


RESEARCH ARTICLE

# The limits of criminal justice reform: an analysis of elite rhetoric in four cities

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## Abstract

As the coronavirus pandemic swept the nation in 2020, many emphasized that carceral spaces were hotspots for the virus, leaving Black and Brown people especially vulnerable to infection. In combination with other critiques of racism in the carceral state, these observations created pressure to decarcerate, especially on the political left. How did political elites discuss the carceral state in this changed atmosphere? To answer this question, we analyze rhetoric in public statements across four liberal metropolitan areas during the spring and summer of 2020. In these statements, we find a long-standing discourse of racially paternalist penal welfarism, retrofitted to pandemic times and accompanied by a distinction between “deserving” and “undeserving” criminals. Accommodating portrayals of incarcerated people as vulnerable to COVID-19 and in desperate need of care, this pattern of rhetoric positioned the carceral state as a protector in order to justify continued incarceration.

**Keywords:** carceral state; criminal justice; discourse; public policy; race

Racist ideas fueled mass incarceration. Early in the nation’s history, linkages between Blackness and criminality justified the precursors of today’s carceral state, such as slave patrols during the antebellum era and convict leasing during the Jim Crow era. After the mid-century civil rights movement, political elites promulgated racist portrayals of Black people as criminals in order to advance their racial agenda (Weaver, 2007). These ideas were mobilized in support of a massive increase in the number of people behind bars at the end of the twentieth century (Hinton, 2017; Murakawa, 2014). At the time, many political elites and much of the American public agreed – as many still believe today – that violent (Black) crime was one of the nation’s biggest problems and that a vast, punitive carceral apparatus was needed to deal with it (Alexander, 2010; Simon, 2007).

However, the ideological underpinnings of the carceral state – challenged since their inception – have become subjected to increased scrutiny in recent years. Long-standing critiques that emphasize the racially disproportionate harms of mass

incarceration have become increasingly common on the left,<sup>1</sup> in large part due to the efforts of social movements such as the Movement for Black Lives (Woodly, 2021). How do political elites in liberal circles talk about the carceral state in this altered discursive environment?

We investigate an important case in which the legitimacy of mass incarceration was forcefully and publicly challenged: the coronavirus pandemic. As COVID-19 swept the country in the spring and summer of 2020, jails and prisons became hotspots for the virus, leading to racially concentrated harm. In response, many on the left argued for decarceration. At the same time, nationwide protests following the police killing of George Floyd extended a long tradition of organized activism resisting racism in the carceral state. Protestors and their allies called for a reckoning of the routinely racist deployment of violence on behalf of police and the criminal justice system at large. Taken together, these challenges threatened the ideational foundations of the carceral state by depicting those in its control as vulnerable to racialized harm.

In this project, we investigate whether, and how, political elites continue to justify a system of mass incarceration even when its failings are laid bare. To do so, we analyze rhetoric from public officials, especially those with strong connections to the criminal justice system, in four liberal metropolitan areas: Boston, MA, Los Angeles, CA, New York City, NY, and Washington, D.C. We study elite rhetoric during a time in which challenges to the legitimacy of the carceral state were at a high point: the summer of 2020, when the COVID-19 pandemic raged and the George Floyd protests were at their peak. Our goal is not to explain or even comprehensively describe variation across these areas but to search for patterns of discourse that they may have in common.

We find that across all four metropolitan areas, some political elites strategically co-opted discourses of care in order to justify continued incarceration. Incorporating the observation that incarcerated people were especially vulnerable to the pandemic, these elites repositioned carceral state actors as medical experts uniquely well-suited to provide care to the vulnerable. This strategy drew on a long-standing and racially-paternalist rhetorical tradition of “penal welfare” (Garland, 2001), which portrays incarcerated people as unable to care for themselves and the carceral state as the provider of the care they need and otherwise would not obtain.

This strategy worked in conjunction with an additional rhetorical device called “bifurcation” (Seeds, 2017): a long-standing and racialized distinction between “deserving” and “undeserving” “criminals” (Muhammad, 2011a). Here, some criminalized people (often implicitly racialized as white) are described in sympathetic terms, implying that they deserve to be treated kindly. Other criminalized people (often implicitly racialized as Black or Brown), meanwhile, are portrayed as violent and dangerous, in turn justifying their punishment. This discourse attempts to shift the focus of debate away from the horrors of the carceral state back to the question of who deserves to be subjected to these horrors; these terms place Black people “perpetually on trial” (Murakawa, 2021).

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<sup>1</sup>Throughout this paper, we use the terms “on the left,” “liberal,” and “progressive” mostly interchangeably, and to refer to political ideology.

In our findings, penal welfarism and bifurcation work together, both serving an implicitly racist logic. That is, while few carceral state actors mention race explicitly, racist ideas suffuse two contradictory and complementary images of the “criminal”: one a violent thug who must be sequestered from society, and the other a vulnerable creature requiring paternalistic care. Carceral state actors mobilize both of these racialized images in support of incarceration.

As discussed in the concluding section, these findings have important implications for the study of the role of ideas in policymaking, and in particular for scholars’ understanding of the contemporary ideological underpinnings of mass incarceration. The findings also have the potential to inform ongoing conversations about how to resist the racially authoritarian governance (Weaver and Prowse, 2020) of the carceral state. In particular, while we applaud those who seek to draw attention to those who are most vulnerable, we caution that elite actors are so discursively nimble that they can enlist even claims of vulnerability to racialized harm in support of a primary dealer of racialized harm: the carceral state.

### **Theory: the influence of racially paternalist ideas on carceral state discourse**

Here we theorize factors that shape political elites’ discourse when responding to challenges to the legitimacy of the carceral state. Doing so is not a purely deductive exercise; indeed, our theoretical framework has emerged both from our reading of existing scholarship and from our qualitative analysis.

Our approach draws from “new institutionalism,” which characterizes discourse as “the interactive process of conveying ideas,” including both structure (what is said, where, and how) and agency (who said what to whom) (Schmidt, 2008). We focus on “communicative discourse” in particular, in which political actors attempt to wield “ideational power” (Carstensen and Schmidt, 2016) by mobilizing ideas in order to persuade. It is important to study this discourse in the context of carceral reform efforts because, as Schoenfeld (2016) notes, “The language and process of reform shapes how legislators and the public view the problem and potential solutions” (166).

The main factor of interest consists of the available ideas that political elites have to choose from: these ideas both enable and constrain their rhetoric. When ruling ideas are challenged, elites seek to respond strategically, constructing more acceptable justifications for their positions. To do so, elites work like “bricoleurs,” grabbing bits and pieces of ideas in the political ether and melding them together in creative ways (Carstensen, 2011). Rhetoric, then, is a function of not only contemporary pressures and interests but also ideational and institutional legacies.

One important idea available to carceral state actors is penal welfare<sup>2</sup>: the idea that the carceral state provides those under its jurisdiction with protection and care. This idea has been central to the growth of mass incarceration from the beginning, as shown by Hinton’s (2017) landmark analysis of linkages between the War on Poverty and the War on Crime. In recent years, it is increasingly common for social

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<sup>2</sup>We did not identify this theme in advance: we iterated between reviewing the data and reading a wide variety of studies of criminal justice reform efforts.

benefits to be channeled through the criminal justice system (Gruber *et al.*, 2016), and, of particular interest for our purposes, for discourse to position the carceral state as a welfare state. For example, pay-to-stay fees, in which people are billed for the cost of their incarceration, are justified on the grounds that room and board are a type of welfare provision (Kirk, Fernandes, and Friedman, 2020). It is common for carceral state actors to characterize probation (Phelps and Ruhland, 2021), “rehabilitation” programming for children (Cate, 2016), and, in some cases, even due process (Van Cleve and Lara-Millan, 2017) as *social services* that are provided by the criminal justice system.

