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Gregory Brazeal

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RURAL MASS INCARCERATION AND THE POLITICS OF PUNITIVENESS

GREGORY BRAZEAL*

Criticisms of American mass incarceration have generally focused on urban areas, and especially large, racially segregated cities. But after nearly two decades in which urban incarceration rates have fallen while rural rates have risen, rural Americans are now more likely to be incarcerated than urban Americans. Because most rural areas in the United States are overwhelmingly white, the rise of rural incarceration rates creates a puzzle for race-grounded explanations of American mass incarceration. Why would overwhelmingly white areas “lock up their own” in such great numbers?

This Article proposes an explanation for the ongoing rise of rural mass incarceration that draws on two strands of political science research. First, Peter Enns’s analysis of the origins of American mass incarceration suggests that changes in incarceration rates have been largely driven by two interrelated factors: crime rates and punitive public attitudes toward crime. Because rural crime rates have remained lower than urban crime rates, Enns’s model implies that rural incarceration rates are likely higher than urban incarceration rates today primarily because rural Americans have more punitive attitudes toward crime.

Survey evidence shows that, in fact, rural Americans do have more punitive criminal justice views than nonrural Americans. A second strand of political science research suggests possible explanations. Scholars of political psychology, including Karen Stenner and Marc Hetherington, have found that punitiveness, like intolerance, tends to vary based on differences in personality and changes in perceived threats. Notably, rural Americans have a higher average score than nonrural Americans on a standard measure of “authoritarian” predisposition, which is associated with greater punitiveness under at least some conditions.

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Understanding political support for mass incarceration as fundamentally the product of psychological processes tied to punitiveness and intolerance rather than ideological attitudes specifically about race does not mean ignoring the central role of race in the politics that created American mass incarceration. To the contrary, the most politically powerful expression of intolerance throughout U.S. history has been racial intolerance, especially toward Black and Indigenous Americans. But attending to the political psychology of punitiveness suggests that confronting racial injustices in the criminal legal system, while necessary, may not be sufficient to end mass incarceration.

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INTRODUCTION

Over the last two decades, it has become common to identify mass incarceration in the United States with racism, and especially racism against African Americans.¹ This Article argues that the focus on race is justified but

1. More than any other single work, MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010), helped to draw attention to the extraordinary rates of African American incarceration and to popularize the term “mass incarceration.” For more recent examples of the racial framing of mass incarceration, see Elizabeth Hinton & DeAnza Cook, *The Mass Criminalization of Black Americans: A Historical Overview*, 4 ANN. REV. CRIMINOLOGY 261 (2021) (collecting scholarship); Hedwig Lee, *How Does Structural Racism Operate (in) the Contemporary US Criminal Justice System?*, 7 ANN. REV. CRIMINOLOGY 233 (2024).

incomplete. It is justified because of the enormous racial inequalities in criminal justice outcomes, especially incarceration rates, and because of the evidence of racially biased decision-making throughout the various stages of the criminal justice process.² But it is incomplete if approached as an overarching explanation for why Americans have supported the harsh criminal justice policies and practices that have resulted in mass incarceration.

If the desire to incarcerate nonwhites, or African Americans in particular, was a necessary condition, or the primary motivation, for the “tough-on-crime” policies that resulted in contemporary U.S. incarceration rates, then we might expect overwhelmingly white jurisdictions to eschew such policies and punish members of their own communities less harshly. But this is not what the evidence shows. Today, residents of overwhelmingly white rural areas in the United States are more likely to be incarcerated than residents of urban areas.³ Although rural areas incarcerate African Americans at far higher rates than urban areas, rural areas also incarcerate whites at far higher rates.⁴ As a result, even though racial disparities in incarceration rates in rural areas are large, they continue to be smaller than in urban areas.⁵

The mass self-incarceration of rural whites presents a puzzling anomaly for a specifically racial theory of the political origins of mass incarceration. Why would rural whites support “locking up their own”⁶ at such high rates, if the underlying motive was to lock up nonwhites?

It is possible to respond to an anomaly by adjusting the theory just enough to make the anomaly disappear.⁷ The legal scholar Paul Butler suggests, for example, that “American criminal justice today is premised on controlling African American men,” but that other people may be “caught in its snares” as “collateral damage of a process that is designed for [B]lack

2. See, e.g., ELIZABETH HINTON, LESHAE HENDERSON & CINDY REED, *VERA INST. OF JUST., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM* (2018); David Garland, *The Current Crisis of American Criminal Justice: A Structural Analysis*, 6 ANN. REV. CRIMINOLOGY 43 (2023) (reviewing scholarship on relationship between racial politics, political economy, and criminal justice in the United States); Radley Balko, Opinion, *There's Overwhelming Evidence that the Criminal Justice System Is Racist. Here's the Proof.*, WASH. POST (June 10, 2020), <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/> (on file with the Maryland Law Review) (collecting scholarship).

3. See *infra* Part I.

4. See *infra* Part I.

5. See *infra* Part I.

6. The phrase is a reference to JAMES FORMAN JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (2017), a study of Black political support for tough-on-crime policies in Washington, D.C., in the 1970s.

7. See THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 5–6, 68, 71, 77, 146–47 (1962).

men.”⁸ This Article proposes adjusting the race-focused theory of the political origins of mass incarceration in a more significant way. The apparent anomaly of white rural mass incarceration disappears if we expand our focus from specifically racial attitudes to more general attitudes toward punishment and tolerance of perceived difference, with hostile racial attitudes being seen as only one, historically contingent ideological expression of the more deeply rooted attitudes that political psychologists refer to as “authoritarian.”

Part I begins by offering a brief survey of basic statistics about crime and punishment in rural America today, in part to make the case that rural criminal justice deserves more attention in contemporary criminal justice debates than it currently receives. The evidence shows that incarceration rates in many rural jurisdictions are high and rising, even as incarceration rates in many urban jurisdictions have fallen. This is the central puzzle that the Article will investigate: Why are incarceration rates so high today in rural America? In particular, why are rural incarceration rates higher than urban incarceration rates even though rural crime rates remain lower than urban crime rates?

Parts II and III summarize political science research that will be used in Part IV to propose a possible explanation for contemporary rural mass incarceration.⁹ Part II summarizes the political scientist Peter K. Enns’s account of the origins of American mass incarceration. Enns provides compelling evidence that changes in America’s national incarceration rate between the 1950s and the 2010s can be largely predicted by two interrelated variables: crime rates and punitive public attitudes regarding criminal justice issues.

Part III considers the possible sources of punitive criminal justice attitudes. For decades, political psychologists have collected a growing body of evidence concerning the predictive power of what has typically been called an “authoritarian” predisposition. The political scientist Karen Stenner defines the predisposition in terms of a preference for “oneness and sameness.” Part III.A summarizes Stenner’s “authoritarian dynamic” model. The model suggests that when people who score highly on the standard measure of authoritarian predisposition perceive a threat to oneness and sameness, they tend to react by adopting attitudes of increased intolerance

8. PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 17 (2017); accord ALEXANDER, *supra* note 1, at 205 (arguing that “Black and brown people are the principal targets in [the drug] war; white people are collateral damage”). As Forman noted in 2012, based on 2008 numbers suggesting that one-third of the nation’s prisoners were white, “[t]hat’s a lot of ‘collateral damage.’” James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21, 58 (2012).

9. Because the primary audience for the Article is legal scholars, practitioners, and students, the Article summarizes the relevant political science research at a greater length and in a different style than is conventionally used in political science research itself.

and punitiveness. Part III.B summarizes research by political scientist Marc Hetherington and others suggesting that less authoritarian individuals respond to some threats by adopting more punitive and intolerant attitudes as well.

Part IV applies the models from Parts II and III to offer a potential explanation for the high rural incarceration rates described in Part I. It is likely that the primary explanation for rural incarceration rates being higher than urban rates today, despite rural crime rates being lower, lies in rural Americans having more punitive attitudes than urban Americans.

Finally, Part V suggests that if the explanation for rural incarceration rates proposed in Part IV is correct, then rural mass incarceration may be an even more obstinate problem than the urban mass incarceration that has been the focus of criminal justice reform efforts in recent years.

I. RURAL MASS INCARCERATION

The cultural association of crime and cities has deep roots.¹⁰ In the last several decades, academic and public discussions of crime and punishment have continued to focus on urban more than rural areas.¹¹ Until the very recent growth of attention to rural criminal justice and rural studies,¹² rural

10. See Gregory Brazeal, *The Politics of Crime Stories*, THE NEW RAMBLER (Dec. 16, 2021), <https://newramblerreview.com/book-reviews/literary-studies/the-politics-of-crime-stories> [https://perma.cc/GES2-G46S] (noting, in reviewing ANDREW PEPPER: THE POLITICS OF CRIME STORIES (2016), the centrality of crime to two of the most well-known Western myths of the origins of the city: the stories of Romulus and Remus and of Cain and Abel); Edward L. Glaeser & Bruce Sacerdote, *Why Is There More Crime in Cities?*, 107 J. POL. ECON. S225, S226 (1999) (collecting works across decades showing criminologists discussing “the urban tendency toward crime,” and noting that “[s]ocial observers (such as Thomas Jefferson and Jean-Jacques Rousseau) have long argued that there exists a connection between cities and immoral behavior”). But see STEVEN PINKER, THE BETTER ANGELS OF OUR NATURE: WHY VIOLENCE HAS DECLINED 63, 87, 95, 98–99 (2011) (suggesting that in the West from the late Middle Ages until the 1960s, “cities were generally safer than the countryside”). Pinker draws in part on the research of Manuel Eisner, who in a later article notes evidence that homicide rates in medieval Europe were in fact lower in rural areas, and concludes “it is currently impossible to say with confidence whether the tendency toward lower rates in rural areas reflects incomplete records because of the absence of criminal justice institutions or whether violence was effectively concentrated in urban centers.” Manuel Eisner, *From Swords to Words: Does Macro-Level Change in Self-Control Predict Long-Term Variation in Levels of Homicide*, 43 CRIME & JUST. 65, 72 (2014).

11. Marie Gottschalk, *Deplorable or Disposable? The Carceral State and ‘Breaking Bad’ in Rural America*, 234 PROC. BRIT. ACAD. 94, 95 (2020) [hereinafter Gottschalk, *Deplorable or Disposable?*]; Pamela R. Metzger, *Rural Criminal Justice Reform*, in TRANSFORMING CRIMINAL JUSTICE: AN EVIDENCE-BASED AGENDA FOR REFORM 242, 242 (Jon B. Gould & Pamela R. Metzger eds., 2022); RALPH A. WEISHEIT, DAVID N. FALCONE & L. E. WELLS, CRIME AND POLICING IN RURAL AND SMALL-TOWN AMERICA (3d ed. 2006).

12. The election of Donald Trump as president of the United States in 2016 with high levels of rural support resulted in increased attention to rural areas, as reflected in the reception of books such as KATHERINE J. CRAMER, THE POLITICS OF RESENTMENT: RURAL CONSCIOUSNESS IN WISCONSIN AND THE RISE OF SCOTT WALKER (2016) [hereinafter CRAMER, POLITICS OF RESENTMENT]; EZRA KLEIN, WHY WE’RE POLARIZED (2020) (drawing on, among other sources, BILL BISHOP, THE BIG

areas appeared in discussions of criminal justice primarily as places where jails and prisons are built.¹³

There were good reasons to focus on urban crime and punishment more than rural crime and punishment over the last few decades. Above all, there are far more urban than rural Americans. According to the U.S. Census Bureau's definition of "rural," only twenty percent of the U.S. population lived in rural areas as of 2020.¹⁴ The U.S. population, like the global population, has been shifting away from farms and small towns and toward suburbs and cities for well over a century.¹⁵ When considering the relative

SORT: WHY THE CLUSTERING OF LIKE-MINDED AMERICA IS TEARING US APART (2008)); JONATHAN A. METZL, DYING OF WHITENESS: HOW THE POLITICS OF RACIAL RESENTMENT IS KILLING AMERICA'S HEARTLAND (2019); JONATHAN RODDEN, WHY CITIES LOSE: THE DEEP ROOTS OF THE URBAN-RURAL POLITICAL DIVIDE (2019); ROBERT WUTHNOW, THE LEFT BEHIND: DECLINE AND RAGE IN SMALL-TOWN AMERICA (2019). More recently, a journalist and a political scientist co-authored a popular critique of rural American politics. TOM SCHALLER & PAUL WALDMAN, WHITE RURAL RAGE: THE THREAT TO AMERICAN DEMOCRACY (2024). For a critique of Waldman's and Schaller's work by a political scientist based in Maine, see Nicholas F. Jacobs, *What Liberals Get Wrong About 'White Rural Rage'—Almost Everything*, POLITICO (Apr. 5, 2024, at 05:00 ET), <https://www.politico.com/news/magazine/2024/04/05/white-rural-rage-myth-00150395> [<https://perma.cc/XZG5-Y2CP>]. But see Suzanne Mettler & Trevor Brown, *The Growing Rural-Urban Political Divide and Democratic Vulnerability*, 699 ANNALS AM. ACAD. 130, 130, 132–33, 138–39 & fig. 3 (2022) (arguing that the "growing rural-urban divide is fostering . . . democratic vulnerability," noting that based on the 2020 ANES, rural dwellers "were much more likely to favor restrictions on the press . . . and to suggest it would be helpful if the president could unilaterally work on the country's problems without paying attention to the Congress or the courts," and showing that Republican representatives who supported Trump's "efforts to overturn the 2020 presidential election" "represent disproportionately the nation's most rural places"). For an indication of the growth of rural studies more generally, see Emma Goldberg, *How 'Rural Studies' Is Thinking About the Heartland*, N.Y. TIMES (June 29, 2024), <https://www.nytimes.com/2024/06/29/business/rural-studies-american-politics.html> (on file with the Maryland Law Review).

13. See, e.g., John M. Eason, Sarah Jensen & Chloe E. Haimson, *Crime, Violence, and Criminal Justice in Rural America: Toward a Rural Neighborhood Effect*, 8 ANN. REV. CRIMINOLOGY 359 (2025); JOHN M. EASON, BIG HOUSE ON THE PRAIRIE: RISE OF THE RURAL GHETTO AND PRISON PROLIFERATION (2017); RUTH W. GILMORE, GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA (2007); JACOB KANG-BROWN & RAM SUBRAMANIAN, VERA INST. OF JUST. & JOHN D. AND CATHERINE T. MACARTHUR FOUND.'S SAFETY AND JUST. CHALLENGE, OUT OF SIGHT: THE GROWTH OF JAILS IN RURAL AMERICA (2017); JACK NORTON & JACOB KANG-BROWN, VERA INST. OF JUST., IF YOU BUILD IT: HOW THE FEDERAL GOVERNMENT FUELS RURAL JAIL EXPANSION (2020).

14. 2020 *Census Urban Areas Facts*, U.S. CENSUS BUREAU (last revised June 29, 2023), <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2020-ua-facts.html> [<https://perma.cc/7QCT-SGAP>]. For details on the Census Bureau's definition of "rural," as well as other definitions of "rural" used by government agencies and researchers, see *infra* App.

15. "In 1810, 95 percent of the U.S. population was rural; in 1910, 55 percent was; and in 2010, that number declined to only 20 percent." WUTHNOW, *supra* note 12, at 45. The tipping point arrived between 1910 and 1920. See U.S. CENSUS BUREAU, UNITED STATES SUMMARY: 2010: POPULATION AND HOUSING UNIT COUNTS 14 tbl. 7 (2012) (showing 45.6 percent urban population in 1910 and 51.2 percent in 1920). Globally, the tipping point arrived in 2008, when "for the first time, the majority of humans lived in cities." ROBERT M. SAPOLSKY, BEHAVE: THE BIOLOGY OF HUMANS AT OUR BEST AND WORST 296 (2017). By 2050, it is estimated that the rural percentage of the U.S. population will have fallen to around ten percent. See WILL WILKINSON, NISKANEN

decline of the rural population, it is worth keeping in mind that “population in absolute terms is growing in many rural communities,” and that “rural counties that grow enough or are close enough to expanding cities become reclassified as urban, leaving the ones that remain rural less likely to have grown.”¹⁶ Nevertheless, the impression that many small towns have lost population in recent decades, and that the smallest towns have been most likely to shrink, is not a myth.¹⁷

In addition, the staggering rise in American violent crime that began in the 1960s and peaked in the 1990s, which was perhaps the central concern of American criminal justice debates during that period, was concentrated in urban areas.¹⁸ The racially segregated concentrated disadvantage that contributed to the rise in national violent crime rates was primarily an urban phenomenon.¹⁹ The exposure of children to environmental lead, which also

CTR., THE DENSITY DIVIDE: URBANIZATION, POLARIZATION, AND POPULIST BACKLASH 17 fig. 8 (2019) (citing *World Urbanization Prospects 2025, Country Profiles: United States of America*, U.N. DEP’T OF ECON. & SOC. AFFS., <https://population.un.org/wup/countryprofiles?country=United%20States%20of%20America&mainCategory=Countries%20and%20Aggregates&subCategory=Urbanization%20-%20International%20definition> [https://perma.cc/7EJ5-RDUU] (last visited Jan. 12, 2026)).

16. WUTHNOW, *supra* note 12, at 45–46.

17. See *id.* at 47 (noting that of the incorporated towns or boroughs with fewer than a thousand residents in 1980, 62 percent had fewer residents by 2010; of those with one thousand to two thousand residents, 48 percent experienced declines; of those with two thousand to five thousand residents, 42 percent experienced declines; of those with five thousand to ten thousand residents, 41 percent experienced declines; and of those with ten to twenty-five thousand residents, 38 percent experienced declines); see also Kenneth M. Johnson, *Rural America Lost Population Over the Past Decade for the First Time in History*, UNIV. OF N.H. CARSEY SCH. OF PUB. POL’Y (Feb. 22, 2022), <https://carsey.unh.edu/publication/rural-america-lost-population-over-past-decade-first-time-history> [https://perma.cc/8U9C-662G] (noting that the unprecedented, although “minimal”—0.6 percent, or 289,000 out of 46 million—rural population loss between 2010 and 2020 “was due to fewer births, more deaths, and more people leaving than moving in,” especially in rural counties remote from metropolitan counties); Tim Craig, *‘Too Many Old People’: A Rural Pa. Town Reckons with Population Loss*, WASH. POST (June 23, 2024), <https://www.washingtonpost.com/nation/2024/06/23/rural-america-shrinking-population-pennsylvania/> (on file with the Maryland Law Review) (noting that between 2019 and 2023, “81 percent of rural counties had more deaths than births,” although “the rural population did rebound by 0.25 percent from 2020 to 2022 as some families decamped from urban areas during the pandemic”).

18. See WEISHEIT, FALCONE & WELLS, *supra* note 11, at 54–63, 113 (collecting studies comparing rural to urban crime rates using various measures, and showing that violent crime rates were higher in big cities between 1980 and 2003, although the gap began to decline in the 1990s); Glaeser & Sacerdote, *supra* note 10, at S225 (noting that “[a]ccording to the 1994 *Statistical Abstract of the United States*, metropolitan areas have 79 percent more violent crimes than other American cities and 300 percent more violence than rural areas”); PATRICK SHARKEY, *UNEASY PEACE: THE GREAT CRIME DECLINE, THE RENEWAL OF CITY LIFE, AND THE NEXT WAR ON VIOLENCE* 14–15 (2018) (emphasizing rise of violent crime in cities beginning in 1960s); WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* 15–22 (2011) (same).

19. On racially segregated concentrated disadvantage and its relationship with urban violent crime, see generally ELIJAH ANDERSON, *CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY* (1999); JILL LEOVY, *GHETTOSIDE: A TRUE STORY OF MURDER IN AMERICA* (2015); DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID:*

appears to have played a significant role in the rise and fall of violent crime, was likewise concentrated in cities.²⁰

But today the peak of the national violent crime wave is more than a quarter-century in the past. The fall in violent crime in some big cities has been especially dramatic. In New York City, homicides declined over eighty percent from their peak.²¹ The anomalous surge in homicides during and after

SEGREGATION AND THE MAKING OF THE UNDERCLASS (1998); WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996). *See also* Garland, *supra* note 2; RAM SUBRAMANIAN, KRISTINE RILEY & CHRIS MAI, VERA INST. OF JUST., *DIVIDED JUSTICE: TRENDS IN BLACK AND WHITE JAIL INCARCERATION, 1990–2013*, at 45 nn.56–57 (collecting studies of “the relationship between race, crime, and structural disadvantage”). On the criminogenic effects of inequality, and particularly “poverty amid plenty,” see the sources collected at SAPOLSKY, *supra* note 15, at 294 & n.40.

20. *See* Maria Jose Talayero, C. Rebecca Robbins, Emily R. Smith, Carlos Santos-Burgoa, *The Association Between Lead Exposure and Crime: A Systematic Review*, PLOS GLOB. PUB. HEALTH, Aug. 1, 2023, at 1, 19 (concluding based on a review of available research “that an excess risk for criminal behavior in adulthood exists when an individual is exposed to lead in utero or within childhood”); *see also* Federico Curci & Federico Masera, *Flight from Urban Blight: Lead Poisoning, Crime, and Suburbanization*, 107 REV. ECON. & STAT. 621 & n.3, 623 (2025) (noting that “in 1991, U.S. city centers had 11.7 violent crimes per 1,000 inhabitants,” while “[t]he violent crime rate in the suburbs, even at its peak in 1991, was only 3.3 crimes per 1,000 inhabitants,” in part because “suburbs have lower exposure to car emissions”). Because lagged lead exposure data correlates so well with Uniform Crime Report (“UCR”) violent crime trends between 1970 and 2000, and because UCR trends differ significantly from National Crime Victimization Survey (“NCVS”) trends, lagged lead exposure data naturally does not correlate with NCVS violent crime trends. *Cf.* Janet L. Lauritsen, Maribeth L. Rezey & Karen Heimer, *When Choice of Data Matters: Analyses of U.S. Crime Trends, 1973–2012*, 32 J. QUANT. CRIMINOLOGY 335, 335 (2016). In light of the many non-UCR-based sources of support for the lead-crime hypothesis, however, the lack of support for the hypothesis in NCVS data may represent an argument against the relative reliability of NCVS data rather than an argument against the hypothesis. In 2022, a meta-analysis concluded that lead “does not explain the majority of the fall in crime observed in some countries in the 20th century.” Anthony Higney, Nick Hanley & Mirko Moro, *The Lead-Crime Hypothesis: A Meta-Analysis*, 97 REG’L SCI. & URB. ECON. 1, 1 (2022). However, the paper also prominently features a chart presenting the total recorded crime rate in the United States and Europe between 1970 and 2010 as falling between twenty and eighty per 100,000, rather than per 1,000 as the cited source states. *Id.* at 4 fig. 5 (citing Paolo Buonanno et al., *Crime in Europe and the United States: Dissecting the ‘Reversal of Misfortunes,’* 26 ECON. POL’Y 347 (2011)). Perhaps the error was simply an isolated typo, but it may raise concerns about the reliability of the far more complicated analysis at the core of the paper.

