

Do District Attorneys Represent Their Voters? Evidence from California's Era of Criminal Justice Reform*

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Abstract

Reformers claim district attorneys (DA's) contribute to mass incarceration by responding to "tough on crime" voters, yet there are no measures of the correspondence between DA and voter preferences. I use a series of criminal justice ballot propositions in California to explore the link between DA's and their constituencies. While voter preferences vary greatly across issues and geography, DA's almost always take the conservative position. They are on the same side as their voters only half the time, and more liberal electorates are only weakly associated with more liberal DA's. DA's are also substantially less representative than other elected officials taking positions on the same issues and facing similar electorates. These results suggest limits to representation among elected criminal justice officials, and among local elected officials in general.

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Locally elected district attorneys hold significant influence over criminal justice outcomes in the United States, deciding when to file criminal charges and how severe these charges will be. A common assumption about these officials is that, as local politicians, they are hypersensitive to local public opinion. Indeed, such sensitivity was a key goal of state constitutional designers, who opted for elections from small constituencies rather than appointments to larger constituencies. Those chosen via the latter, argued one delegate to the 1847 Illinois convention, “cannot have the necessary acquaintance with the people, their morals, the state of society, and the character of the parties concerned in the case” (Ellis 2012, 1561).

In the 20th century, the rise of the “tough on crime” prosecutor coincided with a general increase in the public’s punitiveness (Enns 2014). Anecdotal evidence showed incumbent prosecutors frequently touting their high conviction rates – or being criticized by challengers for their insufficiently high rates – while national polls showed large majorities of the public supporting harsher sentences (Gordon and Huber 2002). More recently, some urban jurisdictions have elected a new breed of district attorney, one openly committed to using the power of the office to reduce the prison population (Bazelon and Krinsky 2018). Supporters of this reform movement share the view that, traditionally, the safest way to win election as prosecutor was to be “tough on crime.” But as public attitudes on law and order move in a liberal direction, so too will the views of officials. In the words of journalist Emily Bazelon, the reform movement “definitely starts with local voters. When local voters rise up and decide that they don’t want a ‘tough on crime’ DA,” policy will change (Illing 2019).

Do district attorneys (DA’s) actually reflect the criminal justice views of their constituents? Although polls show the public is punitive on average (Brenan 2020), this does not necessarily mean that more punitive voters are represented by more punitive district attorneys. One reason it is difficult to test for such a correspondence directly is that, unlike many other areas of government, there are no existing measures of the criminal justice policy preferences of district attorneys or their voters. It is difficult to infer the district attorney’s views from case outcomes, which may result in part from their anticipation of judge behavior (itself a possible result of constituency opinion)

(LaCasse and Payne 1999). Moreover, public views on criminal justice have been overwhelmingly punitive for many years (Enns 2014). To know if district attorneys become more liberal as voter opinions change, voter opinions must be observed to vary.

I assess the representation of locally elected district attorneys using the case of California. Spurred by a 2011 federal Supreme Court decision regarding overcrowded prisons, and in keeping with a national trend, California considered several criminal justice policy changes between 2012 and 2016, including a reform of its “three strikes” sentencing policy, repeal of the death penalty, and legalizing adult use of marijuana, to name a few. Many reforms were put before voters as ballot propositions, allowing me to use election returns to measure voter support for each policy proposal, and many district attorneys also took positions on these measures, allowing me to assess representation. And an advantage to examining California in this era is that, unlike during past eras of reform, there is significant variation in voter preferences, both across issues and across jurisdictions.¹

Contrary to conventional wisdom, I find that district attorneys are systematically out of step with their constituents. Despite the heterogeneity in voter preferences, DA’s almost always take the conservative position on criminal justice issues. The handful of exceptions typically occur in jurisdictions with very liberal constituencies, though even there DA’s frequently defy public opinion. On average, DA’s take a position in line with a majority of their voters a little over half of the time. Moreover, more liberal areas do not necessarily elect more liberal DA’s, suggesting that even large shifts in voter opinion are unable to move DA’s from their default, conservative position. Taking advantage of the fact that other California elected officials – including members of Congress, state legislators, and city and county officials – also take positions on these same issues, I also find these other officials are substantially more representative of their constituencies than DA’s are.

