justice conference is one possible sentence that can be imposed for a felony crime. Restorative justice is a community-based alternative to incarceration in prison or jail. It involves a third-party facilitator, the victim, and the perpetrator. During the conference, the victim describes the harm that they have suffered as a result of the perpetrator's actions. The perpetrator listens and offers an apology and explanation for their actions. The parties then come to a mutually agreed upon plan for how the perpetrator can repair the harm done to the victim and society more broadly, usually involving repayment of any stolen money or goods and community service.

In this case, the judge sentenced Jamal to participate in a restorative justice conference with his victim, Kevin, which resulted in an agreement that Jamal repay Kevin \$500, attend a non-violence workshop once a week for 3-months, and perform 100 hours of community service.

Appendix D

Focus Group Screener

Welcome page:

You are invited to take part in a research study conducted by Shirin Bakhshay from the department of Psychology at the University of California, Santa Cruz. We would like to ask you a few questions to see if you might be eligible for our research study. We are holding a series of conversations with residents of San Mateo County to learn more about the community's thoughts on the criminal justice system, opinions regarding justice and punishment, and ideas or suggestions for reforms.

It is very important to the success of this research that we get input from a wide variety of people. If you are eligible and volunteer to participate in this study, you will be asked to participate in a 1 ½ hour group conversation with other community members and a UCSC research team, where we will guide a conversation about the criminal justice system and reforms. Participants will receive a \$30 gift card. Snacks will be provided at the focus group.

You may not be contacted for participation in the study based on your answers. If you are not eligible for the study, we will not contact you again for this project. If you are not eligible, your responses will be deleted.

The screening will take less than five minutes. We will ask you basic demographic questions like how you identify in terms of age, race, and gender. You do not have to answer any questions you do not wish to answer or are uncomfortable answering, and you may stop at any time. Your participation in the screening is voluntary. If you decide to decline, there will be no penalty or loss of benefits to which you are otherwise entitled.

Precautions will be taken to protect the confidentiality of your response. However, breaches of confidentiality are always a risk. Although unlikely, potential breaches of confidentiality include inadvertent disclosure of identifiable participant information through data loss or theft.

Your answers will be confidential. No one will know your answers except for the research team. When you submit your answers, they will be assigned a

code number. The list connecting your name to this code will be kept in on a secure UCSC Google Drive account. Only the researcher will have access to the list. When the study is completed and the data have been analyzed, the list will be destroyed.

There is no direct personal benefit to you from completing this screener. However, if you are invited to participate in a focus group, your comments may benefit the community by helping to provide insights into community members' thoughts on the criminal justice system.

If you have questions about this research, please contact Shirin Bakhshay at sbakhsha@ucsc.edu. You may also contact the faculty member supervising this work: Dr. Craig Haney, at psylaw@ucsc.edu. If you have any questions regarding your rights as a research participant, please contact the Office of Research Compliance Administration at the University of California at Santa Cruz at 831-459-1473 or orca@ucsc.edu.

If you are interested in completing the screening survey, please fill out the following pages.

If you are not interested in completing the screening survey, we thank you for your time and interest.

Please click "next" if you consent to fill out the screening questionnaire.

Please fill in answers or check a response to the following demographic questions.

1. What is your age?

2. Are you over 18 years old?

- Yes
 No

3. What is your gender?

- Man
 Woman
 Gender non-binary
 Other (fill in)_____

4. How do you identify your race/ethnicity? (choose all that apply)

- Asian American or Pacific Islander
 Black/African American
 Latinx/Hispanic
 Native American, Indigenous, or Alaskan Native
 White/European American
 Other (fill in)_____

5. What is your highest level of education?

- No high school diploma or GED
 High school diploma or GED
 Some college
 Associate's degree
 Bachelor's degree
 Graduate/professional degree

4. Are you a resident of San Mateo County?

- Yes
 Unsure
 No

4. Are you in the field of law enforcement or corrections?

- Yes
 No

Please provide the following contact information:

Name: _____

Phone number: (_____) _____ - _____

Email address: _____

Please indicate the best times for you to participate in a focus group by checking the box(es).

- Weekdays during the day (from 9 to 5)
- Weekdays during the evening (after 5 pm)
- Weekends during the day (from 9 to 5)
- Weekends during the evening (after 5 pm)

Is it okay if we keep your contact information to invite you to participate in future studies?

- Yes
- No

Thank you for answering the screening questions. We will review your responses and contact you if you are eligible to confirm your interest in participating and set up a time to schedule the focus group. If you are not eligible for the study, we will not contact you again for this project.

If you have questions about this research, please contact Shirin Bakhshay at sbakhsha@ucsc.edu. You may also contact the faculty member supervising this work: Dr. Craig Haney, at psylaw@ucsc.edu. If you have any questions regarding your rights as a research participant, please contact the Office of Research Compliance Administration at the University of California at Santa Cruz at 831-459-1473 or orca@ucsc.edu.

Appendix E

Focus Group Protocol

INTRODUCTION

Hello, my name is Shirin Bakhshay. I am a doctoral student in the Psychology Department at UCSC currently completing my Ph.D. I will be moderating the conversation today.

Introduce Ras

Thank you so much for sharing your perspective with us - we value your time and opinions. We are holding a series of conversations, like this one today, to learn more about community perspectives regarding the criminal justice system, specifically the way we punish criminals, and to hear suggestions for ways to reform it.

After all of our conversations are completed, we will identify common patterns and themes from your responses. This information will be used to inform future research papers and presentations.