21. *See* SHARKEY, *supra* note 18, at xvii–xviii (noting that in New York City, “where more than 2,000 people used to be murdered each year, 328 people were killed in 2014, the lowest tally since the first half of the twentieth century”). In 2017, the number of murders fell to 290. *See New York City Records Fewest Murders, Lowest Crime Rate in Decades*, ABC NEWS (Jan. 5, 2018, at 16:10 ET), <https://abcnews.go.com/US/york-city-records-fewest-murders-lowest-crime-rate/story?id=52166562> [<https://perma.cc/T82Z-SSET>].

the COVID-19 pandemic also appears to be subsiding.²² In Boston, halfway through 2024, only four homicides had occurred.²³

Meanwhile, although violent crime rates in rural areas in the United States remain lower overall than in urban areas, as they have been for many decades, the gap between urban and rural violent crime rates has grown smaller, as seen in research by Mark T. Berg and Janet L. Lauritsen.²⁴ Based on Berg's and Lauritsen's comparisons, whether one uses Uniform Crime Report ("UCR") data provided by law enforcement agencies to the FBI, or the National Crime Victimization Survey ("NCVS") data collected annually since 1973,²⁵ rates of serious violence were significantly lower in rural than in urban areas from 1973 to 2010.²⁶ According to UCR data, the rural rate was remarkably steady, with only slight variations between decades, while the urban rate rose dramatically through the early 1990s and then plummeted.²⁷ According to NCVS data, by contrast, the rural and urban rates both generally declined from 1973 to 2010, with a few temporary rises along the way, especially in the early 1990s.²⁸

Both data sources agree that the urban-rural gap in serious violent crime rates decreased as the urban rate fell after the early 1990s, and both agree that rural rates of serious violent crime remained lower than urban rates through 2010. Figure 1 shows that based on UCR data, violent crime rates in

22. See Tom Costello & Corky Siemaszko, *New FBI Stats Show 'Historic' Declines in Violent Crime Rate, with Murder Showing Sharpest Drop*, NBC NEWS (June 12, 2024, at 10:49 ET), <https://www.nbcnews.com/news/us-news/new-fbi-stats-show-historic-declines-violent-crime-rate-murder-showing-rcna156573> [<https://perma.cc/CUB7-PKEA>]; Ames Grawert & Noah Kim, *Myths and Realities: Understanding Recent Trends in Violent Crime*, BRENNAN CTR. FOR JUST. (May 9, 2023), <https://www.brennancenter.org/our-work/research-reports/myths-and-realities-understanding-recent-trends-violent-crime> [<https://perma.cc/TD8J-8JJ2>] (noting that gun violence surged in 2020, the murder rate rose "by nearly 30 percent," and assaults rose "by more than 10 percent," but property crimes reached a record low, other than motor vehicle thefts).

23. Jenna Russell, *A Plummeting Murder Rate Stuns Boston. But Can It Survive the Summer?*, N.Y. TIMES (June 27, 2024), <https://www.nytimes.com/2024/06/27/us/boston-homicides-violence-prevention.html> (on file with the Maryland Law Review).

24. Mark T. Berg & Janet L. Lauritsen, *Telling a Similar Story Twice? NCVS/UCR Convergence in Serious Violent Crime Rates in Rural, Suburban, and Urban Places (1973–2010)*, 32 J. QUANT. CRIMINOLOGY 61, 71 fig. 1, 73 fig. 3 (2016) (showing serious violence rates in urban and rural areas, in both NCVS and UCR data, 1973 through 2010). The authors use a measure of serious violence based on "attempted and completed rapes, robberies, and aggravated assaults." *Id.* at 68; see also Katherine Beckett & Lindsey Beach, *The Place of Punishment in Twenty-First Century America: Understanding the Persistence of Mass Incarceration*, 46 L. & SOC. INQUIRY 1, 13 (2021) (noting based on UCR data from 2011–2013 that "crime and arrest rates are notably higher in urban counties than in suburban and rural counties," with "the average urban violent crime rate . . . more than twice as high as the violent crime rate in suburban counties and more than triple the violent crime rate in rural counties").

25. On UCR and NCVS data, see SHARKEY, *supra* note 18, at 8–12.

26. Berg & Lauritsen, *supra* note 24, at 71 fig. 1, 73 fig. 3.

27. *Id.*

28. *Id.*

nonmetropolitan counties remained lower than the rates in metropolitan counties through 2020, although the gap continued to close.

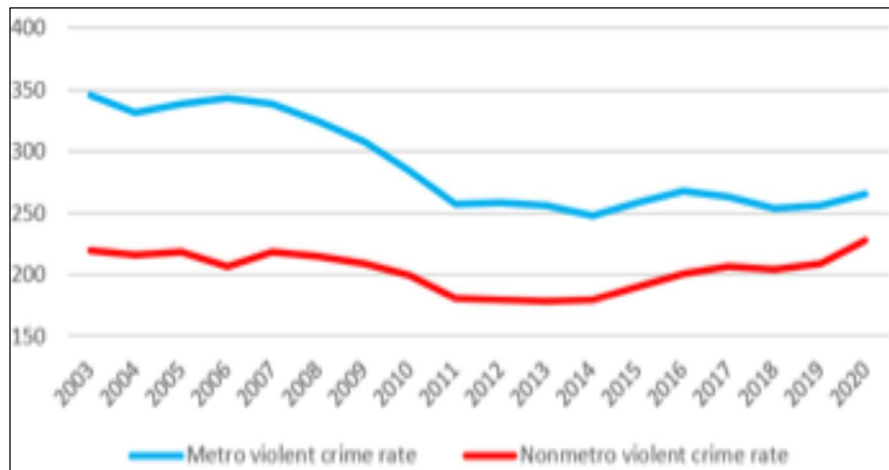


Figure 1: Violent crime rate in metropolitan and nonmetropolitan counties, per 100,000 residents, 2003–2020.²⁹

Notably, however, Figure 2 shows that by 2018, the reported rates for the two most serious violent crimes, homicide and rape, were higher in nonmetropolitan than in metropolitan counties. The rape rate has been higher in nonmetropolitan counties since 2005, and the homicide rate has gone from being consistently lower until 2009, to being similar through 2018, to rising sharply above the metropolitan rate in 2019 and 2020.³⁰

29. This Figure is based on data from table 16 of the Federal Bureau of Investigations' ("FBI") annual *Crime in the United States* report. See *Crime Data Explorer*, FBI.GOV, <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr/publications> (on file with the Maryland Law Review) (last visited Jan. 17, 2026) (reporting data through 2019); *FBI's Crime Data Explorer*, FBI UNIF. CRIME REPORTING PROGRAM, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/about> [<https://perma.cc/A424-UCJ3>] (last visited Jan. 17, 2026) (reporting data for 2020).

30. According to NCVS data, rural violent victimization rates per 1,000 persons remained lower than urban rates in 2019 (16.3 versus 21.1). RACHEL E. MORGAN & ALEXANDRA THOMPSON, BUREAU OF JUST. STAT., OFF. OF JUST. PROGRAMS, U.S. DEP'T OF JUST., NCJ 301775, CRIMINAL VICTIMIZATION, 2020, at 10 (2021), <https://bjs.ojp.gov/media/65271/download> [<https://perma.cc/R8UQ-XMBV>]. In the anomalous years during and after the COVID-19 pandemic, the rural-urban disparity grew: 13.4 rural versus 19.0 urban in 2020, 11.1 rural versus 24.5 urban in 2021, and 15.4 rural versus 33.4 urban in 2022. See *id.*; ALEXANDRA THOMPSON & SUSANNAH N. TAPP, BUREAU OF JUST. STAT., OFF. OF JUST. PROGRAMS, U.S. DEP'T OF JUST., NCJ 307089, CRIMINAL VICTIMIZATION, 2022, at 9 (2023), <https://bjs.ojp.gov/document/cv22.pdf> [<https://perma.cc/8LTM-DMKS>].

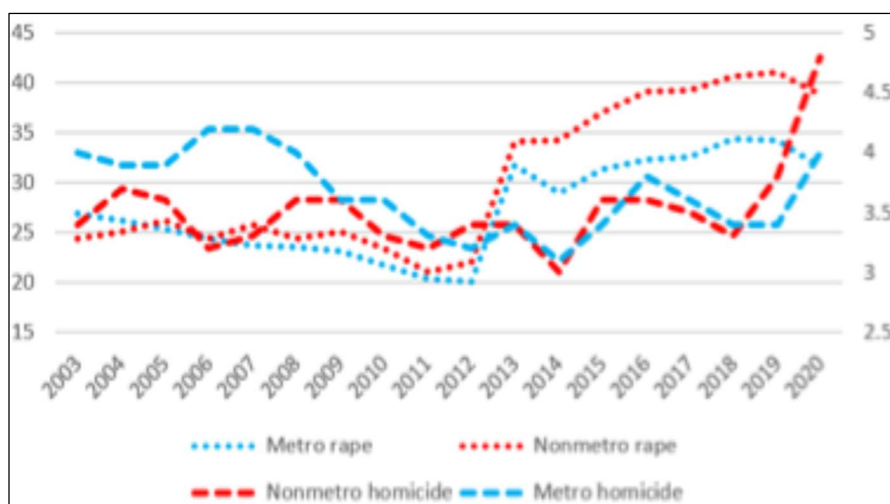


Figure 2: Homicide rate (right axis) and rape rate (left axis) in metropolitan and nonmetropolitan counties, per 100,000 residents, 2003–2020.³¹

If the general decline in, and in some cases disappearance of, the traditional disparity between higher urban and lower rural crime rates over the last few decades argues in favor of greater attention to rural criminal justice today, a comparison between urban and rural arrest rates provides an even stronger argument. According to the Vera Institute, “arrest rates in urban areas were the highest prior to 1993 (5,457 per 100,000 residents).”³² But this is no longer the case. As of 2020, “small and midsize counties . . . have the highest arrest rates (3,487 per 100,000 residents), followed by rural areas, where the arrest rates are slightly lower (3,358 per 100,000 residents).”³³

Finally, the comparison of rural and urban incarceration rates may provide the best argument for greater attention to rural criminal justice. In a

31. See sources cited *supra* note 29.

32. *The Arrest-Jail Admission Gap*, VERA INST. OF JUST. (Jan. 10, 2020), <https://www.vera.org/news/the-arrest-jail-admission-gap-jail-admission-rates-surpass-arrest-rates-in-small-and-rural-counties> [<https://perma.cc/U7C7-YTTY>].

33. *Id.* Racial disparities in arrests are also higher in rural versus urban areas. See Patricia I. Jewett, *Racial Arrest Disparities in the USA by Rural-Urban Location and Region*, 11 J. RACIAL & ETHN. HEALTH DISPARITIES 2355, 2361 (2024) (finding based on 2016 UCR data that racial disparities in arrest rates “were highest in small and medium towns, closely followed by rural areas,” and that the “highest arrest rates and disparities among racialized groups [were] in the Midwest”). By contrast, for the lesser racial disparities in rural versus urban incarceration rates, see *infra* note 51 and accompanying text. It is worth noting that racial comparisons between “white” and “Black” Americans in criminal justice statistics can be complicated by inconsistent practices regarding the categorization of Hispanics/Latinos as “white.” See SUBRAMANIAN, RILEY & CHRIS MAI, *DIVIDED JUSTICE*, *supra* note 19, at 14, 25–27.

2018 study, researchers from the Vera Institute found that the national decline in incarceration rates since the peak in 2007 has been driven by declines in urban areas that “hide[] increases in more rural areas.”³⁴ With regard to prison admissions, “in the 35 states for which there is reliable county-level data, there is an almost universal urban-to-rural shift . . . regardless of whether admissions are declining in the state as a whole.”³⁵ A *New York Times* analysis similarly found that as of 2013, “[p]eople in rural areas are much more likely to go to prison than people in urban areas, a major shift from a decade ago,” and that “[p]rison admissions in counties with fewer than 100,000 people have risen even as crime has fallen.”³⁶

Even if incarceration rates are considered on a statewide basis, a shift from more urban to more rural states is discernable. In the 1990s, many of the states whose incarceration rates had risen the most since 1970 had heavily urban populations, such as New Jersey and New York.³⁷ But as of 2021, the

34. JACOB KANG-BROWN ET AL., VERA INST. OF JUST., THE NEW DYNAMICS OF MASS INCARCERATION 22 (2018), <https://www.vera.org/publications/the-new-dynamics-of-mass-incarceration> [<https://perma.cc/ZPH4-8XZ7>]; see also *id.* at 35 tbl. 2 (showing data for thirty-five states). The researchers’ sources included “the National Corrections Reporting Program (NCRP), which began recording data in 1983, and the National Prisoner Statistics program (NPS), which provides state-level prison data from 1926 to 2016,” as well as data collected directly from states by the researchers. *Id.* at 12. The NPS includes “incarceration statistics by county of court commitment,” which “is generally where a person was convicted and committed to serve time in a state correctional facility; it is not necessarily the person’s county of residence, and may not even be the county where the crime was committed, but is likely to be both.” *Id.*

35. *Id.* at 22. On the other hand, the extent of the urban turn against mass incarceration should not be exaggerated. Although the prison incarceration rate has generally declined in urban counties since at least 2007, research by Katherine Beckett and Lindsey Beach has shown that the ratio of prison admissions to the number of Part I “index” crimes—which the authors reasonably frame as an expression of “penal intensity”—grew in both rural and urban counties between the years 2001–2003 and 2011–2013. See Beckett & Beach, *supra* note 24, at 4, 14 tbl. 3. But consistent with Vera’s analysis, the authors found that “the punishment rate—the ratio of prison admissions to crimes—is substantially higher” in rural as opposed to urban counties. See *id.* at 13. For a further confirmation of the shift in incarceration from urban to rural, see JESSICA T. SIMES, PUNISHING PLACES: THE GEOGRAPHY OF MASS IMPRISONMENT 4, 56–82 (2021) (concluding that “[s]mall cities, suburbs, and rural areas outside of American metro areas have the highest rates of incarceration (in either prison or jails) today”).

36. Josh Keller & Adam Pearce, *A Small Indiana County Sends More People to Prison than San Francisco and Durham, N.C., Combined. Why?*, N.Y. TIMES (Sep. 2, 2016), <https://www.nytimes.com/2016/09/02/upshot/new-geography-of-prisons.html> (on file with the Maryland Law Review) (showing, based on NCRP data, a sharp decline in new inmates per capita for counties with more than 300,000 residents, from twenty-five to roughly seventeen per 10,000 residents, versus an increase from roughly twenty-three to twenty-four for counties with less than 100,000 residents). Anticipating the arguments of this Article, the authors note that the growing divide between rural and urban prison admission rates “does not appear to be driven by changes in crime, which fell in rural and urban areas at roughly equal rates, according to the F.B.I. Instead, it reflects growing disagreement about how harshly crime should be punished . . .” *Id.* The authors observe that “[c]ities have adopted a more lenient approach to drug offenses in particular, diverting many low-level drug offenders to probation or treatment rather than to jail.” *Id.*

37. See *Incarceration Trends*, VERA INST. OF JUST. (Oct. 31, 2024, at 2:00 UTC) [hereinafter VERA INST. OF JUST., *Incarceration Trends*], <https://trends.vera.org/> [<https://perma.cc/W5ZM->

ten states whose incarceration rates have risen the most since 1970 are remarkably rural.³⁸ The following are the ten states with the greatest increases in incarceration rates since 1970, from most to least, followed by the rank of their rural population percentages out of the fifty states: Montana (5th most rural), West Virginia (3rd), Nebraska (26th), North Dakota (11th), Kansas (25th), Arkansas (6th), Wyoming (12th), Oklahoma (14th), Idaho (20th), and Alaska (15th).³⁹ In addition, the five states with the highest prison incarceration rates as of 2022 all have rural populations above the median: Mississippi (4th), Louisiana (23rd), Arkansas (6th), Oklahoma (14th), and Idaho (20th).⁴⁰

To be clear, not every highly rural state has a high incarceration rate. The rural states of New England, in particular, have remarkably low prison incarceration rates: Vermont ranks 1st in rural population percentage and 47th in prison incarceration; Maine ranks 2nd and 49th, respectively; and

CHAX]. The numbers in this paragraph refer to Vera's combined jail and prison incarceration rates. *Id.*

38. *Id.* The rankings of rural population percentages are from the 2020 Census. See *State-Level Urban and Rural Information for the 2020 Census and 2010 Census*, U.S. CENSUS BUREAU [hereinafter U.S. CENSUS BUREAU, *State-Level Urban and Rural Information*], <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html> [<https://perma.cc/3VYP-853W>] (last visited Jan. 14, 2026).

39. VERA INST. OF JUST., *Incarceration Trends*, *supra* note 37. It might be argued that these states are more united by their partisan (Republican) leanings than by their rurality. But the aim of the present Section is not to argue that rurality is the best predictor of punitiveness, or a better predictor than partisan affiliation. Rather, the aim is to emphasize various ways in which punitive criminal justice outcomes have become more pronounced in rural rather than urban America. It is worth noting, however, that rurality as such may be correlated with criminal justice punitiveness. See KATHERINE BECKETT, *ENDING MASS INCARCERATION: WHY IT PERSISTS AND HOW TO ACHIEVE MEANINGFUL REFORM* 176 (2022) (concluding that “political conservatism, the size of the Black population, and social disadvantage . . . help explain heightened punitiveness at the county level,” but that “[e]ven after controlling for all of these factors as well as crime and drug arrests, . . . ruralness and suburbaness are significantly associated with heightened punishment”).

40. See U.S. *Criminal Justice Data*, THE SENT’G PROJECT, <https://www.sentencingproject.org/research/us-criminal-justice-data/> [<https://perma.cc/V6WR-8S2R>] (last visited May 5, 2025) (using 2022 data from the Bureau of Justice Statistics); see also Beckett & Beach, *supra* note 24, at 9–10 & tbl. 1 (finding that the ten most punitive states in 2011–2013, based on a measure incorporating, in part, the ratio of prison admissions to various crimes, were: Oklahoma, Kentucky, Mississippi, Alabama, Arizona, South Dakota, Georgia, Wyoming, West Virginia, and Indiana).

New Hampshire ranks 9th and 45th, respectively.⁴¹ These states also have unusually low violent crime rates.⁴²

Because rural jail beds are sometimes rented out to federal, state, tribal, and local governments as a revenue source, it would be incorrect to assume that rural jail incarceration rates simply reflect the rate at which nearby rural populations are being held in jails.⁴³ Nevertheless, it is worth noting that rural counties now have higher jail incarceration rates than urban counties.⁴⁴ Until 2000, the per capita rate of jail incarceration in rural counties was lower than the rate in urban counties.⁴⁵ Since 2000, however, the rural jail incarceration rate has been higher, and continues to rise even as the urban rate has fallen.⁴⁶ As of the third quarter of 2022, the average jail incarceration rate in rural counties was 558 per 100,000 residents, while the urban rate was only 238 per 100,000 residents.⁴⁷ According to the Vera Institute's definitions, while only fifteen percent of the U.S. population lives in rural counties, twenty percent of the jail population is located in rural counties.⁴⁸

Finally, despite the overwhelmingly white racial composition of most rural areas in the United States,⁴⁹ since the late 1990s, incarceration rates for

41. See THE SENT'G PROJECT, *supra* note 40; U.S. CENSUS BUREAU, *State-Level Urban and Rural Information*, *supra* note 38. Beckett and Beach found that penal outcomes are associated not only with the rurality of a county but with "the state policy environment," such that "the average punishment rates found in suburban and rural counties in more punitive states are three times higher than those found in less punitive states." Beckett & Beach, *supra* note 24, at 14. It makes sense that public punitiveness could be reflected both at the state level, through the election of state legislators who support punitive criminal justice legislation (for example, harsh sentencing laws), and at the county level, through the election of local prosecutors who pursue aggressive charging and plea bargaining.

42. In 2022, Maine had the lowest violent crime rate in the nation, followed by New Hampshire. *Crime Data Explorer*, FBI, <https://cde.ucr.cjis.gov/> [<https://perma.cc/WSB9-FSNX>] (last visited July 6, 2024) (analyzing data from Table 5 of the 2022 "CIUS Estimations" file under the "Crime in the United States Annual Reports," downloaded from the "Documents and Downloads" tab of the Crime Data Explorer). Vermont had the eighth lowest rate. *Id.* It is fitting that Shea and Jacobs, who argue against urban progressive stereotypes of rural Americans, are based in Maine, which, along with Vermont and New Hampshire, is an outlier in combining very high rurality and very low punitiveness. See NICHOLAS F. JACOBS & DANIEL M. SHEA, *THE RURAL VOTER: THE POLITICS OF PLACE AND THE DISUNITING OF AMERICA* 23–24, 267 (2023); Jacobs, *supra* note 12; *supra* fig. 1.

43. KANG-BROWN & SUBRAMANIAN, *supra* note 13, at 7.

44. See VERA INST. OF JUST., *Incarceration Trends*, *supra* note 37.

45. See *id.*

46. See *id.*

47. *Id.*

48. See SUBRAMANIAN, RILEY & MAI, *supra* note 19, at 11. The study found that in 2013, rural counties incarcerated Black Americans in jail at a rate of 1,411 per 100,000 county residents aged fifteen to sixty-four, while the jail incarceration rate for Black Americans in large metro counties was nearly half, 723. See *id.* at 10, 36 app. Rural counties jailed whites at a rate of 365, compared to only 183 in large metro counties. See *id.* at 36 app.