¹When voters enacted the “three strikes” sentencing regime via Proposition 184 in 1994, every county but San Francisco voted in favor (see <https://elections.cdn.sos.ca.gov/sov/1994-general/ssov/measures-statewide.pdf>). Note that in this paper, I use only cross-sectional variation in voter preferences, given the difficulty of measuring district attorney positions at just a single point in time. However, one advantage of these data is that voters and officials may be placed on the same scale, allowing me to gauge *congruence* as well as *responsiveness*. For those unfamiliar with these terms, I discuss them below.

These results suggest a common assumption about district attorneys – that they are responsive, perhaps even overly responsive, to the views of their local electorates – is incorrect. Given the lack of representation observed here, it may be that the role of public opinion in driving the rise of the carceral state has been overstated – and that hopes of installing progressive prosecutors, responsive to newly liberal publics, are misguided. The results also suggest limits to local representation (Sances 2019), and that models of representation developed at the national level may not fit so neatly to state and local politics (Rogers 2020).

Studies of Representation

While representation is theoretically multifaceted (Pitkin 1972), almost all empirical studies of representation compare representative and constituent opinion. While most early studies of representation focused on Congress (Miller and Stokes 1963; Achen 1978), later work focuses on the state (Erikson, Wright, and McKiver 1993; Shor and McCarty 2011; Lax and Phillips 2012) and, more recently, the city and county levels (Tausanovitch and Warshaw 2014; Warshaw 2019). Regardless of the level of government, these studies employ measures outlined by Achen (1978). First, *congruence* is the degree to which a representative’s position approximates that of their constituents’ (average) opinion. For example, if the average voter in a district prefers a minimum wage of \$15, a representative advocating for a \$12 minimum wage is more congruent than a representative advocating for a \$10 minimum wage, as the former representative’s opinion is “closer” to the district’s voters.

Second, *responsiveness* is the degree to which a representative’s behavior changes as voter preferences change. For example, if the average voter’s preferred minimum wage changes from \$15 to \$20, a representative who begins advocating for a higher minimum wage is responsive, while a representative who does not change their position (or who starts advocating for a lower wage) is not responsive. Although at a conceptual level, responsiveness captures how the *same* representative would change their behavior in response to the *same* voters changing their preferences, in most

empirical applications, analysts rely on cross-sectional comparisons, asking if districts with more or less liberal voters have more or less liberal representatives. I adopt the same cross-sectional approach in my paper.²

Because voters are only rarely presented with the same policy choices as their representatives, we know much more about responsiveness than we do about congruence. Still, most studies of Congressional representation find a robust connection between representative and aggregate constituency opinion (Bartels 2018). At this level, finding such a relationship is perhaps unsurprising, given strong electoral incentives (Mayhew 1978) to converge to the median voter in one's constituency (Downs 1957).

At the state and local level, scholars typically assume similar electoral incentives operate (e.g., Tausanovitch and Warshaw 2014). While this may be true in some cases, Rogers (2020) warns that theories of representation developed at the national level may fail when ported to lower levels. For instance, Rogers finds representation is much weaker in state legislatures as compared to Congress; Sances (2020) finds that local government responsiveness is limited to only a few issue areas; and Thompson (2020) finds elected sheriffs behave similarly in terms of immigration enforcement regardless of their voters' preferences. In all three of these cases, the authors note key differences between the institutional environment studied and Congress: a lack of information (Rogers), constraints due to state preemption (Sances), and homogeneity in candidate ideology resulting from professional norms (Thompson).

²Note that there is no a priori reason to expect congruence and responsiveness to go together – in fact, in some cases they can be at odds. Again take our example of the constituency that prefers a \$15 minimum wage, and suppose now the representative prefers a \$14 minimum wage. Now suppose the constituency becomes more conservative, favoring a \$13 minimum wage, and that the representative reacts by changing their position to \$4. This representative is quite responsive – so much so, in fact, that they have drastically increased the distance between themselves and their voters. Typically, researchers know which constituencies are more or less liberal, and which representatives are more or less liberal, but they are not able to place voters and representatives on the same scale. When researchers are able to put voters and officials on the same scale, they sometimes find large gaps (e.g., Bafumi and Herron 2010; Lax and Phillips 2012)

District Attorney Representation?