There is a kernel of truth to some of these portrayals. As Miller and Stuart (2017) point out, to be marked as a “carceral citizen” does render one uniquely eligible for an array of social services – but the authors also observe that these social services are at best “(perverse) benefits” (542) bound up with degrading treatment and coercion. Furthermore, discourses of penal welfare can actually open up room for carceral state expansion (Gruber *et al.* 2016).

Although race is rarely explicitly mentioned in penal welfare discourse, such discourse relies heavily on an implicit form of racial paternalism. A standard justification for coercive care is that “inmates” and the communities they belong to are incapable of self-care. For example, in focus groups led by Phelps and Ruhland (2021), probation officers routinely invoked a parenting metaphor, often critiquing the upbringing of their “clients.” As one probation officer said: “We re-parent people” (7). Those on probation in Phelps and Ruhland’s focus groups observed that the probation officers treated them in dehumanizing ways: as one participant noted in vocal agreement, “They treat us like animals” (8).

Another idea available to carceral state actors, one that we believe enhances the effectiveness of penal welfare discourse, is that of bifurcation: “distinguishing groups in order to treat them differently” (Seeds, 2017, p. 592). Bifurcation draws a distinction between deserving categories and undeserving categories of criminals, and it has a long and deeply racialized history. As Muhammad’s (2011b) study of the urban North in the 20th century demonstrates: “Black criminality . . . was shaped by innovative statistical discourses that emphasized racial inferiority, while northern white and immigrant criminality was relationally and simultaneously defined by sociological discourses that emphasized class victimization” (74)

Bifurcation discourse (Beckett, Reosti, and Knaphus, 2016) has been increasingly adopted by carceral state reformers in recent years. For example, movements for decarceration tend to focus on what Marie Gottschalk (2015) has called the “non, non, nons”: nonserious, nonviolent, and nonsexual offenders (165). As Katherine Beckett (2018) notes, this approach “appears to be premised on the idea that only relatively sympathetic defendants facing less-serious charges are deserving of reform” (244). Bifurcation rhetoric has underpinned a number of state legislative reforms lessening penalties for “non-violent” crimes while simultaneously increasing penalties for “violent” crimes – in turn requiring a reorganization of state criminal law so that all crimes can be classified into one of these two categories (Seeds, 2017). This long history and growing prevalence of bifurcation creates an opportunity for carceral state actors; they can argue on one hand that deserving criminals require coercive care and on the other that undeserving criminals require punishment. While these groups are defined against each other, both constructions are mobilized to justify incarceration.

The use of rhetorics of penal welfarism and bifurcation may depend on the actor's relationship to the carceral state. Drawing on Garland's framework (2001), which divides public officials into elected officials and administrative officials, we consider that elected officials with strong connections to the carceral state face both electoral and organizational pressures. Rachael Rollins, who at the time of our data collection was the district attorney of Suffolk County, Massachusetts (where Boston is located), is a prime example. She was elected on a platform that committed her to fight racial injustice in the carceral state – yet her core organizational imperative was to incarcerate people. When formulating her rhetoric, therefore, she faces pressures that work at cross purposes. In comparison, Ed Markey, U.S. Senator from Massachusetts, can criticize racial injustice in the carceral state and then return to his day-to-day business, which need not be as directly concerned with putting people, especially people of color, behind bars. In sum, the more directly one is connected to the carceral state, the more likely one is to, as Friedman (2021) puts it, “privilege[] protecting the prison as an institution, rather than saving the lives within” (3). With this in mind, we believe that racial paternalism is particularly useful to political elites who, on one hand, have connections to the carceral state and, on the other, are accountable to liberal critiques of the carceral state.

### **Research design: analyzing the rhetoric of Carceral state actors**

This project examines “communicative discourse,” which Schmidt (2008) defines as “the individuals and groups involved in the presentation, deliberation, and legitimation of political ideas to the general public” (310). We investigate public statements made during a time in which those entangled in the carceral state were particularly likely to be described as vulnerable: during the peak of the George Floyd protests and at a high point of the pandemic. While we were motivated in the short term by these noteworthy events, we are optimistic that the rhetorical strategies we identified are used in other contexts and by other actors.

### **Site selection**

The data come from four major metropolitan areas in the USA: Boston, MA, Los Angeles, CA, New York, NY, and Washington D.C. These areas were partly chosen for pedagogical purposes; the students on the research team collecting data sought to learn more about the areas in which they were raised. They were also chosen because we are particularly interested in the statements made by elites in liberal areas since it is there that the critiques of the carceral state have been most prevalent. Taken together, the four metropolitan areas represent approximately 44 million people, about 13% of the country's total population.

These four cities are densely populated and consistently progressive. Each represents a touchstone of American society: education, entertainment, commerce, and politics. They vary considerably in their racial diversity and histories of carcerality. However, as with any purposive sample, these cities are not representative of all American cities. We have not included any cities in the South or the Midwest. All are on the East coast, save Los Angeles, and none is among those with the highest proportion of Black residents. We believe there is

much to be learned from these places but look to future research for a more inclusive sample. More details about these metropolitan areas can be found in Appendix 1.

### **Actor selection**

While the term “carceral” might typically conjure prisons and jails, the “carceral state,” as Weaver and Lerman (2010) define it, includes the “totality of this spatially concentrated, more punitive, surveillance, and punishment-oriented system of governance” (818). This expansive definition implicates many potentially relevant actors. Here we study actors with formal political power, whether direct or indirect, over who will be incarcerated, their conditions while incarcerated, and/or the length of their sentence. We prioritize the rhetoric of actors who may set policy priorities and wield resources to achieve their goals. Our focus is on Chiefs of Police rather than patrol officers, District Attorneys rather than line prosecutors, and so forth – particularly as rhetoric from these officials is more likely to reach the public.

In some areas, it became evident that statements were difficult to analyze without taking into account the broader scope of the conversation happening beyond the city limits. In particular, major institutional actors in Massachusetts and California often spoke directly and in response to other actors from different regions in the state. For example, the policy debate on decarceration in Massachusetts was largely shaped by a series of back-and-forth petitions and public statements from opposing groups of district attorneys from across the state. Through a collaborative process, we determined where and when it was appropriate for our dataset to include statements from a larger area in order to enrich and contextualize our findings and analysis.

We grouped the actors into five broad categories: Corrections (which includes prison and jail officials as well as state Department of Corrections officials), Courts and Judges, Police and other Law Enforcement Officials (e.g. Sheriffs), Prosecutors, and non-judicial Elected Officials (e.g. governors, senators).<sup>3</sup>

### **Data gathering**

Our project utilized a highly inductive method of data collection, with careful attention paid to the interpretive and contextual nature of discourse. Our task was to collect public statements made by key institutional actors about the carceral state.

We built the dataset by searching for official statements made during the time period of interest by our previously designated relevant actors. From that master list, we culled statements that engaged the carceral state. Determining which statements fell within this category was a deliberative process. In some cases, statements clearly referenced the carceral state in language and content. In these statements, actors would utilize terms such as “prison,” “jail,” “inmate,” “decarceration,” “incarceration,” “arrest,” or “criminal,” clearly invoking direct aspects of carceral institutions and practices. In other cases, actors would make statements about court proceedings or adaptations made by the justice system at large, without directly referencing incarcerated people or specific policies regarding decarceration during the

<sup>3</sup>No elected judges entered our data set.