49. There are a number of significant exceptions to the stereotype of rural America as overwhelmingly white—above all, Native American reservations, Black Americans in the rural South, and rural areas with growing Latino and immigrant populations. See Metzger, *supra* note 11, at 243. At the same time, the association between whiteness and rurality is not simply a myth. As

Black Americans (combining both jail and prison incarceration) have been significantly higher in rural areas than in urban areas.⁵⁰ Rural areas also incarcerated whites at a higher rate than urban areas throughout this period, with the result that the disparity between the incarceration rate of Black and white Americans remained lower in rural areas.⁵¹ But as the Vera Institute has noted, urban areas “have made larger strides in reducing racial disparities over the past three decades than have rural counties and smaller cities.”⁵²

In sum, if mass incarceration is the most urgent crisis in American criminal justice today,⁵³ then rural areas demand attention because of their exceptionally high incarceration rates. What is driving rural mass incarceration?

II. THE INFLUENCE OF CRIME RATES AND PUBLIC PUNITIVENESS ON INCARCERATION RATES

In his 2016 book *Incarceration Nation*, the political scientist Peter K. Enns offers statistical evidence that changes in the American incarceration rate since the 1950s can largely be predicted by the crime rate and the level of public punitiveness, as reflected in public opinion surveys.⁵⁴ According to

Wuthnow notes, “[i]n 1980, white Anglos made up 91.3 percent of the population nationally of all small rural communities with total populations under twenty-five thousand. By 2010, the white Anglo proportion had declined only to 86.5 percent.” WUTHNOW, *supra* note 12, at 143; *see also* JACOBS & SHEA, *supra* note 42, at 293 (stating that “15 percent of residents in rural America . . . largely identify as Black, indigenous American, or Latino”).

50. *See* VERA INST. OF JUST., *Incarceration Trends*, *supra* note 37. For an especially stark example, *see* MARC MAUER & RYAN S. KING, THE SENT’G PROJECT, UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY 7, 8 tbl. 3 (2007) (noting that, in 2005, South Dakota had the highest rate of combined jail and prison incarceration of Black people in the country: 4.71 per 100 residents).

51. *See* VERA INST. OF JUST., *Incarceration Trends*, *supra* note 37. Significantly, this statistic suggests that the fact of rural incarceration rates being higher than urban rates cannot be explained by rural areas pursuing racist incarceration practices even more aggressively than urban areas. Again, rural whites are “locking up their own.” At the same time, there are of course vast regional variations between rural areas. For example, the disparity between the incarceration rates for whites and Native Americans in South Dakota remains shockingly high. *See South Dakota Profile*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/profiles/SD.html> [<https://perma.cc/J7BY-QTU8>] (last visited May 29, 2025) (noting eight percent of state population is Native American, versus thirty-five percent of the state’s prison population and forty-seven percent of the state’s jail population).

52. *See* VERA INST. OF JUST., *Incarceration Trends*, *supra* note 37.

53. *Cf.* ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 6 (2016) (“Arguably the most important question facing American society today is why, in the land of the free, one in thirty-one people is under some form of penal control.”).

54. *See generally* PETER K. ENNS, INCARCERATION NATION: HOW THE UNITED STATES BECAME THE MOST PUNITIVE DEMOCRACY IN THE WORLD (2016). For the survey questions that Enns used in his aggregate measure of punitiveness, *see id.* at 37 tbl. 2.1. According to Enns’s measure, public punitiveness regarding crime fell sharply from 1953 to the mid-1960s, even as the violent crime rate began to rise; then punitiveness rose sharply beginning in the mid-1960s, roughly

Enns's statistical analyses, the explanation works both at the state and national levels.⁵⁵

Although Enns's research has not been ignored in legal scholarship, it has not received as much attention as it would deserve if Enns's arguments about the drivers of mass incarceration are correct.⁵⁶ Of course, statistical analyses are only as reliable as the data, assumptions, and statistical techniques upon which they are based, and Enns's causal argument is based on regression analyses rather than the experimental and quasi-experimental techniques that would provide a more reliable foundation for making causal claims.⁵⁷ But Enns's demonstration of a correlation between national crime rates and changes in the national incarceration rate by itself calls into question the widespread, practically significant, frequently reiterated assumption that incarceration rates are basically unrelated to crime rates.⁵⁸ Legal scholars might also reconsider the assumption that public opinion regarding criminal punishment is indefinite and malleable, not responsive to objective changes

in line with the sharp rise in the violent crime rate; public punitiveness peaked in the mid-1990s, shortly after the peak of the violent crime rate; and then public punitiveness fell, alongside the violent crime rate, through 2012 (the final year of Enns's survey data). *See id.* at 38 fig. 2.6. The low point in punitiveness arrived in 1966, followed immediately by a sharp spike. *See id.* at 89. The timing also roughly aligned with a long-recognized turning point in American public opinion. *See* BISHOP, *supra* note 12, at 87–90 (noting that beginning around 1965, there was a sudden and lasting decline in support for both political parties, a decline in civic organization membership, a decline in reliance on daily newspapers, a rise in crime rates and divorce rates, a decline in mainline Protestantism, and a decline in trust in government, “universities, medicine, major companies, and journalism”); MARTIN GILENS, *WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY* POLICY 6 (1999) (noting that in the mid-1960s, “public images of poverty shifted dramatically and came to focus disproportionately on [B]lacks”). Although it may be impossible to establish causation, it is tempting to note that the turning point away from trust in established institutions arrived soon after the legislative dismantling of Jim Crow through the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

55. *See infra* text accompanying note 80.

56. As of July 4, 2024, Westlaw's database of law reviews and journals showed twenty-five citations to ENNS, *supra* note 54. WESTLAW, Enns & (“Incarceration Nation: How the United States Became the Most Punitive Democracy in the World”), 25 results (Oct. 16, 2025) (on file with the Maryland Law Review) (filtered by “Secondary Sources”, “Law Reviews & Journals”, “Date before July 4, 2024”). As an indication of how much a work that attracts wide attention in legal scholarship can be cited, the same database shows 306 citations to FORMAN, *supra* note 6, a historical work by a law professor that was published a year after Enns's book. WESTLAW, Forman & (“Locking Up Our Own: Crime and Punishment in Black America”), 306 results (Oct. 16, 2025) (on file with the Maryland Law Review) (filtered by “Secondary Sources”, “Law Reviews & Journals”, “Date before July 4, 2024”).

57. For one positive assessment, see Justin T. Pickett, *Public Opinion and Criminal Justice Policy: Theory and Research*, 2 ANN. REV. CRIMINOLOGY 405, 406 (2019) (affirming the validity of Enns's conclusions regarding the influence of public punitiveness on criminal justice outcomes and noting that such conclusions conflict with “misperceptions about public opinion [that] have become entrenched in” the field of criminology).

58. *See infra* note 70.

in crime rates, and not a dominant influence on the decisions of public officials about criminal justice.⁵⁹

The notion that rising crime rates would tend to cause rising incarceration rates might strike some as obvious. If individuals in an area commit more crimes, the reasoning would go, more of them will be arrested and prosecuted and the incarceration rate will rise—perhaps after a lag, as the state catches up to the rise in crime by expanding law enforcement capacity. In fact, this was apparently the conventional explanation for the rise of American incarceration rates in the early decades of the incarceration boom that began in the 1970s.⁶⁰

But in recent years, scholars have tended to emphasize that changes in America's incarceration rate resulted not from changes in criminal behavior, or even from changes in public opinion, but from political decisions.⁶¹ Indeed, the rise in America's incarceration rate that began in the 1970s cannot simply be explained as the natural result of more people committing crimes, being caught, and then being incarcerated. The timing of the trends does not line up. Although America's violent crime rate began a sharp rise in the

59. See Pickett, *supra* note 57, at 406–09, 413–16. Pickett offers a thorough review of the debates within criminology over the effect of public opinion on penal policy. See *id.* Another important book published in the same year as Enns's that reached similar conclusions regarding the role of crime rates in influencing media coverage and, in turn, public opinion: LISA MILLER, *THE MYTH OF MOB RULE: VIOLENT CRIME AND DEMOCRATIC POLITICS* (2016). Research by Mark D. Ramirez on crime rates and public punitiveness also anticipated some of Enns's conclusions. See generally Mark D. Ramirez, *Punitive Sentiment*, 51 *CRIMINOLOGY* 329, 356–57 (2013); Mark D. Ramirez, *The Polls—Trends: Americans' Changing Views on Crime and Punishment*, 77 *PUB. OP. Q.* 1006, 1022–23 (2013). More recently, international comparative research by Georg Wenzelburger noted the consistency between his own findings and Enns's model. See GEORG WENZELBURGER, *THE PARTISAN POLITICS OF LAW AND ORDER* 8–9 (2020).

60. See, e.g., Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 *STAN. L. REV.* 1271, 1304 (2004) (“For the past thirty years, the growth of the prison population has generally been accepted as a conventional law enforcement response to crime.”); Michael Tonry, *Determinants of Penal Policies*, 36 *CRIME & JUST.* 1, 16 (2007) (“At first, the reasons why American imprisonment rates rose rapidly and why policy makers adopted increasingly severe policies seemed straightforward: crime rates rose, the public demanded action, and policy makers and practitioners responded.” (citing JAMES Q. WILSON, *THINKING ABOUT CRIME* (rev. ed. 1983); WILLIAM J. BENNETT, JOHN J. DI IULIO, JR. & JOHN P. WALTERS, *BODY COUNT: MORAL POVERTY . . . AND HOW TO WIN AMERICA'S WAR AGAINST CRIME AND DRUGS* (1996))).

61. For statements of “the lack of relationship between the crime rate and the incarceration rate,” see ENNS, *supra* note 54, at 144 n.23 (citing, among others, MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA* (2006) [hereinafter GOTTSCHALK, *THE PRISON AND THE GALLOWS*]; BRUCE WESTERN, *PUNISHMENT AND INEQUALITY IN AMERICA* (2006)). For skepticism regarding the influence of public opinion on incarceration rates, see Pickett, *supra* note 57, at 406 (citing, among others, KATHERINE BECKETT, *MAKING CRIME PAY: LAW AND ORDER IN CONTEMPORARY AMERICAN POLITICS* (1997)); ENNS, *supra* note 54, at 13 (citing, among others, GOTTSCHALK, *THE PRISON AND THE GALLOWS*, *supra*; Franklin E. Zimring & David T. Johnson, *Public Opinion and the Governance of Punishment in Democratic Political Systems*, 605 *ANNALS AM. ACAD. POL. SOC. SCI.* 266 (2006)).

mid-1960s,⁶² the national prison incarceration rate actually fell slightly and stayed low until the mid-1970s.⁶³ Then, after the violent crime rate peaked in the early 1990s, the prison incarceration rate continued to rise for nearly two decades before finally beginning to decline after 2007.⁶⁴ Furthermore, even though the violent crime rate has fallen by nearly half since its peak,⁶⁵ the incarceration rate, as late as 2021, had only fallen by roughly a quarter.⁶⁶

If changes in the incarceration rate were simply the result of changes in criminal behavior, then a chart showing the rate of incarceration per violent

62. The widely accepted claim that violent crime began rising sharply in the mid-1960s is usually based on UCR data. *See, e.g.*, ENNS, *supra* note 54, at 75–77; JOHN F. PFAFF, *LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION AND HOW TO ACHIEVE REAL REFORM* 3 (2017) [hereinafter PFAFF, *LOCKED IN*]. Enns relies on UCR data to calculate his aggregate crime rate, and defends the use of UCR data as a measure of crime trends. *See* ENNS, *supra* note 54, at 76 n.4 (describing calculation of aggregate “crime rate” based on UCR data); *id.* at 75–76 (collecting defenses of UCR data); *accord* SHARKEY, *supra* note 18, at 8–12. For skeptical treatments of UCR data in general, *see* HINTON, *supra* note 53, at 6–7, 346–47 nn.10–11 (collecting sources); Colin Loftin & David McDowall, *The Use of Official Records to Measure Crime and Delinquency*, 26 J. QUANT. CRIMINOLOGY 527, 527–28 (2010) (collecting criticisms and noting that “the most consistent theme in textbooks and professional discussions of the quality of crime statistics is that the UCR data are invalid and should not be used as an indicator of criminal behavior”). On the stakes of relying on UCR data, *see* Lauritsen, Rezey & Heimer, *supra* note 20, at 335 (showing that the “association between trends in levels of gasoline lead exposure and serious violence” in a leading study only appears when UCR data is used, and “is not found when NCVS or homicide trend data are used”). Rural UCR data is probably more inaccurate than urban data because rural law enforcement agencies tend to have fewer resources to ensure accurate data collection and submission. *See generally* Berg & Lauritsen, *supra* note 24. *See also* Metzger, *supra* note 11, at 252–54; Michael D. Maltz & Joseph Targonski, *A Note on the Use of County-Level UCR Data*, 18 J. QUANT. CRIMINOLOGY 297, 313 (2002) (noting that “smaller counties are more likely to have extensive reporting deficiencies than larger counties”); Jeff Asher, *NIBRS Noncompliance Has Become More of a Small Agency Problem*, JEFF-ALYTICS (Mar. 25, 2024), <https://jasher.substack.com/p/nibrs-noncompliance-has-become-more> [<https://perma.cc/PG47-DLAW>] (noting that as of 2015, the National Incident-Based Reporting System (“NIBRS”) has replaced the system used by law enforcement agencies for reporting crime data to the FBI since the 1930s, and that compliance with NIBRS in bigger cities and counties is reaching “acceptable . . . levels” while compliance in smaller cities and counties “is still comparatively low and not growing as fast”).

63. *See* ENNS, *supra* note 54, at 104 fig. 5.2.

64. *See id.* at 77 fig. 4.1, 104 fig. 5.2.

65. *See* Jeff Asher, *2025 Year in Review: A Remarkable Drop in Crime*, JEFF-ALYTICS (Dec. 22, 2025), <https://jasher.substack.com/p/2025-year-in-review-a-remarkable> [<https://perma.cc/JA2M-JH9F>] (showing a decline in the violent crime rate from 758 violent crime offenses per 100,000 population in 1991 to between 350 and 400 in every year from 2011 to 2022). As of 2015, NCVS data showed an even steeper decline (seventy-five percent from the NCVS peak) than UCR data (roughly fifty percent from the UCR peak). *See* SHARKEY, *supra* note 18, at 11–12.

66. *See* VERA INST. OF JUST., *Incarceration Trends*, *supra* note 37 (showing under “U.S. total” a decline in the national number of people incarcerated in prisons and jails per 100,000 residents ages fifteen to sixty-four from a peak of 1,132 in the second quarter of 2007 to 827 in the second quarter of 2021, a decline of twenty-seven percent). “The year 2022 . . . marked the first year in more than a decade where the prison population rose again, by two percent, led by increases in 36 states and the federal government.” ASHLEY NELLIS, *THE SENT’G PROJECT, MASS INCARCERATION TRENDS* 1 (2024).

crime over time would approximate a flat horizontal line.⁶⁷ Instead, such a chart actually shows large swings, with the 1970s appearing, from this perspective, as the least punitive decade since the end of World War II.⁶⁸ The number of people incarcerated in the United States per reported violent crime fell sharply during the 1960s and only began to rise significantly in the 1980s.⁶⁹

Thus, it is reasonable to conclude that mass incarceration was the result of political choices rather than the mechanical result of more people committing crimes and being prosecuted. Various political actors appear to have turned toward more punitive criminal justice policies and practices beginning in the 1980s and continuing for decades.⁷⁰ These changes were a necessary part of the sharply rising incarceration rate that made the United States the world's leading carceral state. But many works of criminal justice scholarship have gone further and suggested that variations in incarceration rates have little to do with variations in criminal behavior.⁷¹ In his book, Enns calls these stronger claims into question by showing that an aggregated measure of the national crime rate between 1950 and 2010 is in fact remarkably correlated with annual *changes* in the national incarceration rate.⁷² As Enns summarizes his model: “[C]rime rates influence the public’s attitudes, which in turn influence politicians (and perhaps others) that influence the incarceration rate.”⁷³

More specifically, Enns’s research shows that, in the United States between the 1950s and 2010, crime rates were associated with levels of public

67. See ENNS, *supra* note 54, at 11. Using a measure of crime combining violent and property crime would lead to a roughly similar result. Although “some differences do exist . . . [.] overall, violent and property crimes tend to follow similar trajectories.” *Id.* at 76–77 & fig. 4.1.

68. See *id.* at 11 fig. 1.3; PFAFF, LOCKED IN, *supra* note 62, at 9 fig. 3.

69. See ENNS, *supra* note 54, at 11 fig. 1.3.

70. In fact, Beckett and Beach show that prison admissions per crime, which they refer to as “penal intensity,” continued to rise until at least 2014. See Beckett & Beach *supra* note 35, at 4, 14 tbl. 3.

71. See HINTON, *supra* note 53, at 347 n.11 (collecting sources); ENNS, *supra* note 54, at 103 n.5 (same); ENNS, *supra* note 54, at 103 (quoting an economist stating in 2010 that “[f]or two generations, crime rates have fluctuated with no apparent relationship to a steady climb in the extent of imprisonment” (quoting Glenn C. Loury, *Crime, Inequality & Social Justice*, 139 DAEDALUS 134, 135, (2010))); GOTTSCHALK, THE PRISON AND THE GALLOWS, *supra* note 61, at 24 (stating that “[m]ost experts in criminal justice basically agree that ‘there is no general relationship between’” trends in crime rates and incarceration rates (quoting André Kuhn, *Prison Populations in Western Europe*, in SENTENCING REFORM IN OVERCROWDED TIMES: A COMPARATIVE PERSPECTIVE 124–25 (Michael Tonry & Kathleen Hatlestad eds., 1997))).

72. See ENNS, *supra* note 54, at 108 fig. 5.4; see also *id.* at 103–08 (defining relevance of changes in incarceration rate).

73. *Id.* at 116. As Enns notes, “a large literature shows that policy makers respond to the public’s policy preferences.” See *id.* at 13 (collecting sources); Beckett & Beach, *supra* note 24, at 6 (same). It would be plausible for state legislatures to respond to increased public punitiveness by passing harsher sentencing laws, and for locally elected prosecutors to respond by filing charges more aggressively and seeking longer sentences through plea bargaining.

punitiveness;⁷⁴ and levels of public punitiveness were associated, after a brief lag,⁷⁵ with changes in the incarceration rate.⁷⁶ Enns provides empirical support for this conclusion through a variety of statistical analyses, including both simple bivariate analyses and sophisticated multivariate regressions.⁷⁷ As Enns notes, in a bivariate analysis his measure of public punitiveness and the measure of changes in the incarceration rate “appear to move virtually in tandem.”⁷⁸ When Enns incorporates into a single model crime rates *and* public punitiveness as drivers of incarceration, the model predicts the changes in U.S. incarceration rates between the 1950s and 2010 with striking accuracy.⁷⁹ As Enns describes one set of results, “[k]nowing the crime rate and public support for being tough on crime in the states almost fully accounts for the observed rise in state incarceration rates.”⁸⁰

In sum, Enns’s research agrees with the conventional wisdom that American mass incarceration was the result of political choices, not a

74. See ENNS, *supra* note 54, at 108 fig. 5.4, 109 fig. 5.5, 116.

75. See *id.* at 138 n.14 (concluding that at the national level, “a one-year lag may best approximate the overall process”).

76. See *id.* at 109 fig. 5.5, 116. See generally *id.* at 100–55. Incidentally, Enns’s incarceration rate only includes “those sentenced to more than one year.” *Id.* at 4 n.5.

77. See *id.* at 100–55. In a bivariate analysis, the correlation between the crime rate and changes in the incarceration rate “is a notable $r = 0.72$.” *Id.* at 107; 108 fig. 5.4. As Enns observes, “[t]his strong relationship significantly revises conventional wisdom, which maintains that the relationship between crime and incarcerations is weak, at best.” *Id.* at 107. The public’s punitiveness is even more strongly correlated with changes in the incarceration rate: “[T]he correlation is an impressive $r = 0.82$.” *Id.* at 109. A review by a leading incarceration scholar questions the significance of public punitiveness by noting that, according to one of Enns’s multivariate regression analyses, “the incarceration rate would have been just 20 percent lower in the absence of rising public punitiveness.” Katherine Beckett, Book Review, *Review of Incarceration Nation: How the United States Became the Most Punitive Democracy in the World*, 37 AM. REV. POL. 133, 137 (2020) (reviewing ENNS, *supra* note 54); see also ENNS, *supra* note 54, at 119. But it is possible that this result understates the influence of public punitiveness on incarceration rates, as Enns suggests when he argues that public punitiveness is “the most important factor” for understanding American mass incarceration. ENNS, *supra* note 54, at 5. Enns’s data is consistent with a causal model in which public punitiveness largely determines changes in incarceration rates, but where national crime rates between the 1950s and 2010 happened to predict in large part national public punitiveness. In a regression analysis that controlled for crime rates, public punitiveness would appear to have relatively little independent effect—even if, in fact, crime rates affected incarceration rates mostly through the mediation of crime rates’ effect on public punitiveness. One way to clarify the relative causal power of crime rates and public punitiveness on incarceration rates might be to study a situation in which public punitiveness apparently changed for a reason unrelated to any change in the crime rate (that is, where an “instrumental variable” unrelated to the crime rate caused a change in public punitiveness). The magnitude of the change in incarceration rates resulting from the change in public punitiveness brought about by the instrumental variable could clarify the extent to which public punitiveness influences incarceration rates. Perhaps changes in public punitiveness in rural areas resulting from Stenner’s authoritarian dynamic (for example, as a result of perceived increases in societal dissensus) rather than from changes in crime rates could provide the basis for an instrumental variable analysis of this kind.

78. ENNS, *supra* note 54, at 108.

79. See *id.* at 119 fig. 5.7, 143 fig. 6.5.

80. *Id.* at 143 fig. 6.5, 143–44.

mechanical result of rising crime. But in sharp contrast to the conventional wisdom, Enns's research suggests that rising crime rates appear to have played a very significant role in those political choices—indirectly, by provoking an increasingly punitive attitude among the public on criminal justice issues.