Like members of Congress, state legislators, and city mayors, district attorneys are selected via elections, which in principle allow voters to choose like-minded representatives and induce them to respond via the threat of removal. Of course, there are several institutional differences that might prevent elections from leading to district attorney representation. In many states, including California, these offices are non-partisan, depriving voters of a key signal of candidate preferences. Also in many states, elections are held separately from races for statewide office; in California they are mostly held in June of midterm election years. And unlike some other offices, voters might value technical skill and general performance over ideological views. That said, most of these objections also hold for city and county elections, where scholars have nonetheless, in general, found robust evidence of ideological representation (Warshaw 2019).

An additional reason to expect district attorney representation is that a good deal of past work shows sensitivity to public opinion in a very similar office: local trial judges. Although scholars rarely measure public opinion directly, a common finding is that more exposure to the public – whether via election timing (Huber and Gordon 2004; Dippel and Poyker 2019), selection mechanisms (Gordon and Huber 2007; Lim 2013), or press coverage (Lim, Snyder, and Stromberg 2015) – leads to harsher sentencing behavior. If the median voter is pro-punishment, these results suggest judges seek to represent voter opinion when they believe voters are watching.³

A handful of studies have similarly tested if district attorneys are more punitive in election years (Dyke 2007; Bandyopadhyay and McCannon 2014; Nadell, Scaggs, and Bales 2017). While these papers generally find support for this hypothesis, none of them is able to directly compare measures of voter opinion to district attorney behavior. The one study that does is Nelson's (2014) examination of district attorney behavior in Colorado following the legalization of marijuana. Similar to my own paper, Nelson uses the results of the marijuana ballot measure to calculate a measure

³Relaxing the assumption of uniform voter preferences, Park (2017) and Boston and Silveira (2019) both find trial judges with more liberal (conservative) voters become more liberal (conservative) when more electorally exposed. Finally, several other studies find that when voter preferences become clearer, perhaps as a result of a referendum or recall campaign, sentencing behavior changes accordingly (Kuklinski and Stanga 1979; Nelson 2014; Gordon and Yntiso 2020).

of constituency opinion; he finds that after the referendum results were known, DA's (and judges) in areas with more supporters alter their sentencing behavior accordingly. However, these results do not tell us how congruent DA's are with their voters, and it is unclear whether the findings extend to other criminal justice issues.

Existing evidence aside, it is worth considering some other key institutional differences between district attorneys and other offices. Like sheriffs, district attorney candidates almost always have experience in the criminal justice system, nearly always as prosecutors. This experience could mean that candidates are uniformly conservative (Thompson 2020). Incumbent DA's also have special power over the candidate pool. As shown in Table tk, the surest path to becoming district attorney is to have served previously as a prosecutor, typically as the chief assistant to the incumbent. Any deputy making a challenge prior to the incumbent's chosen retirement date not only risks losing an election, but their job.

If not the deputies, who else might challenge the incumbent for being out of step with the voters? Other candidates may have prosecutorial experience from other local or federal offices, potentially freeing them from the incumbent's influence – but perhaps also weakening their appeal to voters skeptical of “outsiders”. Another source of candidates are criminal defense lawyers with little or no prosecutorial experience. Yet these candidates may be similarly cowed. Would a defense lawyer who loses to the incumbent district attorney perhaps have a harder time doing their job in the future? Surely this thought enters any ambitious defense lawyer's electoral calculus (Wright 2008).⁴

Data on electoral competition in California races speak to some of the differences between DA's and other offices. In Table 1, I show several measures of competition for district attorneys (top row), CA state assembly members (second row), CA state senators (third row), and US House members from California (bottom row). To compute these measures, I use election returns from

⁴Hessick and Morse (2020) argue that a major limitation to electoral competition is the lack of lawyers in small jurisdictions. In suggestive analysis of national data, they find that the more lawyers living in a jurisdiction, the more likely it is the incumbent DA sees a challenger. Other possible barriers to DA representation operate at the level of the voter. Even if a challenger were to inform voters their DA is out of step, voters might opt to keep the unrepresentative DA if they value the technical skill of prosecuting cases – an experience nearly exclusive to the DA and their deputies.