Before getting started:

- This conversation will last about 1 ½ hours.
- We value everyone's perspectives and want everyone to feel comfortable sharing as little or as much as they want to. You can skip any question that you want to but if we haven't heard from you, I may check in to see if there is anything you'd like to share. To make sure that everyone has a chance to talk, I might ask you to wait if you've already shared.
- I may interrupt you if we need to move on, change topics, or in order to ensure everyone has a chance to share their perspective. I have a set list of questions I plan to ask you and want to ensure that we get through all of them, so I may have to direct the conversation a bit and ask that we switch topics at certain points.
- There are no right or wrong answers. Feel free to share your view even if it differs from what someone else has said. Everyone's perspectives are important and we are interested in hearing diverse opinions, not reaching a consensus.
- You can skip any question that you want to and stop participating at any time. Regardless of how many questions you answer or whether or not you complete the discussion, you will receive a \$30 gift card.

- We will record the audio of our conversation, which will be transcribed, and will be taking notes to help us remember everything, but no one's real names will be used. The voice recordings will not be published. Quotes from this focus group might be used in reports, but they will not be associated with your real name.
- This conversation is confidential and private. We ask that you respect the confidentiality of everyone here by not repeating what is discussed outside this room.

We will be discussing your views on the criminal justice system, specifically the legal punishments we impose on people convicted of committing crimes (hereinafter "criminals"). Before we delve into our discussion, let's just go over some basic information so we are all on the same page.

- 1) Basic sentencing information
 - a. Difference between probation, jail, and prison
 - b. Different types of sentences: term, life, LWOP, death penalty
 - c. Quick stats
 - i. Approximately 136,000 people in CA prisons, which is at 125% capacity; 84,000 in local jails
 - ii. 29.4% of all CA prison inmates are black, 41.3% are Latino, 23% are white, and 6.3% are other
 1. In CA, 39% Latino and 6.5% black
 2. Closer to 33, 33, and 33% for female inmates
 - iii. Approximately 4.5% of all CA inmates are female
 - iv. Approximately 25% of people in prison are serving life sentences
 - v. Approximately 60% recidivism rate
 - vi. Most people are in prison for serious or violent crimes
- 2) Information regarding community-based alternatives and restorative justice
 - a. Define/describe restorative justice
 - b. Restorative justice is gaining traction; increasing in popularity
 - i. Both a different process and understanding of justice
 - ii. Sees justice as involving all affected parties (criminals, victims, families, and communities); focused on holding criminals accountable, repairing harm to victim, engaging community to find solutions
 1. Repair harm
 2. Restore victims and communities

- iii. Process involves facilitated meetings between affected parties, discussion of harms, apology, and plan for repair and restitution
 - iv. Can be part of formal legal process, or can occur informally
 - c. Currently, restorative justice procedures are used at the local level in several jurisdictions in California for low-level, non-violent crimes for both juveniles and adults – Alameda, Fresno, Los Angeles, Sonoma, San Francisco, Yolo
 - i. Diversion
 - ii. Part of sentencing
 - iii. Post-sentencing contexts
 - iv. In legislation in 32 states
 - d. Other community-based alternatives
 - i. Counseling; drug/alcohol treatment
 - ii. Vocational and education programs
 - iii. Work release
 - iv. Home detention; electronic monitoring
 - v. Community service
 - vi. Fines
- 3) Before we move on, does anyone have any questions?
- 4) Quick ice-breaker
- a. Please introduce yourself and tell us how long you have lived in San Mateo County and if there is anything in particular you really like about this community.
- 5) Attitudes regarding punishment practices
- a. **What do you think the purpose of legal punishment is? What do you think it should be?**
 - i. Officially?
 - 1. How can this purpose be best accomplished?
 - ii. From your own perspective, what should it be?
 - 1. How can this purpose be best accomplished?
 - b. **Do you think there are alternatives to prison or jail that would satisfy that purpose?**
 - c. **What makes a punishment fair?**
- 6) Factors that might impact the fairness of punishment?
- a. Social historical information

- i. Do you think a criminal actor's background is relevant to their punishment?
 - ii. Do you think it matters if a criminal actor has a spouse or children? How so?
 - iii. Do you think it matters if a criminal actor has ties to his/her community? How so?
- b. Motive
 - i. Does the reason for the crime matter?
- c. The victim's wishes
 - ii. Should the victim's wishes matter in terms of punishment?
 - iii. Should they have a formal say in what happens to a criminal actor? Why?

7) Exploring alternatives to incarceration

- a. **Can you think of something other than incarceration that would be an appropriate response to a serious crime, such as robbery or assault?**
 - i. What about [fines, home detention, mandatory treatment, public apology, community service]?
 - ii. What are some reasons why these options might be good?
 - iii. What are some of your concerns?
- b. **What do you think about restorative justice approaches?**
- c. **Do you think that participation in restorative justice is a form of punishment? Why or why not?**
- d. **What do you think about restorative justice as part of a punishment that includes prison (split sentence)?**
- e. **What do you think about restorative justice as replacing incarceration?**
 - i. What are some of the reasons why this would be a good idea?
 1. *Because they attempt to rehabilitate the offender*
 2. *Repair the financial harm*
 3. *Restore the dignity of the victim*
 4. *Promise public safety*
 - ii. What are some of your concerns?
- f. **Are these alternatives "punitive" enough? Are they severe enough?**
- g. **What are the limits to using alternatives to incarceration as punishment for crime?**

- i. Do you think there are too many people in prison? Too few? The right amount?
- ii. Why do you think people should be sent to prison or jail?
- iii. Do you think it is fair to send people to prison or jail? Why?
- iv. Are there some crimes for which incarceration is unnecessary? Why?
- v. Are there some crimes for which incarceration is necessary? Why?
- vi. Are there some types of people who should not be incarcerated? Why?
- vii. Are there some types of people who should be incarcerated? Why?