One can imagine institutional changes in the United States that might loosen or break the apparent influence of public punitiveness on the incarceration rate. For example, the United States could place more criminal justice decisions in the hands of relatively politically insulated professionals and experts, as is already the practice in many liberal democracies in Europe and elsewhere.⁸¹ A largely anonymous bureaucrat who is appointed rather than elected, and who is tasked with making evidence-based decisions to promote public safety, would likely be less responsive to fluctuations in public punitiveness than a locally elected prosecutor.⁸² But no obvious large-scale changes along these lines have taken place since the end of Enns's data in 2010. As a result, it seems likely that the relationships Enns identified continue to operate today, including in rural areas.⁸³

81. See John Rappaport, *Some Doubts About 'Democratizing' Criminal Justice*, 87 U. CHI. L. REV. 711, 775–78 (2020) (citing, among others, JAMES Q. WHITMAN, *HARSH JUSTICE: CRIMINAL PUNISHMENT AND THE WIDENING DIVIDE BETWEEN AMERICA AND EUROPE* 199 (2003)); Nicola Lacey & David Soskice, *American Exceptionalism in Crime, Punishment, and Disadvantage*, in *AMERICAN EXCEPTIONALISM IN CRIME AND PUNISHMENT* 53, 57 fig. 1.5 (Kevin R. Reitz ed., 2018) (comparing selection processes for police, prosecutors, and local judges in the United States, Canada, England and Wales, and New Zealand).

82. On the political incentives of American prosecutors, see generally Rappaport, *supra* note 81; PFAFF, *LOCKED IN*, *supra* note 62; William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505 (2001); see also RACHEL ELISE BARKOW, *PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION* 111 (2019).

83. One question that Enns's model of mass incarceration does not directly address is how to account for the racial disparities in American incarceration rates. He addresses race when he notes that he has excluded an explicit measure of racial bias from his measure of public punitiveness because the latter measure is already so deeply tied to racial attitudes and biases. See ENNS, *supra* note 54, at 33. But he does not attempt to address, as one group of scholars recently put the question, how much of the racial disparities in incarceration are “mediated by crime (e.g., racial oppression leads to racial differences in crime commission, which leads to racial differences in incarceration),” and how much are mediated “by the behavior of criminal justice actors (e.g., racial oppression leads to racially biased legislation and punishment practices, which leads to racial differences in incarceration).” John Clegg et al., *Punishment in Modern Societies: The Prevalence and Causes of Incarceration Around the World*, 7 ANN. REV. CRIMINOLOGY 211, 225 (2024).

Based on Enns's model, we might ask: Can racial disparities in incarceration rates be predicted based on a combination of disparities between the crime rates of different racial groups and disparities in public punitiveness toward different racial groups? If the latter variable turned out to have significant predictive power in explaining racial disparities in incarceration rates, that fact would offer troubling support for the longstanding argument “that one major function of the criminal justice system is the regulation and control of marginalized social groups such as African Americans.” Lawrence D. Bobo & Devon Johnson, *A Taste for Punishment: Black and White Americans' Views on the Death Penalty and the War on Drugs*, 1 DU BOIS REV. 151, 172 (2004); see also Hinton & Cook, *supra* note 1; ALEXANDER, *supra* note 1 and accompanying text.

III. POSSIBLE CAUSES OF VARIATIONS IN PUBLIC PUNITIVENESS

Enns's research suggests that American crime rates and public punitiveness largely predicted changes in the national incarceration rate between the 1950s and 2010.⁸⁴ A reasonable next question would be: What caused the changes in crime rates and public punitiveness during this period?

A vast literature already exists regarding the causes of changing crime rates in general, and of the rise and fall of the violent crime rate in the United States over the last sixty years in particular.⁸⁵ Instead, this Section will focus on what might cause variations in public punitiveness. Enns himself persuasively presents crime rates themselves as playing a significant role.⁸⁶ But the crime rate cannot be the only significant determinant of public punitiveness. Public punitiveness varies independently enough from the crime rate that Enns's most accurate model for predicting the national incarceration rate includes both crime rates and public punitiveness as separate variables.⁸⁷

Enns also suggests that "shifts in news coverage of crime have had a profound influence on the public's punitiveness."⁸⁸ Although it seems plausible that media representations of crime and punishment would play a central role in shaping public attitudes regarding criminal justice, Enns's statistical evidence on this point is less compelling than for the association between crime rates, public punitiveness, and incarceration rates discussed in Part II. For example, one of his figures shows a sharp increase in newspaper coverage of crime beginning in 1958, a full eight years before the beginning of the sharp increase in the public's punitiveness.⁸⁹ Enns acknowledges that "news coverage of crime is not the only factor influencing the public's attitudes."⁹⁰

There is a growing body of research in the field of political psychology that attempts to explain variations over time and between individuals and

84. See *supra* Part II.

85. See Gregory Brazeal, *Justice Theater in the Criminal Law Curriculum*, 45 CARDOZO L. REV. 1723, 1756 n.110 (2024) [hereinafter Brazeal, *Justice Theater*] (collecting sources).

86. See *supra* text accompanying note 73.

87. See *supra* note 79 and accompanying text.

88. ENNS, *supra* note 54, at 75. In another significant finding that runs counter to the conventional wisdom, Enns shows that changes in the amount of crime news coverage largely track changes in the crime rate. See generally *id.* at 86 fig. 4.5, 92–93. See also *id.* at 75 ("Even though the news media consistently over-report violent crime and the proportion of criminal activity committed by racial minorities, *changes* in the amount of crime in the news correspond closely with changes in the actual crime rate."); *id.* at 85 ("Conventional wisdom holds that increases in media attention to crime typically do *not* track officially reported crime."); *id.* at 96 (noting that this "substantially revises conventional wisdom").

89. See *id.* at 89 fig. 4.6. In addition, the chart shows a sharp decline in newspaper coverage of crime in the early 1970s, followed by a sharp increase, with neither of the changes seeming to affect public punitiveness. See *id.*

90. *Id.* at 97.

groups in levels of punitiveness and related attitudes such as intolerance.⁹¹ This Section will suggest that two models in particular could help to make sense of what drove the public punitiveness that apparently contributed to the rise of American mass incarceration. Connecting the political psychology research on punitiveness to Enns's research on the role of punitiveness in shaping incarceration rates suggests a number of avenues for future empirical investigations, including into the questions regarding rural incarceration rates discussed in Part IV.

A. The Authoritarian Dynamic and Public Punitiveness

In *The Authoritarian Dynamic* (2005), Karen Stenner suggests that about one-third of people in Western democracies today are “authoritarian” in the sense of having a stable predisposition in favor of “oneness and sameness” that, when activated by certain forms of threat, leads them to react with heightened intolerance and punitiveness.⁹² Stenner's model is

91. Like Enns's research on the origins of mass incarceration, the research on punitiveness and intolerance by Karen Stenner, Marc Hetherington, Jonathan Weiler, and others discussed in this Section has been relatively neglected in legal scholarship on criminal justice. For example, the same database of legal scholarship that shows twenty-five citations to Enns's 2016 book, *supra* note 56, shows only eighteen citations to Karen Stenner's work. WESTLAW, “Karen Stenner”, 18 results (Jan. 12, 2026) (on file with the Maryland Law Review) (filtered by “Secondary Sources”, “Law Reviews & Journals”). Similarly, the database shows only eighteen citations to Hetherington's research on authoritarianism. WESTLAW, Marc /3 Hetherington /s (authoritar! prius), 18 results (Jan. 12, 2026) (on file with the Maryland Law Review) (filtered by “Secondary Sources”). The general neglect of political psychology research on authoritarianism in legal scholarship on criminal justice may result in part from the fact that authoritarianism research was originally motivated not by questions about crime and punishment but by the attempt to explain support for authoritarian politics, such as European fascism in the early twentieth century. *See* KAREN STENNER, *THE AUTHORITARIAN DYNAMIC 2* (2005) [hereinafter STENNER, *AUTHORITARIAN DYNAMIC*] (tracing the argument that there exists “predispositions to intolerance” back to ERICH FROMM, *ESCAPE FROM FREEDOM* (1941), as well as THEODOR W. ADORNO ET AL., *THE AUTHORITARIAN PERSONALITY* (1950)). For potential intersections between punitiveness in criminal justice and political authoritarianism, see, for example, WHITMAN, *supra* note 81, at 4 (observing that the United States during the later twentieth century, like Nazi Germany after the Weimar Republic, “turned sharply toward retributivism and the permanent incapacitation of habitual offenders”); ROBERT O. PAXTON, *THE ANATOMY OF FASCISM* 110, 133 (2004) (noting that Italian fascists “reinstated the death penalty,” and that the process of bringing the German police under Nazi control “was facilitated by the disgruntlement many German police had felt for the Weimar Republic and its ‘coddling of criminals,’ and by the regime's efforts to enhance police prestige,” for example by expanding “the annual congratulatory ‘Police Day’ . . . from one day to seven” (citing ROBERT GELLATELY, *BACKING HITLER* 34–36, 43, 87–89, 258 (2001))).

92. STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 1, 7–8, 14–25, 182; Karen Stenner & Jonathan Haidt, *Authoritarianism Is Not a Momentary Madness, But an Eternal Dynamic Within Liberal Democracies*, in *CAN IT HAPPEN HERE? AUTHORITARIANISM IN AMERICA* 175, 180 (Cass R. Sunstein ed., 2018). Stenner also notes that “authoritarianism is fairly characterized as ‘groupiness.’” STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 18; *see also id.* at 29, 140–41. The term suggests a possible intersection between Stenner's research and the “group-grid” theory used by the law professor Dan Kahan to explain differences in motivated cognition about risk. *See* Dan M. Kahan, *Cultural Cognition as a Conception of the Cultural Theory of Risk*, in *HANDBOOK OF RISK THEORY* 727 (Sabine Roeser et al. eds., 2012).

predictively powerful, as she recently demonstrated again using data from a 2016 EuroPulse survey that included twenty-eight European Union countries as well as the United States.⁹³ But the model is also easily misunderstood, in part because the term “authoritarian” in ordinary usage may bring to mind a number of ideological commitments that Stenner’s authoritarians may or may not share.⁹⁴

Potential confusions can be reduced by pragmatically cashing out the term “authoritarian” into the concrete variables used to measure it. Stenner generally tests for an authoritarian predisposition by asking a standard series of questions about childrearing values, such as whether the respondent thinks it is more important that a child “‘has respect for his elders’ or ‘that he thinks for himself.’”⁹⁵ The more the respondent prioritizes “obedience, good manners, and being well behaved over things like independence, curiosity,

93. See Stenner & Haidt, *supra* note 92, at 188–209. In an analysis of public opinion and “populist” voting in the UK for Brexit, in the United States for Trump, and in France for Marine Le Pen, Stenner and Haidt found that “there was no socio-demographic variable whose impact on populist voting exceeded that of our basic ‘child-rearing values’ measure of authoritarianism: not education, income, religion, gender, age, or urban/rural residence.” *Id.* at 198. In addition, the results were consistent with Stenner’s authoritarian dynamic: “[T]he impact of authoritarianism was greatly magnified,” in the sense that authoritarians were far more likely to support the “populist” option, when they perceived “conditions of normative threat.” *Id.* at 201. It should be noted, however, that other, more explicitly ideological measures, such as racial resentment, appear to have predicted Trump support even more powerfully than the childrearing values questions. See *infra* note 172.

94. See Stenner & Haidt, *supra* note 92, at 182–83 (noting that their references to authoritarianism are to a psychological predisposition and not a political ideology); cf. STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 23–34, 72–73, 82–83. Stenner also distinguishes authoritarians from Burkean, status quo conservatives and from laissez-faire conservatives who in the United States might be called “libertarian.” See Karen Stenner, *Three Kinds of “Conservatism,”* 20 *PSYCH. INQUIRY* 142, 142 (2009) [hereinafter Stenner, *Three Kinds of “Conservatism”*]; see also *id.* at 157 (describing authoritarians as “simple-minded avoiders of complexity far more than closed-minded avoiders of change”); Gregory Brazeal, *Markets as Legal Constructions*, 91 *U. CIN. L. REV.* 595, 633–34 n.157 (2023) (comparing and contrasting American-style libertarians and authoritarians using Kahan’s group-grid categories). As Stenner notes, “[w]hen people use the terms *conservative* or *right-wing*” they may be referring to any “one (or problematically, more)” of these three concepts. STENNER, *Three Kinds of “Conservatism,”* *supra*, at 142. For a more detailed elaboration of the distinction between psychological predispositions and ideological attitudes, as well as the “elective affinities” that sometimes draw them together, see generally JOHN T. JOST, *LEFT AND RIGHT: THE PSYCHOLOGICAL SIGNIFICANCE OF A POLITICAL DISTINCTION* (2021).

95. STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 23–25. For the typical phrasing of the questions in full, see MARC HETHERINGTON & JONATHAN WEILER, *PRIUS OR PICKUP?: HOW THE ANSWERS TO FOUR SIMPLE QUESTIONS EXPLAIN AMERICA’S GREAT DIVIDE* 14 (2018) [hereinafter HETHERINGTON & WEILER, *PRIUS OR PICKUP?*]. The questions were originally devised, and incorporated into the American National Election Survey beginning in 1992, by Stenner’s dissertation advisor, the political psychologist Stanley Feldman. See *id.* at 13–14; STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at xvii. For evidence that the childrearing questions are in fact a valid, stable measure of an authoritarian personality adaptation, see Stenner, *Three Kinds of “Conservatism,”* *supra* note 94, at 147 (noting that “responses to the childrearing values measures are not growing steadily more ‘permissive’ over time, and they prove barely responsive to subcultural variations . . . and sociodemographic attributes”); Andrew M. Engelhardt, Stanley Feldman & Marc J. Hetherington, *Advancing the Measurement of Authoritarianism*, 45 *POL. BEHAVIOR* 537 (2023).

and thinking for oneself,” the more they are coded as predisposed toward authoritarianism.⁹⁶

Twin studies have shown that “[a]uthoritarianism is substantially heritable and mostly determined by lack of ‘openness to experience’ (one of the ‘Big Five’ personality dimensions)” and by cognitive resistance to complexity.⁹⁷ Because the authoritarian predisposition is not simply or even primarily the product of social learning, it likely cannot be changed through education or other forms of cultural influence.⁹⁸ If Stenner is right, the authoritarian dynamic is and will probably remain a feature of all societies, or at least all developed, liberal democracies.⁹⁹

Researchers before Stenner had already established that a person who displays intolerance toward one out-group will be more likely to display intolerance toward other out-groups as well.¹⁰⁰ This is already a significant

96. Stenner & Haidt, *supra* note 92, at 184; *cf.* STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 20–25.

97. Stenner & Haidt, *supra* note 92, at 183 (citations omitted) (quoting STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 144–46); *cf.* STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 15–16, 34. For a summary of debates regarding the limitations of twin studies and heritability estimates, see SAPOLSKY, *supra* note 15, at 233–49. On the correlation between right-wing authoritarian ideological attitudes and cognitive resistance to complexity, even after controlling for education and socioeconomic status, see SAPOLSKY, *supra* note 15, at 447–48 (citing Gordon Hodson & Michael A. Busseri, *Bright Minds and Dark Attitudes: Lower Cognitive Ability Predicts Greater Prejudice Through Right-Wing Ideology and Low Intergroup Contact*, 23 PSYCH. SCI. 187 (2012); Chris G. Sibley et al., *Personality and Prejudice: Extension to the HEXACO Personality Model*, 24 EUR. J. PERS. 515 (2010)). For an introductory overview of personality psychology and especially the Big Five, see generally DANIEL NETTLE, *PERSONALITY: WHAT MAKES YOU THE WAY YOU ARE* (2007). Looking beyond authoritarianism, political psychology research has more generally “converge[d] on the conclusion that openness to experience promotes political liberalism, and, to a lesser extent, that conscientiousness promotes political conservatism.” CHRISTOPHER D. JOHNSTON, HOWARD G. LAVINE & CHRISTOPHER M. FEDERICO, *OPEN VERSUS CLOSED: PERSONALITY, IDENTITY, AND THE POLITICS OF REDISTRIBUTION* 28 (2017); *see also* Alan S. Gerber et al., *The Big Five Personality Traits in the Political Arena*, 14 ANN. REV. POLI. SCI. 265, 271 (2011) (noting correlation between emotional stability trait and economic conservatism). On the relationship between personality and political ideology more generally, see JOST, *supra* note 94. The emphasis of contemporary political psychology research on differences in personality and ideology between individuals and groups contrasts with the influential legal scholar Paul Robinson’s use of psychological studies to highlight consensus in attitudes toward punishment. *See, e.g.*, Paul H. Robinson, *Democratizing Criminal Law: Feasibility, Utility, and the Challenge of Social Change*, 111 NW. U. L. REV. 1565, 1567 (2017) (arguing for “a high degree of agreement about judgments of justice across all demographics, at least for what one might call the core of wrongdoing—physical aggression, taking property without consent, and deceit in exchanges”); Donald Braman, Dan M. Kahan & David A. Hoffman, *Some Realism About Punishment Naturalism*, 77 U. CHI. L. REV. 1531, 1535, 1552–56 (2010) (critiquing Robinson’s evidence of moral consensus).

98. *See* Stenner & Haidt, *supra* note 92, at 180–84, 215–17.

99. *See* STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 1, 335.

100. “Across time and place, we find that those inclined to discriminate against members of other racial and ethnic groups also rush to protect the ‘common good’ by ‘stamping out’ offensive ideas and ‘cracking down’ on misbehavior” STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 1; *see also id.* at 2, 5–7 (noting prior research by Adorno, Altemeyer, and others).

finding, because it runs counter to the tendency among those expressing intolerance to blame their intolerance toward an out-group on that specific out-group's allegedly objectionable traits.¹⁰¹ Stenner's primary contribution has been to identify a trigger that predictably causes people with authoritarian predispositions to actively express authoritarian attitudes.¹⁰² She calls the trigger "'normative threats' or 'threats to the normative order,'" meaning threats to "some system of oneness and sameness" that "defines who 'we' are."¹⁰³

The operationalization of normative threat in Stenner's studies is less straightforward than her operationalization of the authoritarian predisposition through the questions about childrearing values. Stenner has written that "[t]he conditions most threatening to oneness and sameness . . . are questioned or questionable authorities and values: that is, disrespect for leaders or leaders unworthy of respect, and lack of conformity to or consensus in group values, norms, and beliefs."¹⁰⁴ In an experimental study using fictional news stories, Stenner's examples of normative threats included stories about growing disagreements among Americans, and presidents failing to be strong leaders.¹⁰⁵

Once an authoritarian predisposition has been triggered by a perception of normative threat, the result is an increase in intolerance and punitiveness, as measured by "overall measures of intolerance in various domains—racial, political, and moral intolerance and its corollary, punitiveness—and

101. See SAPOLSKY, *supra* note 15, at 401, 560–65.

102. See STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 5, 19. For convenience, this Article will sometimes distinguish between "authoritarians" and "nonauthoritarians," as though there is a categorical distinction between the two. In fact, there is a continuum from those with the most authoritarian predispositions (that is, those who offer the authoritarian answers on all the childrearing questions, whom I will call "authoritarians") to those with the least (that is, those who offer the nonauthoritarian answers on all the childrearing questions, whom I will call "nonauthoritarians"). As Stenner notes, most people "fall somewhere in between." *Id.* at 2; see also Stenner & Haidt, *supra* note 92, at 192 (noting that in a 2016 survey of white respondents in twenty-nine liberal democracies, "33 percent were authoritarian" "in the sense of passing the neutral midpoint of the scale," "37 percent were non-authoritarian, and 29 percent were 'balanced' or neutral"); HETHERINGTON & WEILER, *PRIUS OR PICKUP?*, *supra* note 95, at 18 (noting that "on average 16 percent of Americans" offer the authoritarian answers to all four questions, "[a]nother 26 percent" offer three authoritarian answers, a quarter of the population offers two authoritarian and two nonauthoritarian answers, 19 percent offer one nonauthoritarian answer, and 13 percent offer the nonauthoritarian answers on all four questions).

103. STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 17 (citing Karen Stenner, *Societal Threats and Authoritarianism: Racism, Intolerance and Punitiveness in America, 1960–1994* (1997) (Ph.D. dissertation, State University of New York at Stony Brook) (on file with author)). Notably, authoritarians are not particularly predisposed to perceive normative threats. If anything, their predisposition to favor "oneness and sameness" and obedience to authority may make them less prone to perceive societal conflict and leadership failures than nonauthoritarians. See Stenner & Haidt, *supra* note 92, at 215.

104. STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 17–18; see also Stenner & Haidt, *supra* note 92, at 186.

105. STENNER, *AUTHORITARIAN DYNAMIC*, *supra* note 91, at 44–47.

summary measures of general intolerance *across* the different domains.”¹⁰⁶ These forms of intolerance are “the authoritarian’s classic ‘defensive arsenal,’ concerned with differentiating, defending, and glorifying ‘us,’ in conditions that appear to threaten ‘us,’ by excluding and discriminating against ‘them’: racial and ethnic minorities, immigrants and refugees, political dissidents, radicals, and moral ‘deviants.’”¹⁰⁷

The core features of Stenner’s authoritarian dynamic can be captured in the following formula: “*intolerance of difference = authoritarian predisposition × normative threat*.”¹⁰⁸ The effects of the dynamic can be seen not only in the United States but worldwide. Based on an analysis of data from the World Values Survey, Stenner concluded that “authoritarianism is the primary determinant of general intolerance of difference worldwide.”¹⁰⁹

B. Threat and Punitiveness Among the Less Authoritarian

Over the last two decades, the political scientist Marc Hetherington and various co-authors, including Jonathan Weiler, have moved beyond Stenner’s primary focus on the authoritarian threat to liberal democracy and have instead explored, more generally, the relevance of the childrearing values questions to contemporary mainstream politics in the United States and elsewhere.¹¹⁰ In a recent book, Hetherington and Weiler draw a grand psychological contrast between authoritarians (whom they refer to as “fixed”) and nonauthoritarians (whom they refer to as “fluid”).¹¹¹ They associate all of the following with “fixed” individuals: a high degree of “conscientiousness,” as the research on Big Five personality traits defines

106. *Id.* at 7–8.