Office	Total races N	Incumbent ran % (N)	Incumbent opposed % (N)	Incumbent won if ran % (N)	Incumbent won if opposed % (N)
District attorney	116	83 (96)	41 (39)	88 (84)	69 (27)
State assembly	160	81 (129)	94 (121)	95 (122)	94 (114)
State senate	40	57 (23)	96 (22)	91 (21)	91 (20)
US House	106	92 (98)	100 (98)	95 (93)	95 (93)

Table 1: Comparing electoral competition across offices, 2014-2018.

both the 2014 and 2018 races.

Table 1 shows that incumbents run at about the same rate as these other offices (first column), though they are opposed far less (second column).⁵ Just 41% of district attorneys faced any opponent in an election cycle, compared to 94% of state assembly members, 96% of state senators, and 100% of US House members.⁶ Conditional on running, though, incumbent district attorneys actually win less often than legislators (88% of the time), and win even less (69% of the time) when they face a challenger. Thus, a distinguishing feature of district attorney elections is the lack of opposition. With no challenger to seriously threaten their job, district attorneys may have little need to respond to their voters.

Criminal Justice Reform in California

Starting in 2011, criminal justice policy in California has generally moved in the direction of liberal reform (Arango 2019). A catalyst was a 2011 federal Supreme Court ruling, which ordered

⁵California has term limits for state legislators, which likely explains the relatively low share of incumbent state senators who run for re-election.

⁶I count both primary and general election challengers for these figures.

the state to drastically reduce its overcrowded prison population (Liptak 2011). In response, state lawmakers enacted “realignment”, shifting thousands of state inmates convicted of “nonviolent and nonserious” offenses to counties (VanSickle and Villa 2018). In addition to legislative action, reform has also taken place via direct democracy. For example, in 2014, voters approved Proposition 47, which re-classified many felony crimes to misdemeanors with more lenient penalties; and in 2016, voters approved Proposition 57, which gave thousands of state prisoners a chance at parole (VanSickle and Villa 2018). Not all these attempts at reform succeeded: for instance, in both 2012 and 2016, voters turned down efforts to abolish the death penalty. But overall, the shift in policy was so great that by 2018, a *Los Angeles Times* headline claimed that the state had “transformed its justice system” since 2011 (VanSickle and Villa 2018).

To measure constituency opinion on criminal justice policy, I examine relevant ballot propositions considered in the 2012, 2014, and 2016 November elections.⁷ One reason for selecting this time span is that it is after the 2011 Supreme Court decision and the start of the state’s liberal shift on justice policy. Another reason is that it is difficult to determine the positions of district attorneys, and it is more difficult the further back in time we go. By my count, Californians voted on a total of nine propositions related to criminal justice policy over this period, and I summarize them below.⁸

- **Death penalty repeal (Proposition 34, 2012):** Would have repealed the death penalty and replaced it with life without parole, and would have applied retroactively to those currently on death row. *Failed* with 48% in favor (Ballotpedia Authors 2020a).
- **Human trafficking increase sentences (Proposition 35, 2012):** Increased penalties for human trafficking convictions, required traffickers to register as sex offenders, and required sex offenders to disclose Internet activity. *Passed* with 81% in favor (Ballotpedia Authors 2020b).

⁷Senate Bill 202, enacted in 2011, mandates that ballot propositions must be held in November of statewide election years (i.e., even years) (Ballotpedia 2020j). There were no criminal justice-related propositions on the ballot in 2018.

⁸The bolded phrase is my own shorthand for each proposition, not the official proposition title.

