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The Influence of Criminalism on Prosecutorial Discretion and Sentence Length

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Citation	Moore, Graham Ellis. "The Influence of Criminalism on Prosecutorial Discretion and Sentence Length." 2023. Thesis, Georgia State University. https://doi.org/10.57709/35194842
DOI	https://doi.org/10.57709/35194842
Download date	2026-06-06 19:41:22
Link to Item	https://hdl.handle.net/20.500.14694/14028

The Influence of Criminalism on Prosecutorial Discretion and Sentence Length

by

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Under the Direction of Daniel Pasciuti, PhD

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Master of Arts

in the College of Arts and Sciences

Georgia State University

2023

ABSTRACT

Using the concept of criminalism, this paper addresses the disjunction in the sentencing and prosecution of bodies read as young, racialized as Black, and seen as male. Specifically, using the 2016 Survey of Prison Inmates (SPI), this thesis examines differences in sentence length across multiple intersecting statuses, institutions, and geographies as an empirical outcome. Results demonstrate a significant positive association between being read as young, racialized as Black, seen as male, and punishment in the extremes.

INDEX WORDS: Controlling images, Criminalism, Critical criminology, Incarceration, Prosecutorial bias, Race making

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2023

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May 2023

DEDICATION

This thesis is dedicated to my late mother, Lydia Ellis Moore. I miss you, Mom.

ACKNOWLEDGEMENTS

I would first like to recognize Dr. Daniel Pasciuti for his tireless mentorship and for whom this work would not otherwise exist. I would also like to extend gratitude to my committee members, Dr. Tomeka Davis and Dr. Mathew Gayman, for their guidance throughout this process. To Steve Jessup, thank you for believing in me; you are a shepherd. To Dr. James Ainsworth, Dr. Desmond F. Goss, Dr. Erin Ruel, Dr. Elena Rumiano, and Dr. Taura Taylor, thank you for challenging me, reading my work, and supporting my development. Thaddeus Nifong, you are remembered, and your kindness is not forgotten. Thank you to all my friends and family, past, present, alive, and departed. To my parents, Lydia and James Moore, my brother, Joseph Moore, and my family, Bobbie, Izik, Jamie, and Elliott Moore, nothing is accomplished independently; thank you.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS		V
LIST OF TABLES		VIII
LIST OF FIGURES		IX
1 INTRODUCTION		1
2 LITERATURE REVIEW		4
2.1 Preparing the Carceral State		4
2.2 Controlling Images		6
<i>2.2.1 Controlling Images and the Ideology of Criminalism</i>		<i>7</i>
<i>2.2.2 The Superpredator</i>		<i>7</i>
<i>2.2.3 The Thug</i>		<i>8</i>
<i>2.2.4 The Illegal</i>		<i>9</i>
<i>2.2.5 Systems of Ideological Domination</i>		<i>10</i>
2.3 Criminalism as a System of Power		10
<i>2.3.1 Criminalism and Materializing White Supremacy</i>		<i>11</i>
2.4 Prosecutorial Discretion		12
<i>2.4.1 The Specter of Justice</i>		<i>13</i>
2.5 Measuring Criminalism		14
2.6 Hypothesized Causal Model		15
3 METHODS		18

3.1	Data	18
3.2	Dependent Variables.....	19
3.3	Independent Variables.....	20
3.4	Data Analysis	22
4	RESULTS	25
4.1	Sentence Length Outcomes	28
4.2	Greater than Twenty Years to Life Outcomes	32
4.3	Validating Regression Analysis.....	36
5	DISCUSSION	40
5.1	Limitations and Future Research.....	41
5.2	Conclusion.....	41
	REFERENCES.....	42

LIST OF TABLES

Table 1 Characteristics of the Sample	26
Table 2 Descriptive Statistics by Race.....	27
Table 3 OLS Regression Models Predicting Sentence Length in Months.....	31
Table 4 Logistic Regression Models Predicting Prison Sentence Greater than Twenty Years to Life.....	34
Table 5 Logistic Regression Models Predicting Prison Sentence Greater than Twenty Years to Life, Odds Ratios	35
Table 6 OLS Regression Validating Analysis	38
Table 7 Logistic Regression Validation Analysis.....	39

LIST OF FIGURES

Figure 1 The Overall Impact of Criminalism on Sentence Length.....	17
Figure 2 The Direct Impact of Criminalism on Sentence Length.....	17
Figure 3 The Indirect Impact of Criminalism on Sentence Length through Prosecutorial Discretion.....	17

1 INTRODUCTION

In criminological research, traditional labeling theorists have stressed the essentiality of a deviant identity to explicate behavioral continuity over the life course; others have argued the centrality of persistent social structural constraints introduced in the formal sanctioning process (Becker 2018; Sampson and Laub 2018). In particular, and as it pertains to the latter, cumulative disadvantage posits the importance of early positionality in shaping individual and group trajectories or pathways through the life course (Ferraro and Kelley-Moore 2003; Sampson and Laub 2018). Abrams, Mizel, and Barnert (2021) illustrate a carceral continuum that begins with academic discipline. Similarly, Sampson and Laub (2018) assert that continuity starts early and, in the family, with harsh punishment. Of the predominant explanations for criminal continuity, the work advanced by Sampson and Laub (2018), including their life-course theory of cumulative disadvantage, is arguably the most compelling—yet incomplete.

Though societal reaction (i.e., a labeling event) is necessarily central in each supposition, there is a lack of literature interrogating underlying systems of power that permeate and influence the validity, probability, frequency, and severity of authoritative response. Significantly, “stability of behavior may reflect more the stability of social response than the time-invariance of an individual trait” (Sampson and Laub 2018:22). Therefore, rather than rooted in static identities or liminal labeling events, disparities in sentencing and representation reflect power differentials and a persistent attributional gaze that presupposes deviance or, in the case of prosecutors, crime. Specifically, I contend that criminal legal disparities are informed by *criminalism*, a system of power that marks bodies with criminal meanings, essentializing criminality and rationalizing disparate social control.

This study argues that systematic differences in sentence length are primarily products of biased prosecutorial discretion and criminalism, a system of power through which arrangements of intersecting statuses, such as race and sex, are treated as criminally constitutive. In the United States, the conflation of race with criminality is foundational (DiAngelo 2018:63; Smiley and Fakunle 2016:1; Wacquant 2001:117). Within the carceral state, intersections of age, race, and sex serve as proxies for probable cause (Wacquant 2001:117). Racialized mass incarceration is a product of this ideological mythology (Smiley and Fakunle 2016:1; Wacquant 2001:117). Though criminal legal overrepresentation is conditioned by various actors, prosecutors have relatively unrestricted powers to label the criminally accused and then litigate those labels structurally (Davis 2017:179; Greenberg 2021; Pfaff 2017). These powers include the ability to charge or not, as well as what to charge and how to wield charges expeditiously through criminal plea bargaining (Davis 2017:179; Greenberg 2021; Pfaff 2017).

Working with the 2016 Survey of Prison Inmates, a national sample of state and federal prisoners, I examine differences in sentence length across multiple intersecting statuses, institutions, and geographies. Specifically asking, how does criminalism influence sentence length through prosecutorial bias? For this study, systematic differences in sentence length across statuses were conceptualized as an indicator of prosecutorial bias and a mechanism through which the underlying system of power—criminalism—was exercised. As we cross mass incarcerations semi-centennial, this study challenges the rationality of sentencing disparities as products of an unbiased criminal legal system. Beyond developing criminalism as a system of power, this paper aims to contribute to critical criminology through counter-narratives that trouble prosecutorial primacy and interrogate the capacity of the criminal legal system to execute unbiased discretionary assessments broadly.

Using this dataset, I examine the following hypotheses:

H1 Sociology of the Accused: Sentence length differs based on the interpreted race, sex, and age of the accused when controlling for the offense category.

H2 Geography of the Accused: Sentence length differs based on the interpreted race, sex, and age of the accused when controlling for the offense category and region.

H3 Institution of the Accused: Sentence length differs based on the interpreted race, sex, and age of the accused when controlling for the offense category, region, and institution type.

2 LITERATURE REVIEW

To develop criminalism and establish my argument regarding prosecutorial bias, I will briefly portrait the carceral apparatus within a socio-historical context. I will then examine the ideological antecedents to disproportionately using Patricia Hill Collins' concept of controlling images, followed by an introduction to criminalism as a system of power, of which controlling images reflect the symbolic dimension. I will conclude this review on prosecutorial power, evidence of its biased praxis, and a hypothesized causal model.