COVID-19 pandemic. In these cases, we would assess the context in which the statements were made, and determine if they were substantively referencing the carceral state. These data would then be reviewed by others in the team and assessed for their relevance throughout the coding and analysis processes. Actor type also influenced the kind of collection process that was utilized. In the case of prosecutors or corrections officials, nearly every public statement that was made at the height of the pandemic pertained to the carceral response to the pandemic. In contrast, non-administrative actors such as congressional representatives would speak about the carceral state less frequently and exclusively. As such, closer examination of the statements made and the context of these statements was necessary to determine if and when these actors were engaging in any kind of rhetoric related to the carceral state.<sup>4</sup>

The data collected include press releases, press conference speeches, quoted comments in news articles, newsletters, op-eds, Facebook posts, radio interviews, official statements, policy plans, joint statements, amicus briefs, petitions, and executive orders. A particularly common source of statements came from institutional actors who have public Twitter accounts. We used a Twitter-specific search program on the terms “COVID,” “pandemic,” “coronavirus,” “prison,” “inmate,” “release,” “jail,” “incarcerated,” “incarceration,” along with the Twitter handles of the actors in each region, to collect relevant messages.

Any statements regarding decarceration or the administrative response to COVID-19, such as procedures implemented within facilities, opinions and informal statements regarding the process or scope of decarceration, and statements containing statistical information about the number of people in prisons and jails, those released, and rates of recidivism, were recorded in our dataset. We also included any statements that directly referenced race and the carceral state, which were relatively few in number and almost entirely restricted to statements made shortly after the police murder of George Floyd.

We deliberately cast a broad net to gain an informed view of the institutional responses at various levels and in various fields of policy and practice. This included reports from county jails on how they were meeting Centers for Disease Control and Prevention guidelines, procedural shifts in judicial hearings, and city police commenting on the perceived dangers of early release. Our process of data collection was iterative and collaborative: the scope of statements we collected broadened or narrowed as we deliberated the scope of carceral policy and institutions. This process required continued and frequent examination of our own assumptions about what constitutes the carceral state itself, as well as what types of policies and legislation should be considered within the scope of our project.

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<sup>4</sup>By studying statements, we necessarily exclude silent actors from our analysis. During the nine month period, we analyzed some previously designated “key” institutional actors who never discussed incarcerated individuals such that their statements rose to the level of our research team’s attention. While we do not see a defensible way to incorporate non-speech into a rhetorical framework, future research might seek to answer the important question: who chooses to speak about this issue and who does not, and under what conditions?

### **Data description**

We initiated the data-gathering process by searching available public statements made by 342 relevant institutional actors, almost all of whom were individuals but some of whom were associations (such as police unions and associations of correctional officers, public defenders, and prosecutors). This search resulted in a rich, novel data set consisting of 788 statements (395 unique) related to the carceral state made by 171 different institutional actors, spanning March 1 to December 20, 2020.<sup>5</sup> Each observation includes the actor's institutional position, the mode of statement delivery (public speech, press release, tweet), and the content of the rhetoric.<sup>6</sup>

Figure 1 provides a visual summary of the data by two key variables, city and actor type. Los Angeles has the most statements of any city (348), followed by Boston (204 statements), Washington D.C. (92 statements), and New York (79 statements). In general, elected officials had more statements (411 statements) than other groups, thanks in large part to the relatively vocal nature of elected officials in California. The next highest number of statements came from prosecutors (165 statements), police (101 statements), courts and judges (24 statements), and corrections officials (22 statements).<sup>7</sup>

### **Method of analysis**

Our analysis followed a constitutive approach, consistent with the methods of such qualitative scholarship as Cramer (2016) and Weaver, Piston and Prowse (2019). Four teams of researchers, each focusing on a single region, worked independently to collect and consider statements. Patterns were identified over the course of several months in weekly meetings, where teams reported on their various findings, including which actors were more and less vocal or visible, as well as what elites were saying.

After coding the full set of public statements and characterizing them appropriately, we looked for patterns across the statements and logged these meta-themes. We worked independently, met to discuss our findings, and re-iterated until we reached convergence: agreement on the dominant patterns across the statements.<sup>8</sup>

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<sup>5</sup>During the period of study, Senator Kamala Harris (D-CA) was running for Vice President and her campaign speech included statements regarding California politics, including Los Angeles' carceral apparatus. Given the unique nature of Senator Harris's position during this time we exclude her statements from remaining quantitative summaries for comparability across California officials.

<sup>6</sup>The data will be made publicly available upon publication of this manuscript.

<sup>7</sup>Five statements came from unelected public defenders. The nature of their role led us to decline to group those statements with the other institutional actors examined here.

<sup>8</sup>In the interest of clarifying our data collection process further, here we offer a more detailed description of our approach. At group meetings, each team (consisting of two to three researchers focusing on a single metropolitan area) would present their progress, review any concerns or obstacles, and collectively discuss any patterns emerging in the data (including the nature of the rhetoric being used, any repeated patterns or ideas in the statements, and patterns in sources or availability of statements). Additionally, two project managers were assigned to review the ongoing work of each team on a daily basis and offer their insights and course corrections as needed. These project managers had the benefit of viewing the statements being collected across regions in order to maintain a roughly holistic method of evaluating the data collection process in real time.



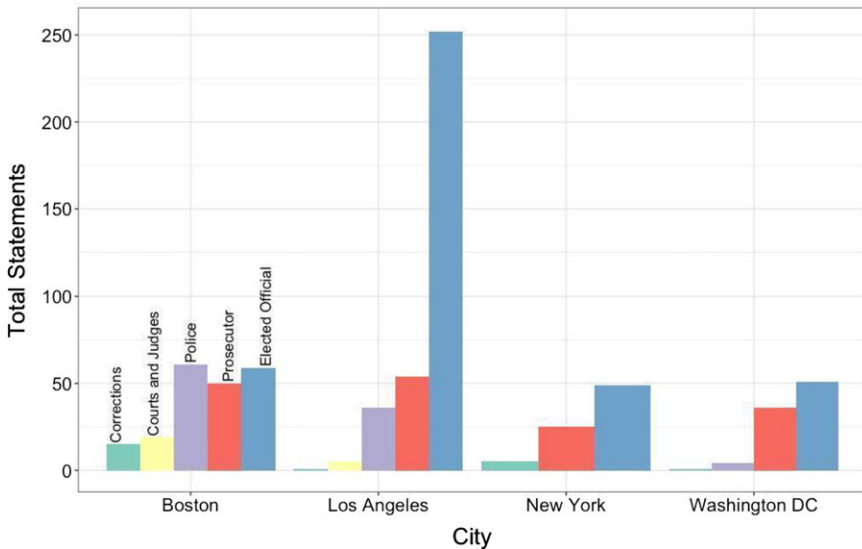


Figure 1. Statements on the carceral state by actor type in four cities.

We then coded the data with reference to these meta-themes, which facilitated the identification of two predominant ideational frameworks, as well as a subset of narrative strategies, that characterize the responses. This strategy maximizes our human expertise in identifying patterns and nuances of speech. We believe that our painstaking labor has produced a compelling training set for the rhetorical frameworks we identify and, as such, will complement and inform future research that employs computational methods of text analysis and natural language processing.

## Findings

Above we explicated the ideational legacies of penal welfarism and bifurcation; here we explain how elites drew on, and refashioned, these ideas during the summer of 2020.