107. Stenner & Haidt, *supra* note 92, at 187.

108. *Id.* at 179; *see also* Stenner, *Three Kinds of “Conservatism,” supra* note 94, at 144.

109. STENNER, *AUTHORITARIAN DYNAMIC, supra* note 91, at 133.

110. For Hetherington’s work on authoritarianism with Weiler and others, *see* HETHERINGTON & WEILER, *PRIUS OR PICKUP?*, *supra* note 95; MARC J. HETHERINGTON & JONATHAN D. WEILER, *AUTHORITARIANISM AND POLARIZATION IN AMERICAN POLITICS* (2009) [hereinafter HETHERINGTON & WEILER, *AUTHORITARIANISM AND POLARIZATION*]; Marc J. Hetherington & Elizabeth Suhay, *Authoritarianism, Threat, and Americans’ Support for the War on Terror*, 55 AM. J. POL. SCI. 546 (2011). Hetherington has also, with Feldman, co-authored an article providing further support for the validity of the childrearing values questions. *See generally* Engelhardt, Feldman & Hetherington, *supra* note 95.

111. Hetherington and Weiler originally followed the scholarly convention of using the term “authoritarianism,” although with reservations, to refer to the trait measured by the childrearing values questions. *See* HETHERINGTON & WEILER, *AUTHORITARIANISM AND POLARIZATION, supra* note 110, at 5–8. But in a more recent book written for a popular audience, they instead refer to those who offer all four authoritarian answers in response to the childrearing values questions as having a “fixed” worldview, those who offer all four nonauthoritarian answers as “fluid,” and those in between as “mixed.” *See* HETHERINGTON & WEILER, *PRIUS OR PICKUP?*, *supra* note 95, at 17–18, 159–64.

that term;¹¹² preferring hierarchy and a “strict father” model of leadership in the political world;¹¹³ offering “conservative” rather than “liberal” answers on an issue-based ideological questionnaire called the Wilson-Patterson Attitude Inventory;¹¹⁴ spending more time looking at threatening objects in a laboratory test of eye movements;¹¹⁵ having stronger startle reflexes;¹¹⁶ “express[ing] more resentment toward African Americans”;¹¹⁷ having higher disgust sensitivity, as reflected in, among other things, stronger gag reflexes;¹¹⁸ having a larger amygdala, “the part of the brain that governs survival instincts”;¹¹⁹ and having lower trust in people in general.¹²⁰

Many of the items in the preceding list, Hetherington and Weiler argue, are “ways of tracking one simple trait: wariness, the degree of caution and

112. See HETHERINGTON & WEILER, PRIUS OR PICKUP?, *supra* note 95, at 10 (defining the “conscientiousness” personality trait as “a tendency to value dependability and dutifulness, order and organization”). While “conservatives,” as that term is currently used in the United States, score high in conscientiousness, “liberals” (again, following contemporary U.S. usage) score high in “openness.” *Id.* (citing Alan S. Gerber et al., *Personality and Political Attitudes: Relationships Across Issue Domains and Political Contexts*, 104 AM. POL. SCI. REV. 111 (2010)). On the Big Five more generally, see *supra* note 97. On Stenner’s distinction between status quo conservatives, who score high on conscientiousness, and authoritarians, who score low on openness, see Stenner, *Three Kinds of “Conservatism,”* *supra* note 94, at 145.

113. See HETHERINGTON & WEILER, PRIUS OR PICKUP?, *supra* note 95, at 16 (citing GEORGE LAKOFF, *MORAL POLITICS* (3d ed. 2016)).

114. See *id.* at 3–4. Stenner criticizes the Wilson-Patterson Attitude Inventory for “confound[ing]” status quo conservatism, authoritarianism, and laissez-faire conservatism. Stenner, *Three Kinds of “Conservatism,”* *supra* note 94, at 147.

115. See HETHERINGTON & WEILER, PRIUS OR PICKUP?, *supra* note 95, at 4 (citing JOHN R. HIBBING, KEVIN B. SMITH & JOHN R. ALFORD, *PREDISPOSED: LIBERALS, CONSERVATIVES, AND THE BIOLOGY OF POLITICAL DIFFERENCES* (2013)).

116. See *id.* at 5 (citing Douglas R. Oxley et al., *Political Attitudes Vary with Physiological Traits*, 321 SCI. 1667 (2008)).

117. See *id.* For example, the authors note that “[r]oughly 60 percent of people with a fixed worldview—likely well over 60 percent—believe the economic divide between [B]lacks and whites would disappear if only [B]lacks worked harder,” versus 21 percent of people with a fluid worldview. *Id.* at 45–46. As the authors describe, this question is one of the questions that social scientists have long used to measure racial resentment. See *id.* at 41–50; Alicia D. Simmons & Lawrence D. Bobo, *Understanding “No Special Favors”: A Quantitative and Qualitative Mapping of the Meaning of Responses to the Racial Resentment Scale*, 15 DU BOIS REV. 323 (2018) (defending the validity of the racial resentment scale, in part by finding that it “fundamentally measures racial concerns and minimally taps non-racial politics”); Katherine Cramer, *Understanding the Role of Racism in Contemporary US Public Opinion*, 23 ANN. REV. POL. SCI. 153, 154–58 (2020) (reviewing literature on racial resentment scale). See generally DONALD R. KINDER & LYNN M. SANDERS, *DIVIDED BY COLOR: RACIAL POLITICS AND DEMOCRATIC IDEALS* (Benjamin I. Page ed., 1996).

118. See HETHERINGTON & WEILER, PRIUS OR PICKUP?, *supra* note 95, at 6–7.

119. See *id.* at 7. The authors note that brain-imaging studies have been criticized for having small, unrepresentative sample sizes, but that questionnaires with larger sample sizes seem to support the general finding “that our political beliefs are rooted in our physiology.” *Id.* at 7–8; see also *id.* at 229–30 (collecting sources).

120. See *id.* at 8, 19.

vigilance people employ when engaging with the world around them.”¹²¹ The authors trace the central political divide in the United States today to “how people respond to situations that might be considered dangerous”—that is, how people respond to perceived *threats*: “People on the right are more heavily attuned to danger than those on the left. This makes conservatives erect more barriers—more defense mechanisms—between themselves and their environments.”¹²² “At its root,” they write, “someone’s worldview is a reflection of their primal alertness to the relative safety or danger of their environment.”¹²³

Although Hetherington and Weiler share Stenner’s belief in the explanatory power of the childrearing values questions, they supplement her research in at least two ways. First, Hetherington and Weiler suggest that authoritarians generally have more authoritarian (for example, intolerant and punitive) attitudes than nonauthoritarians even in the absence of elevated normative threat.¹²⁴ As Hetherington and Elizabeth Suhay write in the context

121. *See id.* at 8.

122. *See id.* at 4.

123. *See id.* at 15. Elsewhere, Hetherington speculates that “the key traits thought to make up the authoritarian personality—obedience to authority, strict adherence to conventional norms, and aggression—may cohere in large part due to chronic perceptions of threat, likely beginning early in life.” Hetherington & Suhay, *supra* note 110, at 547 (footnote omitted). The relationship between various forms of threat and various forms of authoritarianism, illiberalism, punitiveness, and intolerance appears to be a remarkable through-line across various research programs in political psychology, from the work of Stenner discussed in Part III.A, which argues that normative threat activates the authoritarian predisposition, resulting in heightened intolerance and punitiveness; to the work of Hetherington and others discussed in Part III.B, which frames the authoritarian predisposition itself as an expression of greater wariness toward threats; to the theory of ideological change developed by Ronald Inglehart, which presents the emergence of “postmaterialist” values as a response to reduced material and existential threat; to Michele Gelfand’s distinction between “tight” and “loose” cultures, where greater tightness tends to result from facing greater threats; to terror management theory, which has shown that in response to reminders of the threat of death, hostility to outgroups increases. *See* RONALD F. INGLEHART, *CULTURAL EVOLUTION: PEOPLE’S MOTIVATIONS ARE CHANGING, AND RESHAPING THE WORLD* 1 (2018); MICHELE GELFAND, *RULE MAKERS, RULE BREAKERS: HOW TIGHT AND LOOSE CULTURES AND THE SECRET SIGNALS THAT DIRECT OUR LIVES WIRE OUR WORLD* 3, 57 (2018); Jeff Greenberg & Spee Kosloff, *Terror Management Theory: Implications for Understanding Prejudice, Stereotyping, Intergroup Conflict, and Political Attitudes*, 2 SOC. & PERSONAL. PSYCH. COMPASS 1881, 1881 (2008); *cf.* JONATHAN HAIDT, *THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY POLITICS AND RELIGION* 219–23 (2012) (arguing that natural selection favored groups containing members who are “groupish,” and describing the author’s own surging nationalism after the September 11 attacks). Kahan’s research on “cultural cognition” complements political psychology research on threat by highlighting how perceptions of threat are ideologically shaped by motivated cognition based on cultural identity. *See generally* Kahan, *supra* note 92. Thus, it may be the case both that perceptions of threat influence ideological attitudes (as Hetherington suggests) and that ideological attitudes influence perceptions of threat (as Kahan suggests).

124. HETHERINGTON & WEILER, *AUTHORITARIANISM AND POLARIZATION*, *supra* note 110, at 33–62; *see also id.* at 112 n.1 (stating that “evidence that authoritarians have the same opinions and behaviors as nonauthoritarians absent some threat manipulations is derived from a student sample of fewer than 100 subjects”); *id.* at 116–17 (questioning the measure of normative threat in Stenner’s survey work). This conclusion is consistent with Stenner & Haidt, *supra* note 92, at 198 (finding

of national security threats such as terrorism, “in ‘normal times,’ authoritarians are already more inclined to hold hawkish opinions and oppose democratic principles, while the less authoritarian tend to support democratic principles and less confrontational foreign policies.”¹²⁵ More generally, they observe that “[r]esearchers have shown authoritarianism to be correlated with a long list of variables” including “social punitiveness” and “nationalism, ethnocentrism, prejudice, and anti-immigrant attitudes.”¹²⁶

Thus, while Stenner emphasizes that normative threat increases the authoritarian attitudes of those predisposed to authoritarianism, Hetherington¹²⁷ suggests that authoritarians often display greater authoritarian attitudes even in the absence of elevated normative threat. The latter point could be significant for understanding Enns’s measure of changes in punitive public opinion over time. It supports the plausibility of the idea that authoritarians were likely among that large portion of the American population who expressed punitive attitudes regarding criminal justice throughout the entire period in Enns’s study, from the 1950s to 2010, and regardless of any changes in their perceptions of threat during that time. For example, if authoritarians were always supporters of the death penalty throughout the period, then increased support for the death penalty would have had to come from individuals who are less or not at all authoritarian. Hetherington makes a similar point, observing that when support for far-right parties rises, “it is not that hard-core authoritarians . . . get even more supportive of parties like this; they already support them. Instead people who are *not* hard-core authoritarians start to support them.”¹²⁸

A second point on which Hetherington departs from Stenner provides further support for the conclusion that the fluctuations in punitiveness found by Enns likely came from changes in the views of respondents who were less authoritarian. Hetherington argues that less authoritarian individuals adopt authoritarian attitudes in response to some threats, even if they do not become

that “even under ordinary conditions—among those not feeling particularly threatened (or reassured),” authoritarianism “increas[ed] the probability of a populist vote by about .42, .30, and .24 in the US, UK, and France, respectively”). To be clear, however, and in support of Stenner’s authoritarian dynamic model, Stenner and Haidt found that those authoritarians who expressed the *lowest* levels of normative threat did *not* vote like authoritarians: They voted for populist candidates and causes at or even below the level of nonauthoritarians who expressed similarly low levels of normative threat. See Stenner & Haidt, *supra* note 92, at 204 fig. 3; see also *id.* at 199–200 (describing Stenner’s and Haidt’s measures of normative threat based on the available questions in the 2016 EuroPulse survey).

125. Hetherington & Suhay, *supra* note 110, at 547.

126. *Id.* at 548 (collecting sources); see also HETHERINGTON & WEILER, AUTHORITARIANISM AND POLARIZATION, *supra* note 110, at 91–108 (presenting evidence that authoritarians appear to express more ideologically authoritarian attitudes than nonauthoritarians).

127. Going forward, I will use “Hetherington” when referring to Marc J. Hetherington’s various co-authored works cited herein.

128. HETHERINGTON & WEILER, AUTHORITARIANISM AND POLARIZATION, *supra* note 110, at 113.

more authoritarian in response to Stenner's "normative threats." Hetherington plausibly suggests that pure nonauthoritarians may not experience "normative threat" as a "threat" at all. As Hetherington and Suhay note, "[w]hile diversity is threatening to authoritarians, it is often welcomed by nonauthoritarians."¹²⁹ In line with the correlation between low authoritarian predisposition and the trait of "openness to experience,"¹³⁰ nonauthoritarians may find diversity and pluralism attractive and deserving of celebration.

But when nonauthoritarians *do* encounter a development they perceive to be threatening, such as the physical threat posed by terrorism,¹³¹ Hetherington's research suggests that the preferences of nonauthoritarians "become indistinguishable from those who score high in authoritarianism."¹³² Hetherington shows, through a regression analysis based on polling from 2004 and 2006, that on various issues, including support for same-sex adoption, support for wiretapping without warrants, and preferring strength over diplomacy, high-authoritarians (those providing three or four authoritarian responses to the childrearing values questions) and low-authoritarians (those providing zero or one authoritarian response(s) to the childrearing questions) who express low perceptions of threat regarding

129. Hetherington & Suhay, *supra* note 110, at 549.

130. See Stenner & Haidt, *supra* note 92, at 183. Openness to experience is "one of the 'Big Five' personality dimensions." *Id.*

131. See Hetherington & Suhay, *supra* note 110, at 548 & n.6 (collecting sources arguing "that physical threats, not just normative ones, are relevant to authoritarianism," and noting that "a number of scholars who propose that authoritarianism and threat interact in the way proposed by Feldman and Stenner argue that physical threats are also relevant to authoritarianism").

132. HETHERINGTON & WEILER, *AUTHORITARIANISM AND POLARIZATION*, *supra* note 110, at 7; see also *id.* at 113 ("The negative interaction between threat and authoritarianism suggests that as perceived threat increases, the difference in the opinions and behaviors of authoritarians relative to nonauthoritarians decreases."); HETHERINGTON & WEILER, *PRIUS OR PICKUP?*, *supra* note 95, at 163 (noting that "when people *across* the worldview spectrum are afraid, they become more attracted to blunt projections of strength"); Paul R. Nail et al., *Threat Causes Liberals to Think like Conservatives*, 45 J. EXPERIMENTAL. SOC. PSYCH. 901, 901 (2009) (finding based on three laboratory studies "that political and dispositional liberals become more politically and psychologically conservative after threats"); Jaime L. Napier et al., *Superheroes for Change: Physical Safety Promotes Socially (But Not Economically) Progressive Attitudes Among Conservatives*, 48 EURO. J. SOC. PSYCH. 187, 187, 190 (2018) (finding based on laboratory studies "that experimentally increasing feelings of physical safety increases conservatives' socially [but not economically] progressive attitudes," while having no significant effect on progressives' social attitudes); Daniel Stevens & Susan Banducci, *What Are You Afraid of? Authoritarianism, Terrorism, and Threat*, 43 POL. PSYCH. 1081 (2022) (finding that less-authoritarian individuals "respond with more right-wing and illiberal preferences to heightened physical and personal threat, such as from terrorism"). For another indication that different types of threats may have different political effects, see Mark J. Brandt et al., *The Association Between Threat and Politics Depends on the Type of Threat, the Political Domain, and the Country*, 47 PERS. & SOC. PSYCH. BULL. 324, 325–26, 337–39 (2021) (finding "that the link between threat and political beliefs varied across types of political beliefs, different types of threat, and different countries," and specifically that "[t]hreats of violence were associated with cultural right-wing beliefs and economic threats were associated with left-wing economic political beliefs").

these issues have very different attitudes, with high-authoritarians expressing less support for same-sex adoption, civil liberties, and diplomacy.¹³³ But among respondents who express high perceptions of threat regarding these issues, the differences between the attitudes of high- and low-authoritarians dramatically narrow.¹³⁴

Similarly, Hetherington uses survey data from 2000 to 2004 to study the effect of an increased perception of terrorist threat on high-authoritarian and low-authoritarian attitudes toward military strength and civil liberties. The September 11 terrorist attack “provides a natural experiment because perceived threat from terrorism increased exponentially after it.”¹³⁵ Consistent with Hetherington’s model, the analysis shows that high-authoritarians were more hawkish and less supportive of civil liberties than low-authoritarians before the attacks, but that after the attacks low-authoritarians’ views moved closer to the views of high-authoritarians.¹³⁶

Finally, Hetherington shows, based on survey results from 2008, that, among respondents with a low fear of terrorism, authoritarians were much more likely to support the use of torture than nonauthoritarians: about sixty percent versus about twenty percent.¹³⁷ But among respondents with a high fear of terrorism, nonauthoritarians were actually slightly more likely than authoritarians to support torture: nearly seventy percent versus about sixty percent.¹³⁸ In other words, in line with Hetherington’s perspective, authoritarians expressed consistently high levels of support for torture, even when they did not perceive a terrorist threat. By contrast, nonauthoritarians expressed a low level of support for torture in the absence of a perceived

133. HETHERINGTON & WEILER, *AUTHORITARIANISM AND POLARIZATION*, *supra* note 110, at 119–33.

134. *Id.*

135. See Hetherington & Suhay, *supra* note 110, at 550.

136. Specifically, Hetherington and Suhay found that

[a]mong those who scored at the authoritarianism maximum, 63% favored an increase [in defense spending] in 2000, exactly the same percentage as in 2002 In contrast, those who scored low and in the middle of the distribution increased their support for defense spending in 2002 (relative to 2000), when the threat was at its highest, and decreased their support in 2004 (relative to 2002), as threat ebbed.

Id. Similarly, high-authoritarians expressed high support for media censorship (a little above eighty percent) regardless of their perception of the threat of terrorism, and high support for force over diplomacy (a little above fifty percent) regardless of threat perception, while low-authoritarians changed their views dramatically based on increased terrorist threat perception, moving from twenty-six percent to forty-nine percent support for force over diplomacy—in other words, expressing similar views to authoritarians on this issue. *Id.* at 552.

137. HETHERINGTON & WEILER, *PRIUS OR PICKUP?*, *supra* note 95, at 176–77.

138. *Id.*

terrorist threat, but once they perceived such a threat, they became dramatically more like authoritarians in their support for torture.¹³⁹

In sum, Stenner's research suggests that authoritarians express punitive and intolerant attitudes in response to perceptions of elevated threats to oneness and sameness.¹⁴⁰ Research by Hetherington and others supplements Stenner's research by providing evidence that authoritarians tend to be more punitive and intolerant even in the absence of elevated threats to oneness and sameness;¹⁴¹ that even nonauthoritarians become more punitive and intolerant on specific issues in response to specific perceived threats; but that nonauthoritarians do not perceive normative threat as a threat.

IV. POSSIBLE CAUSES OF RURAL MASS INCARCERATION

Drawing on the models for predicting punitiveness and incarceration from Parts II and III, we can now turn to the puzzle of why rural incarceration rates are higher than urban rates, despite crime rates in rural areas being lower than urban rates.

It will be useful to begin with a brief restatement of Enns's view of incarceration rates from Part II. According to Enns, crime rates and public punitiveness largely predict *changes* in the incarceration rate. A fall in crime rates or public punitiveness, or even in both, does not necessarily predict a fall in the incarceration rate itself. Even if the crime rate and public punitiveness decline over some period, they may still be high enough in absolute terms that they predict a positive change in the incarceration rate. This is what appears to have happened nationally between the mid-1990s and the mid-2000s, when the national incarceration rate grew even as both the crime rate and public punitiveness were falling.¹⁴² But a fall in crime rates or public punitiveness *does* predict, all else equal, a downward movement in the annual *change* in the incarceration rate. Thus, if the crime rate or public punitiveness, or both, fall far enough, Enns's model predicts that the annual change in the incarceration rate will turn negative, and the incarceration rate itself will begin to shrink—as finally happened at the national level beginning in 2007.¹⁴³

139. See also HETHERINGTON & WEILER, *AUTHORITARIANISM AND POLARIZATION*, *supra* note 110, at 113, 117–19 (additional arguments that nonauthoritarians express attitudes more like authoritarians on issues where they perceive threat).

140. See *supra* Part III.A.

141. Again, however, it is important to note that authoritarians who express *low* perceptions of normative threat, at least according to some measurements, do not behave like authoritarians, at least in some contexts. See *supra* note 123. Perhaps additional research into the identities and attitudes of individuals who offer authoritarian responses to the childrearing values questions and express low normative threat could lead to a resolution of the tensions between Stenner's and Hetherington's models.

142. See ENNS, *supra* note 54, at 108 fig. 5.4, 109 fig. 5.5.

143. See *id.* at 3 fig. 1.1.

Based on Enns's model and the available data, it is hard to see how rural crime rates alone could explain rural prison incarceration rates being higher than urban prison incarceration rates today. Rural prison incarceration rates were lower than urban rates in the 1990s (and presumably long before then), and then moved higher than urban rates—during a period when rural crime rates were always lower than urban crime rates. Some other variable seems to be needed to explain the reversal.¹⁴⁴

The other independent variable in Enns's model of incarceration rates is public punitiveness. There is, in fact, evidence that rural areas have long expressed more punitive attitudes than urban areas on at least one criminal justice issue: the death penalty.¹⁴⁵ Moreover, the gap between rural and urban punitiveness has been growing. As illustrated in Figure 3, the General Social Survey shows that rural support for the death penalty has been higher than urban support for decades, and that both rural and urban support have declined since peaking in the 1990s, but that rural support has only declined slightly, to 1970s levels, while urban support has declined much further.¹⁴⁶

144. To be clear, it would be consistent with Enns's model if a relatively steady rural crime rate predicted a steadily rising rural incarceration rate. But there are only two ways for that rural incarceration rate to rise above the urban incarceration rate, assuming the urban incarceration rate starts at a higher point: Either the urban crime rate would have to fall beneath the rural crime rate, which has not happened; or there would have to be a discrepancy between how rural crime rates predict changes in the rural incarceration rate, and how urban crime rates predict changes in the urban incarceration rate, such that a lower rural crime rate could predict a more positive change in the rural incarceration rate than would have been the case for the same crime rate if it had been urban. In the latter scenario, we would then want to know what causes the rural-urban discrepancy in the carceral effects of crime rates. In other words, we would still want to find some variable other than crime rates to explain the fact that rural incarceration rates are higher than urban incarceration rates today.