2.1 Preparing the Carceral State

The ascent of the modern carceral state was initiated in an era where overt racism was transitioning to subtler systems of color-coded disingenuity (Alexander 2020). In particular, civil disobedience was construed as synonymous with crime throughout the 1950s and coincided with the emergence of law-and-order rhetoric (Alexander 2020; Anderson 2017:104; Wacquant 2001:117). By 1965, and operating on behalf of the political class, intellectuals like Daniel Patrick Moynihan were working to rearticulate the social problems poor Black communities faced, depositing them as historically rooted but self-perpetuating "social pathologies" (Alexander 2020; Moynihan 1965). According to Moynihan, the race problem in America, while once structural, was now patently personal (Alexander 2020; Moynihan 1965). By 1968, however, successful Black resistance meant that materializing the myth of white supremacy required further abstraction (Anderson 2017:119). The now notorious "Southern Strategy" perfected this racial re-articulation, using "strategic dog-whistle appeals—crime, welfare, neighborhood schools—to trigger Pavlovian anti-Black responses" (Anderson 2017:103–4). Consequently, the carceral institution was "elevated to the rank of main machine for 'race making'" (Wacquant 2001:117).

In the post-civil-rights period, state and federal prison populations increased from approximately 200,000 in 1973 to more than 1.5 million in 2009, not accounting for the roughly 700,000 individuals who regularly occupy local jails (Travis, Western, and Redburn 2014:23). Of the 2.2 million incarcerated U.S. American adults, the majority are minoritized men under age 40 many of whom struggle with drug involvement, neurodivergence, health problems, inadequate education, and other social and economic disadvantages (Travis et al. 2014:23). Broadly, the Black community has “experienced the largest absolute increases in incarceration rates” (Travis et al. 2014:117). Conversely, the mid-century U.S. American prison was a moderately sized, predominantly white institution (Wacquant 2001:96).

The unprecedented expansion of the carceral apparatus and the replacement of whites as the majority demographic began with the collapse of Jim Crow and the “revivification” of “centuries-old” images of criminal Blackness (Wacquant 2001:117). Just as racialization has functioned to delimit rights and rationalize super-exploitation, so too has the propagation and differential distribution of the criminal label (Alexander 2020:2,118). Though color-coded racism was a novel and semi-sanitized reconstitution of the blatant racial antipathy that preceded it, the covert language that emerged was advanced in service of existent hierarchies and performed a familiar function (Bonilla-Silva 2022). In particular, to “misrepresent the world,” concealing the mechanisms of containment and subordination (Bonilla-Silva 2022:80). Ultimately, the strategic proliferation of color-coded images of criminal Blackness facilitated a reconstituted disciplinary apparatus which, when activated during this period of heightened insecurity, both real and imagined, remediated “the derailing of the traditional mechanisms for maintaining the ethnoracial order” (Wacquant 2009:11).

2.2 Controlling Images

In her seminal work, *Black Feminist Thought*, Patricia Hill Collins (2022:90) introduces the concept of *controlling images*, which she defines as “powerful ideological justifications” for a range of intersecting oppressions. Restated, controlling images are determinative distillates of broader ideological constructions that serve as “justifications for intersecting oppressions of race, gender, and class” (Hill Collins 2022:103). Using stereotypes as a starting point, Hill Collins (2022:91) posits that controlling images reflect power dynamics that function, in part, to conceal social relations. The design of controlling images is such that they make injustice appear naturally inevitable (Hill Collins 2022:91). As the subordinated group’s subjectivity is overthrown by the hegemonic group’s dominating ideology, the normality of the dominant group is affirmed (Hill Collins 2022:91). The boundaries of normality are zero-sum and defined in antithesis (Hill Collins 2022:91). Thus, controlling images are co-constitutive oppositional binaries that reflect hegemonic relations between a dominating subject and a subordinated object (Hill Collins 2022:91–92).

The early 20th-century image of the brute, for example, conflates Blackness and maleness with danger (Smiley and Fakunle 2016:6). Dramatized in the influential 1915 propaganda film *Birth of a Nation*, the image of the brute couples Blackness with criminality while valorizing the Ku Klux Klan as keepers of law-and-order (Smiley and Fakunle 2016:6). Ignoring U.S. history, this primitivist portrait casts Black men as immoral sexual deviants controllable only by what one must assume are chivalrous white men. Thus, the image of the brute obscures power relations and de-victimizes Black men by inverting the direction of danger and sexual depravity. Throughout U.S. white supremacist history, the brutalized is rearticulated as the brute, the destroyers of the family become the arbiters of family values, and so on.

2.2.1 Controlling Images and the Ideology of Criminalism

Applying Hill Collins' (2022:95) methodology to three controlling images that demonstrate what Stuart Hall et al. (2019:392) termed the "racism of criminalization," we can focus on "the public face" that white America expects particular groups "to assume for them" and which inform criminal legal interaction. These three examples do not represent an exhaustive list, nor are they explicit in the data beyond the disparities that proceed from them. However, this analysis provides a necessary pretext for interpretation and the inferences made concerning prosecutorial bias and criminalism. This section begins with the *superpredator* controlling image, transitions to the image of the *thug*, and concludes with the image of the *illegal*. Each of these controlling images misrepresents "a racialized, gendered symbol of deviant" criminality while simultaneously affirming whites' orientation toward lawfulness, reproducing the normal/deviant binary (Hill Collins 2022:108).

2.2.2 The Superpredator

Popularized in 1996 by then-first lady Hillary Clinton, the superpredator theory targeted precarious Black youth using what Wacquant (2001:117) referred to as "Lombroso-style mythologies about criminal atavism." In her now infamous speech, Clinton said, "They are not just gangs of kids anymore; they are often the kinds of kids that are called superpredators—no conscience, no empathy—we can talk about why they ended up that way, but first, we have to bring them to heel" (Anon 2016). The appropriate response, according to Clinton, is an allusion to dog training and forced submission. While eventually recognized as a myth, this rendering of criminal essentialism emerged in the era of zero tolerance. Policies passed during this period targeted juveniles, diminished judicial discretion, and expanded prosecutorial power (Tanenhaus and Drizin 2002:642).

Like the normalizing discipline directed at Black families by Moynihan in 1965, the superpredator myth emerged as racial pathology [mythology] with policy implications (Tanenhaus and Drizin 2002). Aspects of the Violent Crime Control and Law Enforcement Act of 1994, such as the federal “three-strikes” provision, arguably demonstrate the salience of the emergent superpredator theory. Though officially recognized as a myth by the U.S. Surgeon General in 2001, at least forty state legislatures were influenced by its apparent novelty and passed laws in the interim that targeted juveniles, diminished judicial discretion, and expanded prosecutorial power to combat “this new ‘breed’ of delinquent” (Tanenhaus and Drizin 2002:642). Where innocence and the exceptional state are incongruent, Black childhood is rendered incomprehensible.

2.2.3 The Thug

The controlling image of the “thug” performs a not-unfamiliar function, specifically, casting young Black males as criminally deviant, unreachable, and deserving of discipline, problematizing Black masculinity and youth culture without explicitly calling for racial subordination. The image of the “thug” is often invoked as a pejorative by white supremacists and their allies where uncoded derogatives are no longer permissible (Smiley and Fakunle 2016:2). The image of the “thug” has inspired some U.S. cities to pass laws against wearing sagging pants, escalating an otherwise benign practice by warranting criminal legal contact, punishable with fines and jail time (Demby 2014). Where racial exclusion cannot proceed, performance and embodiment are rendered punishable.

The image of the “thug” has proven effective not only for disempowering young Black males but also for posthumously de-victimizing unarmed Black male victims through media misrepresentations (Smiley and Fakunle 2016). Using media content analysis, Smiley and

Fakunle (2016:1, 7) found that de-victimization occurs by exploiting victims' "criminal records, physical appearances, or misperceived attitudes," which serve as justifications for anti-Black violence. Hill Collins (2006:78) observes that, for Black youth, "stylistic choices often have tangible material consequences." For 17-year-old Trayvon Martin, it was a hoodie; for 17-year-old Jordan Davis, it was loud music (Coates 2015:130).

2.2.4 The Illegal

The controlling image of the "illegal," the final in this brief analysis, perhaps most overtly criminalizes race-ethnicity. By explicitly representing the collectively defined individual as unlawful, the controlling image of the "illegal" is entirely unnuanced. Expressly, the ambiguity of the "illegal" frame de-particularizes, thus broadening the contours of discrimination (Delia Deckard et al. 2020). Notwithstanding, the image of the "illegal" is no less amenable to gendered dimensions introduced through particularized misrepresentations. For example, Donald Trump referring to undocumented persons as rapists hyper-masculinizes the caricature of the "illegal" as both criminal and Latino (Delia Deckard et al. 2020).