### ***The centrality of vulnerability and care***

Depictions of incarcerated people as vulnerable to the pandemic are pervasive in the statements we collected; here we illustrate this point through a discussion of statements from a wide range of actors in Massachusetts. While many of the statements collected across all regions resemble each other quite closely, a unique circumstance in Massachusetts offers a particularly revealing insight into the scope and dimensions of the debate regarding the vulnerability of incarcerated people. In March of 2020, the Massachusetts Committee for Public Counsel Services (CPCS), along with the American Civil Liberties Union of Massachusetts and the Massachusetts Association of Criminal Defense Lawyers, submitted an emergency

petition to the Massachusetts Supreme Judicial Court advocating for widespread decarceration as a means to limit the spread of COVID-19 in Massachusetts jails and prisons. This petition inspired a number of responses from key institutional actors across the state, including opposing groups of district attorneys, some of whom argued against the petition's demands.

The ensuing debate, including the Court's ultimate decision and reactions to that decision by sheriffs, elected officials, and corrections officials, was largely negotiated on the terms of the vulnerability of incarcerated people. Notably, neither side refuted the claim that incarcerated people were especially vulnerable to COVID-19, both within the walls of prisons and jails and on the outside. One example in support of the petition comes from Suffolk County DA Rachael Rollins: "the Plaintiff class are human beings, who did not lose their humanity the day they were sentenced or confined, and their health and lives are worthy of protection." District Attorneys in New York City similarly appeal to the obligations that they face in ensuring the protection of those in custody: "We, as elected prosecutors, have an obligation to protect the safety and wellbeing of everyone in our community . . . Those obligations extend behind prison walls. And they require elected prosecutors to step up in this time of growing public health concerns to address the needs and rights of individuals in these facilities."

Like these prosecutors, several actors made reference to the legal and constitutional rights of incarcerated people, highlighting how the pandemic jeopardized these rights. For instance, the CPCS argued the following in their petition to the Massachusetts Supreme Judicial Court (SJC) in support of mass release:

"In light of the pandemic, detention now not only deprives individuals of their freedom, but also subjects them to a serious risk of loss of life or permanent injury. These additional burdens, not accounted for in the traditional analysis, implicate substantive and procedural due process concerns that demand action."

Many statements also highlight how the dangers posed by the pandemic intersected with other vectors of vulnerability for incarcerated people. In support of the CPCS's petition, a group of progressive district attorneys wrote in a joint statement that "the elderly and people with underlying medical conditions are more susceptible to falling severely ill with COVID-19. Both populations are, unfortunately, well represented among incarcerated people." Elected officials in Massachusetts largely concurred, as in the case of Senator Elizabeth Warren, who noted that incarcerated people are "especially vulnerable." This language is prevalent in all regions, and appears at almost double the frequency as statements that described people in prisons and jails as "dangerous."

The sentiments of Massachusetts elected officials were echoed by congressional representatives and senators in each of the regions we studied. For example, in California, then-Senator Kamala Harris tweeted: "Many people are hurting right now because of the coronavirus pandemic. We especially have to consider the impact on vulnerable populations including the elderly, low income workers, incarcerated people." This language is striking. Incarcerated people are grouped with the "elderly" and "low-income workers;" in other settings, these groups might

be pitted against one another, even depicted as morally antithetical to one another. In D.C., Representative Gerry Connolly made a similar claim on Twitter: “We know how aggressively the coronavirus can hit crowded living facilities - Nursing homes, college dorms, prisons etc . . . . We cannot forget our shared humanity. [D]etainees must be released now.”

### ***Sheriffs co-opt vulnerability claims through penal welfarism***

Previous research has pointed out that justifications for incarceration have historically relied on the racist demonization of “criminals.” In this context, it is striking that – at least in these liberal cities in this historical moment – many sheriffs present themselves less as disciplinarians than as *caretakers* of those who have been neglected by other social and political institutions. For example, Sheriff Thomas Bowler of Berkshire County, Massachusetts expressed frustration that proponents of mass decarceration sought to spring people from “a safe, controlled environment with good medical care, into a pandemic-sphere lacking all the usual support services the jail prepares for each inmate before they leave” (Bellow, 2020). In a separate press release, Sheriff Bowler went on to argue:

Acting on an emergency petition from several special interest groups, the court agreed that jails were a risky place for inmates during the COVID-19 pandemic and ordered the immediate release of those meeting certain criteria. Yet, within 24 hours of release from the Berkshire County Jail and House of Correction, two of our former inmates were in the emergency department following drug overdoses. Two more were re-arrested on new charges.

While it avoids the language of racial animus, this adaptation of the penal welfarist framework to pandemic times is implicitly racially paternalist. Without directly mentioning race, the claim that “inmates” cannot be trusted to care for themselves (and, moreover, pose a danger to others) connotes centuries-long stereotypes of Black dependence and criminality. Moreover, instances of recidivism are presented not as evidence of the failure of the rehabilitative capacities of carceral facilities but of a need for additional confinement.

As sheriffs attempted to position the carceral state as a site of care rather than punishment, they relied heavily on assertions of expertise. Sheriff Kevin Coppinger of Essex County, Massachusetts, argued: “Those in our custody do receive proper health care — and for many, better care than they would receive if released . . . History has shown us that recently released inmates often return to living on the streets, relying on homeless shelters and soup kitchens. These living conditions increase exposure and risk of COVID-19. I suggest these life-sustaining necessities are better provided by the Sheriffs’ Departments for those in our custody.” Similarly, in an op-ed for a local newspaper, Sheriff Thomas Bowler defended his previously mentioned claims by asserting that those in custody at his facility “are treated with humanity and respect. Above all, our inmates have access to excellent medical care delivered by an extraordinary team of clinicians and nurses.” Speaking more broadly about carceral officials in general, he continues: “Sheriffs and their staff are experts in the care and custody of inmates. We work diligently to

keep them safe during any circumstance... In fact, our inmates receive better medical care than most other citizens of Berkshire County.”

In sum, these claims of professional expertise and concern for the welfare of “inmates,” set against a backdrop of failing and insufficient welfare services, retrofit the ideational framework of penal welfarism to pandemic times in order to justify continuing to keep people in cages.

### ***Some carceral state critics reproduce penal welfarism***

To be sure, the statements of some political elites in our dataset challenged carceral state administrators’ assertions of expertise. These critics pointed to COVID-19 outbreaks in facilities and evidence of neglect and poor conditions of confinement to argue that incarcerated people are not adequately protected from vulnerability. However, this critique was not usually leveraged to support decarceration but instead left the door open to the argument that carceral facilities should be improved so that they would be better equipped to care for those in their custody. Thus, even harsh critiques leveled against carceral institutions risked reinforcing an expansion of carceral state power: more carceral expertise and programmatic development.

For example, Representative Jerrold Nadler of the 10th Congressional District of New York was quoted in a tweet by the House Judiciary Democrats: “We have a moral and constitutional duty to prevent additional deaths among those who are detained or imprisoned under our laws. DOJ must do more to protect individuals in custody during the COVID-19 pandemic.” Likewise, Representative Seth Moulton, a Democrat from Massachusetts, declared that “local and federal officials need to do more to keep inmates and corrections workers safe.” These statements draw attention to the vulnerability of incarcerated people but call on the carceral state itself to address this vulnerability.

### ***Bifurcation***

The long-standing and racialized distinction between deserving and undeserving criminals, so often used by critics and supporters of the carceral state alike, also appeared in our data as a means of addressing the unique challenges of the pandemic. Some elites affirmed that *certain* groups of incarcerated people are deserving of release, given the unique threats posed by the pandemic to those behind bars, but that others, particularly those accused or convicted of “violent” offenses, should remain incarcerated, the risk of illness and death notwithstanding.