145. It may be, however, that further in the past, rural support for the death penalty was lower than urban support. Gallup polling in 1972 found that rural support for the death penalty was fifty-one percent, lower than the fifty-eight percent support "in communities with 1 million people and over." Neil Vidmar & Phoebe Ellsworth, *Public Opinion and the Death Penalty*, 26 STAN. L. REV. 1245, 1254 n.38 (1974).

146. My focus in this Section is explaining the higher rate of rural as opposed to urban incarceration today, not the rise in the rural incarceration rate across recent decades. But it may be worth noting that a rise in rural incarceration rates would not be inconsistent with Enns's model even if the rise coincided with a fall in rural crime rates and rural punitiveness, as seems to be the case based on Figures 1 and 3. As already noted, the same dynamic of rising incarceration rates alongside falling crime rates and public punitiveness seems to have happened nationally between the mid-1990s and the mid-2000s. In any case, because rural violent crime rates are now rising, as shown in Figures 1 and 2, future increases in rural incarceration rates may not require such a counterintuitive explanation.

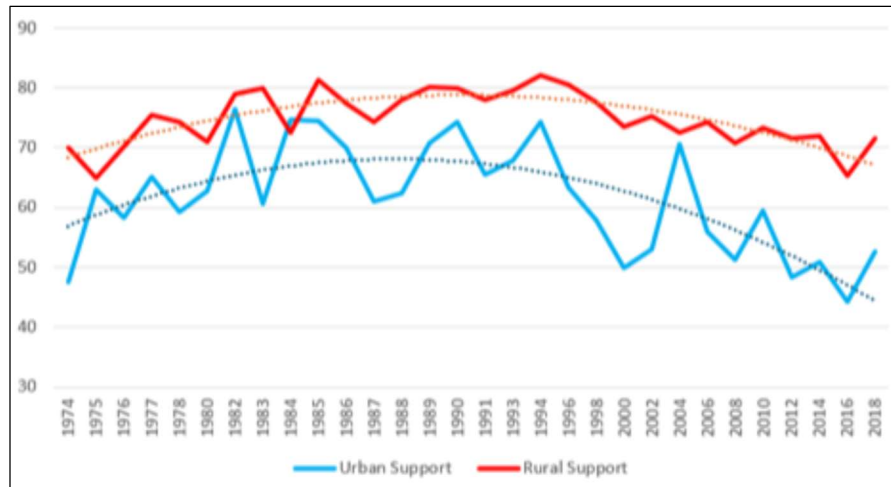


Figure 3: Urban versus rural support for the death penalty, 1974–2018.¹⁴⁷

A criminal justice survey in 2018, co-sponsored by the Vera Institute, provides additional evidence suggestive of rural criminal justice attitudes being more punitive than nonrural attitudes.¹⁴⁸ The survey asked respondents about their priorities for public spending on infrastructure construction or repair.¹⁴⁹ The options consisted of schools and educational facilities, roads and transportation, hospitals and other health care facilities, water treatment facilities and irrigation, and jails and prisons.¹⁵⁰ In every category, a lower percentage of rural respondents stated that the category was a “major priority” than respondents as a whole—with one exception: jails and prisons, which thirty-seven percent of rural respondents treated as a major priority,

147. Data drawn from the General Social Survey 1972-2022 Cumulative Datafile - Release 2, via U.C. Berkeley’s Survey Documentation and Analysis Website, U.C. BERKELEY, <https://sda.berkeley.edu/sdweb/analysis/?dataset=gss22rel2> (on file with author) (last visited July 29, 2024). Death penalty support is based on the “favor” response to the CAPPUN question (“Do you favor or oppose the death penalty for persons convicted of murder?”). “Urban” categorization is based on SRCBELT category 1 (respondent resided in a central city of the twelve largest standard metropolitan statistical areas (“SMSAs”)). “Rural” categorization is based on SRCBELT categories 5 and 6 (respondent resided in a county outside of those containing cities or suburbs of the 100 largest SMSAs). In 2021, support in both areas fell, and then it rose sharply in 2022, especially in urban areas. I omitted 2021 and 2022 in order to provide a more accurate picture of trends prior to the anomalous crime trends associated with the COVID-19 pandemic.

148. See GREENBERG QUINLAN ROSNER RSCH., *THE EVOLVING LANDSCAPE OF CRIME AND INCARCERATION* (2018); Vann R. Newkirk II, *Is Rural America Getting Tired of Tough-on-Crime Policies?*, ATLANTIC (Apr. 20, 2018), <https://www.theatlantic.com/politics/archive/2018/04/study-law-and-order-voter-attitudes/558425/> (on file with the Maryland Law Review).

149. GREENBERG QUINLAN ROSNER RSCH., *supra* note 148, at 2.

150. See *id.*

compared to only thirty percent of total respondents.¹⁵¹ Rural respondents were also more likely to state that “[b]uilding more jails and prisons to keep more people in jail reduces crime” than respondents as a whole (thirty-two percent versus twenty-eight percent).¹⁵² Finally, fewer rural respondents (sixty percent) than total respondents (sixty-six percent) stated that they would be concerned “if they learned that their community has a higher rate of incarceration than similar communities in their state.”¹⁵³ In sum, on every measure in the survey, rural respondents appeared to express more pro-carceral attitudes than respondents as a whole.¹⁵⁴

Evidence of rural jurisdictions pursuing harsher criminal justice policies in recent years, and opposing the criminal justice reforms pursued in more urban areas, suggests that rural punitiveness may even be rising.¹⁵⁵ South Dakota, for example, the eighth most rural state, passed noteworthy criminal justice reform legislation in 2013,¹⁵⁶ as well as a juvenile justice reform bill in 2015 that reduced the number of youth sentenced to the South Dakota Department of Corrections by over eighty percent.¹⁵⁷ In recent years, by contrast, the legislature has passed a “Truth in Sentencing” bill that severely

151. *See id.* Questions about investments to improve quality of life produced a similar outcome: In each of the ten categories, rural respondents rated investments as less “effective” in improving quality of life than respondents as a whole—except with regard to “[b]uilding more prisons and jails,” which forty-six percent of rural respondents rated as effective, versus thirty-five percent of respondents as a whole. *Id.* at 3.

152. *See id.* at 4.

153. *Id.*

154. Presumably a contrast between rural and nonrural respondents, or rural and urban respondents, would have shown even larger disparities than the comparison between rural respondents and respondents as a whole, a category that obviously includes rural respondents. On the other hand, it may be possible to interpret some of the rural answers not as expressions of punitiveness but of support for rural jail construction on economic grounds.

155. *See supra* note 33; Sarah Staudt, *Zombie Politics: The Return of Failed Criminal Legal System Policies in 2023—and How to Fight Back*, PRISON POL’Y INITIATIVE (Jan. 24, 2024), <https://www.prisonpolicy.org/blog/2024/01/24/zombie-politics/> [https://perma.cc/KN3J-UXML] (noting that in 2023, states including Alabama, Iowa, and Wisconsin passed policies increasing penalties for drug-related crimes; that in 2022 and 2023, states including Louisiana, South Dakota, and Arkansas passed “Truth in Sentencing” laws; and that states including Arkansas, South Dakota, and Montana “continue to invest hundreds of millions of dollars into building new prisons instead of pursuing decarceration strategies”).

156. *See* BRIAN ELDERBROOM ET AL., URBAN INST., *ASSESSING THE IMPACT OF SOUTH DAKOTA’S SENTENCING REFORMS: JUSTICE REINVESTMENT INITIATIVE* (2016), <https://www.urban.org/sites/default/files/publication/80106/2000762-Assessing-the-Impact-of-South-Dakota’s-Sentencing-Reforms-Justice-Reinvestment-Initiative.pdf> [https://perma.cc/N2HE-MU8L].

157. *See* Danielle Ferguson, *Juvenile Justice Reforms Working, but Not as Well for Minority Offenders in South Dakota*, S.D. NEWS WATCH (Aug. 4, 2021), <https://www.sdnewswatch.org/juvenile-justice-reforms-working-but-not-as-well-for-minority-youths-in-south-dakota/> [https://perma.cc/V9ZB-Y69X] (showing sudden decline from 1013 youth sentenced in 2014 to 243 in 2015, followed by gradual decline to 86 in 2019).

reduces the availability of parole for violent offenses,¹⁵⁸ a “three-strike[s]” law for juvenile offenders,¹⁵⁹ and other pro-carceral legislation.¹⁶⁰ The current Attorney General has called for changes to the most significant reform in the 2013 legislation, a provision imposing presumptive probation for the lowest-level felonies, including drug possession and ingestion.¹⁶¹

Looking beyond direct measures of rural punitiveness to the potential drivers of punitiveness from Part III, there is additional evidence that rural residents may be more punitive than urban residents. First, authoritarians appear to have made up a higher proportion of the rural population than of the nonrural population in the United States since at least the early 2000s. Hetherington’s and Weiler’s analysis of the 2004 American National Election Studies (“ANES”) survey straightforwardly shows that rural respondents had a higher mean authoritarianism score (0.603) than respondents from small towns (0.584), who had a higher score than respondents from suburbs (0.524), who in turn had a higher score than respondents from large cities (0.502).¹⁶² To be clear, the magnitude of the rural versus urban difference in authoritarianism is smaller than the difference in authoritarianism between, say, Jewish (0.383) and secular

158. See Annie Todd, *Lawmakers Vote to Fundamentally Change how South Dakota Handles Parole for Violent Offenders*, ARGUS LEADER (Feb. 28, 2023, at 18:17 CT), <https://www.argusleader.com/story/news/politics/2023/02/28/sd-votes-to-fundamentally-change-sentencing-guidelines-for-violent-crime/69950381007/> (on file with the Maryland Law Review); S.D. CODIFIED LAWS § 24-15-4.1 (2025); S.D. CODIFIED LAWS § 24-15-4.2 (2025).

159. See Annie Todd, *House Passes Three-Strike for Juvenile Offenders in South Dakota*, ARGUS LEADER (Feb. 28, 2023, at 18:03 CT), <https://www.argusleader.com/story/news/politics/2023/02/28/house-passes-three-strike-rule-for-juvenile-offenders-in-south-dakota/69956087007/> (on file with the Maryland Law Review); S.D. CODIFIED LAWS § 26-8C-7 (2016). Earlier, a state senate committee passed, 8-1, a repeal of the 2015 juvenile justice legislation. See Nicole Ki, *South Dakota Weighs Whether to Lock Up Kids with ‘Bad Behavior’*, ARGUS LEADER (Feb. 21, 2022, at 08:42 CT), <https://www.argusleader.com/story/news/2022/02/20/south-dakota-senate-hear-new-law-repealing-juvenile-justice-system/6812460001/> (on file with the Maryland Law Review).

160. See, e.g., John Hult, *Senate Votes to Return Clemency Bill for Lifers to Earlier, More Stringent Form*, S.D. SEARCHLIGHT (Jan. 25, 2024, at 16:29 CT), <https://southdakotasearchlight.com/2024/01/25/senate-votes-to-return-clemency-bill-for-lifers-to-earlier-more-stringent-form/> [<https://perma.cc/T23A-Y5X9>] (describing bill to force prison lifers to wait longer between clemency requests); S.D. CODIFIED LAWS § 24-15A-23 (2013) (requiring four-year wait between certain clemency requests); John Hult, *Criminal Justice Bills Passed in 2023 Described as ‘Just a Start’ for Lawmakers*, S.D. SEARCHLIGHT (Mar. 13, 2023, at 16:21 CT), <https://southdakotasearchlight.com/2023/03/13/criminal-justice-bills-passed-in-2023-described-as-just-a-start-for-lawmakers/> [<https://perma.cc/TN8Y-TS24>] (noting passage of bill setting “mandatory minimum sentences for anyone convicted of four or more driving under the influence violations,” and allocating \$400 million for construction of new prisons).

161. See Marissa Brunkhorst, *Jackley Calls for Changes to Presumptive Probation*, KELOLAND MEDIA GRP. (July 2, 2024, at 11:49 CT), <https://www.keloland.com/news/local-news/jackley-calls-for-changes-to-presumptive-probation/> [<https://perma.cc/653X-ACVL>]; ELDERBROOM ET AL., *supra* note 155, at 1–2; S.D. CODIFIED LAWS § 22-6-11 (2017).

162. HETHERINGTON & WEILER, *AUTHORITARIANISM AND POLARIZATION*, *supra* note 110, at 48, 59 tbl. 3.2.

(0.481) respondents on the one hand, and Evangelical Protestants (0.709) on the other; or between respondents with a graduate degree (0.373) or college degree (0.505) and those with no high school degree (0.754).¹⁶³ It would be easy to overstate the extent to which rural voters in general are more predisposed toward authoritarianism than urban voters in general. It is especially important not to do so because of the risk of bias toward rural Americans who are, after all, a minority in the contemporary United States—and an often socially and economically struggling minority, despite the disproportionate political power of rural areas.¹⁶⁴ There is a risk that noting the relatively greater levels of authoritarianism in rural areas might contribute to exaggerated perceptions of rural-urban difference, in line with the general contemporary tendency for Americans to exaggerate the differences of their political opponents as part of the phenomenon of “negative partisanship.”¹⁶⁵

163. *Id.*

164. On the social and economic struggles of the residents of rural areas, who mostly reside not on farms but in small towns, see generally METZL, *supra* note 12; WUTHNOW, *supra* note 12; SCHALLER & WALDMAN, *supra* note 12, at 23–60, 196–226; CHALLENGES FOR RURAL AMERICA IN THE TWENTY-FIRST CENTURY (David L. Brown & Louis E. Swanson eds., 2003); RICHARD E. WOOD, SURVIVAL OF RURAL AMERICA: SMALL VICTORIES AND BITTER HARVESTS (2008); OSHA GRAY DAVIDSON, BROKEN HEARTLAND: THE RISE OF AMERICA’S RURAL GHETTO (1996); JOEL DYER, HARVEST OF RAGE: WHY OKLAHOMA CITY IS ONLY THE BEGINNING (1998); NICK REDING, METHLAND: THE DEATH AND LIFE OF AN AMERICAN SMALL TOWN (2009). According to the Census Bureau’s Official Poverty Measure, “poverty is highest in rural counties and micropolitan areas,” although according to the Supplemental Poverty Measure, which takes into account local cost of living and non-cash governmental benefits, “poverty is highest in the largest metropolitan areas.” Jed Kolko, *Are Place-Based Policies Targeting the Wrong Distressed Areas?*, SLOW BORING (Dec. 17, 2024), <https://www.slowboring.com/p/are-place-based-policies-targeting> [<https://perma.cc/2DQQ-NWJH>]. For the view of rural Americans as a socially marginalized group, see Lisa R. Pruitt & Kaceyee Klein, *Rural Bashing*, 57 U. RICH. L. REV. 965 (2023). Although farmers, as distinct from the rural population in general, have sometimes also been described as a marginalized minority, decades of farm consolidation and ongoing agricultural subsidies have resulted in most owners of working farms today earning a higher income and possessing greater wealth than the median American household. See generally Nathan Rosenberg & Bryce Wilson Stucki, *Don’t Trust the Antitrust Narrative on Farms*, LPE PROJECT (May 10, 2021), <https://lpeproject.org/blog/dont-trust-the-antitrust-narrative-on-farms/> [<https://perma.cc/8E8L-9873>] (noting that “wealthier farmers won their war against more modest farmers long ago,” that “[t]he median net income for farm households is 21 percent higher” than the median income in general, that “97 percent of farm households have higher net wealth than the median American household,” and calling for increased attention to the struggles of “hyper-exploited . . . farmworkers, not farmers”). Cf. GILBERT C. FITE, AMERICAN FARMERS: THE NEW MINORITY (1981). For a concise criticism of other popular misperceptions about rural America, see Daniel Immerwahr, *Beyond the Myth of Rural America*, NEW YORKER (Oct. 16, 2023), <https://www.newyorker.com/magazine/2023/10/23/beyond-the-myth-of-rural-america> (on file with the Maryland Law Review). On rural America possessing political power out of proportion to its population due to the malapportionment of the Senate, winner-take-all legislative districts, the electoral college, and the role of the president and Senate in determining the composition of the Supreme Court, see RODDEN, *supra* note 12; JACOB S. HACKER & PAUL PIERSON, LET THEM EAT TWEETS: HOW THE RIGHT RULES IN AN AGE OF EXTREME INEQUALITY 188–89, 205–06 (2020); SCHALLER & WALDMAN, *supra* note 12, at 61–92.

165. See generally KLEIN, *supra* note 12; LILLIANA MASON, UNCIVIL AGREEMENT: HOW POLITICS BECAME OUR IDENTITY (2018). On Democrats’ inaccurate perceptions of Republicans as

But after making all appropriate qualifications, it remains the case that Hetherington's and Weiler's data show rural and small-town Americans displaying a significantly more authoritarian predisposition in the 2004 ANES survey than urban Americans.¹⁶⁶ The only exception to the correlation between lower population density and higher authoritarianism comes from the "Inner City," where respondents had a mean authoritarianism score (0.549) between that of suburban and small town respondents.¹⁶⁷ It might seem surprising that residents of urban cores would have a higher authoritarianism score than suburbanites, given the correlation between higher population density and Democratic voting, and the correlation in recent elections between Democratic voting and lower authoritarianism.¹⁶⁸ The explanation is likely related to the continuing (although declining) relative concentration of African Americans in the former industrial cores of large cities,¹⁶⁹ and the fact that, as Hetherington and Weiler note, as measured by the childrearing values questions, "African Americans are . . . the most authoritarian racial group in the United States by far," with a mean score of 0.74 in 2004, versus the mean score of 0.55 for non-Black Americans.¹⁷⁰

more extreme than they are, and vice versa, see generally DANIEL YUDKIN, STEPHEN HAWKINS & TIM DIXON, *MORE IN COMMON, THE PERCEPTION GAP: HOW FALSE IMPRESSIONS ARE PULLING AMERICANS APART* (2019).

166. In addition, the authors' summary of the ANES data does not subdivide rural and urban respondents by race. See HETHERINGTON & WEILER, *AUTHORITARIANISM AND POLARIZATION*, *supra* note 110, at 59 tbl. 3.2. The difference between the authoritarianism of white rural and white urban voters may be even larger than the difference between rural and urban voters in general. See *infra* text accompanying note 169.

167. See HETHERINGTON & WEILER, *AUTHORITARIANISM AND POLARIZATION*, *supra* note 110, at 59 tbl. 3.2.

168. See *supra* note 12; *infra* note 172.

169. On the concentration of Black Americans in urban centers in the twentieth century, see generally DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987). On the ongoing decline of segregation in metro areas and the movement of Black Americans to the suburbs, see David M. Cutler, Edward L. Glaeser & Jacob L. Vigdor, *The Rise and Decline of the American Ghetto*, 107 J. POL. ECON. 455, 455 (1999) (finding a decline in racial segregation in American cities between 1970 and 1990 "as [B]lacks have moved into previously all-white areas of cities and suburbs"); Daniel T. Lichter, Brian C. Thiede & Matthew M. Brooks, *Racial Diversity and Segregation: Comparing Principal Cities, Inner-Ring Suburbs, Outlying Suburbs, and the Suburban Fringe*, 9 RUSSELL SAGE FOUND. J. SOC. SCI. 26, 26 (2023) (noting that 2020 Census data show that "[f]or the first time, a majority of metro Blacks reside in suburbs").

170. HETHERINGTON & WEILER, *AUTHORITARIANISM AND POLARIZATION*, *supra* note 110, at 141; see also HETHERINGTON & WEILER, *PRIUS OR PICKUP?*, *supra* note 95, at 51 (stating that the world-views of African Americans are "more fixed than those of white Americans"). Although some scholars, including Hetherington, have expressed skepticism regarding the validity of the childrearing values questions as a measure of African American authoritarian predisposition, higher African American authoritarian predisposition would in fact be consistent with political psychology's general framing of authoritarian orientations as, in various ways, a response to threat. See, e.g., Efrén O. Pérez & Marc J. Hetherington, *Authoritarianism in Black and White: Testing the Cross-Racial Validity of the Child Rearing Scale*, 22 POL. ANALYSIS 398, 398 (2014) (arguing that

Because of the Black-non-Black difference in authoritarianism scores, the continuing relative concentration of Black Americans in metropolitan areas, and the overwhelmingly white composition of most rural areas,¹⁷¹ comparisons of rural and nonrural authoritarianism that do not distinguish authoritarians by race often obscure the predictive power of authoritarianism.¹⁷²

the “racial gap in authoritarianism is largely a measurement artifact”); *supra* note 122 and accompanying text (authoritarian orientations and threat). On threats to African Americans in recent decades, see, for example, ALEXANDER, *supra* note 1; ELLIOTT CURRIE, A PECULIAR INDIFFERENCE: THE NEGLECTED TOLL OF VIOLENCE ON BLACK AMERICA (2020). If it is assumed that specific political attitudes (such as criminal justice policy preferences) are the product not only of psychological predispositions and activating threats, but also of other significant factors such as socially learned ideological assumptions and perceived self-interest, then even high-authoritarian individuals who are generally predisposed toward punitiveness might favor less punitive criminal justice policies under certain circumstances, especially if they perceive punitive policies as threats to their individual or group self-interest. On the “large Black-[w]hite differences in opinion” regarding the criminal justice system, “with Blacks consistently less punitive than [w]hites,” see Bobo & Johnson, *supra* note 83, at 151.