- **Soften three-strikes (Proposition 36, 2012):** The existing three-strikes law resulted in a life sentence on the third offense; this required the third offense to be “serious or violent.” *Passed* with 69% in favor (Ballotpedia Authors 2020c).
- **Nonviolent offenses to misdemeanors (Proposition 47, 2014):** Mandated misdemeanor sentences instead of felonies for some drug and property crimes. *Passed* with 60% in favor (Ballotpedia Authors 2020d).
- **Increase parole for nonviolent felons (Proposition 57, 2016):** Allowed those convicted of “nonviolent felonies” to be considered for parole once prison term for main offense is complete. *Passed* with 65% in favor (Ballotpedia Authors 2020e).
- **Death penalty repeal (Proposition 62, 2016):** Essentially the same as Proposition 34 in 2012. *Failed* with 47% in favor (Ballotpedia Authors 2020f).
- **Gun control (Proposition 63, 2016):** Instituted a variety of gun control measures, including requiring background checks and state authorization for buy ammunition, banning high-capacity magazines, and requiring most ammunition sales to be made through licensed vendors. *Passed* with 63% in favor (Ballotpedia Authors 2020g).
- **Legalize recreational marijuana (Proposition 64, 2016):** Legalized all marijuana use under state law. *Passed* with 57% in favor (Ballotpedia Authors 2020h).
- **Death penalty speed process (Proposition 66, 2016):** Made a number of changes to procedures for death penalty convictions, including limiting the amount of time for legal challenges to five years. *Passed* with 51% in favor (Ballotpedia Authors 2020i).

Measuring Constituency Opinion

I follow several existing studies of representation that use constituency returns on ballot propositions as an alternative to survey measures of voter opinion (Brunner, Ross, and Washington 2013;

Masket and Noel 2012; Matsusaka 2017; Rogers 2017; Giger, Klüver, and Witko 2020). While most of these past studies go on to match constituency returns with actual legislative votes on the issue, as I explain below, I instead use endorsements by public officials. Before doing so, I describe the constituency measures.

All district attorneys in California serve at the county level. As such, I measure constituency opinion on each proposition using county election returns, obtained from the Secretary of State’s web site.⁹ In Figure 1, I map how voters in each county voted on each proposition, with darker shadings indicating that a majority over voters in that county cast a vote for the liberal position. (For almost all of the propositions, a “yes” vote corresponds with the liberal position; the exceptions are the human trafficking and death penalty speed propositions.) These maps show considerable heterogeneity in voter liberalism across issues and geography. For example, a majority of voters in all counties voted to increase penalties for human trafficking – a conservative position – while also voting to decrease penalties for “third strikers” – a liberal position. Other issues, such as the death penalty, see a small group of coastal counties voting liberally while the rest of the state votes conservative.

Measuring District Attorney Positions

I depart from existing measures of judicial and district attorney responsiveness by using publicly expressed policy positions, in the form of pre-election ballot proposition endorsements, rather than administrative data on case filings or outcomes. While no measure is perfect, I argue public positions have several advantages over administrative data. First, I can place endorsements on the same scale as voter opinions, allowing me to assess congruence as well as responsiveness. Second, I can also place them on the same scale as legislators, allowing me to benchmark DA representation against legislator representation. Third, case data are the result of a complex strategic interaction involving the police (Knox, Lowe, and Mummolo 2020), the DA (more likely, an assistant DA and

⁹See <https://www.sos.ca.gov/elections/prior-elections/statewide-election-results/>.



Figure 1: California counties with a majority voting on liberal side, by proposition. Light gray counties saw less than 50% take a liberal position, while black counties saw more than 50% take a liberal position.