Take, for example, a tweet by the Representative for California’s 13th Congressional District, Barbara Lee: “detention is cruel and inhumane under normal circumstances. in the midst of a pandemic it’s life threatening. Non-violent offenders must be released.” Here, Representative Lee’s initial claim was deeply critical of the carceral state, arguing that any form of detention is “cruel and inhumane.” However, she then argued only for the release of “[n]on-violent offenders,” implying that violent offenders would deserve cruel, inhumane treatment. Other statements follow this same theme of the “deserving” group, referring to them as those who “pose no risk to public safety” (D.C. Representative

At-Large, Eleanor Norton), or individuals who “are not risks to national security” (CA Senator. Diane Feinstein).

Even the most vocal proponents for decarceration often couched their claims in terms of *whose* rights count the most. In their petition to the Massachusetts SJC asking for immediate, widespread decarceration in state prisons and county jails, the CPCS issued the following statement:

“There are about 16,500 human beings in our prisons and jails. None of them have been sentenced to death. Yet, without aggressive and immediate intervention, COVID-19 will likely kill many of them. This is intolerable. This Court should reduce the number of deaths by ordering the release of *individuals whose continued incarceration cannot be justified under these life-or-death circumstances*” (emphasis added).

Other progressive actors, including district attorneys and congressional representatives, supported this proposal, affirming its implicit claim that some people should remain incarcerated even in light of direct threats to their lives.<sup>9</sup>

Opponents of decarceration also adopted the rhetoric of bifurcation. To be sure, their emphasis, in arguing for continued incarceration, was on the “many dangerous criminals” who “pose an enormous threat to public safety” (Sheriff Kevin Coppinger, Worcester County Sheriff 2020). They argued that the mass release of prisoners in light of COVID would be “appalling” (Representative Kevin McCarthy, R 23rd Congressional District, CA 23), “reckless and irresponsible” (President of NYC Corrections Officers’ Benevolent Association), and “dangerous” (Virginia Secretary of Public Safety and Homeland Security, source: (DeFusco, 2020)). Elias Husamudeen, President of the New York City Corrections Officers’ Benevolent Association, described a mass release plan as an “asinine proposal,” arguing that such a plan would facilitate the release of “inmates . . . regardless of their risk to public safety.” Carceral state actors in Orange County, CA and Essex County, MA claim that advocates of decarceration were using COVID-19 as a “ruse” to release individuals who “commit serious offenses” once they are released (Emery, 2020). Yet many of these same actors still acknowledged that *some* low-risk, non-dangerous individuals would be eligible for release, reproducing the bifurcating rhetorical framework.

Indeed, even the most vitriolic rhetoric was directed at only a subset of exceptionally “violent” or “dangerous” individuals. For example, at a press conference in May of 2020, William Gross, who was then Boston’s Police Commissioner, claimed: “Violent offenders should not be released from prison regardless of the health risks posed by staying incarcerated . . . People who have been locked up for violent offenses and carrying a firearm should not be released on personals,<sup>10</sup> and I could care less if they get sick in jail or not” (Cote, 2020). Despite

<sup>9</sup>The court agreed with the claim that the lives and constitutional rights of incarcerated individuals were jeopardized as a result of the COVID-19 pandemic. Nevertheless, the court ruled that this level of increased risk was tolerable so long as Department of Corrections officials did not show “deliberate indifference” to the wellbeing of the incarcerated (*Foster versus Commissioner of Correction* (No. 1), 2021).

<sup>10</sup>“Released on personals” probably refers to being released on personal recognizance, meaning the release of a person who has been charged with a crime without the requirement of posting bail.

the cruelty of Gross's claims, it is important to note that he directs them solely toward those in the "violent offender" category. Also notable is the fact that Gross's comments were immediately supported, in person, by Suffolk County DA Rachael Rollins, the district attorney elected on a platform of seeking racial justice and equity.

The eventual SJC decision mandated release on an individual basis rather than widespread decarceration. Echoing the bifurcation in the CPCS petition, the criteria for release were restricted to pretrial detainees accused of "nonviolent" and low-level offenses. MA SJC Chief Justice, Frank Gaziano, wrote in the decision: "We also agree with the Attorney General and the district attorneys that the process of reduction requires individualized determinations . . . and should focus first on those who are detained pretrial who have not been charged with committing violent crimes."

In our findings, then, bifurcation shrinks the range of debate among political elites. The most apparent difference between them lies in the identification of *how many* people fall into the deserving and undeserving categories, respectively. While the petition cited above argued that many incarcerated people should be released, other actors in our dataset claimed that only a very small portion of prison and jail populations should be considered for release. In Massachusetts, Worcester County Sheriff Lewis Evangelidis made this case explicitly: "We're looking at the overall public safety," Evangelidis said, noting that inmates considered for release would be evaluated on criteria including dangerousness. "Frankly, I would find that very few would be appropriate for early release" (Thompson 2020). While they disagreed about how many people should be considered eligible for decarceration, elites across the political spectrum converged on bifurcation as the metric of eligibility.

### ***The availability and prevalence of two ideational frameworks***

The two ideational frameworks identified above appear in 27.6% of the 788 statements we consider. This indicates that these frames are common but not omnipresent. Penal welfarism was slightly more common than bifurcation, but not significantly so ( $t = 0.944$ ;  $p = 0.340$ ) (Fig. 2).

Over the course of our studied time period, use of the rhetorical frameworks identified here becomes less common. General statements about the carceral state declined over the course of the year, and statements engaging in penal welfarism or bifurcation became nearly nonexistent by September. Figure 3 shows the longitudinal trends in statement prevalence over nine months.

Similar utilization of identifiable ideational frameworks are visible across each region, denoting a strikingly coherent, or at least complementary, discursive field. The actual content of the rhetoric was so similar, in fact, that statements made by actors in different regional contexts are largely indistinguishable and interchangeable (Fig. 4).

While our research cannot speak to the prevalence of these frameworks beyond our data, the presence of these patterns within elite discourse in this study offers a valuable and much-needed contribution to research that seeks to identify the discursive evolution of carceral rhetoric and corresponding policy.

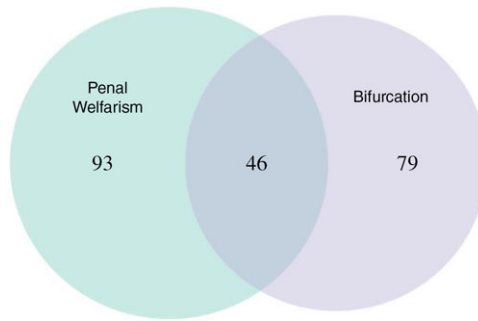


Figure 2. Joint and separate occurrence of rhetorical frameworks.

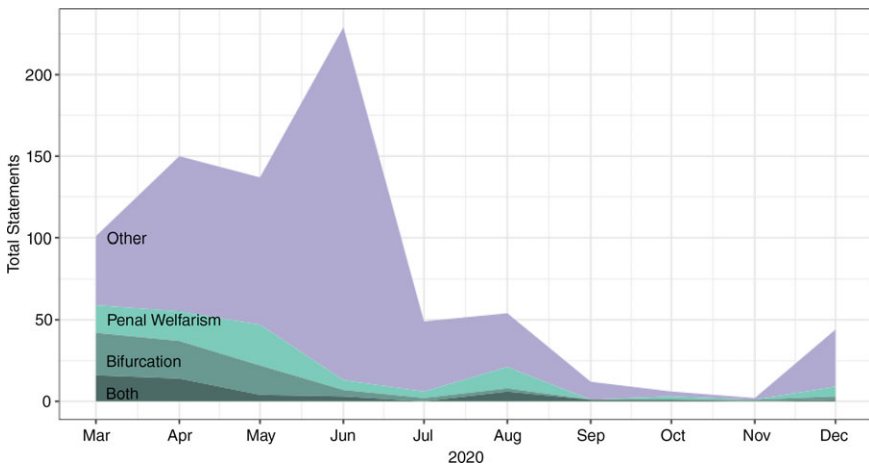


Figure 3. Use of rhetorical frameworks, March–December 2020.