8) Reconceptualizing justice

- a. What does justice, in the criminal context, mean to you?**
- b. What does justice look like?
 - i. *For victims?*
 - ii. *For criminal actors?*
 - iii. *For communities?*
 - iv. *For society as a whole?*
- c. Is there a way to get justice without inflicting pain/harm on criminal actors?**
 - i. *Why?*
 - ii. *What would that look like?*

9) Attitudes regarding penal reforms

- a. In recent years, California has passed a number of criminal justice reforms, including diverting more people from prison to jail and probation. Are you familiar with some of these reforms?
- b. Are you comfortable with these reforms?
- c. Do you think there is a need for change in how we punish convicted criminals?**
- d. What should that change look like?**
- e. *Do you think community members like yourselves should play a role in determining penal policy?*
 - i. *Why?*
 - ii. *What should that role look like?*

- f. *Do you think community members like yourselves should play a role in reintegrating criminal actors?*
 - i. *Why?*
 - ii. *What should that role look like?*

10) Resistance to reform

- a. **What are some concerns you have about penal reform and specifically putting fewer people in prison?**
- b. Or using restorative justice more frequently?
- c. **Is there a way to address these concerns?**

11) Suggestions for improving restorative justice processes

- a. **Do you have any suggestions for how to improve upon restorative justice processes?**
 - i. To increase public support?
 - ii. To increase efficacy?
 - iii. To satisfy the demand for punishment?

12) Do you have any questions for me? Is there anything else on these topics you would like to share?

Thank you so much for your participation!

Appendix F

Demographic Questionnaire for Focus Group Participants

Please fill in answers or check a response to the following demographic questions.

1. What is your age?

2. What is your gender?

- Female
- Male
- Gender non-binary
- Other (fill in)_____

3. What is your current relationship status?

- Single
- Long-term partnership
- Married
- Divorced
- Widowed

4. Do you have children?

- Yes
- No

5. What is your highest level of education?

- No high school diploma or GED
- High school diploma or GED
- Some college
- Associate's degree
- Bachelor's degree
- Graduate/professional degree

6. How do you identify your race/ethnicity? (choose all that apply)

- Asian American or Pacific Islander
- Black/African American
- Latinx/Hispanic
- Native American, Indigenous, or Alaskan Native
- White/European American
- Other (fill in)_____

7. What is your political affiliation?

- Democrat
- Green Party
- Independent
- Libertarian
- Republican
- I don't have one
- Other (fill in) _____

References

- Alicke, M. D. (2000). Culpable control and the psychology of blame. *Psychological Bulletin, 126*(4), 556-574.
- Allais, L. (2011). Restorative justice, retributive justice, and the South African Truth and Reconciliation Commission. *Philosophy & Public Affairs, 39*(4), 331-363.
- Aronson, E. (1992). The return of the repressed: Dissonance theory makes a comeback. *Psychological Inquiry, 3*(4), 303-311.
- Bagaric, M. (2000). Proportionality in sentencing: its justification, meaning and role. *Current Issues Criminal Justice, 12*, 143-165.
- Bagaric, M., & Alexander, T. (2011). (Marginal) general deterrence doesn't work—and what it means for sentencing. *Criminal Law Journal, 35*, 269-283.
- Bakhshay, S., & Haney, C. (2018). The media's impact on the right to a fair trial: A content analysis of pretrial publicity in capital cases. *Psychology, Public Policy, and Law, 24*(3), 326-340.
- Baldus, D. C., Woodworth, G., Zuckerman, D., & Weiner, N. A. (1997). Racial discrimination and the death penalty in the post-Furman era: An empirical and legal overview with recent findings from Philadelphia. *Cornell Law Review, 83*, 1638-1770.
- Barnett, M. E., Brodsky, S. L., & Davis, C. M. (2004). When mitigation evidence makes a difference: Effects of psychological mitigating evidence on sentencing decisions in capital trials. *Behavioral Sciences & the Law, 22*(6), 751-770.

- Batson, C.D., Polycarpou, M.P., Harmon-Jones, E., Imhoff, H.J., Mitchener, E.C., Bednar, L.L., Klein, T.R., & Highberger, L. (1997). Empathy and attitudes: Can feeling for a member of a stigmatized group improve feelings toward the group? *Journal of Personality and Social Psychology*, 72(1), 105-118.
- Baum, M. A. (2003). Soft news and political knowledge: Evidence of absence or absence of evidence? *Political Communication*, 20(2), 173-190.
- Beckett, K. (1997). *Making crime pay*. Oxford University Press.
- Bell Holleran, L. L., Vaughan, T. J., & Vandiver, D. M. (2016). Juror decision-making in death penalty sentencing when presented with defendant's history of child abuse or neglect. *Behavioral Sciences & the Law*, 34(6), 742-766.
- Bentham, J. (1962). Principles of penal law. In J. Bowring (Ed.), *The works of Jeremy Bentham*. Edinburgh: Tait.
- Bilz, K. (2002). Restorative justice and Victim Offender Mediation (VOM): A new era for social psychological inquiry. Princeton University.
- Blumstein, A., Tonry, M., & Van Ness, A. (2005). Cross-national measures of punitiveness. *Crime and Justice*, 33(1), 237-248.
- Boas, T. C., Christenson, D. P., & Glick, D. M. (2020). Recruiting large online samples in the United States and India: Facebook, mechanical turk, and qualtrics. *Political Science Research and Methods*, 8(2), 232-250.
- Boraine, A. (2000). Truth and Reconciliation in South Africa: The third way. In R.I. Rotberg & D. Thompson (Eds.), *Truth v. justice: The morality of Truth Commissions*. Princeton University Press.