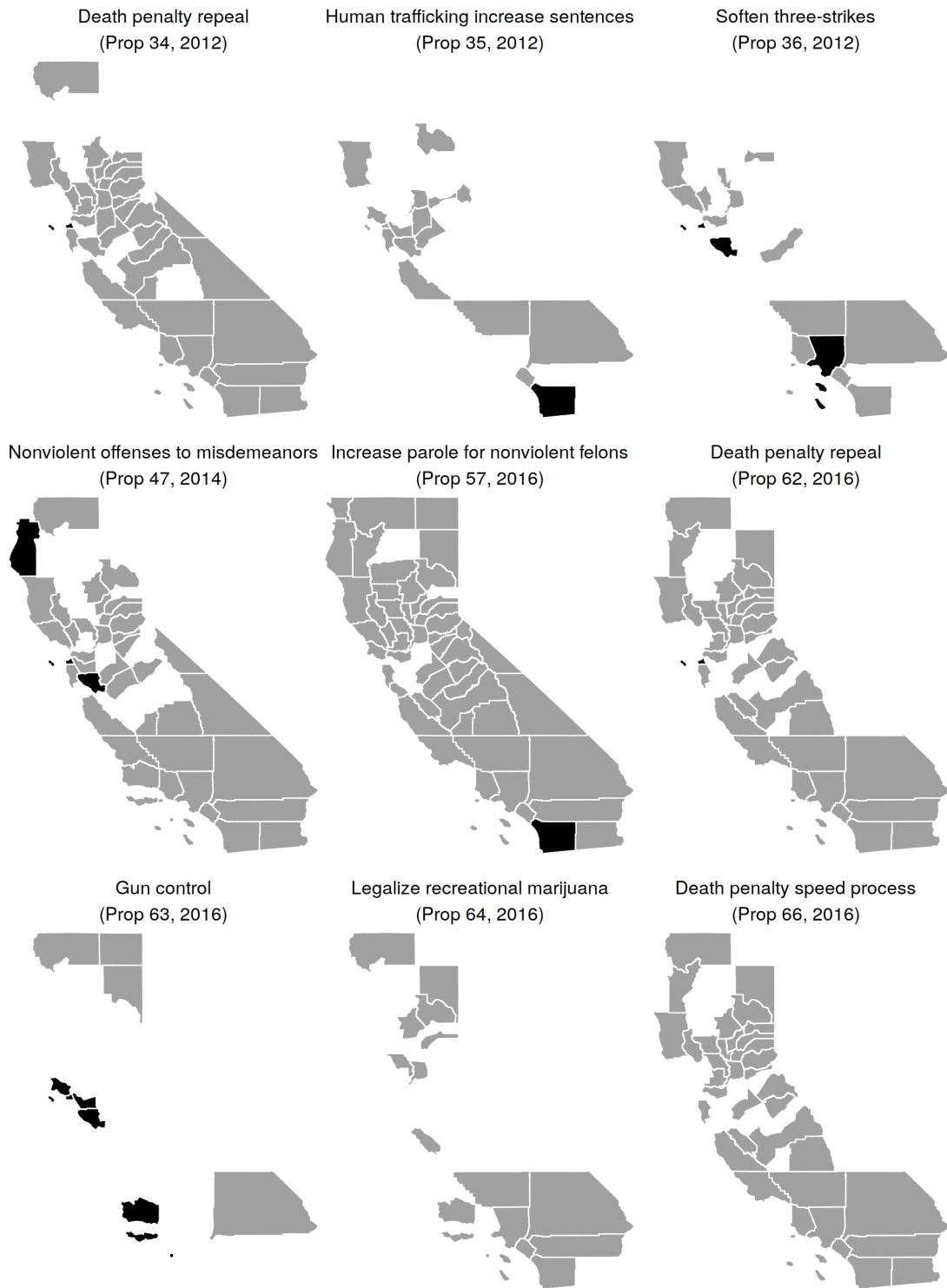


Figure 2: California counties represented by a district attorney (DA) taking a liberal position, by proposition. Light gray counties are represented by a DA taking a conservative position, while black counties are represented by a DA taking a liberal position. Whited out areas denote counties where the DA did not take a position.

not the actual elected official), defense attorneys, and judges; in particular, the veto power of judges (LaCasse and Payne 1999) may prevent the DA from acting in accordance with voter wishes.¹⁰

I obtained DA positions on four of the nine propositions from the American Civil Liberties Union of California. As part of a broader effort to educate voters in district attorney elections, the ACLU set up a web site, <https://meetyourda.org/>, publicizing the positions of all CA district attorneys on Proposition 36 in 2012 (softening three strikes), Proposition 47 in 2014 (change felonies to misdemeanors), Proposition 57 in 2016 (increase parole), and Proposition 64 in 2016 (legalize marijuana). For each proposition, almost all district attorneys are coded as supporting, opposed, or neutral. I use the data from this web site as a starting point for coding DA positions. To simplify the analysis and to ensure comparability with other offices, I code any neutral positions as missing.¹¹

For the remaining five propositions, I relied mainly on the endorsements pages of pro- and anti-campaign web sites, which I found using the Wayback Machine tool at the Internet Archive (see <https://archive.org/web/>). These campaign web sites typically list public officials who agree with the campaign's position.¹² To supplement these lists, I searched the web and newspaper databases to find instances of specific district attorney's taking positions.¹³ Last, I also searched for district attorney names on lists of donors to pro- and anti-campaign committees for each proposition, via the California Secretary of State's web database (see <http://cal-access.sos.ca.gov/>).