### ***The importance of institutional position***

One consideration that makes comprehensive studies of the carceral state particularly challenging is the variation in the kind of power and influence that different actors hold across regions. For example, in some counties, sheriffs hold significant power in terms of shaping the conditions of carceral facilities. They may be more or less hands-on in terms of their administrative duties, more or less visible and popular in the community, and may or may not share a range of duties with district attorneys and local elected officials. Some sheriffs hold political sway and influence at the level of policy-making, while others do not. These differences can be driven by structural variations as well as individualized and interpersonal dynamics in any given region. Regional variations are undeniably present in the cities within our dataset. However, our interest lies in identifying whether and how administrative actors differ from non-administrative actors in their utilization of the identified rhetorical frameworks. As Fig. 5 emphasizes, these differences between actor types are notable despite regional variation regarding the relative power of each category.

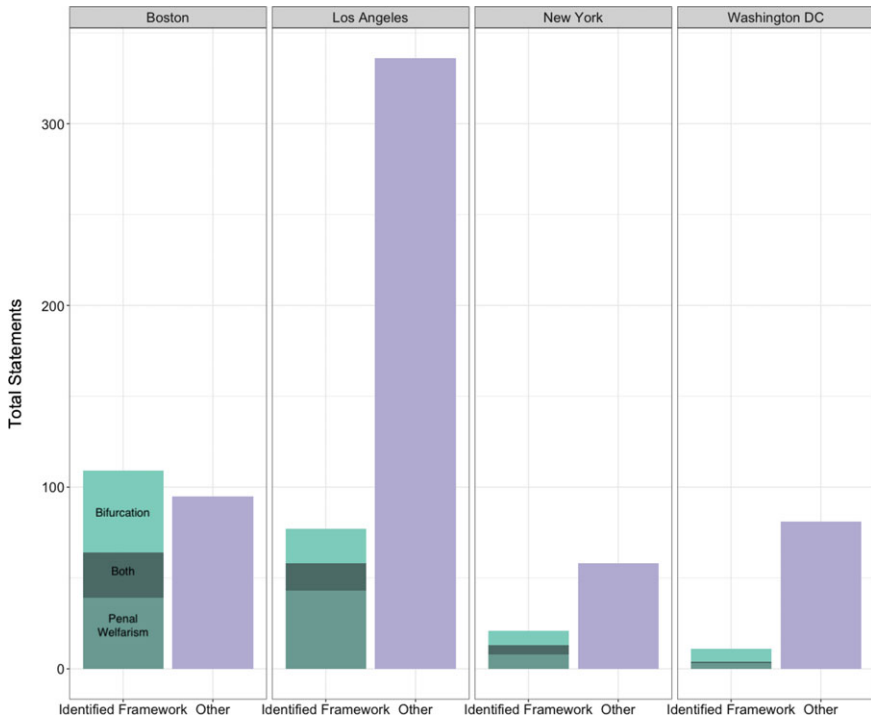


Figure 4. Use of rhetorical frameworks in four cities.

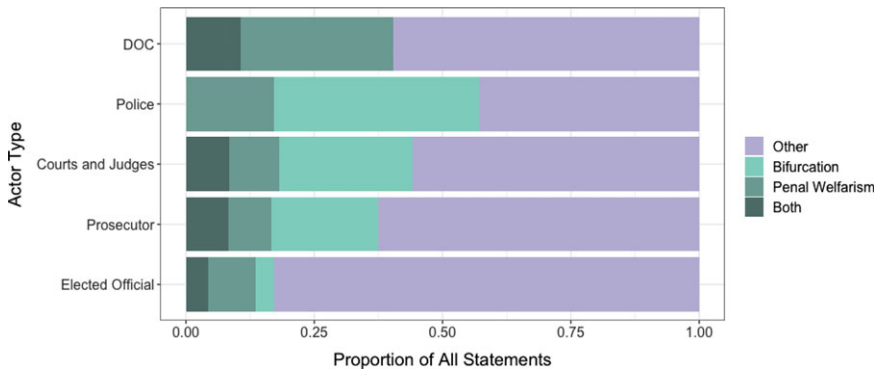


Figure 5. Use of rhetorical framework by actor type.

Actors who are closely linked to the carceral state are more likely to engage one or both of the rhetorical frameworks we identified above. Elected officials employed bifurcation, penal welfarism, or both in about 15.3% of their statements about the carceral state. Compared with prosecutors (44.2%), courts and judges (37.5%), police (50.4%), and corrections officials (32%), elected officials were less likely to use the frameworks that we argue represent a response to paradigmatic shift in the availability and resonance of ideas.



While political actors like members of Congress, whose roles are not directly tied to the operation of the criminal justice system, are more willing to make broad criticisms of the entire system, even these critiques are limited by an emphasis on incarceration as a means to ensure public safety. This is especially evident in the way carceral facilities are being portrayed as places for providing care to individuals in need and vulnerable populations.

### **Additional narratives**

Alongside these primary rhetorical strategies, we identify two additional narratives (falling in the “other” category in the figures above) that are either less common or more particularized to a subset of actors or discursive context. These less common responses, which are more extreme than those reviewed so far, include, on one extreme, outright repudiations of depictions of “inmates” as vulnerable, and on the other, comprehensive denunciations of the carceral state as a fundamentally racist and/or broken institution. In both cases, we argue that the primary ideational mechanisms of bifurcation and penal welfarism remain intact, along with the ideological foundations of the carceral state. Essentially, statements that fall within the former category frequently rely on bifurcation to target a particular subset of incarcerated people who the speaker suggests are threats to the community who deserve no sympathy or concern for their welfare. Statements of the latter category are infrequent and vague; their ultimate message looks less like a denouncement of the practice of incarceration itself, and more of a call to do incarceration better. For more discussion of these additional narratives, see Appendix 2.

Beyond the aforementioned narratives, the “Other” category contains a smattering of other types of statements, which included both mentions of COVID as well as carceral-state-related terms to which our search was sensitive. Position-taking on COVID-related crimes (e.g. price gouging, fraudulently collecting government aid) or announcing arrests for crimes related to COVID-19 is one such type. Additionally, institutional actors also spoke on the externalities of COVID-19 and warned their constituents about potential threats. For example, on April 13, Washington D.C. Attorney General Karl Racine warned District residents that the increased use of video chat software was associated with more instances of hacking and unintentional sharing of personal information. Finally, many announcements included in the “Other” category take the shape of generic announcements: that they would be shifting court-based services online, expressing condolences to the family of a victim of COVID-19, sharing testing information (e.g. On August 14, 2020, Bronx District Attorney Darcel Clark’s office announced that it would be sponsoring free COVID-19 testing), wishing residents a happy holiday season, and so forth. We were less interested in these statements than those that expressed a substantive narrative about the carceral state and its function. So, while these “Other” statements represent a considerable share of rhetoric overall, they received relatively less attention in our evaluation.

### **Conclusion**

As existing scholarship ably documents, racially demonizing portrayals of the “criminal” have long served as an ideational linchpin of the carceral state

(Alexander, 2010; Muhammad, 2011a; Weaver, 2007). In recent years, however, critiques of the carceral state have become more prominent, especially on the left. In particular, as the pandemic and the George Floyd protests took center stage in the U.S. political discourse, those caught up in the carceral state have been increasingly described not as irredeemable criminals in need of punishment but as vulnerable people in need of protection—vulnerable to the ravages of the pandemic, on one hand, and to the excesses of the punitive criminal justice system, on the other.