- Braithwaite, J. (1989). *Crime, shame and reintegration*. Melbourne, Australia: Cambridge University Press.
- Braithwaite, J. (2002). *Restorative justice and responsive regulation*. Oxford University Press.
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology, 3*(2), 77–101.
- Brewer, T. W. (2004). Race and jurors' receptivity to mitigation in capital cases: The effect of jurors', defendants', and victims' race in combination. *Law and Human Behavior, 28*(5), 529-545.
- Buhrmester, M., Kwang, T., & Gosling, S. D. (2011). Amazon's Mechanical Turk: A new source of inexpensive, yet high-quality, data? *Perspectives on Psychological Science, 6*(1), 3-5.
- Campbell, M., Schoenfeld, H., & Vaughn, P. (2020). Same old song and dance? An analysis of legislative activity in a period of penal reform. *Punishment & Society, 22*(4), 389-412.
- Carlsmith, K. M. (2006). The roles of retribution and utility in determining punishment. *Journal of Experimental Social Psychology, 42*(4), 437-451.
- Carlsmith, K. M., & Darley, J. M. (2008). Psychological aspects of retributive justice. *Advances in Experimental Social Psychology, 40*, 193-236.
- Carlsmith, K. M., Darley, J. M., & Robinson, P. H. (2002). Why do we punish?: Deterrence and just deserts as motives for punishment. *Journal of Personality and Social Psychology, 83*(2), 284-299.

- Carson, E. A., & Anderson, E. (2016). Prisoners in 2015 (NCJ 250229). Washington, DC: Bureau of Justice Statistics.
- Carvalho, H., & Chamberlen, A. (2018). Why punishment pleases: Punitive feelings in a world of hostile solidarity. *Punishment & society*, 20(2), 217-234.
- Chapman, B., Mirrlees-Black, C., & Brawn, C. (2002). *Improving public attitudes to the Criminal Justice System: The impact of information* (pp. 1-66). London: Home Office.
- Chancer, L., & Donovan, P. (1994). A mass psychology of punishment: Crime and the futility of rationally based approaches. *Social Justice*, 21(3), 50-72.
- Choi, J. J., Green, D. L., & Gilbert, M. J. (2011). Putting a human face on crimes: A qualitative study on restorative justice processes for youths. *Child and Adolescent Social Work Journal*, 28(5), 335-355.
- Clifford, S., & Jerit, J. (2014). Is there a cost to convenience? An experimental comparison of data quality in laboratory and online studies. *Journal of Experimental Political Science*, 1(2), 120-131.
- Costelloe, M. T., Chiricos, T., & Gertz, M. (2009). Punitive attitudes toward criminals exploring the relevance of crime salience and economic insecurity. *Punishment & Society*, 11(1), 25-49.
- Crouch, J. L., & Milner, J. S. (1993). Effects of child neglect on children. *Criminal Justice and Behavior*, 20(1), 49-65.
- Daly, K. (2000). Revisiting the relationship between retributive and restorative justice. *Restorative justice: Philosophy to practice*, 33-54.

- Daly, K. (2002). Restorative justice: The real story. *Punishment & Society*, 4(1), 55-79.
- Darley, J. M. (2009). Morality in the law: The psychological foundations of citizens' desires to punish transgressions. *Annual Review of Law and Social Science*, 5, 1-23.
- Darley, J. M., Carlsmith, K. M., & Robinson, P. H. (2000). Incapacitation and just deserts as motives for punishment. *Law and Human Behavior*, 24(6), 659-683.
- Davis, A. Y. (2003). *Are prisons obsolete?*. Seven Stories Press.
- Deitz, S. R., Blackwell, K. T., Daley, P. C., & Bentley, B. J. (1982). Measurement of empathy toward rape victims and rapists. *Journal of Personality and Social Psychology*, 43(2), 372-384.
- Denzin, N. K., & Lincoln, Y. (2000). *Handbook of qualitative research*. Sage Press.
- Diamond, S. (1997). Illuminations and shadows from jury simulations. *Law and Human Behavior*, 21(5), 561-571.
- Doble, J. & Greene, J. (2000). *Attitudes towards crime and punishment in Vermont: Public opinion about an experiment with restorative justice*. Englewood Cliffs, NJ: John Doble Research Associates.
- Dodge, K.A., Bates, J.E., & Pettit, G.S. (1990). Mechanisms in the cycle of violence. *Science*, 250, 1678-1683.
- Doob, A.N. & Roberts, J.V. (1988). Public punitiveness and public knowledge of the facts: Some Canadian surveys. In Walker, N. & Hough, M. (Eds.), *Public attitudes to sentencing*, Cambridge Studies in Criminology, LIX, Gower,

Aldershot, England, UK.

- Durkheim, E. (1933). *The division of labor in society*. New York: Free Press.
- Eberhardt, J. L., Davies, P. G., Purdie-Vaughns, V. J., & Johnson, S. L. (2006). Looking deathworthy: Perceived stereotypicality of Black defendants predicts capital-sentencing outcomes. *Psychological Science, 17*(5), 383-386.
- Enns, P. (2014). The public's increasing punitiveness and its influence on mass incarceration in the United States. *American Journal of Political Science, 58*(4), 857-872.
- Enns, P. K. (2016). *Incarceration nation*. New York: Cambridge University Press.
- Espinoza, R. K., & Willis-Esqueda, C. (2015). The influence of mitigation evidence, ethnicity, and SES on death penalty decisions by European American and Latino venire persons. *Cultural Diversity and Ethnic Minority Psychology, 21*(2), 288-299.
- Fiske, A. P., & Tetlock, P. E. (1997). Taboo trade-offs: reactions to transactions that transgress the spheres of justice. *Political Psychology, 18*(2), 255-297.
- Franz, C.E., Cole, E.R., Crosby, F.J., & Stewart, A.J. (1994). Lessons from lives: In C.E. Franz & A.J. Stewart (Eds.), *Women creating lives: Identities, resilience, and resistance* (pp. 325-334). Boulder, CO: Westview.
- Freiberg, A. (2001). Affective Versus Effective Justice Instrumentalism and Emotionalism in Criminal Justice. *Punishment & Society, 3*(2), 265-278.
- Garland, D. (1990). *Punishment and modern society: A study in social theory*. University of Chicago Press.