171. See *supra* note 49.

172. For example, after a flurry of journalistic coverage in 2016 suggested a strong correlation between authoritarianism (based on the childrearing values questions) and Trump support, a second wave of research seemed to call the predictive power of authoritarianism into question. See JOHN M. SIDES, MICHAEL TESLER & LYNN VAVRECK, IDENTITY CRISIS: THE 2016 PRESIDENTIAL CAMPAIGN AND THE BATTLE FOR THE MEANING OF AMERICA 92, 283 n.48 (2019) (summarizing the disagreement and collecting sources). But the critics who rejected the predictive power of authoritarianism appear not to have distinguished between Black and non-Black authoritarians. See, e.g., Adam E. Enders & Steven Smallpage, *Racial Prejudice, Not Populism or Authoritarianism, Predicts Support for Trump over Clinton*, WASH. POST (May 26, 2016, at 09:00 ET), <https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/26/these-9-simple-charts-show-how-donald-trumps-supporters-differ-from-hillary-clintons/> (on file with Maryland Law Review). Without denying that racial resentment may have been the single most powerful predictor of support for Trump over Clinton in 2016, it remains the case that high authoritarianism among whites has been increasingly correlated with support for Republicans since the 1990s, and that white authoritarians voted overwhelmingly for Trump in both 2016 and 2020. See Thomas B. Edsall, Opinion, *The Seeds Had Been Planted. Trump Didn't Do It Himself.*, N.Y. TIMES (May 15, 2024), <https://www.nytimes.com/2024/05/15/opinion/trump-authoritarianism-democracy.html> (on file with Maryland Law Review) (quoting Hetherington's observation that “[i]n 1992, those whites scoring at the top of the authoritarianism scale split their two-party vote almost evenly between Bush and Clinton (51 to 49),” while “[i]n both Trump elections it was 80 to 20 among those voters”); Stenner & Haidt, *supra* note 92, at 205 (finding that white authoritarians under low-threat conditions had a roughly thirty-one percent likelihood of voting for Trump, and under high threat conditions an eighty-seven percent likelihood); cf. SIDES, TESLER & VAVRECK, *supra*, at 171 fig. 8.6 (showing that respondents with the highest racial resentment scores had an over ninety percent likelihood of voting for Trump); HETHERINGTON & WEILER, PRIUS OR PICKUP?, *supra* note 95, at 23 (showing rising correlation between authoritarianism and party identification between 1992 and 2016, even with Black authoritarians included, such that by 2016, seventy-one percent of nonauthoritarians were Democrats and only twenty-one percent were Republicans).

On the importance of distinguishing the political behavior of whites and people of color when comparing rural and nonrural political behavior, see also Trevor E. Brown, Gisela Pedroza Jauregui & Suzanne Mettler, *A Rural-Urban Political Divide Among Whom? Race, Ethnicity, and Political Behavior Across Place*, 13 POLS., GRPS. & IDENTITIES 229, 229 (2024) (concluding that “the growing rural-urban divide is driven primarily by white Americans, while rural people of color differ much less, if at all, from their urban counterparts in voting behavior”).

If one accepts the widely discussed premise that Donald Trump presented himself as an exceptionally “authoritarian” candidate and president, then the high level of rural support for Trump in 2016 and 2020 itself suggests greater “authoritarianism” among rural residents.¹⁷³ Here, however, we must be careful to distinguish not only between the psychological trait of authoritarianism (as measured by the childrearing questions) and authoritarian ideological attitudes in general, but also between two sets of not-necessarily-related ideological attitudes that might be described as “authoritarian”: on the one hand, punitive and intolerant attitudes, which are a central concern of this Article; and, on the other hand, hostile attitudes toward liberal democratic norms, which tend to be the main focus of critics who have described Trump as “authoritarian.”¹⁷⁴ It is not obvious that having an “authoritarian” predisposition would make someone more likely to vote for an “authoritarian” candidate in the sense of a punitive and intolerant candidate, much less in the sense of a candidate opposed to democratic norms.¹⁷⁵ Nevertheless, in the 2016 and 2020 presidential elections, it seems fair to say that rural areas, which display higher mean

173. On rural support for Trump, see RUTH IGIELNIK, SCOTT KEETER & HANNAH HARTIG, PEW RSCH. CTR., *BEHIND BIDEN’S 2020 VICTORY* 13 (2021), https://www.pewresearch.org/wp-content/uploads/sites/20/2021/06/PP_2021.06.30_validated-voters_REPORT.pdf [<https://perma.cc/DB2X-6RQ8>] (showing that in 2016, Clinton won 70% and Trump 24% of urban voters, versus 34% and 59% of rural voters; and that in 2020, Biden won 66% and Trump 33% of urban voters, versus 33% and 65% of rural voters); SCHALLER & WALDMAN, *supra* note 12, at 137–38, 230 (noting that “[a]lmost all” of the “one hundred counties where Trump’s vote margins were widest in 2016” were rural, and that Trump’s vote share among rural whites went from sixty-two percent in 2016 to seventy-one percent in 2020, with a remarkably seventy-four percent of rural whites supporting the GOP in the 2022 midterms). Rural support for Trump continued to increase in 2024. See Zach Levitt et al., *See the Voting Groups that Swung to the Right in the 2024 Vote*, N.Y. TIMES (Dec. 17, 2024), <https://www.nytimes.com/interactive/2024/11/06/us/elections/trump-america-red-shift-victory.html> (on file with Maryland Law Review).

174. For prominent criticisms of Trump as authoritarian in the latter, illiberal sense, see RUTH BEN-GHIAT, *STRONGMEN: MUSSOLINI TO THE PRESENT* (2020); HACKER & PIERSON, *supra* note 164; PIPPA NORRIS & RONALD INGLEHART, *CULTURAL BACKLASH: TRUMP, BREXIT, AND AUTHORITARIAN POPULISM* (2019); Michael J. Klarman, *The Degradation of American Democracy—And the Court*, 134 HARV. L. REV. 1 (2020); STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* (2018). In a broader historical perspective, Trump’s challenges to liberal democratic norms might be seen as a continuation of earlier trends in the Republican party. See, e.g., Geoffrey Skelley, *How the Republican Push to Restrict Voting Could Affect Our Elections*, FIVETHIRTYEIGHT (May 17, 2021), <https://fivethirtyeight.com/features/how-the-republican-push-to-restrict-voting-could-affect-our-elections/> [<https://perma.cc/34Z3-VAEB>] (citing V-Dem Institute data suggesting that Republican Party has become increasingly less committed to democracy by various measures since 2000); THOMAS E. MANN & NORMAN J. ORNSTEIN, *IT’S EVEN WORSE THAN IT LOOKS: HOW THE AMERICAN CONSTITUTIONAL SYSTEM COLLIDED WITH THE NEW POLITICS OF EXTREMISM* (2012); THEDA SKOCPOL & VANESSA WILLIAMSON, *THE TEA PARTY AND THE REMAKING OF REPUBLICAN CONSERVATISM* (2012).

175. See Mollie J. Cohen & Amy Erica Smith, *Do Authoritarians Vote for Authoritarians? Evidence from Latin America*, RSCH. & POLS., Oct.–Dec. 2016, at 1, 1 (questioning whether “‘authoritarian’ citizens (defined by parenting attitudes) vote for ‘authoritarian’ candidates (defined by disrespect for democratic institutions)”).

levels of authoritarian predisposition than urban areas, voted in greater numbers for the candidate who was more ideologically authoritarian in both the punitive and intolerant sense and the anti-democratic sense.¹⁷⁶ Assuming these correlations are not entirely coincidental, the exceptionally high rural vote for Trump in 2016, which rose in 2020, provides further evidence that at least some forms of punitiveness are likely higher in rural than in urban areas.

The suggestion that rural Americans display higher levels of punitiveness than nonrural Americans—on criminal justice issues, and perhaps more generally—is consistent with a growing literature on geography and political polarization. Bill Bishop and Robert G. Cushing argued in *The Big Sort* that, since the mid-1970s, Americans have become increasingly geographically “sorted,” in the sense that certain politically significant attributes that used to be more evenly distributed between rural and urban areas have become more concentrated in either rural or urban areas.¹⁷⁷ In a widely discussed 2018 research report for the Niskanen Center, Will Wilkinson presented similar data, arguing that Americans are increasingly politically sorted across a “density divide,” with more dense areas looking increasingly unlike less dense areas in terms of voting behavior, ethnicity, levels of education, and even personality traits.¹⁷⁸ If the density

176. See *supra* notes 172–175; Newkirk II, *supra* note 148 (noting that, in 2016, “Trump garnered great success in rural areas running with an extraordinarily punitive agenda, with a promise to restore private prisons and put more people in jail”); Kurt Andersen, *RFK Jr. Was My Drug Dealer*, ATLANTIC (Aug. 23, 2024), <https://www.theatlantic.com/politics/archive/2024/08/rfk-jr-endorse-trump-execute-drug-dealers/679597/> (on file with the Maryland Law Review) (noting that Trump has called for all convicted drug dealers to be executed).

177. See generally BISHOP, *supra* note 12. More recent research has “confirm[ed] that Democrats are, in fact, more likely than Republicans to prefer living in more Democratic, dense, and racially diverse places,” but has shown that “on average [partisans] are not migrating to more politically distinct communities,” likely because practical concerns outweigh the preference for living in “more politically compatible communities.” Jonathan Mummolo & Clayton Nall, *Why Partisans Do Not Sort: The Constraints on Political Segregation*, 79 J. POL. 45, 45 (2016); see also Gregory J. Martin & Steven W. Webster, *Does Residential Sorting Explain Geographic Polarization?*, 8 POL. SCI. RSCH. & METHODS 215, 215 (2020) (finding that “revealed preferences of voters who move from one residence to another correlate with partisan affiliation, though voters appear to be sorting on non-political neighborhood attributes that covary with partisan preferences rather than explicitly seeking politically congruent neighbors”).

In contrast to studies that focus on the decisions of adults to move, another residential sorting mechanism that could plausibly contribute to urban-rural polarization is “the rural brain drain”: the tendency of ambitious, high-achieving, college-bound young people in rural areas to leave (and to be encouraged by adults in the community to leave), while young people who do not complete high school are more likely to stay. For more on “rural brain drain,” see PATRICK J. CARR & MARIA J. KEFALAS, *HOLLOWING OUT THE MIDDLE: THE RURAL BRAIN DRAIN AND WHAT IT MEANS FOR AMERICA* (2009).

178. See generally WILKINSON, *supra* note 15. Wilkinson also provides further evidence of a correlation between rurality and the “Closed” personality trait, which is itself correlated with authoritarianism. See *id.* at 12, 39–42 (citing, among other sources, Peter J. Rentfrow, Samuel D. Gosling & Jeff Potter, *A Theory of the Emergence, Persistence, and Expression of Geographic Variation in Psychological Characteristics*, 3 PERSPS. PSYCH. SCI. 339 (2008); Peter J. Rentfrow,

divide generally correlates with criminal justice punitiveness, such that less dense areas have more punitive attitudes, as seems to be the case,¹⁷⁹ then the growth of the density divide in recent decades may have played some part in the urban-to-rural shift in incarceration since 2000.

A second factor that might be contributing to rising rural punitiveness in recent years, but that was not discussed in Parts II and III, is the possibility that many rural authoritarians have been experiencing especially high levels of normative threat in recent years. As we saw in the discussion of Stenner's research in Part III.A, there is no universally accepted, widely administered set of questions to measure "normative threat," unlike the childrearing values questions that are used to measure authoritarian predisposition. As a result, it is only possible to speculate about the degree of normative threat experienced by rural voters. But it is not implausible that the perception of a threat to "oneness and sameness" among white rural voters may have been fueled by the growing influence of right-wing media including, since the 2000s, Fox News.¹⁸⁰ A growing literature on "rural resentment" shows that many people in rural America, whether authoritarian or not, feel that they are "looked down on" by nonrural Americans, disrespected and left behind.¹⁸¹ Such impressions could presumably be experienced as threats to "oneness and sameness," and thus could provoke heightened punitiveness, including on criminal justice issues, among authoritarians.

Statewide Differences in Personality: Toward a Psychological Geography of the United States, 65 AM. PSYCH. 548 (2010)). Greater intolerance toward out-groups appears to be associated with lower population densities in other countries as well. See, e.g., HETHERINGTON & WEILER, PRIUS OR PICKUP?, *supra* note 95, at 203–05 (noting that solid majorities of urban residents opposed Brexit, while "'Leave' won big outside of major cities"; that "'opposition to immigration' was the single best predictor of support for Leave"; and that Brexit had greater support among authoritarian voters); RODDEN, *supra* note 12, at 254 (noting "a nationalist backlash of the rural periphery against globalization, immigration, cosmopolitan values, and free trade" across many developing countries including Germany, Sweden, and the United States).

179. See *supra* Figure 3.

180. On the structure of the right-wing media ecosystem and the influence of Fox News, see generally YOCHAI BENKLER, ROBERT FARIS & HAL ROBERTS, NETWORK PROPAGANDA: MANIPULATION, DISINFORMATION, AND RADICALIZATION IN AMERICAN POLITICS (2018). Viewed through the lens of Stenner's authoritarian dynamic, the stories highlighted in the right-wing media ecosystem often seem as if they were designed to trigger a sense of normative threat among native-born white American authoritarians. Cf. *id.* at 4 (noting that many stories before the 2016 election "seemed designed to elicit fear and disgust," and citing as examples Breitbart stories entitled: "Six Diseases Return to US as Migration Advocates Celebrate World Refugee Day," and "More than 347,000 Convicted Criminal Immigrants At Large in U.S."); *id.* at 128 (listing Fox News headlines associating immigrants with gangs, violence, dishonesty, illegality, and failures of American leadership); *id.* at 132 (concluding based on empirical analysis that "the interaction between Trump[,] the candidate[,] and Breitbart[,] the media outlet . . . framed immigration as primarily about fear of Muslims, and to some extent Africans and Mexicans, who would bring crime, disease, and terrorism").

181. See generally CRAMER, POLITICS OF RESENTMENT, *supra* note 12; JACOBS & SHEA, *supra* note 42; WUTHNOW, *supra* note 12.

In sum, there is a variety of evidence suggesting that rural Americans likely have more punitive criminal justice attitudes, on average, than nonrural Americans. Some of the rural-urban gap in punitiveness may result from the greater proportion of authoritarians living in rural areas. Regardless, the fact that rural Americans appear to be more punitive regarding criminal justice issues than nonrural Americans can help to resolve the puzzle of why rural incarceration rates have been higher than urban incarceration rates in recent years, even though rural crime rates were lower. Applying Enns's model, the explanation would be straightforward: Incarceration rates are ultimately a function of crime rates and public punitiveness. Rural areas may have higher incarceration rates than urban areas because the effect of higher rural punitiveness is large enough that it has outweighed the effect of lower rural crime rates.

V. POLITICAL OBSTACLES TO REDUCING RURAL INCARCERATION RATES

In a recent book review, the criminologist and law professor John Pfaff lamented that legal scholarship on criminal justice often focuses only “on what we should do without examining the politics of how we got to where we are and what that means for what we should propose.”¹⁸² Reformers offer proposals as though “policy failure comes from ignorance,” when in fact “almost every ‘failure’ in the criminal legal system is *not* a failure for everyone. Almost always, *someone* is benefitting from the ‘failure,’ and whoever is benefitting will almost always work to block reforms that threaten what they have.”¹⁸³

It is tempting, in light of the growing incarceration rates in rural America, to conclude by proposing policies that could potentially reduce incarceration rates. Although many proposals for criminal justice reform apply to both urban and rural areas, some rural criminal justice challenges require creative thinking that looks beyond urban examples.¹⁸⁴ But Pfaff's

182. John Pfaff, Book Review, *Mass Incarceration Nation: How the United States Became Addicted to Prisons and How It Can Recover*, CRIM. L. & CRIM. JUST. BOOK REV. (Sep. 2023) [hereinafter Pfaff, Book Review], <https://clcjbooks.rutgers.edu/books/mass-incarceration-nation-how-the-united-states-became-addicted-to-prisons-and-jails-and-how-it-can-recover> [https://perma.cc/3QQ4-6M77] (reviewing JEFFREY BELLIN, *MASS INCARCERATION NATION: HOW THE UNITED STATES BECAME ADDICTED TO PRISONS AND JAILS AND HOW IT CAN RECOVER* (2022)).

183. *Id.*

184. Metzger proposes three reform ideas that target distinctive problems of rural criminal justice systems—in a nutshell: better data collection about rural criminal justice, more engagement by national policymakers and advocates with rural criminal justice actors, and better recruitment, training, and retention of rural criminal law practitioners. *See* Metzger, *supra* note 11, at 252–60. Metzger notes that “South Dakota’s Rural Recruitment Program (RRP) is a particularly promising initiative.” *Id.* at 260. *See generally* HANNAH HAKSGAARD, *THE RURAL LAWYER: HOW TO INCENTIVIZE RURAL LAW PRACTICE AND HELP SMALL COMMUNITIES THRIVE* (2025) (analyzing South Dakota’s RRP). For an example of an article that offered detailed, and almost entirely

warning also suggests the limits of this approach.¹⁸⁵ There is little value in proposing detailed policies that are never implemented. In fact, there are already countless criminal justice and related social reforms that could plausibly benefit rural areas.¹⁸⁶ But they are not being adopted.

Enns's model suggests that rural criminal justice reformers might focus on three possible paths for reducing rural incarceration rates, individually or in combination: First, reformers could attempt to reduce rural crime rates; second, reformers could attempt to reduce rural punitiveness on criminal justice issues; third, reformers could attempt to alter some other condition in order to break the apparent causal connections between crime rates, public punitiveness, and incarceration rates. In each case, political obstacles stand in the way of pursuing policies to reduce rural incarceration. Instead of proposing criminal justice reform policies, I will conclude by briefly detailing these obstacles.

A. Obstacles to Reducing Rural Crime Rates

The simplest way to reduce crime rates, by definition, would be to decriminalize some forms of criminal conduct, such as drug possession. Although opinions regarding what should or should not be subject to criminal prosecution are, in some cases, powerfully predicted by partisan identification,¹⁸⁷ Gallup polling from 2018 to 2019 found that “[t]here are essentially no meaningful differences in support for legal marijuana by . . . urban/suburban/rural residence.”¹⁸⁸ Because at least some rural states continue to rely heavily on incarceration to address substance abuse disorders, the decriminalization or legalization of drugs could significantly

unheeded, criminal justice reform proposals for one rural state (again, South Dakota), see Timothy W. Bjorkman, *A State in Shackles: The Effect of a Dysfunctional Childhood on Crime and Imprisonment*, 62 S.D. L. REV. 211, 249–65 (2017).

185. See Pfaff, Book Review, *supra* note 182.

186. See *supra* note 184.

187. See, e.g., PEW RSCH. CTR., MOST AMERICANS FAVOR LEGALIZING MARIJUANA FOR MEDICAL, RECREATIONAL USE (2024), https://www.pewresearch.org/wp-content/uploads/sites/20/2024/03/PP_2024.3.26_marijuana_REPORT.pdf [<https://perma.cc/RA9U-N9GE>] (finding that fifty-eight percent of Democrats believe the legalization of marijuana for recreational use would make the criminal justice system more fair, versus twenty-seven percent of Republicans); Hanna Hartig, *Wide Partisan Gaps in Abortion Attitudes, but Opinions in Both Parties Are Complicated*, PEW RSCH. CTR. (May 6, 2022), <https://www.pewresearch.org/short-reads/2022/05/06/wide-partisan-gaps-in-abortion-attitudes-but-opinions-in-both-parties-are-complicated> [<https://perma.cc/PV66-2FPD>] (finding that eighty percent of Democrats believe abortion should be legal in all or most cases, versus thirty-eight percent of Republicans).

188. Jeffrey M. Jones, *U.S. Support for Legal Marijuana Steady in Past Year*, GALLUP (Oct. 23, 2019), <https://news.gallup.com/poll/267698/support-legal-marijuana-steady-past-year.aspx> [<https://perma.cc/H8BR-MAKT>].

reduce incarceration rates in those states.¹⁸⁹ On the other hand, as has often been noted, the decriminalization of drugs can only go so far in achieving decarceration, because four-fifths of the people in American prisons or jails are not being held based on a drug offense.¹⁹⁰

Another way to reduce crime rates is to reduce the frequency of criminal conduct. There is by now a vast empirical literature on the causes of crime, and especially violent crime, alongside a related literature on ways to reduce crime, from the provision of housing, health care, and financial support; to early childhood interventions; to hot spot policing, streetlighting, and the reclaiming of public spaces by local community groups.¹⁹¹ Unfortunately, because rural areas by definition have more dispersed populations than urban areas, providing social services in a rural area is typically much more expensive than providing the same services in an urban area.¹⁹² Urban areas can take advantage of economies of scale that rural areas generally cannot achieve. Thus, if rural areas often benefited in the past from lower population density resulting in lower crime rates, today it is becoming increasingly clear

189. See WENDY SAWYER & PETER WAGNER, *MASS INCARCERATION: THE WHOLE PIE* 2023, PRISON POL'Y INITIATIVE (2023), <https://www.prisonpolicy.org/reports/pie2023.html> [https://perma.cc/N2RK-7SP6] (showing decline from roughly thirty-one percent to roughly ten percent in “[s]hare of New York prison population serving a sentence for a drug offense” between 2000 and 2023, versus rise over same period in South Dakota from roughly thirteen percent to roughly twenty-nine percent).

190. See *id.* Moreover, as Pfaff has noted, even among the state prison population held on a drug offense, it is unclear how many may have committed a more serious or violent offense that was dismissed or downgraded as part of a deal to plead guilty to the drug offense. See PFAFF, *LOCKED IN*, *supra* note 62, at 35. The magnitude of people incarcerated based on offenses involving actual physical violence is large enough that the undoing of mass incarceration will require addressing violence. See DANIELLE SERED, *UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND A ROAD TO REPAIR* 6 (2019); MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* 165–95 (2015) [hereinafter GOTTSCHALK, *CAUGHT*]. Consistent with the fear that criminal justice reform focused on drug offenses might be accompanied by an increase in punitiveness toward violent offenses, Beckett and Beach show that in both rural and urban counties, the ratio of prison admissions to drug arrests fell between 2001–2003 and 2011–2013, while the ratio of prison admission to violent felony arrests rose. See Beckett & Beach, *supra* note 24, at 12 tbl. 2; see also BECKETT, *supra* note 39, at 12 (concluding that state sentencing law reforms “have been limited to comparatively minor offenses, especially drug law violations,” above all drug possession, with “enhanced penalties for drug distribution” more common than reductions in recent years).