In this changed atmosphere, the political rhetoric found in our dataset is *not* simply one of backlash or a retrenchment into old narratives. Instead, we see a rhetorical adaptation of historically salient ideational frameworks. Elites draw on, modify, and integrate (Cartensen, 2011) implicitly racist ideas that have percolated in discourse about the carceral state for a long time: penal welfarism and bifurcation. The first strategy, penal welfarism, co-opts claims of vulnerability, enlisting these claims in service of incarceration by positioning prison guards as professionals (e.g. medical experts) who are uniquely capable of dealing with a needy population (racialized as Black) incapable of self-care. The second strategy, bifurcation, partitions those under the carceral state's jurisdiction into two categories: (1) deserving criminals (implicitly racialized as white) in need of care (or limited decarceration, in some instances); (2) undeserving (implicitly racialized as Black) criminals threatening public safety and in need of punishment.

Our findings suggest that the claimed criminological imperative of carceral institutions, at least in liberal/progressive areas, is not exclusively concerned with either punishment or reform. The form of penal welfarism that is present in our data instead positions the carceral state as increasingly synonymous with the welfare state, in which continuous care is justified for racialized figures unable to care for themselves.

In turn, our findings have broader implications for scholars' understanding of the role of racist ideas in American governance. In both the study of public opinion and the study of the politics of public policy, scholars have tended to focus on the forms of "social construction of target populations" (Schneider and Ingram, 1993) that emphasize racial animus: the inner-city (Black) male superpredator; the urban (Black) welfare queen; the diseased, violent (Latinx) immigrant; the cunning, disloyal (Asian) foreigner. But the liberal complement to conservatives' racial demonization is racial paternalism (Jackman, 1994). Racially paternalistic ideas have been used in service of White supremacy by legitimizing a wide range of policies and practices, including welfare programs that intentionally treat adults like children<sup>11</sup> (Soss *et al.*, 2011), the takeover of Black-led school districts by White-led state legislatures (Moore, 2020), and even the institution of chattel slavery, which was often justified as a form of coercive care (Jackman, 1994). At a time when many characterize sympathy for social groups as a progressive force (e.g. Piston, 2018), scholars would do well to recognize its potential to feed into coercive paternalism.

Our findings also identify ways in which the carceral state is flexible and adaptable. In a perverse form of policy feedback (Weaver and Geller, 2019), organized interests have arisen to defend mass incarceration: prosecutors' associations (Dagan, 2021), prison guards' unions, police unions, the cash bail

<sup>11</sup>This quotation is from Lawrence Mead, architect of "welfare reform" in 1996.

industry (Page, Piehowski, and Soss, 2019), and a wide range of companies whose business model depends on putting people in cages (Page and Soss, 2018). Given the expansiveness of the carceral state and the proliferation of stakeholders whose interests are tied to its preservation, we believe that the mechanisms by which carceral actors legitimize its existence are vital to understanding the tenacity of mass incarceration and policing in the face of intensified scrutiny and ideological threats. Here we have argued that when ruling ideas become challenged, a wide range of actors mobilize to construct alternative ideational foundations for the carceral state.

Of course, these actors organize in other ways as well, seeking not only to adapt to ideational currents but also to shape the political terrain in ways that will advantage them in future struggles (Hacker and Pierson, 2014). Today, even as incarceration rates in the USA have plateaued (Kang-Brown et al., 2018), organized interests are exploiting new or expanding opportunities, including immigration detention (Collingwood, Morin, and El-Khatib, 2018), monetary sanctions (Harris, 2016), forms of “e-carceration” such as predictive policing, electronic surveillance, and ankle monitors (Alexander, 2018), and, as described here, gaps in the welfare state. Even the two recent developments motivating this paper, the pandemic and the George Floyd protests, did not merely challenge the legitimacy of the carceral state but also created opportunities for new forms of carceral control: police brutality of protestors and journalists, new crimes to enforce created by social distancing regulations, and the banning of protests in some jurisdictions. The study of the carceral state, then, is the study of malleable, authoritarian patterns, policies, practices, ideas, and institutions.

It is imperative that scholars grapple with these developments. Taken on its own terms, the carceral state is one of the most massive policy failures in American history. It does not reduce, but rather breeds, violence, and it extracts wealth from those who have the least. But the carceral state should not merely be taken on its own terms, as it serves functions of racial control. It “cleaves custodial citizens from the broader democratic polity” (Lerman and Weaver, 2014, p. 111), not only reducing the political participation of those it entangles (Burch, 2013; White, 2019) but also fundamentally reorienting the relationship between members of “race-class subjugated communities” (Soss and Weaver, 2017) and the state, even while it also spawns resistance to this reoriented relationship (Walker, 2020; Weaver, Piston, and Prowse, 2020). In short, the carceral state is a key site of racially authoritarian policies, practices, and discourse in the contemporary USA (Weaver and Prowse, 2020). At the time of writing, many political scientists focused on electoral politics are rightly concerned with preserving democratic elements of American governance that are under attack. If political science is to do its job, we must attend to elements of authoritarian governance as well, so that we can point the way to a more democratic future.

**Data availability statement.** This study does not employ statistical methods and no replication materials are available.

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## Appendix 1. Overview of four sites

Boston is America's tenth largest city, a consistent democratic party stronghold, and not without a history of racial tension and carcerality. As of 2015, the Massachusetts prison population had increased by 82% since 1983 (Vera Institute for Justice, 2019). Black people represent 27% of the prison population and only 7% of the state population (Vera Institute for Justice, 2019). Boston is the least racially diverse city we study.

Los Angeles, America's second-largest city and largest population center on the West Coast, has elected one Republican mayor in the last 60 years (Richard Riordan, who served from 1993 to 2001). As of the 2010 census, Whites are a demographic minority. L.A. has a dramatic history of violent conflict between the carceral state and Black people, exemplified by the Watts and Rodney King riots. California is also well known for its "Three-Strikes" statute, meant to discourage recidivism, but ultimately a source of the "McDonaldization" of the judicial process and disproportionate incarceration of non-White people (Schiraldi, 1997; Shichor, 1997).

New York City is the largest city in the country; it is especially notable for its expansive and abusive policing practices and the subsequent reckoning with the racist outcomes of these policies. In particular, "Broken Windows" policing and the aggressive use of Stop-and-Frisk have involved routine surveillance and harassment of Black people. Recent high-profile conflicts between police and former Mayor Bill de Blasio have illustrated the power of police unions to resist reform.

Washington D.C. is one of the most liberal big cities in America, second only to San Francisco (Tausanovitch and Warshaw, 2014). D.C. was the first majority Black city, and has historically hosted the most vehement rebukes and defenses of the carceral state in its capacity as the nation's capital; nonetheless, its criminal justice policies remain deeply punitive (Forman, 2012).

## Appendix 2. Additional narratives

While the vast majority of statements do not directly challenge claims about the vulnerability of incarcerated people, a handful of the most extreme statements do. However, when considered in context (or in the context of a speaker's other statements), it becomes clear that even in these extreme statements, tactics such as bifurcation are often employed to soften the message.