- Garland, D. (2001). *The culture of control: Crime and social order in contemporary society*. Oxford: Oxford University Press
- Gaubatz, K. T. (1995). *Crime in the public mind*. Ann Arbor, MI: University of Michigan Press.
- Gibbons, J. J., & Katzenbach, N.D.B. (2006). Prison reform: Commission on safety and abuse in America's prisons: Confronting confinement. *Journal of Law and Politics*, 22, 385-547.
- Gottschalk, M. (2006). *The prison and the gallows: The politics of mass incarceration in America*. New York: Cambridge University Press.
- Greene, J. D. (2007). Why are VMPFC patients more utilitarian? A dual-process theory of moral judgment explains. *Trends in cognitive sciences*, 11(8), 322-323.
- Greene, S., Haney, C., & Hurtado, A. (2000). Cycles of pain: Risk factors in the lives of incarcerated mothers and their children. *The Prison Journal*, 80(1), 3-23.
- Gromet, D.M. (2009). Psychological perspectives on the place of restorative justice in criminal justice systems. In Oswald, M., Bieneck, S. & Hupfeld-Heinemann, J. (Eds.) *Social Psychology of Punishment of Crime*, (pp. 39-54). Oxford, UK: Wiley-Blackwell
- Gromet, D. M., & Darley, J. M. (2006). Restoration and retribution: How including retributive components affects the acceptability of restorative justice procedures. *Social Justice Research*, 19(4), 395-432.
- Gromet, D. M., & Darley, J. M. (2009). Punishment and beyond: Achieving justice

- through the satisfaction of multiple goals. *Law & Society Review*, 43(1), 1-38.
- Gromet, D. M., Okimoto, T. G., Wenzel, M., & Darley, J. M. (2012). A victim-centered approach to justice? Victim satisfaction effects on third-party punishments. *Law and Human Behavior*, 36(5), 375.
- Haney, C. (1982). Criminal justice and the nineteenth-century paradigm: The triumph of psychological individualism in the "Formative Era". *Law and Human Behavior*, 6(3-4), 191-235.
- Haney, C. (1995). Social context of capital murder: Social histories and the logic of mitigation. *Santa Clara Law Review*, 35, 547-609.
- Haney, C. (2003). Condemning the other in death penalty trials: Biographical racism, structural mitigation, and the empathic divide. *DePaul Law Review*, 53, 1557-1590.
- Haney, C. (2006). *Reforming punishment: Psychological limits to the pains of imprisonment*. American Psychological Association.
- Haney, C. (2008a). Counting casualties in the war on prisoners. *University of San Francisco Law Review*, 43, 87-138.
- Haney, C. (2008b). Media criminology and the death penalty. *DePaul Law Review*, 58, 689-740.
- Haney, C. (2010). Demonizing the enemy: The role of science in declaring the war on prisoners. *Connecticut Public Interest Law Journal*, 9, 139-196.
- Haney, C. (2012). Prison effects in the age of mass incarceration. *The Prison Journal*, 1-24.

- Haney, C. (2020). *Criminality in context: The psychological foundations of criminal justice reform*. American Psychological Association.
- Haney, C., & Greene, S. (2004). Capital constructions: Newspaper reporting in death penalty cases. *Analyses of social issues and public policy*, 4(1), 129-150.
- Harmon-Jones, E., & Mills, J. (1999). An introduction to cognitive dissonance theory and an overview of current perspectives on the theory. In E. Harmon-Jones & J. Mills (Eds.), *Cognitive dissonance: Progress on a pivotal theory in social psychology* (pp. 3-21). Washington, DC: American Psychological Association.
- Hartnagel, T. F., & Templeton, L. J. (2012). Emotions about crime and attitudes to punishment. *Punishment & Society*, 14(4), 452-474.
- Hawkins, J.D., Herrenkohl, T.I., Farrington, D.P., Brewer, D., Catalano, R.F., Harachi, T.W., & Cothorn, L. (2000). *Predictors of youth violence*. Office of Juvenile Justice and Delinquency Prevention: Washington D.C.
- Herman, J.L. (2005). Justice from the victim's perspective. *Violence Against Women*, 11(5), 571-602.
- Hetey, R. C., & Eberhardt, J. L. (2018). The numbers don't speak for themselves: Racial disparities and the persistence of inequality in the criminal justice system. *Current Directions in Psychological Science*, 27(3), 183-187.
- Hirtenlehner, H. (2011). The origins of punitive mentalities in late modern societies.

- Testing an expressive explanatory model (pp. 27-52). In H. Kury, & E. Shea (Eds.). *Fear of Crime – Punitivity, New Developments in Theory and Research*. Bochum: Universitätsverlag Dr. N. Brockmeyer.
- Hogan, M. J., Chiricos, T., & Gertz, M. (2005). Economic insecurity, blame, and punitive attitudes. *Justice Quarterly*, 22(3), 392-412.
- Horberg, E. J., Kraus, M. W., & Keltner, D. (2013). Pride displays communicate self-interest and support for meritocracy. *Journal of Personality and Social Psychology*, 105(1), 24-37.
- Huber, G., & Gordon, S. C. (2004). Accountability and coercion: Is justice blind when it runs for office?. *American Journal of Political Science*, 48(2), 247-263.
- Indermaur, D. (2008). Dealing the public in: Challenges for a transparent and accountable sentencing policy. In A. Freiberg & K. Gelb (Eds.), *Penal Populism, Sentencing Councils and Sentencing Policy* (pp. 45-67). Hawkins Press.
- Indermaur, D., & Hough, M. (2002). Strategies for changing public attitudes to punishment. In J. Roberts & M. Hough (Eds.) *Changing Attitudes to Punishment: Public Opinion, Crime and Justice*, (pp. 198-214). Cullompton: Willan.
- Jefferson Exum, J. (2020). Sentencing disparities and the dangerous perpetuation of racial bias. *Washington and Lee Journal of Civil Rights and Social Justice*, 26(2), 491.