As with the superpredator image, the Clinton Administration was integral to this recasting, and the criminalization of undocumented persons became law in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (Lind 2016; Macías-Rojas 2018). More recently, the image of the illegal was reified in Arizona's SB 1070, the controversial provision requiring that police exercise discretionary powers to "investigate" and make demands of persons presumed unlawful (Rivera 2014:58). The image of the "illegal" marks particular non-white bodies as criminally out of place, rendering those targeted vulnerable to the repressive powers of the state, regardless of nationality or immigration status.

2.2.5 Systems of Ideological Domination

Any specificity can distract from the ubiquity of systems of ideological domination, which the conceptualizations presented here merely attempt to describe (Hill Collins 2022:115). Criminalism does not begin with or end in the dissolution of a particular discursive objectification. Instead, the images presented here conflate color and ethnicity with criminality and prime criminal legal actors to anticipate a particularized deviance. The consequences of these biases become the lubricious rationale by which such conflation are treated as common-sense (Wacquant 2001:117). Where the explicit phenotypic racial subordination of Jim Crow could no longer function overtly, I argue that criminalism and its materialization, racialized mass incarceration, facilitate its perpetuation covertly.

2.3 Criminalism as a System of Power

Merriam-Webster (1866) defines *criminalism* as “the tendency to criminality.” The general definition advanced here is deficient, particularly when considering the historical and ideological foundations to which this tendency is readily ascribed. For example, Davis (2003:16) observes that racism has always collectively fantasized people of color as criminals. Instead, and borrowing from and inspired by Patricia Hill Collins’s (2022:167) framework for an intersectional analysis of heterosexism, this section will develop the concept of criminalism as a system of power. Expressly, I conceptualize criminalism as a system of power through which intersecting statuses and their concomitant representations are inscribed with criminal meaning, set in antithesis to a “lawful” hegemonic ideal, and systematically oppressed. As it pertains to prosecutorial bias, criminalism operates as a common-sense belief that arrangements of intersecting statuses, such as race and sex, are criminally constitutive and compel incapacitation differentially.

As in Hill Collins (2022:167) analysis of heterosexism, focusing on the interdependent ideological and structural dimensions of criminalism facilitates the conceptualization process. First, the discursive misrepresentations, or controlling images, used to evaluate behaviors encompass the symbolic dimension of criminalism. For example, the “thug” image posits primarily young Black men as criminally deviant. Second, the structural dimension includes how criminalism is reproduced institutionally through legal and social practice (Hill Collins 2022:167). For example, disparate sentencing guidelines, such as those imposed for crack cocaine, reflect this socio-legal practice. Crack cocaine is an illegal stimulant pharmacologically identical to powdered cocaine but historically associated with impoverished Black users (Alexander 2020:65; Kilty and Joseph 1999; Wells 2022). Until 2010, crack cocaine carried a 100:1 quantity ratio, increasing the likelihood its users would trigger minimum mandatory sentences (Kilty and Joseph 1999; Wells 2022). Today, that disparity remains, but as 18:1, reduced by the Fair Sentencing Act, half measures intended to ameliorate racial incongruity (Wells 2022).

2.3.1 Criminalism and Materializing White Supremacy

The contradiction of the United States, its exemplification of liberty and justice juxtaposed against its inherently white supremacist founding ideology and ongoing predatory oppressions, necessitates exonerating rationalizations that invert social relations (Feagin 2006:169; Feagin and Sikes 1995:91; Myrdal and Bok 1996). Criminalism performs this function, de-victimizing minoritized groups through essentialist misrepresentations that re-articulate the violent illogic of whiteness as coherently defensive. From the Slave Codes to the Black Codes onward, “race has always played a central role in constructing presumptions of

criminality” (Davis 2003:28). The judiciary, police, and prison system have historically organized around these presumptions, evidenced by their lawful inscription.

Within the carceral apparatus, criminalism is defined substantially by gendered anti-Black oppression. Criminalism marks bodies with criminal meanings, and marked bodies are de-normalized as lawlessly inferior or pathologically criminal, thus rationalizing incarceration differentially. Importantly, discrimination does not require conscious bias for disparities to accumulate in a racist system, particularly where ideology determines perceived causality (Zucker and Weiner 1993). The color-coded contours of criminalism are the basis of that ideology within the U.S. criminal legal system. Consequently, young Black males experience disparities at every stage of the criminal legal system, from arrest to disposition (Abrams et al. 2021; Fader, Kurlychek, and Morgan 2014; Graham and Lowery 2004). Where Wacquant (2001:117) has posited the carceral institution as the principal “race making” machine, I advance that criminalism is the system of power through which freedom and captivity are differentially distributed.

2.4 Prosecutorial Discretion

Within the U.S. criminal legal system, disproportionality is the psycho-material embodiment of hegemonic power relations. The presumptions of criminalism are its ideological antecedent. As arbiters of the carceral environment, prosecutors are disproportionately empowered. And while more than 97 percent of criminal cases are cleared through a presumably unbiased plea-bargaining process, constitutionally protected from selective prosecution, disparities in representation and sentencing evidence a system in which prosecution proceeds discriminatorily (Davis 2017:185; Greenberg 2021). As it pertains to the more than 1.1 million sentenced persons incarcerated in a state or federal prison in 2020, upwards of 93 percent were

male, and nearly 70 percent belonged to a minoritized group (Carson 2021). These figures account for only a fraction of the more than 5.5 million persons under some form of supervision in that year and for whom prosecutorial discretion was differentially determinative (Kluckow and Zeng 2022).

According to Brown and Brunnell (2006:1064), “plea bargaining is a defining, if not the defining, feature of the federal criminal justice system.” Its exercise is contingent on prosecutors’ ability to exert pressures on defendants that reflect the spectrum of punishments at their elective disposal (Davis 2017:181–82). Notwithstanding, coercively leveraging a cascading severity of sanctions against the criminally accused and minimally defended is hardly an exemplification of justice and may indicate the precarity of the defendant rather than a preponderance of the evidence (Davis 2017:182). Research has demonstrated that many “factually innocent defendants” take plea bargains when facing the potential consequences of going to trial against the state (Beenstock, Guetzkow, and Kamenetsky-Yadan 2021:1). If certain groups are being coerced into a system that punishes them particularly based on perceived attributes, then we are no longer talking about actual criminals, but rather a process of criminalization rooted in ideology and the logical avoidance of a threatened hierarchy of punishment.

2.4.1 The Specter of Justice

The National Registry of Exonerations “collects, analyzes, and disseminates information about all known exonerations of innocent criminal defendants in the United States, from 1989 to the present” (The National Registry of Exonerations n.d.). At the time of writing, the registry had published detailed data on the more than 3,200 wrongful conviction cases for which all charges were cleared due to new evidence indicating the defendant’s innocence (The National Registry of Exonerations n.d.). A 2017 report published by the registry determined that, while Black

Americans accounted for only 13 percent of the population, nearly half of all exonerees were Black (Gross, Possley, and Stephens 2017). Across every offense category, Black exonerees were disproportionately represented (Gross et al. 2017). In other words, in the exceedingly rare instances where the criminal legal system acknowledged and engaged in steps to remediate an injustice that it had itself perpetrated, that injustice having happened to a Black American was about as likely as a coin flip. Prosecutors were fundamental to advancing these flawed cases for which Black Americans appear uniquely vulnerable.

2.5 Measuring Criminalism

The state operates within a color-coded discourse that frames racism in abstract individualistic terms that render structuralist arguments imperceptible and difficult to measure (Moore 2008:91). This is evident in the post-civil-rights discursive shift toward a requirement of discriminatory intent in cases involving racial discrimination (Moore 2008:83). Notwithstanding, because prosecutors are unlikely to acknowledge the influence of bias in their decision-making, and because charging and plea bargaining is a “totally discretionary and virtually unreviewable” process that occurs outside public view, investigating disparities become a primary means of empirical review (Davis 2007:5). Disparities are an arguably better objective indicator of systemic bias than self-reporting or even that which could be obtained via a content analysis where the absence of discriminatory intent has been institutionally routinized. That is, official documents indicating explicit bias are unconstitutional and, therefore, unavailable or non-existent (Alexander 2020:130). Thus, non-random differences in sentencing are an effective measure of biased prosecutorial discretion and what is possible.