191. See Ben Grunwald, *Toward an Optimal Decarceration Strategy*, 33 *STAN. L. & POL'Y REV.* 1, 12–14 & nn.56–67 (2022) (collecting sources); SERED, *supra* note 190, at 3, 259 & nn.2–7 (collecting additional sources). Comparative evidence also shows that more “co-ordinated” market economies (that is, those that promote “long-term relationships . . . through investment in education and training, generous welfare benefits, [and] long-term employment relationships”) tend to have lower imprisonment rates. See NICOLA LACEY, *THE PRISONERS' DILEMMA: POLITICAL ECONOMY AND PUNISHMENT IN CONTEMPORARY DEMOCRACIES* 109–11 & fig. 9 (2008).

192. *ORG. FOR ECON. COOP. & DEV., STRATEGIES TO IMPROVE RURAL SERVICE DELIVERY* 3 (2010), https://www.oecd.org/content/dam/oecd/en/publications/reports/2010/03/strategies-to-improve-rural-service-delivery_g1ghc745/9789264083967-en.pdf [https://perma.cc/6L8N-ZG5C].

that lower population density can also make it harder to address the root causes of crime.¹⁹³

The inherent challenge of providing social services in rural areas is compounded by the generally greater rural hostility to social spending, such as state spending on housing, education, healthcare, child care, and income support.¹⁹⁴ It is difficult to see how criminal justice reformers could bring about increased support in rural areas for social spending. Decades of research have shown that American hostility to social spending is based on deeply rooted, relatively stable attitudes, such as racial resentment.¹⁹⁵ If Americans hate welfare because they associate it with the (racially coded) “undeserving poor,”¹⁹⁶ then it should not be surprising if rural Americans,

193. See Gottschalk, *Deplorable or Disposable?*, *supra* note 11, at 103. To take a particularly extreme example of the challenges posed by rural dispersion and inadequate funding, the Oglala Sioux Tribe recently argued in a lawsuit against the federal government that “[o]nly between six and eight of the 30 Oglala Sioux Tribe’s officers are working at one time,” and they are “responsible for servicing an area the size of Connecticut.” Amelia Schafer, *Law Enforcement Issues Unresolved Following Oglala Lakota Lawsuit*, S.D. SEARCHLIGHT (Oct. 13, 2023, at 11:23 ET), <https://southdakotasearchlight.com/2023/10/13/law-enforcement-issues-unresolved-following-oglala-lakota-lawsuit> [<https://perma.cc/UUE8-RSYK>].

194. See RODDEN, *supra* note 12, at 94–96 (showing similar “overall correlation between population density and left voting” in Australia, Canada, the U.K., and the United States, where “left” contrasts with “right” in part through its relative commitment to “government services”).

195. See GILENS, *supra* note 54, at 3 (concluding that, “[i]n large measure, Americans hate welfare because they view it as a program that rewards the undeserving poor,” whom they think of as Black); Andrew J. Bloeser & Tarah Williams, *The Color of Class Politics: Economic Position, Racial Resentment, and Attitudes About Redistribution*, 10 POLS., GRPS., AND IDENTITIES 233, 238, 241–47 (2022) (finding, based on 2016 ANES data, that racial resentment continues to predict opposition to redistribution among whites, especially among higher income whites who have less to gain from redistribution). Although Gilens focused on racial resentment toward African Americans, more recent research has found evidence “that modern racism scales measure attitudes toward any [out-]group, rather than African Americans alone.” Riley K. Carney & Ryan D. Enos, *Conservatism and Fairness in Contemporary Politics: Unpacking the Psychological Underpinnings of Modern Racism* 2 (2017) (unpublished manuscript), <https://www.scribd.com/document/376323779/conservatism-and-fairness-in-contemporary-politics-unpacking-the-psychological-underpinnings-of-modern-racism> [<https://perma.cc/99EN-9C5U>]; see *supra* note 91. In fact, there is a long history in the United States of often quasi-racialized group hostility by higher socioeconomic whites toward lower socioeconomic status whites. See generally NANCY ISENBERG, *WHITE TRASH: THE 400-YEAR UNTOLD HISTORY OF CLASS IN AMERICA* (2016); Pruitt & Klein, *supra* note 164. On the affective rather than deliberative nature of out-group hostility, and moral reasoning in general, see SAPOLSKY, *supra* note 15, at 561–65; HAIDT, *supra* note 123, at 61–83. For another presentation of hostility to anti-poverty programs as associated with personality traits, see JOHNSTON ET AL., *supra* note 97, at 4. Johnston et al. argue that the Big Five trait of “openness” influences politically informed citizens indirectly through partisan sorting and elite cues. See *id.* For example, those with high openness who are politically informed tend to identify as Democrats and as a result tend to endorse the economic policies of cultural left elites. See *id.* For uninformed citizens, openness and its greater tolerance of risk and uncertainty correlates with lower support for left economic policies such as redistribution and market regulation. See *id.*

196. See *supra* note 195.

who have higher racial resentment scores,¹⁹⁷ also express more hostility to social spending than urban Americans. In fact, this is what the evidence shows: Residents of rural areas in the United States express greater hostility to anti-poverty and other social spending programs.¹⁹⁸

In sum, Enns's model suggests that one way to reduce rural incarceration might be to reduce rural crime rates. Decades of evidence suggest that the state provision of various social services would likely reduce crime rates in the long term.¹⁹⁹ But rural jurisdictions are less likely than urban areas to reduce crime through the state provision of social services for at least two reasons: First, such social services will likely be more expensive in rural as opposed to urban areas; and, second, rural voters are more hostile to social spending than urban voters. Finally, even if it were possible to take such steps, the reductions in rural crime rates might not be very large—and thus might not predict large reductions in rural incarceration rates—because rural crime rates are already relatively low by the standards of the United States over the last several decades.

B. Obstacles to Reducing Rural Punitiveness

Based on Enns's model, rural incarceration rates might also decline if residents of rural areas adopted less punitive attitudes toward criminal justice. To the extent that the attitudes of authoritarians affect incarceration rates, rural incarceration rates could conceivably be reduced by decreasing the proportion of high-authoritarian residents in rural areas either through in-migration or out-migration, or by reducing the perception of normative threat among authoritarians living in rural areas. But it is hard to see how criminal justice reformers, in the absence of significant changes to the legal rules that structure media markets, could bring about any meaningful change

197. See JACOBS & SHEA, *supra* note 42, at 295–96; cf. WUTHNOW, *supra* note 12, at 3–4, 10–11, 141–58 (concluding, based on “over a thousand in-depth qualitative interviews,” that “[r]ural residents who are African American or Hispanic describe in no uncertain terms how their lives are still affected by” patterns of segregation and discrimination, “inhumane working conditions” and “threats of harassment and deportation,” while “[w]hite residents . . . emphasize minor gains that may have been made,” rarely value “[d]iversity for diversity’s sake,” and expressed views that were “sometimes difficult to avoid” interpreting as “patently unreasonable or bigoted”).

198. See *supra* note 194 and accompanying text. For a more subtle ethnographic account of rural hostility to social spending in one Midwestern state, see generally CRAMER, *POLITICS OF RESENTMENT*, *supra* note 12. Building on earlier scholarship on the effects of racial resentment on economic policy attitudes, Cramer develops the concept of “rural resentment,” noting that “in a politics of resentment, attitudes toward social groups do the work of ideology. In this kind of politics, we see people arguing in favor of small government based on resentment toward other citizens, not libertarian principles.” *Id.* at 24. Cramer found that the rural Wisconsinites she interviewed often opposed government spending not because of an abstract commitment to “small government,” but because they assumed such spending would take money away from deserving, hard-working rural people and give it to undeserving, lazy urban people, especially state employees. See *id.* at 23, 212–13.

199. See *supra* note 191 and accompanying text.

in the degree to which authoritarians across rural America perceive threats to “oneness and sameness.” It is often harder to imagine criminal justice reformers significantly affecting rural demographics.²⁰⁰

Rural incarceration rates might also be reduced by decreasing the perception of crime-related threats among nonauthoritarians living in rural areas. The most straightforward way to reduce nonauthoritarian perceptions of criminal threat might be to reduce the crime rate even further in rural areas, but we have already seen why that may be difficult.²⁰¹ Beyond that, and (again) in the absence of changes to the media landscape, it is hard to see what supporters of criminal justice reform could do to change crime perceptions beyond what they are already doing through cultural work that attempts to dispel inaccurate beliefs about criminal threats.

In sum, if there is a feasible way to bring about a large-scale reduction in the punitiveness of rural residents regarding criminal justice issues, no one appears to have found it. Punitive rural attitudes facilitate the election and reelection of officials who will take punitive approaches to rural criminal justice. There are virtually no progressive prosecutors in rural counties.²⁰² Legislators and prosecutors in many rural jurisdictions continue to keep the “tough on crime” era alive.²⁰³ It is difficult to see how criminal justice reformers inside or outside of rural areas could change the punitive attitudes that promote rural mass incarceration.

200. Moreover, it is often difficult to predict the political effects of demographic changes. *See, e.g.*, Richard Calvo, Vincent Pons & Jesse M. Shapiro, *Pitfalls of Demographic Forecasts of US Elections* 1, 3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 33016, 2024) (showing that “[e]ven a forecaster with perfect knowledge of future demographic trends” who used data from a given election to predict future elections, based on a projection of demographic trends, “would have performed poorly” in predicting U.S. elections since 1952).

201. *See supra* Part V.A.

202. *See* John F. Pfaff, *The Poor Reform Prosecutor: So Far from the State Capital, So Close to the Suburbs*, 50 *FORDHAM URB. L.J.* 1013, 1023–25 (2023) (concluding based on statistical analysis that reform prosecutor candidates have been “concentrated mostly in larger, more Democratic counties,” that successful campaigns to elect reform prosecutors have been concentrated in “large Democratic counties where the cities themselves make up a large enough share of the population,” and that “nonwhite communities, Black communities in particular, form reform prosecutors’ core base of support”). Pfaff’s only reference to a reform prosecutor in a mostly rural county is to Scott Colom, who was elected in Mississippi’s 16th Judicial District in 2016. *See id.* at 1021 & n.33; *see id.* at 1024 & fig. 2A (showing a single elected reform DA among the least populous counties where a reform DA ran for office). Of course, rural America is a large and varied assortment of places, and many public officials and private individuals and organizations are engaged in valuable work related to criminal justice reform. *See, e.g.*, Dashka Slater, *North Dakota’s Norway Experiment*, *MOTHER JONES* (July/Aug. 2017), <https://www.motherjones.com/criminal-justice/2017/07/north-dakota-norway-prisons-experiment/> [<https://perma.cc/9ZRA-BVPW>] (describing North Dakota prison reforms spearheaded by prisons chief Leann Bertsch). I often share stories about such work with my students in South Dakota. This Article is about aggregate trends.

203. *See supra* note 155 and accompanying text.

*C. Obstacles to Breaking the Association Between Crime Rates,
Punitiveness, and Incarceration Rates*

Finally, it might be possible to reduce rural incarceration rates without reducing either rural crime rates or rural punitiveness if the apparent causal connection between the latter and incarceration rates could be broken. There is no inviolable law of nature that dictates high crime rates and high public punitiveness must result in high incarceration rates. If this happened between the 1950s and 2010, it is because American institutions and traditions, such as the local election of prosecutors and judges,²⁰⁴ and the involvement of state legislatures in sentencing law, created a causal link between public criminal justice attitudes and policy outcomes.

If decision-making regarding criminal justice policies and practices were more insulated from public opinion, carceral outcomes would likely be less sensitive to changes in public punitiveness. For example, if local prosecutors were appointed, as they apparently are in every other country in the world,²⁰⁵ rather than being elected at the county level, they would presumably be less responsive to the ebb and flow of public attitudes regarding criminal punishment. In theory, an appointed prosecutor might choose to be more punitive than the public would have demanded, but comparative evidence suggests that less punitive and more evidence-based prosecution would more likely result.²⁰⁶ Similarly, if sentencing policies were set by an expert bureaucracy rather than through state legislation, the result might be fewer overbroad, harshly punitive sentencing laws inspired by sensationalist anecdotes of crime.²⁰⁷

Any state could adopt such reforms at any time. A pro-reform state could in theory impose such reforms on rural areas in the state. But outside of the three heavily rural states in the Northeast (Vermont, Maine, and New Hampshire), the states with the highest rural population percentages are nearly all solidly Republican, and the brief moment of bipartisan support for criminal justice reform has apparently passed.²⁰⁸ If reform legislation did

204. Although jury trials are extremely rare, juries are another path for punitive public criminal justice attitudes to affect criminal justice outcomes—both directly, through a greater willingness to convict, and indirectly by increasing the plea bargaining leverage of prosecutors.

205. See EMILY BAZELON, *CHARGED: THE NEW MOVEMENT TO TRANSFORM AMERICAN PROSECUTION AND END MASS INCARCERATION* 79 (2020).

206. See, e.g., Rappaport, *supra* note 81, at 775–77.

207. See generally BARKOW, *supra* note 82.

208. See, e.g., Joe Lancaster, *Republicans Have Completely Abandoned Criminal Justice Reform*, REASON (July 17, 2024, at 11:15 ET), <https://reason.com/2024/07/17/republicans-have-completely-abandoned-criminal-justice-reform/?nab=0> [<https://perma.cc/KH22-LNFC>]. There may still be some room for gaining Republican support for rural criminal justice reform among officials who identify with “fiscal conservatism.” But the scope for such reform has always been very limited. See GOTTSCHALK, *CAUGHT*, *supra* note 190, at 3, 7–10, 16–19, 22, 25–27, 99–100, 113–15, 262–63 (illustrating limits of bipartisan and fiscal conservative reforms); PFAFF, *LOCKED IN*, *supra* note 62, at 94–101 (showing that mass incarceration appears to be fiscally sustainable).

somehow pass in a heavily rural Republican state, it would face a serious risk of being rolled back as soon as an opponent could point to a single anecdote in which the reforms apparently resulted in the release of an individual who went on to commit a shocking crime.²⁰⁹

It might be tempting, then, to place greater hopes in federal criminal justice reforms. Perhaps federal legislation could require the appointment rather than election of prosecutors and the creation of sentencing commissions as a condition of federal law enforcement funding. But due to the disproportionate political power of rural areas in the U.S. constitutional system, including through overrepresentation in the Senate, the House, the electoral college, and indirectly the Supreme Court, it is unlikely that such federal legislation could be passed and upheld if rural voters were unwilling to support a policy of political insulation in their own states.²¹⁰

CONCLUSION

In the words of Roberto Mangabeira Unger, “[h]istory really is surprising.”²¹¹ The statistical generalities that apparently governed national incarceration rates from the 1950s to 2010 are not fated to predict rural incarceration rates in the future. Ideological change, in particular, has often been unexpected. While lines of intolerance between “us” and “them” may never go away, the specific contours of the lines perceived by any individual are shaped by culture and social learning, and can change.²¹² This Article has suggested, however, that even if the line between “us” and “them” could somehow be redrawn in entirely non-racial terms, American mass incarceration might still persist. In order, finally, to end mass incarceration, it may be necessary to bring about the ideological delegitimation of punitive human caging in a more general sense, or even to question the core retributive notion “that some people deserve to be hurt.”²¹³ Such transformations have happened before in American history,²¹⁴ and could happen again. Other

209. See Brazeal, *Justice Theater*, *supra* note 85, at 1778 & n.184 (citing BARKOW, *supra* note 82, at 136–37, 169–75; PFAFF, *LOCKED IN*, *supra* note 62, at 182–83, 220–22).

210. On the “rural bias” in American politics and how it has come to favor Republicans, see *supra* note 164 and accompanying text.

211. See ROBERTO MANGABEIRA UNGER, *POLITICS: THE CENTRAL TEXTS* 3, 7 (Zhiyuan Cui ed., 1997).

212. Cf. Stenner, *Three Kinds of “Conservatism,”* *supra* note 94, at 157; AMARTYA SEN, *IDENTITY AND VIOLENCE* 18–39 (2006) (emphasizing that each of us belongs to any number of cross-cutting identity groups); MASON, *supra* note 165, at 24–25 (summarizing view of Edward Alsworth Ross, Seymour Lipset, and Robert Dahl that cross-cutting identities promote democratic stability). One of the dangers of the current political moment is that so many different identities have become aligned.

213. DANIELLE SERED, *VERA INST. OF JUST., ACCOUNTING FOR VIOLENCE: HOW TO INCREASE SAFETY AND BREAK OUR FAILED RELIANCE ON MASS INCARCERATION* 6 (2017).

214. See, e.g., GOTTSCHALK, *THE PRISON AND THE GALLOWS*, *supra* note 61, at 47 (noting that James Madison supported dissecting executed criminals’ bodies as punishment, that Thomas

countries with more humane, less punitive social policies and criminal justice practices have already shown the feasibility of a path forward.²¹⁵

Jefferson supported castration as an alternative punishment for male rape or sodomy, and that Jefferson “suggested drilling a hole at least a half-inch in diameter through the noses of women found guilty of sodomy”).

215. See, e.g., Jessica Benko, *The Radical Humaneness of Norway’s Halden Prison*, N.Y. TIMES (Mar. 26, 2015), <https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html> (on file with the Maryland Law Review); Lacey & Soskice, *supra* note 81; MILLER, *supra* note 59, at 55–96, 161–90; RAM SUBRAMANIAN & ALISON SHAMES, VERA INST. OF JUST., SENTENCING AND PRISON PRACTICES IN GERMANY AND THE NETHERLANDS: IMPLICATIONS FOR THE UNITED STATES (2013).

APPENDIX: DEFINITIONS OF “RURAL”

As summarized below, government agencies and researchers use a number of different definitions of “rural.”²¹⁶ An important implication of these definitions is that statistics about America’s “rural” population typically include people living in small towns, and not only in the countryside. If Americans think of the countryside when they hear the term “rural,” then this Article is more precisely about rural and small town mass incarceration.

The Census Bureau now defines an “urban area” as a “core of census blocks” that encompasses “at least 2,000 housing units” or has “a population of at least 5,000.”²¹⁷ The Census Bureau treats “all population, housing, and territory not included within an urban area” as “rural.”²¹⁸

The U.S. Department of Agriculture (“USDA”) often equates “rural” areas with what the Office of Management and Budget (“OMB”) defines as “nonmetro” counties.²¹⁹ “Metropolitan” counties (or county-equivalent areas) are in turn defined as “broad labor-market areas that include . . . [c]entral counties with one or more urban areas with populations of 50,000 or more people,” and outlying counties where “at least 25 percent of workers living in the county commute to the central counties, or . . . at least 25 percent of the employment in the county consists of workers coming out from the central counties.”²²⁰ In 2020, approximately fourteen percent of the U.S. population resided in “nonmetro” counties.²²¹

The USDA’s Economic Research Service also employs a rural-urban continuum for counties, where Category 1 contains “[t]he most populous counties,” with “a population of 1 million or more,” and Category 9 contains

216. See David A. Fahrenthold, *What Does Rural Mean? Uncle Sam Has More than a Dozen Answers*, WASH. POST (June 8, 2013), https://www.washingtonpost.com/politics/what-does-rural-mean-uncle-sam-has-more-than-a-dozen-answers/2013/06/08/377469e8-ca26-11e2-9c79-a0917ed76189_story.html (on file with the Maryland Law Review) (noting that “the U.S. government has at least 15 official definitions of the word ‘rural,’ two of which apply only to Puerto Rico and parts of Hawaii,” and that according to the “most expansive” of these definitions, “any place with less than 50,000 residents” is rural, with the result that “190 million” Americans, or roughly sixty percent of the 2013 population, would have been “rural”).

217. *Urban and Rural*, U.S. CENSUS BUREAU (Dec. 16, 2024), <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html> [<https://perma.cc/RP47-ABAB>].

218. *Id.*

219. *Rural Classifications - What is Rural?*, ECON. RSCH. SERV., U.S. DEP’T OF AGRIC. (last updated Jan. 8, 2025), <https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications/what-is-rural> [<https://perma.cc/RQT7-AN8Z>].

220. *Id.*

221. *Id.* On the risk of misusing the OMB definition in rural criminology research, see Callie Marie Rennison & Hailey Powers Mondragon, *Defining Rural*, in RESEARCH METHODS FOR RURAL CRIMINOLOGISTS 1, 6–8 (Ralph A. Weisheit et al. eds., 2022).

“the 408 counties that are completely rural, with the largest community having a population of less than 2,500,” and where there is no adjacent metro area.²²² “Categories 1–3 are metropolitan, while categories 4–9 are nonmetropolitan.”²²³ Notably, “[a] majority of the U.S. population lives in Category 1 counties alone.”²²⁴

The studies by the Vera Institute cited in this Article, unless otherwise noted, define “rural” based on a simplified version of the National Center for Health Statistics Urban-Rural Classification Scheme for Counties.²²⁵ According to this definition, roughly 1,900 counties are “rural,” and these counties contain fifteen percent of the U.S. population.²²⁶

Further complicating matters, Pamela R. Metzger, the Executive Director of the Deason Center,²²⁷ has noted that “the borders of rural criminal justice systems are porous,” and not only because “urban and suburban justice systems ‘export’ their incarcerated populations to rural jails and prisons.”²²⁸ “A statistically rural area that shares criminal justice resources with an adjacent metropolitan community may have a legal system that resembles that of its urban neighbor,” while “[c]riminal justice systems in isolated areas at the outer boundary of a statistically metropolitan county may bear scant resemblance to the system that operates in the county’s city center.”²²⁹ Metzger proposes an “operational” definition of a rural criminal justice system as one defined by *long distances* between actors, institutions, and resources; a *small scale*, such that “[c]aseloads and budgets are too small to independently support best practices”; and *professional scarcity* in the sense of “[t]oo few local criminal law professionals to meet local needs.”²³⁰

222. Don E. Albrecht, *Donald Trump and Changing Rural/Urban Voting Patterns*, 91 J. RURAL STUDS. 148, 148–49 (2022).

223. *Id.*

224. *Id.* at 149.

225. See SUBRAMANIAN, RILEY & MAI, DIVIDED JUSTICE, *supra* note 19, at 11.

226. *Id.*

227. The Deason Center is “the nation’s only university research center committed to exploring STAR (small, tribal, and rural) criminal legal systems.” Metzger, *supra* note 11, at 244.

228. *Id.* at 245.

229. *Id.*

230. *Id.*