- Johnson, D. (2009). Anger about crime and support for punitive criminal justice policies. *Punishment & Society*, 11(1), 51-66.
- Johnson, J. D., Simmons, C. H., Jordan, A., MacLean, L., Taddei, J., Thomas, D., Dovidio, J., & Reed, W. (2002). Rodney King and OJ revisited: The impact of race and defendant empathy induction on judicial decisions. *Journal of Applied Social Psychology*, 32(6), 1208-1223.
- Josselson, R. (2011). Narrative research: Constructing, deconstructing, and reconstructing story. In F.J. Wertz, K. Charmaz, L.M. McMullen, R. Josselson, & R. Anderson (Eds.) *Five ways of doing qualitative analysis: Phenomenological psychology, grounded theory, discourse analysis, narrative research, and intuitive inquiry* (pp. 224-242). The Guilford Press.
- Jost, J. T., Banaji, M. R., & Nosek, B. A. (2004). A decade of system justification theory: Accumulated evidence of conscious and unconscious bolstering of the status quo. *Political Psychology*, 25(6), 881-919.
- Kaplan, T. (2012, Nov. 6). Proposition 36: Voters overwhelmingly ease Three Strikes law. *The Mercury News*. Retrieved from: <https://www.mercurynews.com/2012/11/06/proposition-36-voters-overwhelmingly-ease-three-strikes-law/>
- Karch, A., & Cravens, M. (2014). Rapid diffusion and policy reform: The adoption and modification of three strikes laws. *State Politics & Policy Quarterly*, 14(4), 461-491.
- Kay, A. C., & Jost, J. T. (2003). Complementary justice: effects of “poor but happy”

- and “poor but honest” stereotype exemplars on system justification and implicit activation of the justice motive. *Journal of Personality and Social Psychology*, 85(5), 823-837.
- Keller, L. B., Oswald, M. E., Stucki, I., & Gollwitzer, M. (2010). A closer look at an eye for an eye: Laypersons’ punishment decisions are primarily driven by retributive motives. *Social Justice Research*, 23(2-3), 99-116.
- King, A., & Maruna, S. (2009). Is a conservative just a liberal who has been mugged? Exploring the origins of punitive views. *Punishment & Society*, 11(2), 147-169.
- King, G., Schneer, B., & White, A. (2017). How the news media activate public expression and influence national agendas. *Science*, 358(6364), 776-780.
- Kirby, A. & Jacobson, J. (2013). Public attitudes to the sentencing of drug offences. *Criminology & Criminal Justice*, 0(0), 1-17.
- Kovera, M. B. (2019). Racial disparities in the criminal justice system: Prevalence, causes, and a search for solutions. *Journal of Social Issues*, 75(4), 1139-1164.
- Kruttschnitt, C., McLeod, J. D., & Dornfeld, M. (1994). The economic environment of child abuse. *Social Problems*, 41(2), 299-315.
- Langhout, R., Kohfeldt, D., & Ellison, E.R. (2011). How we became the Schmans: Conceptualizations of fairness in the decision-making process for Latina/o children. *American Journal of Community Psychology*, 48(3-4), 296-308.
- Latimer, J., Dowden, C., & Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal*, 85(2), 127-144.

- Leebaw, B. (2001). Restorative justice for political transitions: Lessons from the South African Truth and Reconciliation Commission. *Contemporary Justice Review, 4*(3-4), 267-91.
- Levitt, H. M., Bamberg, M., Creswell, J. W., Frost, D. M., Josselson, R., & Suárez-Orozco, C. (2018). Journal article reporting standards for qualitative primary, qualitative meta-analytic, and mixed methods research in psychology: The APA Publications and Communications Board task force report. *American Psychologist, 73*(1), 26-46.
- Lind, E. A., & Tyler, T. R. (1988). *The social psychology of procedural justice*. Plenum Press: New York.
- Loader, I. (2010). For penal moderation: Notes towards a public philosophy of punishment. *Theoretical Criminology, 14*(3), 349-367.
- Lockett v. Ohio, 438 U.S. 586 (1978).
- Louw, D., & van Wyk, L. (2016). The perspectives of South African legal professionals on restorative justice: an explorative qualitative study. *Social Work, 52*(4), 490-510.
- Lynch, M., & Haney, C. (2000). Discrimination and instructional comprehension: Guided discretion, racial bias, and the death penalty. *Law and Human Behavior, 24*(3), 337-358.
- Lynch, M., & Haney, C. (2009). Capital jury deliberation: Effects on death sentencing, comprehension, and discrimination. *Law and Human Behavior, 33*(6), 481-496.

- Lynch, M., & Haney, C. (2011). Mapping the racial bias of the white male capital juror: Jury composition and the “empathic divide”. *Law & Society Review*, 45(1), 69-102.
- Lynch, M., & Haney, C. (2015). Emotion, authority, and death: (Raced) negotiations in mock capital jury deliberations. *Law & Social Inquiry*, 40(2), 377-405.
- Maruna, S., & King, A. (2009). Once a criminal, always a criminal?: “Redeemability” and the psychology of punitive public attitudes. *European Journal on Criminal Policy and Research*, 15(1-2), 7-24.
- Matthews, R. (2005). The myth of punitiveness. *Theoretical Criminology*, 9(2), 175-201.
- Masten, A.S. & Garmezy, N. (1985). Risk, vulnerability, and protective factors in developmental psychopathology. In B.B. Lahey & A.E. Kazdin (Eds.), *Advances in Clinical Child Psychology* (Vol. 8, pp. 1-52). New York: Plenum.
- Mauer, M. (2010). Justice for all-challenging racial disparities in the criminal justice system. *Human Rights*, 37, 14-16.
- McCold, P. (2006). The recent history of restorative justice: Mediation, circles, and conferencing. In D. Sullivan & L. Tiffts (Eds.), *Handbook of Restorative Justice: A Global Perspective*, (pp. 23-51). London: Routledge.
- Melvin, K. B., Gramling, L. K., & Gardner, W. M. (1985). A scale to measure attitudes toward prisoners. *Criminal Justice and Behavior*, 12(2), 241-253.
- National Research Council. (2014). *The growth of incarceration in the United States:*

Exploring causes and consequences. Washington, DC: National Academies Press.