Though discriminatory intent is the threshold established by the courts in discrimination claims, it is not a necessary precondition for measuring and making inferences concerning

outcomes for which prosecutors are primarily responsible. As such, this paper will examine differences in sentence length across multiple statuses, institutions, and geographies as an empirical outcome. Specifically asking, how does criminalism influence sentence length through prosecutorial bias? As stated previously, systematic differences in sentence length across statuses were conceptualized as an indicator of prosecutorial bias and a mechanism through which the underlying system of power—criminalism—was exercised. This work is necessary because,

If we are willing to take seriously the consequences of a racist and class-biased justice system, we will reach the conclusion that enormous numbers of people are in prison simply because they are, for example, Black, Chicano, Vietnamese, Native American or poor, regardless of their ethnic background. They are sent to prison, not so much because of the crimes they may have indeed committed, but largely because their communities have been criminalized. (Davis 2003:113)

2.6 Hypothesized Causal Model

The proceeding causal model expresses the relationships outlined in my hypotheses (see Figure 1). Figure 1 diagrams the overall relationship between criminalism and sentence length. Figure 1a demonstrates the direct relationship between criminalism and sentence length. This relationship includes, for example, mandatory and non-discretionary sentencing policies that disparately impact communities targeted by criminalism’s rationalizing ideology, such as three-strikes laws or mandatory minimums. Figure 1b expresses the indirect relationship, the process by which criminalism influences sentence length through prosecutorial discretion. Differentiating between these processes is not possible using this dataset. Considering the existence of an unaccounted third variable, results are arguably conservative. That is, the strength and

consistency of the relationship between criminalism and sentence length may be manifestly stronger if its conjuncts were capable of consideration (Marini and Singer 1988).



Figure 1 The Overall Impact of Criminalism on Sentence Length

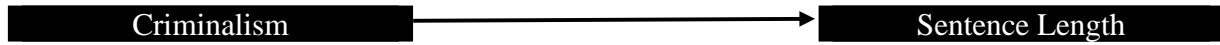


Figure 2 The Direct Impact of Criminalism on Sentence Length



Figure 3 The Indirect Impact of Criminalism on Sentence Length through Prosecutorial Discretion

3 METHODS

For this study, the unit of analysis is individuals, particularly individuals 18 years or older, sentenced to serve time in a state or federal correctional facility (i.e., prison or jail) in the United States during 2016. Because sentence length, or some derivation, is the dependent variable in this analysis, the data has been subset to sentenced individuals exclusively.

3.1 Data

First undertaken in 1974 and revised in 1991 to include federal prisoners, the Survey of Prison Inmates is a national sample of state and federal prisoners. Originally known as the Survey of Inmates in State and Federal Correctional Facilities, the survey changed in 2016 to its current nomenclature. The universe from which the 2016 sample was drawn included 1,502,671 prisoners across 2,001 carceral institutions, defined as “all male and female prisoners age 18 or older who were held in a state prison or were serving a sentence to federal prison in the United States during 2016.” The 2016 Survey of Prison Inmates utilized a two-stage sample design, beginning with a random sample of institutions, followed by a sample of incarcerated persons held in the institutions sampled in the first stage. The final sample consisted of 37,058 prisoners, of which 24,848 participated. The 2016 survey was conducted between January 1, 2016, and October 21, 2016, via in-person interviews and through a cooperative agreement on behalf of the United States Department of Justice, Bureau of Justice Statistics.

Due to limitations inherent in the public data, the restricted version of this dataset was used. In particular, the data did not differentiate between persons held in state or federal institutions. In addition, respondent geography was deidentified. Because geographic and institutional differences produce different outcomes for similar crimes, this study sought and received IRB approval and access to the restricted version of this data from ICPSR.

3.2 Dependent Variables

Two primary dependent variables were used in these analyses, each conceptualized as a measure of prosecutorial bias. The final dependent variable, twenty years or fewer, was utilized only at the point of reliability testing.

Total Months. The first outcome variable, total months, was conceptualized as a measure of prosecutorial bias, counted in months, and refers to the maximum length of time one was committed to state or federal custody. The outcome was generated using self-reported prison sentences in multiple measurement units, including years and months. Whereas the originating variable did not account for individuals with flat life sentences, total months takes these sentences into account by recoding them as 1200 months (i.e., 100 years). In addition, prison sentences exceeding this threshold were recoded as 1200 months. There is arguably little meaningful difference, given that sentences in this range are effectively life sentences and would unnecessarily leverage a regression analysis. Participants sentenced to death were dropped from the dataset; however, the 1983 Baldus study found capital punishment to be a racially discriminatory practice (Alexander 2020:138). Of the initial sample (N=24,447), 10,477 cases are missing for this outcome.

Greater than Twenty Years to Life. The second outcome variable, greater than twenty years to life, examined only those cases in excess of 20 years and was used to examine extreme sentencing outcomes. This variable was dichotomized, where sentence lengths of 240 months or less were coded as 0, and those exceeding 240 months were coded as 1. As with the primary outcome indicator, 10,477 cases were missing from this derivation.

240 Months or Fewer. The validation outcome, 240 months or fewer, examines sentence lengths up to twenty years. This variable was created to deal with skewness, and when looking at

univariate dispersion, 240 months was determined to be a meaningful cutoff in terms of outliers. This variable has a lower N and is only utilized at the point of reliability testing. 13,182 cases are missing from the variable 240 Months or Fewer.

3.3 Independent Variables

As argued by Wacquant (2001:117) and others, “The formula ‘Young + Black + Male’” has come to function as a proxy for probable cause. For this study, the variables youth, racialization, and sexed were conceived as the primary criminalism proxies.

Youth. The independent variable, youth, is the first criminalism proxy and was generated by subtracting the year an individual was admitted to prison from 2016 to generate years incarcerated. The years incarcerated variable was then subtracted from age to generate the variable age at admission. While no universal definition exists, the United Nations defines youth “as those persons between the ages of 15 and 24 years” (Nations n.d.). Using the upper level of the United Nations definition of youth, age at admission was dichotomized into the variable youth where participants admitted to prison at age 25 or older were coded as 0, and participants admitted at age 24 or younger were coded as 1. In total, 904 cases were missing from the variable youth.

Racialization. The second criminalism proxy, racialization, was generated using a series of questions related to socioeconomic characteristics that asked participants to report how other people would describe them using seven race-ethnicity categories, including Hispanic, white, Black, American Indian or Alaska Native, Asian, Native Hawaiian or other Pacific Islander, and something else. For statistical purposes, categories with few observations were collapsed, and the final recoded categories include racialized white (0); racialized Black (1); racialized Hispanic (3); and racialized Other (4). This variable was conceptualized using the definition advanced by

Omi and Winant (2015:109) and is congruent with the theoretical framework I adapted from Hill Collins (2022:167). Specifically, racialization is defined as a discursive socio-historical process through which bodies are differentiated and marked with meaning (Omi and Winant 2015:109). In particular, the racialized body is a corporeal/ocular phenomenon hierarchically constituted according to the meanings associated with perceived phenotypic variation (Omi and Winant 2015:111). Once the body is marked or signified, Omi and Winant (2015:76, 125) say that race operates as the master category, a template for subordination and resistance, the “ideological ‘glue’” for social organization, and when linked to structure, the central principle determining one’s life-chances. 318 cases were missing from the variable racialization.

Sexed. The final criminalism proxy, *sexed*, is a self-reported dichotomous nominal variable with 0 coded as Assigned Male at Birth (AMAB) and 1 coded as Assigned Female at Birth (AFAB). The originating question asked participants what sex they were assigned at birth according to their original birth certificate. Like racialization, sex in this context is an ascribed master status theoretically compatible with the logic of criminalism. The variable *sexed* contained 163 missing cases.

Other Controls. *Educational Attainment* is measured categorically as the highest degree completed. The four mutually exclusive categories include less than high school (1); high school graduate (2); some college (3); and college graduate (4). Educational attainment is an indicator of socioeconomic status and a mechanism through which the influence of prosecutorial bias on sentence length is hypothetically weakened. 291 cases were missing from this variable. *Age* is a continuous variable measured in years. *Age Max 70* is a continuous variable measured in years up to 70. Again, this cutoff was determined by analyzing univariate dispersion and utilized only at the point of reliability testing. *Offense Category* includes homicide (1); rape sexual assault (2);

robbery (3); assault (4); other violent (5); burglary (6); other property (7); drug trafficking (8); drug possession (9); other drug (10); weapons (11); other public order (12); other unspecified (13). 346 cases were missing from the variable offense category. *Geography* is a categorical variable indicating prison location and facility type. The variable is defined as Texas (1); California (2); other state facility (3); and federal (4).