One instance of this can be found by examining the various statements made by Orange County District Attorney Todd Spitzer. In one statement, Spitzer seems to make no attempt to suggest that *any* incarcerated people should be considered eligible for release. He says, "It comes as no surprise that these high-risk sex offenders continue to violate the law and do everything they can to avoid being tracked by law enforcement. . . . There is a concerted effort here in California and across the nation to open up the jailhouse doors and let dangerous criminals back into our streets without regard for the safety of the public which we are sworn to protect." Here, the parallels Spitzer makes between those who are being released and "high-risk sex offenders" is forceful. In isolation, this statement might constitute a challenge to the claim that sympathy for incarcerated individuals is a ubiquitous feature of recent carceral rhetoric. But Spitzer's other statements urge a more nuanced understanding. Other statements by Spitzer in our dataset contain direct appeals to the needs and wellbeing of those in custody. For example, he argues elsewhere against decarceration on the basis that "The safety of our communities including the safety of inmates in our jails during this pandemic should not mean weakening the rule of law." Also worth considering is the backlash from other carceral actors in southern California, who admonished Spitzer for "fearmongering" and "distorting the facts to scare the public" (Emery, 2020). In fact, public defender Sharon Petrosino, one of Spitzer's more vocal critics, utilized portrayals of recently released 'reoffenders' (as Spitzer referred to them) as vulnerable, in order to undermine his rhetoric. She argues: "These are not people who committed sex crimes now, most did not charge their GPS. Most are homeless or mentally ill."

Another extreme set of statements that emerged throughout our data collection efforts are those that make direct and broad critiques of the carceral state. For example, some of these statements claim that the pandemic highlighted problems internal to the criminal justice system. These statements are similar rhetorically to those made by more radical reformers, even prison abolitionists, in that they conceptualize the carceral state as a site of cruelty, corruption, racism, and authoritarianism. For example, Commonwealth

Attorney of Arlington County, VA, Parisa Dehghani-Tafti, states: “The COVID-19 pandemic lays bare the intellectual and moral failure of an approach to criminal justice that says convicted persons ‘deserve’ anything that happens to them because they committed a crime. No court, no jury sentenced anyone to contract a disease.” Another Commonwealth Attorney of neighboring Loudon County, Biba Biberaj, argued: “This pandemic has put a bright spotlight on the problems that have long festered in USA prisons . . . decarceration in the face of COVID 19 is both humane and fiscally responsible.” Other actors, including California’s then Senator Kamala Harris and Representative Barbara Lee (13th Congressional District), argue that the pandemic *worsens* the already “unjust,” “cruel and inhumane” system, and that “it’s past time [for] reform.”

Unsurprisingly, many of these statements were made immediately following the murder of George Floyd and in the context of historic nationwide protests calling attention to racism and police brutality. New York Governor Andrew Cuomo offered a stirring public repudiation of the legacy of racism that plagues the U.S. criminal justice system. In an executive order mandating the establishment of the New York State Police Reform and Reinvention Collaborative on June 17, 2020, Cuomo notes the long history of critiques that have been made of the criminal justice system:

“We’ve been talking about the expansion of the criminal justice industrial complex, we’ve been talking about how many people we put in prison that we put more people in prison in this nation than any industrialized nation on the globe. We’ve been talking for decades that it costs more to keep a person in prison than it would to educate a child at Harvard University, but nothing has changed. We saw Mr. Floyd’s murder, but we’ve been seeing Mr. Floyd’s murder for 40, 50 years. Finally, people said enough is enough and now is the moment to change. But then you have to make change happen.”

Days earlier, Cuomo called the police murder of George Floyd “the tipping point of the systemic injustice and discrimination that has been going on in our nation for decades, if not centuries.”

As radical as these critiques may seem, there are a number of factors even here that reveal the limits of their potential to transform the carceral state. First, these statements are not very common, and when they are made, they are largely made by political actors with less direct daily interaction with carceral institutions. As such, these critiques are limited by the separation between the speakers and those who directly control the policies and practices shaping the criminal justice system. Secondly, critical statements overwhelmingly use vague language to identify the problems of the carceral state, leaving ample room for rhetorical interventions and ideational strategies like penal welfarism to fill in the blanks of these broad progressive critiques. Third, many arguments for concrete change (including widespread decarceration) are tempered by the temporary nature of COVID-19, thus making these critiques prone to a loss of salience as the pandemic abates. Take, for example, a tweet by San Francisco District Attorney Chesa Boudin: “As the district attorney my primary concern is public safety This particular moment of the COVID 19 pandemic has made clearer than ever the ways in which mass incarceration actually undermines public safety.” Finally, even a “radical” policy like mass decarceration is often articulated as a means of *strengthening* carceral operations; in fact, some advocates of decarceration claim that it can facilitate an investment in new correctional programs and infrastructural improvements. Cuomo’s own claims, after all, were made in support of the New York State Police Reform and Reinvention Collaborative, a tripartite plan to implement police reform measures across New York State. The plan itself emphasizes “collaboration” between police and communities, in order to build trust and “allow the police to do their jobs” (New York State Government, 2020, p. 3). The collaborative explicitly aims to establish a fairer policing standard but proposes to do so through a funneling of resources and funding to law enforcement agencies across the state. Overall, this reform plan seeks to scale up preexisting training and accreditation programs based on preexisting model policies and standards and enhance the legitimacy of police departments largely through bureaucratic and formalistic planning processes, which ultimately serve to determine eligibility for state funding (New York State Government, 2020). Essentially, the “reform” plan looks more like a doubling down and enhancement of existing police capacities procedures, rather than a rubric for radical intervention into police brutality.

An example that typifies broad critiques of the carceral state found in our dataset is a statement made by the Massachusetts CPCs: “The Massachusetts Department of Corrections’ (DOC) failure to properly



safeguard incarcerated people from the coronavirus is not simply an isolated act of negligence, it is one facet of a larger ongoing human rights crisis.” This statement exemplifies how progressive rhetoric that makes sweeping critiques of the carceral state as a humanitarian disaster also operates within a framework of carceral expansion and legitimization. Firstly, the “humanitarian crisis” cited in this critique is not clearly defined. If anything, it is the DOC’s failure to *protect* incarcerated people through “negligence” that is the focus of this critique. Presumably, the solution to this type of problem would be to ramp up carceral programs and invest more time, resources, and funding into the administration and infrastructure of prisons, jails, and other detention centers. Absent a wholesale denouncement of the practice of incarceration, which would locate the problem in incarceration *itself*, statements like these do little to challenge the legitimacy or power of the carceral apparatus. In fact, reading these statements in the context of the ideational frameworks of bifurcation and penal welfarism suggests that they actively promote carceral expansion and reify a carceral logic of the necessity of prisons and jails.

Our point about the limits of decarceration extends to those on the right as well. Conservative Sheriff Peter Koutoujian of Middlesex County in Massachusetts makes a noteworthy argument in support of decarceration:

The idea of decarceration is one that is based in social justice and jurisprudence in almost one’s feelings about government and the role of corrections and the criminal justice system. Here, this decarceration has actually brought tangible opportunities to protect our population. . . This is not a philosophical or jurisprudential exercise for me. This is something that I’ve been able to use and, by the way, a general reduction in incarceration is good for corrections because that means that instead of housing people we actually become houses of corrections, we actually get to do more programming and have opportunities to reduce recidivism. (Young, 2020)

Koutoujian’s statement illuminates a potentially disorienting truth for reformists: reforms such as decarceration, which is frequently identified as a progressive and even an anti-carceral policy, do not necessarily correspond to fewer resources for the carceral state. This point is compounded by the fact that releasing individuals from prisons, jails, and detention centers often means a turn to carceral “alternatives” like e-carceration (e.g. the use of ankle monitors and house arrest) and probation, both of which often cause significant financial costs to the convicted person. These practices are not only invasive, punitive, and coercive but also may constitute the further proliferation of an insidious form of carceral expansion into the intimacies of both public and private spaces.