- Okimoto, T. G., & Wenzel, M. (2009). Punishment as restoration of group and offender values following a transgression: Value consensus through symbolic labelling and offender reform. *European Journal of Social Psychology*, 39(3), 346-367.
- O'Neil, C.M. (2016). Restorative justice as diversion in California's juvenile and criminal justice systems: Potential impacts and state policy. *California Senate Office of Research*. 1-45.
- Ortet-Fabregat, G., & Perez, J. (1992). An assessment of the attitudes towards crime among professionals in the criminal justice system. *British Journal of Criminology*, 32(2), 193-207.
- Oswald, M., Bieneck, S. & Hupfeld-Heinemann, J. (2009). Introduction. In Oswald, M., Bieneck, S. & Hupfeld-Heinemann, J. (Eds.) *Social Psychology of Punishment of Crime*, (pp. xiii-xviii). Oxford, UK: Wiley-Blackwell.
- Pager, D. (2008). *Marked: Race, crime, and finding work in an era of mass incarceration*. University of Chicago Press.
- Paul, G. D. (2019). The Influence of Belief in Offender Redeemability and Decision-Making Competence on Receptivity to Restorative Justice. *Negotiation and Conflict Management Research*.
- Pickett, J.T. (2019). Public opinion and criminal justice policy: Theory and research. *Annual Review of Criminology*, 2, 405-428.

- Polkinghorne, D. (1988). *Narrative knowing and the human sciences*. Albany, NY: SUNY Press.
- Powers, A. (2020) Prison Education and The Cure to America's Recidivism Problem. *Editorial Board: 20-77*.
- Pranis, K., & Umbreit, M. (1992). *Public opinion research challenges perception of widespread public demand for harsher punishment*. Minneapolis, MN: Citizens Council.
- Pratt, J. (2007). *Penal populism*. London: Routledge.
- Public Policy Institute of California (2017). *Crime rates in California*. Retrieved from <https://www.ppic.org/data-set/crime-rates-in-california/>
- Ramirez, M. D. (2013). Punitive sentiment. *Criminology*, 51(2), 329-364.
- Rios, V. M. (2011). *Punished: Policing the lives of Black and Latino boys*. NYU Press.
- Roberts, J., Hough, M., Jackson, J., & Gerber, M. M. (2012). Public opinion towards the lay magistracy and the sentencing council guidelines: The effects of information on attitudes. *British Journal of Criminology*, 52(6), 1072-1091.
- Roberts, J. V., & Stalans, L. J. (1997). *Public opinion, crime, and criminal justice*. Boulder, CO: Westview Press.
- Roberts, J.V. & Stalans, L.J. (2004). Restorative sentencing: Exploring the views of the public. *Social Justice Research*, 17, 315-334.
- Roberts, J. V., Stalans, L. J., Indermaur, D., & Hough, M. (2003). *Penal populism and public opinion: Lessons from five countries*. Oxford University Press.

- Robinson, P. H., & Darley, J. M. (1995). *Justice, liability, and blame: Community views and the criminal law*. Boulder, Colorado: Westview Press, Inc.
- Robinson, P. H., & Darley, J. M. (1997). Utility of desert. *Northwestern University Law Review*, *91*, 453-499.
- Robinson, D. T., Smith-Lovin, L., & Tsoudis, O. (1994). Heinous crime or unfortunate accident? The effects of remorse on responses to mock criminal confessions. *Social Forces*, *73*(1), 175-190.
- Ryberg, J., & Roberts, J. V. (Eds.). (2014). *Popular punishment: on the normative significance of public opinion*. Oxford University Press, USA.
- Sawyer, W. & Wagner, P. (2020). *Mass Incarceration: The Whole Pie 2020*. Northampton, MA: Prison Policy Initiative. Retrieved from <https://www.prisonpolicy.org/reports/pie2020.html>
- Seeds, C. (2017). Bifurcation nation: American penal policy in late mass incarceration. *Punishment & Society*, *19*(5), 590-610.
<https://doi.org/10.1177/1462474516673822>
- Sered, D. (2019). *Until we reckon: Violence, mass incarceration, and a road to repair*. The New Press.
- Schreier, M. (2012). *Qualitative content analysis in practice*. Thousand Oaks: Sage.
- Shapiro, R. Y. (2011). Public opinion and American democracy. *Public Opinion Quarterly*, *75*(5), 982-1017.
- Sherman, L.W. (2003). Reason for emotion: Reinventing justice with theories, innovations, and research. *Criminology*, *41*, 1-37.