Finally, the interaction term *Racialized AFAB* combines racialization and the sexed category AFAB, where 0 is coded as no and 1 is coded as yes. Whereas single-axis frames see oppressive systems such as race and gender as parallel, intersectionality considers race and gender as interlocking and co-constitutive systems within the “matrix of domination” (Esposito and Evans-Winters 2022:5; Hill Collins 2022:30). As it pertains to criminalism, Davis (2003:16, 41) observes that though racism has always collectively fantasized people of color as criminals, while acceptable behaviors operate within gendered dimensions. 388 cases were missing from this interaction term.

3.4 Data Analysis

All data analyses were completed using the statistical software package Stata 16/IC 16.1 (StataCorp 2019). First, data were subset to sentenced individuals. After cleaning, generating, and recoding variables theoretically relevant to this study, missingness was sorted by age and examined using a two-sample t-test which revealed significant mean differences (the included p-value is for a two-tailed test) between the missing value group (M=38.7906; SD=12.05771) and the group with no missing values (M=39.44228; SD=11.794); $t(24445) = 4.2672$, $p = 0.000$. That said, age and standard deviations were nearly equivalent, and significance was likely an artifact of sample size. Of the 11,514 observations with missing data, 10,477 were associated with

sentence length. Because sentence length was both the outcome indicator and primary source of missingness, these cases were dropped (n=12,933).

Descriptive statistics were examined using univariate and bivariate analysis.

Multicollinearity was assessed using a correlation matrix and again during the regression phase using the variance inflation factor (VIF). The mean VIF of 1.57 is less than 2, indicating that multicollinearity is not an issue. Heteroskedasticity was analyzed and observed using the Breusch-Pagan/Cook-Weisberg test ($\chi^2=1857.64$, $p<.0005$). Huber-White robust standard errors were implemented to address the issue of heteroscedasticity (Daniels 2020:241).

A series of ordinary least squares (OLS) regressions were conducted to examine the primary empirical differences in sentence length. Specifically, using a stepwise approach, eight OLS models were regressed on the variable total months to explore the relationship between sentence length and prosecutorial bias. OLS is a statistical technique for specifying the relationship between a series of predictors, or covariates, and a single response variable (Hardin and Hilbe 2018:9). OLS depends on several assumptions, including linearity, homoscedasticity, independence, and normality (Hardin and Hilbe 2018:9). For this analysis, significant (i.e., not random) differences in sentence length across statuses and defined in months is a measure of prosecutorial bias and a window/mechanism through which to examine the underlying system of power, criminalism.

Next, to assess the likelihood of receiving a sentence over twenty years, eight binomial logistic models were regressed on the total months derivative, greater than twenty years to life, again using a stepwise approach. Logistic regression is a statistical technique based on the logistic function (Ngo, Govindu, and Agarwal 2015). It is used for estimating the likelihood or probability of a binary outcome event (Ngo et al. 2015). Logistic regression requires fewer

assumptions than ordinary least squares (OLS), and for that reason, it is “the prevailing technique of choice among actuarial approaches for a dichotomous classification” (Ngo et al. 2015). Within criminology, logistic regression is used to examine the influence of factors, such as custodial sanctions, on the likelihood of an outcome, such as recidivism (Nagin, Cullen, and Jonson 2009).

4 RESULTS

Using listwise deletion, the final sample included 12,933 sentenced participants serving time in a state or federal correctional institution in 2016. Table 1 displays descriptive statistics in percentages and appropriate measures of central tendency. The median participant age was 38 years, and approximately 19 percent of participants were under 25 (i.e., youth) at the time of prison admission. For the self-reported racialization categories, less than 35 percent of participants reported being racialized as white. Conversely, nearly 30 percent were racialized as Black, and 17 were racialized as Other. Disproportionality was less apparent for the racialization category Hispanic at just under 19 percent. Nearly two-thirds of participants reported being AMAB, and more than half reported having less than a high school diploma.

Table 2 further unpacks descriptive statistics by race, including percentages, means, standard deviations, and frequencies. Nearly 24 percent of participants racialized as Black were youth when admitted to prison, compared to fewer than 13 percent of racialized whites. Racialized Blacks also experienced the longest average prison sentences, at just over 20 years. When averaged, the mean sentence length for participants racialized as Black was over 5 years longer than the sentence length for other racialization categories. The average difference in sentence length increased to almost 7 years when those racialized as Black were also AMAB. While over 24 percent of participants racialized as Black received sentence lengths of greater than twenty years to life, proportionally more than any other racialization category, approximately 89 percent were also AMAB. The association between sentence length and the constituents of criminalism strongly supports my hypotheses. Explicitly, individuals read as young, racialized as Black, and seen as male are incarcerated disproportionately and receive substantially longer sentences than other groups.

Table 1 Characteristics of the Sample

Variable	Percent (<i>N=12,933</i>)
Age	(<i>Median 38 years</i>)
Youth (Under age 25 at prison admission)	18.96
Racialization	
Racialized white (non-Hispanic)	34.35
Racialized Black (non-Hispanic)	29.41
Racialized Hispanic	18.98
Racialized Other (non-Hispanic)	17.25
Assigned male at birth (AMAB)	73.37
Educational attainment	
Less than high school graduate	57.38
High school graduate	22.79
Some college	13.72
College graduate	6.10
Offense Category	
Homicide	11.33
Rape sexual assault	8.68
Robbery	9.70
Assault	8.14
Other violent crime	1.74
Burglary	5.24
Other property crime	11.02
Drug trafficking	18.69
Drug possession	5.12
Other drug crime	1.12
Weapons	4.51
Other public order	14.09
Other unspecified	0.63
Geography and institution	
Texas	12.60
California	4.96
Other state	57.47
Federal	24.97
Total months	(<i>Median 90 months</i>)
Greater than twenty years to life	18.64
Racialized white AFAB	13.05
Racialized Black AFAB	5.18
Racialized Hispanic AFAB	3.31
Racialized Other AFAB	5.09

Table 2 Descriptive Statistics by Race

	(N=12,933)							
	Racialized white		Racialized Black		Racialized Hispanic		Racialized Other	
	% (N)	M (SD)	% (N)	M (SD)	% (N)	M (SD)	% (N)	M (SD)
Age		41.21(12.41)		38.80(11.51)		38.12(10.89)		38.48(11.57)
Youth (Under age 25 at prison admission)	12.90(573)		23.87(908)		19.80(486)		21.74(485)	
Assigned male at birth (AMAB)	62.01(2,755)		82.39(3,134)		82.57(2,027)		70.51(1,573)	
Educational attainment								
Less than high school graduate	46.28(2,056)		62.51(2,378)		68.76(1,688)		58.23(1,299)	
High school graduate	25.77(1,145)		22.45(854)		18.37(451)		22.32(498)	
Some college	18.88(839)		11.09(422)		8.43(207)		13.76(307)	
College graduate	9.07(403)		3.94(150)		4.44(109)		5.69(127)	
Offense Category								
Homicide	10.02(445)		14.38(547)		8.51(209)		11.83(264)	
Rape sexual assault	11.93(530)		5.05(192)		7.98(196)		9.114(204)	
Robbery	5.27(234)		16.19(616)		8.07(198)		9.23(206)	
Assault	6.62(294)		8.68(330)		8.88(218)		9.46(211)	
Other violent crime	2.07(92)		1.45(55)		1.51(37)		1.84(41)	
Burglary	5.65(251)		5.34(203)		5.05(124)		4.48(100)	
Other property crime	15.19(675)		8.70(331)		7.98(196)		10.00(223)	
Drug trafficking	15.35(682)		20.14(766)		22.61(555)		18.56(414)	
Drug possession	6.84(304)		3.84(146)		4.36(107)		4.71(105)	
Other drug crime	0.81(36)		0.68(26)		1.83(45)		1.70(38)	
Weapons	2.34(104)		7.91(301)		3.26(80)		4.39(98)	
Other public order	17.11(760)		7.28(277)		19.27(473)		13.98(312)	
Other unspecified	0.81(36)		0.37(14)		0.69(17)		0.67(15)	
Geography and institution								
Texas	9.72(432)		11.54(439)		20.69(508)		11.25(251)	
California	2.75(122)		4.65(177)		9.41(231)		4.98(111)	
Other state	68.49(3,043)		62.07(2,361)		30.47(748)		57.37(1,280)	
Federal	19.04(846)		21.74(827)		39.43(968)		26.40(589)	
Total months		192.40(306.64)		249.67(339)		165.44(253.74)		194.08(306.31)
Greater than twenty years to life	16.54(735)		24.32(925)		14.99(368)		17.17(383)	

4.1 Sentence Length Outcomes

The results of the primary OLS regression analysis examining empirical differences in sentence length and controlling for offense category, geography, and institution are shown in Table 3. The results were significant across all variables to differing degrees, and in most models, except for the coefficients associated with the racialization category racialized Other and the institution category federal. Specifically, these variables were statistically non-significant in the eight regression models. California was significant in Model 7 but non-significant in Model 8. Model 8, the final OLS regression model, exhibited the greatest explanatory power, statistically and theoretically. Incorporating all the criminalism proxies, Model 8 is most demonstrative of the process by which criminalism influences sentence length through prosecutorial discretion net of offense category, region, and institution. According to the adjusted R^2 (0.4381), the regression model explains 43.81 percent of the variability in sentence length.

Beginning with a simple bivariate in Model 1 and using a stepwise variable selection approach, the criminalism proxies, youth, racialization, and sexed, were introduced sequentially in Models 2 through 4 and retained in subsequent regression models. In each model, there was a highly significant positive relationship between the three criminalism proxies and the outcome variable, total months. The racialized Hispanic variable was statistically non-significant in Model 3 but exhibited a significantly negative relationship with sentence length in Model 4 and all proceeding models after introducing the sexed variable, AFAB. Introduced in Model 4, the variable AFAB exhibited a highly significant negative relationship with sentence length across each model. The results indicate that the process by which criminalism influences sentence length through prosecutorial discretion is both highly significant and positive for those delimited by its controlling images.

The variable educational attainment, an indicator of socioeconomic status and a mechanism through which the influence of prosecutorial bias on sentence length is theoretically weakened was introduced in Model 5 and retained throughout. Across all models, a significant negative relationship existed between sentence length and educational attainment increases. In the final model, individuals with a college degree or more received sentences more than two years shorter on average than those with less than a high school diploma. Arguably, defendants with greater educational attainment are less socially and economically precarious, more likely to retain outside counsel, and less vulnerable to plea-bargaining pressures and the threatened trial penalty.

The 13-level categorical variable, offense category, was controlled beginning in Model 6, while geography and institution were introduced in Model 7. All controls were statistically significant except for the institution category, federal. California was statistically significant in Model 7 but statistically non-significant in the final model. From Model 5 to Model 6, the adjusted R^2 increased from 0.145 to 0.436, indicating that sentence length and offense category are predictably correlated, and approximately 29 percent of the measured difference in sentence length is attributable to the offense category. Notwithstanding, the constituents of criminalism infer a statistically significant positive relationship between prosecutorial bias and sentence length net of educational attainment, offense category, geography, and institution, further supporting my hypotheses.

Finally, the interaction term racialized AFAB was introduced in Model 8 to elucidate sentencing outcomes further. After including the interaction term, the magnitude of the positive relationship between racialized Black and sentence length increased, indicating that the process by which criminalism influences sentence length through prosecutorial bias is uniquely

deleterious for those who are both racialized as Black and seen as male. After controlling for offense type, institution, and geography, the coefficients associated with youth (79.554) and racialized Black AMAB (25.591) predict an increase in average sentence length of approximately 9 years when compared to non-youth who are racialized as white and AMAB.

Table 3 OLS Regression Models Predicting Sentence Length in Months

Predictor	Model 1		Model 2		Model 3		Model 4		Model 5		Model 6		Model 7		Model 8	
	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error
Age	6.611***	0.257	10.298***	0.311	10.274***	0.308	10.009***	0.309	10.201***	0.312	6.197***	0.252	6.25***	0.254	6.261***	0.254
Youth			230.297***	8.633	224.347***	8.609	217.291***	8.639	214.309***	8.578	79.582***	6.979	79.740***	6.967	79.554***	6.963
Racialized Black					57.461***	6.660	46.117***	6.777	41.526***	6.774	19.829***	5.660	20.018***	5.663	25.591***	6.878
Racialized Hispanic					-10.660	6.547	-22.572**	6.665	-28.507***	6.749	-20.728***	5.567	-21.615***	5.813	-24.183**	6.949
Racialized Other					9.865	7.437	4.981	7.432	1.768	7.432	-9.447	6.113	-8.878	6.146	-9.404	7.930
AFAB							-56.326***	5.240	-52.272***	5.262	-48.034***	4.460	-46.713***	4.518	-43.732***	6.636
High school graduate									-20.359**	6.104	-18.396***	5.073	-17.690***	5.057	-17.797***	5.066
Some college									-31.17373***	7.448	-14.309*	5.988	-12.861*	5.981	-12.940*	5.985
College degree or more									-60.524***	11.650	-27.991**	9.121	-25.775**	9.253	-25.943**	9.275
Rape sexual assault											-398.9801***	14.987	-400.560***	14.954	-399.990***	14.951
Robbery											-455.907***	13.521	-455.711***	13.546	-456.294***	13.545
Assault											-504.3809***	13.622	-506.079***	13.612	-505.634***	13.615
Other violent crime											-485.370***	19.512	-483.177***	19.433	-482.883***	19.413
Burglary											-533.028***	13.414	-533.332***	13.392	-533.555***	13.394
Other property crime											-588.054***	12.280	-586.809***	12.337	-586.501***	12.340
Drug trafficking											-526.655***	12.305	-522.319***	12.472	-523.106***	12.471
Drug possession											-572.348***	13.088	-576.013***	13.123	-576.659***	13.124
Other drug crime											-515.612***	21.570	-511.480***	21.592	-512.784***	21.548
Weapons											-568.045***	13.017	-561.176***	13.402	-562.614***	13.425
Other public order											-582.743***	12.404	-580.112***	12.541	-579.830***	12.541
Other unspecified											-533.363***	23.370	-526.761***	23.526	-525.878***	23.571
Texas													34.522***	7.270	34.694***	7.272
California													-22.693*	11.423	-22.309	11.423
Federal													-5.604	4.562	-5.223	4.578
Racialized Black AFAB															-26.833*	11.967
Racialized Hispanic AFAB															18.250	11.151
Racialized Other AFAB															2.928	11.964
_cons	-56.324	9.248	-245.415	12.206	-259.909	12.509	-226.693	12.973	-219.134	13.112	430.954	17.829	424.695	17.931	423.326	18.095
Adjusted R-Squared	0.0636		0.1291		0.1366		0.1426		0.1453		0.4361		0.4378		0.4381	
F-statistic	659.87***		586.23***		254.06***		232.52***		157.66***		221.55***		196.24***		174.89***	
df	1		2		5		6		9		21		24		27	

* p<.05 **p<.01 ***p<.001

(N=12,933)

4.2 Greater than Twenty Years to Life Outcomes

Table 4 displays the results for the logistic regression models predicting prison sentences greater than twenty years to life and controlling for offense category, geography, and institution. Results are also displayed in Table 5, reported as odds ratios for interpretive purposes. The results were again significant across all variables to differing degrees, and in most models, except for the racialization categories racialized Hispanic, racialized other, the institution category federal, and the interaction term racialized AFAB. The McFadden R^2 (0.349) for Model 8, the final logistic model, indicated an excellent model fit. The area under the ROC curve was 0.8741, suggesting high accuracy. Finally, model fit was assessed using -2 log-likelihood (-2LL). -2LL is useful for examining the ability of a model to improve predictive capacity by looking at reductions in unexplained variance. The final model -2LL (-4050.386) was 2170.303 less than the null -2LL (-6220.689).

Following like procedures, the criminalism proxies, youth, racialization, and sexed, were introduced sequentially in Models 2 through 4 and retained subsequently. While statistically non-significant, the direction of the relationship for the racialized Hispanic variable was persistently negative after introducing the sexed variable, AFAB, in Model 4. The racialization category racialized Other was significantly positive at the .05 level in Model 3 but statistically non-significant in subsequent models after introducing the sexed variable, AFAB. The direction of the relationship also reversed after introducing offense category controls in Model 6. As in the previous OLS regression, and across every model, there was a highly significant positive relationship between the criminalism proxies, youth, and racialized Black, and the outcome variable, greater than 20 years to life.