- Simon, J. (2007). *Governing through crime: How the war on crime transformed American democracy and created a culture of fear*. Oxford University Press.
- Simon, J. (2013). Punishment and the political technologies of the body. In Simon, J., & Sparks, R. (Eds.), *The SAGE handbook of punishment and society* (60-89). London: Sage.
- Simon, J., & Sparks, R. (2013). Punishment and society: The emergence of an academic field. In Simon, J., & Sparks, R. (Eds.), *The SAGE handbook of punishment and society* (1-20). London: Sage.
- Sliva, S.M. & Lambert, C.G. (2015). Restorative justice legislation in the American states: A statutory analysis of emerging legal doctrine. *Journal of Policy Practice, 14*(2), 77-95.
- Smith, K. (2006). Dissolving the divide: Cross-racial communication in the restorative justice process. *Dalhousie Journal of Legal Studies, 15*, 168-203.
- Solomon, S., Greenberg, J., & Pyszczynski, T. (2000). Pride and prejudice: Fear of death and social behavior. *Current Directions in Psychological Science, 9*(6), 200-204.
- Spohn, C. (2002). *How do judges decide? The quest for fairness and justice in punishment*. Thousand Oaks: Sage.
- Stern, M.J. (2016, Nov. 9). California votes to keep the death penalty and execute people faster. *Slate*. Retrieved from:
http://www.slate.com/blogs/the_slatest/2016/11/09/california_keeps_the_death_penalty_and_increases_executions.html

- Stimson, J. A. (2004). *Tides of consent: How public opinion shapes American politics*. New York: Cambridge University Press.
- Stimson, J. (2018). *Public opinion in America: Moods, cycles, and swings*. London: Routledge.
- Strang, H. (2002). *Repair or revenge: Victims and restorative justice*. Oxford, UK: Oxford University Press.
- Strang, H., & Braithwaite, J. (Eds.). (2001). *Restorative justice and civil society*. Cambridge University Press.
- Strang, H., Sherman, L., Angel, C. M., Woods, D. J., Bennett, S., Newbury-Birch, D., & Inkpen, N. (2006). Victim evaluations of face-to-face restorative justice conferences: A quasi-experimental analysis. *Journal of Social Issues, 62*(2), 281-306.
- Strang, H., Sherman, L. W., Mayo-Wilson, E., Woods, D., & Ariel, B. (2013). Restorative Justice Conferencing (RJC) using face-to-face meetings of offenders and victims: Effects on offender recidivism and victim satisfaction, a systematic review. *Campbell Systematic Reviews, 12*, 1-59.
- Tarrant, M., Dazeley, S., & Cottom, T. (2009). Social categorization and empathy for outgroup members. *British Journal of Social Psychology, 48*, 427-446.
- Tetlock, P. E., Self, W. T., & Singh, R. (2010). The punitiveness paradox: When is external pressure exculpatory — and when a signal just to spread blame? *Journal of Experimental Social Psychology, 46*(2), 388-395.
- Tonry, M. (1996). *Sentencing matters*. Oxford University Press.

- Tonry, M. (2011). *Punishing race: A continuing American dilemma*. Oxford University Press.
- Tonry, M. (2016). *Sentencing fragments: Penal reform in American, 1975-2025*. Oxford University Press.
- Tyler, T.R. (1990). *Why people obey the law*. New Haven, CT: Yale University Press.
- Tyler, T. R. (2006). Psychological perspectives on legitimacy and legitimation. *Annual Review Psychology, 57*, 375-400.
- Tyler, T. R., & Boeckmann, R. J. (1997). Three strikes and you are out, but why? The psychology of public support for punishing rule breakers. *Law and Society Review, 237-265*.
- Unnever, J. D., & Cullen, F. T. (2009). Empathetic identification and punitiveness: A middle-range theory of individual differences. *Theoretical Criminology, 13*(3), 283-312.
- Unnever, J. D., Cullen, F. T., & Fisher, B. S. (2005). Empathy and public support for capital punishment. *Journal of Crime and Justice, 28*(1), 1-34.
- U.S. Census Bureau (2018). *San Mateo quick facts table*. Retrieved from <https://www.census.gov/quickfacts/sanmateocountycalifornia>
- Van Camp, T. & Wemmers, J. (2013). Victim satisfaction with restorative justice: More than simply procedural justice. *International Review of Victimology, 19*(2), 117-143.
- Van Ness, D. W., & Strong, K. H. (2014). *Restoring justice: An introduction to restorative justice*. London: Routledge.

- Vidmar, N. (2001). Retribution and revenge. In J. Sanders & V.L. Hamilton (Eds.) *Handbook of justice research in law* (pp. 31-63). New York: Kluwer Academic.
- Walgrave, L., & Geudens, H. (1996). Restorative proportionality of community service for juveniles. *European Journal of Crime Criminal Law & Criminal Justice, 4*, 361-380.
- Weaver, V. M. (2007). Frontlash: Race and the development of punitive crime policy. *Studies in American Political Development, 21*(2), 230-265.
- Weiner, B. (2006). *Social motivation, justice, and the moral emotions: An attributional approach*. New Jersey: Lawrence Erlbaum.
- Weir, J. A., & Wrightsman, L. S. (1990). The determinants of mock jurors' verdicts in a rape case. *Journal of Applied Social Psychology, 20*(11), 901-919.
- Wenzel, M., Okimoto, T. G., Feather, N. T., & Platow, M. J. (2008). Retributive and restorative justice. *Law and Human Behavior, 32*(5), 375-389.
- Wenzel, M., Okimoto, T. G., Feather, N. T., & Platow, M. J. (2010). Justice through consensus: Shared identity and the preference for a restorative notion of justice. *European Journal of Social Psychology, 40*(6), 909-930.
- Wolfe, D.A. (1987). *Child abuse*. Newbury Park, CA: Sage.
- Zhong, R., Baranoski, M., Feigenson, N., Davidson, L., Buchanan, A., & Zonana, H. (2014). So you're sorry? The role of remorse in criminal law. *Journal of the American Academy of Psychiatry and the Law, 42*(1), 39-48.
- Zimring, F. (2001). Imprisonment rates and the new politics of criminal punishment,

Punishment & Society, 3(1), 161-166.

Statutes Cited

Cal. Penal Code § 211 et seq.