Introduced in Model 5, each category of educational attainment indicated a significant negative relationship between sentence length and increases in educational attainment. The odds ratio in Model 8 suggests that individuals with a college degree or more were nearly 28 percent less likely to receive sentences of greater than twenty years to life when compared to those with less than a high school diploma. These results show that precarity and extremity of outcome are correlated within the criminal legal apparatus. Defendants with higher socioeconomic status appear better equipped to resist prosecutorial pressures. The control variables for offense category, institution, and geography were introduced sequentially in Model 6 and Model 7. All controls were statistically significant except for the institution category, federal.

The interaction term racialized AFAB was introduced in Model 8 to explicate racialized and gendered differences in sentencing outcomes more thoroughly. Though the negative relationship between the variable racialized Black AFAB and the outcome, greater than twenty years to life, was statistically non-significant, the magnitude of the positive relationship between the variable racialized Black and the outcome increased with its introduction, reconfirming that the process by which criminalism influences sentence length through prosecutorial bias is particularly harmful to individuals who are both racialized as Black and AMAB. Taken together, the odds ratio associated with youth (2.166) and racialized Black AMAB (1.524) predict that individuals read as young, racialized as Black, and seen as male are 3.69 times more likely to receive sentences greater than twenty years to life when compared to their white counterparts, net of education, offense category, geography, and institution.

Table 4 Logistic Regression Models Predicting Prison Sentence Greater than Twenty Years to Life

Predictor	Model 1		Model 2		Model 3		Model 4		Model 5		Model 6		Model 7		Model 8	
	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error	Coef (b)	Std Error
Age	0.048***	0.002	0.077***	0.002	0.078***	0.002	0.077***	0.002	0.079***	0.002	0.063***	0.003	0.065***	0.003	0.065***	0.003
Youth			1.827***	0.069	1.784***	0.070	1.726***	0.070	1.700***	0.070	0.771***	0.085	0.774***	0.085	0.773***	0.085
Racialized Black					0.572***	0.060	0.482***	0.060	0.427***	0.061	0.372***	0.074	0.377***	0.074	0.421***	0.082
Racialized Hispanic					0.057	0.074	-0.044***	0.075	-0.113	0.076	-0.045	0.088	-0.089	0.091	-0.064	0.098
Racialized Other					0.144*	0.073	0.104	0.074	0.064	0.074	-0.056	0.088	-0.051	0.089	-0.025	0.100
AFAB							-0.565***	0.063	-0.524***	0.064	-0.649***	0.081	-0.617***	0.081	-0.519***	0.121
High school graduate									-0.220***	0.061	-0.295***	0.073	-0.275***	0.073	-0.277***	0.073
Some college									-0.336***	0.081	-0.240*	0.094	-0.207*	0.095	-0.207*	0.095
College degree or more									-0.602***	0.117	-0.366**	0.135	-0.323*	0.138	-0.323*	0.138
Rape sexual assault											-1.978***	0.097	-2.029***	0.098	-2.022***	0.098
Robbery											-2.249***	0.096	-2.268***	0.098	-2.271***	0.098
Assault											-2.686***	0.112	-2.762***	0.115	-2.759***	0.115
Other violent crime											-2.566***	0.209	-2.559***	0.209	-2.558***	0.209
Burglary											-3.291***	0.157	-3.346***	0.158	-3.348***	0.158
Other property crime											-4.514***	0.182	-4.515***	0.184	-4.515***	0.185
Drug trafficking											-3.253***	0.098	-3.177***	0.104	-3.183***	0.104
Drug possession											-4.473***	0.267	-4.575***	0.268	-4.580***	0.269
Other drug crime											-2.939***	0.285	-2.829***	0.291	-2.837***	0.290
Weapons											-4.297***	0.231	-4.174***	0.234	-4.182***	0.235
Other public order											-4.093***	0.136	-4.086***	0.140	-4.084***	0.140
Other unspecified											-2.820***	0.359	-2.698***	0.363	-2.705***	0.363
Texas											0.636***	0.081	0.637***	0.081	0.637***	0.081
California											-0.289*	0.141	-0.290*	0.141	-0.290*	0.141
Federal											-0.125	0.088	-0.122	0.088	-0.122	0.088
Racialized Black AFAB															-0.239	0.196
Racialized Hispanic AFAB															-0.098	0.257
Racialized Other AFAB															-0.104	0.209
_cons	-3.470	0.084	-5.074	0.114	-5.33	0.124	-5.063	0.127	-4.990	0.129	-1.593	0.160	-1.726	0.161	-1.753	0.163
McFadden R2	0.053		0.108		0.116		0.123		0.1267		0.342		0.349		0.349	
χ^2	661.69***		1144.81***		1238.01***		1286.38***		1304.01***		2687.45***		2702.92***		2711.67***	
-2LL	-5894.330		-5552.111		-5498.358		-5456.141		-5432.66		-4091.463		-4051.163		-4050.386	
df	1		2		5		6		9		21		25		28	

* p<.05 **p<.01 ***p<.001

(N=12,933)

Table 5 Logistic Regression Models Predicting Prison Sentence Greater than Twenty Years to Life, Odds Ratios

Predictor	Model 1		Model 2		Model 3		Model 4		Model 5		Model 6		Model 7		Model 8	
	OR	Std Error	OR	Std Error	OR	Std Error	OR	Std Error	OR	Std Error	OR	Std Error	OR	Std Error	OR	Std Error
Age	1.049***	0.002	1.080***	0.003	1.082***	0.003	1.080***	0.003	1.082***	0.003	1.065***	0.003	1.067***	0.003	1.067***	0.003
Youth			6.214***	0.430	5.953***	0.415	5.620***	0.395	5.474***	0.385	2.162***	0.183	2.169***	0.184	2.166***	0.184
Racialized Black					1.772***	0.106	1.619***	0.099	1.533***	0.094	1.451***	0.108	1.458***	0.109	1.524***	0.125
Racialized Hispanic					1.059	0.079	0.957	0.072	0.893	0.068	0.956	0.084	0.915	0.083	0.938	0.092
Racialized Other					1.155*	0.084	1.109	0.082	1.066	0.078	0.946	0.083	0.950	0.084	0.975	0.098
AFAB							0.568***	0.036	0.592***	0.038	0.522***	0.042	0.540***	0.044	0.596***	0.072
High school graduate									0.802***	0.049	0.745***	0.054	0.0760***	0.056	0.758***	0.056
Some college									0.714***	0.058	0.787*	0.074	0.813*	0.077	0.813*	0.077
College degree or more									0.548***	0.064	0.693**	0.094	0.724*	0.010	0.724*	0.100
Rape sexual assault											0.138***	0.013	0.131***	0.013	0.132***	0.013
Robbery											0.105***	0.010	0.103***	0.010	0.103***	0.010
Assault											0.068***	0.008	0.063***	0.007	0.063***	0.007
Other violent crime											0.077***	0.016	0.077***	0.016	0.077***	0.016
Burglary											0.037***	0.006	0.035***	0.006	0.035***	0.006
Other property crime											0.011***	0.002	0.011***	0.002	0.011***	0.002
Drug trafficking											0.039***	0.004	0.042***	0.004	0.041***	0.004
Drug possession											0.011***	0.003	0.010***	0.002	0.010***	0.003
Other drug crime											0.053***	0.015	0.059***	0.017	0.059***	0.017
Weapons											0.014***	0.003	0.015***	0.004	0.015***	0.004
Other public order											0.017***	0.002	0.017***	0.002	0.017***	0.002
Other unspecified											0.060***	0.021	0.067***	0.024	0.067***	0.024
Texas													1.888***	0.152	1.889***	0.152
California													0.749*	0.106	0.748*	0.106
Federal													0.882	0.078	0.885	0.078
Racialized Black AFAB															0.788	0.154
Racialized Hispanic AFAB															0.907	0.233
Racialized Other AFAB															0.901	0.189
_cons	0.031	0.003	0.006	0.001	0.005	0.001	0.006	0.001	0.007	0.001	0.203	0.032	0.178	0.029	0.173	0.028

* p<.05 **p<.01 ***p<.001

(N=12,933)

4.3 Validating Regression Analysis

Confirmation analyses were conducted by rerunning the final model (Model 8) in each regression, controlling for potential outliers in interval ratio level variables. The recoded outcome variable for the OLS model, 240 months or fewer, dampened leverage by omitting extreme values. Observations omitted from the outcome variable, 240 months or fewer, were used to generate the dichotomous nominal variable, greater than twenty years to life. This was the outcome variable analyzed in each binary logistic regression. The recoded predictor variable in the comparison models, age max 70, was truncated at 70 years. Cutoffs were determined by examining univariate dispersion. Table 6 displays the results of the OLS regressions, while Table 7 presents the results of the binary logistic regressions. A total of 2,705 participants over age 70 were dropped from confirmation Models. The final N for Models retaining potential outliers was 12,933, and 10,476 for Models without.

With a few exceptions, relationships observed in the primary OLS regression persist with some expected decrease in the strength of association. In particular, there was a highly significant positive relationship between the variables, youth, racialized Black AMAB, and carceral outcomes, providing strong validation for the relationships outlined throughout this study. The racialization category, racialized Other, was negative in each OLS model but significant only in the model from which outliers were omitted. By omitting outliers that leverage the regression line, variability decreased, and statistical power increased, resulting in the observed statistical significance. The shifting statistical significance across varying units of analysis may indicate that the process by which criminalism influences sentence length through prosecutorial bias differs in ways not captured by this poorly operationalized racialization category.

Similarly, the educational attainment categories, high school graduate and some college, were persistently negative but statistically non-significant in the OLS model where outliers were omitted. This change in significance suggests that individuals with lower levels of educational attainment may be particularly vulnerable to extreme sentencing outcomes. When extreme outcomes are controlled, education ceases to matter, at least at any level lower than a college degree. Arguably, undereducated defendants are the least able to defend themselves against prosecutorial biases and, therefore, the most adversely impacted by the threatened trial penalty. The logistic regression comparison shows that each educational attainment category was significant and increasingly negative across both models.

Finally, in the comparison OLS model where outliers were omitted, the institutional control, federal, reverses, becoming highly significant and positive. This reversal may indicate differences in state and federal discretionary power or the types of crimes prosecuted—for example, those carrying non-discretionary sentences. When extreme cases are removed, the impact of federal vs. state prosecution is clear; however, when extremes are included, the massive influence of prosecutorial discretion on state outcomes is apparent. This validates the importance of controlling for geography and institution when considering sentencing outcomes in research.

Table 6 OLS Regression Validating Analysis

OLS Model with outliers		OLS Model without outliers	
<i>Variable (Total Mon.)</i>	<i>N=12,933</i>	<i>Variable (Up to 240)</i>	<i>N=10,476</i>
	<i>Coeff</i>		<i>Coeff</i>
Age	6.261***	Age (Maximum 70 Yrs)	1.052***
Youth	79.554***	Youth	10.904***
Racialized Black	25.591***	Racialized Black	8.858***
Racialized Hispanic	-24.183**	Racialized Hispanic	-8.153***
Racialized Other	-9.404	Racialized Other	-6.344**
AFAB	-43.732***	AFAB	-10.097***
High school graduate	-17.797***	High school graduate	-0.238
Some college	-12.940*	Some college	-0.259
College degree or more	-25.943**	College degree or more	-9.135***
Rape sexual assault	-399.990***	Rape sexual assault	31.709***
Robbery	-456.294***	Robbery	-44.069***
Assault	-505.634***	Assault	-70.446***
Other violent crime	-482.883***	Other violent crime	-61.705***
Burglary	-533.555***	Burglary	-70.793***
Other property crime	-586.501***	Other property crime	-105.531***
Drug trafficking	-523.106***	Drug trafficking	-67.657***
Drug possession	-576.659***	Drug possession	-103.126***
Other drug crime	-512.784***	Other drug crime	-86.850***
Weapons	-562.614***	Weapons	-87.407***
Other public order	-579.830***	Other public order	-104.339***
Other unspecified	-525.878***	Other unspecified	-80.618***
Texas	34.694***	Texas	9.929***
California	-22.309	California	-6.391*
Federal	-5.223	Federal	18.946***
Racialized Black AFAB	-26.833*	Racialized Black AFAB	-3.608
Racialized Hispanic AFAB	18.250	Racialized Hispanic AFAB	2.783
Racialized Other AFAB	2.928	Racialized Other AFAB	3.044
<u>_cons</u>	423.326	<u>_cons</u>	116.250

* p<.05 **p<.01 ***p<.001

Table 7 Logistic Regression Validation Analysis

LOGIT Model with outliers		LOGIT Model without outliers	
<i>Variable (Twenty...)</i>	<i>N=12,933</i>	<i>Variable (Twenty...)</i>	<i>N=10,476</i>
	OR		OR
Age	1.067***	Age (Maximum 70 Yrs)	1.069***
Youth	2.166***	Youth	2.236***
Racialized Black	1.524***	Racialized Black	1.495***
Racialized Hispanic	0.938	Racialized Hispanic	0.912
Racialized Other	0.975	Racialized Other	0.940
AFAB	0.596***	AFAB	0.576***
High school graduate	0.758***	High school graduate	0.741***
Some college	0.813*	Some college	0.823*
College degree or more	0.724*	College degree or more	0.718*
Rape sexual assault	0.132***	Rape sexual assault	0.137***
Robbery	0.103***	Robbery	0.103***
Assault	0.063***	Assault	0.063***
Other violent crime	0.077***	Other violent crime	0.079***
Burglary	0.035***	Burglary	0.035***
Other property crime	0.011***	Other property crime	0.011***
Drug trafficking	0.041***	Drug trafficking	0.042***
Drug possession	0.010***	Drug possession	0.010***
Other drug crime	0.059***	Other drug crime	0.056***
Weapons	0.015***	Weapons	0.015***
Other public order	0.017***	Other public order	0.017***
Other unspecified	0.067***	Other unspecified	0.073***
Texas	1.889***	Texas	1.882***
California	0.748*	California	0.750*
Federal	0.885	Federal	0.883
Racialized Black AFAB	0.788	Racialized Black AFAB	0.815
Racialized Hispanic AFAB	0.907	Racialized Hispanic AFAB	0.920
Racialized Other AFAB	0.901	Racialized Other AFAB	0.950
<u>_cons</u>	0.173	<u>_cons</u>	0.161

* p<.05 **p<.01 ***p<.001

5 DISCUSSION

This study redefined criminalism as a system of power and empirically examined the process by which criminalism influences sentence length through prosecutorial bias. The results were consistent in all models; there was a significant positive association between being read as young, racialized as Black, seen as male, and punishment in the extremes. Moreover, results are arguably conservative due to the indistinguishability of discretion and structure in analyses. Decoupling these conjuncts may reveal stronger relationships than what was measured.

Where previous studies have examined empirical differences in sentence length, many operate from a position that fails to adequately interrogate the validity of patterned social response, conceding that “their criminal responsibility is real” (Travis et al. 2014:23). In this conception, the criminal legal system is presumed logically coherent, at least to the degree that its continuation is acceptable, and negative sanctions, while sometimes recognized as caustic, are warranted and concomitant with some requisite antecedent. However, when situated within a socio-historical context, as I have attempted, the ideological antecedents to disproportionality are evident, calling to question the legitimacy of patterned response as the corollary of behavioral continuity.

These analyses demonstrate that the ideology of criminalism, a novel concept I have attempted to develop throughout this thesis, conflates youth, Blackness, and maleness with danger. Its controlling images influence outcomes for which prosecutors, as the single most empowered agents within the criminal legal apparatus, are primarily responsible (Davis 2017:178). At the same time, policies that carry racially disparate criminal penalties perpetuate criminalism structurally, thereby essentializing its consequences.

5.1 Limitations and Future Research

If overcharging functions as an unbiased mechanism of judicial efficiency, there is a deficit of data with the capacity to demonstrate so empirically. While there were limitations introduced by using proxies for criminalism and prosecutorial bias, operationalizing racialization and ascribed sex was an effort toward capturing the attributional gaze—the discretionary mechanism by which the consequences of criminalism are made material. Notwithstanding, beyond systemic disparities, criminalism and prosecutorial bias were not explicitly reflected in the data, and future research would benefit from alternative methodological approaches that more directly address the question. Future research should look toward administrative data that speaks to the role of pre-plea charging in sentencing outcomes, using criminalism as a map. Understanding how and against whom such discretionary power is mobilized is vital. In addition, and moving beyond the quantitative, future research on criminalism should include in-depth interviews with prosecutors, defense attorneys, and, most importantly, defendants.

5.2 Conclusion

If the carceral institution is the primary “race making” mechanism in the post-civil-rights period, as Wacquant (2001:117) has argued, criminalism is its rationalizing apologetic. Though the negative consequences of an anti-Black and multiply biased criminal legal apparatus are borne primarily by those captured by its gaze, the adverse impact of imprisonment is broadly distributed.

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