Figure 2 plots district attorney positions by county for each of the propositions. Mirroring the

¹⁰The use of administrative data also requires numerous researcher choices about how to code different cases, what cases to exclude, and what constitutes a more punitive outcome, raising the risk of specification search (Dippel and Poyker 2019). A disadvantage of using endorsements is that officials are under no obligation to offer an opinion, and the lack of an opinion could be strategic. Moreover, endorsements do not necessarily reflect policy decisions. That said, roll call votes cast in legislatures are also strategic, and may also not reflect actual policy changes.

¹¹On most issues, only a handful of district attorneys take neutral positions. Exceptions are Proposition 36 in 2012 (three strikes), where 24 are neutral, and Proposition 64 in 2016 (legalize marijuana), where 43 are neutral. See the Online Appendix for results using alternative codings of these neutral positions.

¹²For two propositions, there was one side where I could not locate an official list of supporters: the anti-campaign for Proposition 36 in 2012, as the campaign site was not archived on Wayback; and the anti-campaign for Proposition 35 in 2012, as the campaign site appeared to be a blog and did not list any endorsements.

¹³First, I determined the name of the incumbent district attorney for each of the three proposition years (2012, 2014, and 2016) for all 58 California counties. Second, I searched for documents including both the district attorney's name, and the phrase "proposition [#]" or "prop [#]" for each proposition. I performed these searches using Google, newspapers.com, and the ProQuest US Newsstream database.

scheme in Figure 1, counties with district attorneys taking liberal positions are shaded dark gray, while those with conservative positions are shaded light gray; counties that are whited out are areas where the district attorney either took a neutral position, or I was not able to find any public position.¹⁴

In contrast to the variety of opinion seen for voters, Figure 2 shows remarkable consistency in district attorney positions, regardless of issue or geographic area. For a typical proposition, all district attorneys with positions are united in taking a conservative stance, with perhaps one or two liberal dissenters. The sole exception is seen in the bottom left panel, concerning the gun control measure. In this case, five district attorneys took liberal positions and four took conservative positions. The relative consistency of district attorney positions, compared to the great variety in voter opinion, constitutes preliminary evidence of a lack of representation.

Measuring Representation

I use two standard metrics to quantify the extent of district attorney representation (Achen 1978; Lax and Phillips 2012). First, for each county I record whether the DA takes a position that is consistent with, or on the same “side” as, their constituency. I refer to this measure as *congruence*,

¹⁴District attorneys are actually somewhat more likely to take public positions on these propositions as compared to legislators. While there are a total of 173 district-based legislators in the state (80 State Assembly, 40 State Senate, and 53 US House), for the average proposition, 25 of these legislators take a position. In contrast, for the average proposition, 29 of 58 district attorneys take a position. To the extent that taking public positions is strategic, making comparisons across offices requires the assumption that any bias is independent of the office. One way this might fail is if DA candidates feel compelled to offer a position on criminal justice propositions, and so more easily reveal themselves as out of step, while other offices do not feel compelled to offer a position, and so only those who are congruent do so. However, while DA's are more likely to take a position than other offices, they do not appear to feel compelled to do so, as missingness is still frequent.

and compute it as

$$\text{Congruence}_{ij} = \begin{cases} 1 & \text{if } \text{Vote}_{ij} > 50 \text{ and } \text{District Attorney}_{ij} = 1 \\ 1 & \text{if } \text{Vote}_{ij} < 50 \text{ and } \text{District Attorney}_{ij} = 0 \\ 0 & \text{if } \text{Vote}_{ij} < 50 \text{ and } \text{District Attorney}_{ij} = 1 \\ 0 & \text{if } \text{Vote}_{ij} > 50 \text{ and } \text{District Attorney}_{ij} = 0 \end{cases}$$

where Vote_{ij} represents the liberal vote share, and $\text{District Attorney}_{ij}$ is an indicator for the DA taking the liberal position, for each district attorney i and for each proposition j . Second, I ask if, cross-sectionally, the tendency of a district attorney to adopt a liberal position is associated with voter liberalism. I refer to this as *responsiveness*, and measure it using the slope (β_j) from the regression

$$\text{District Attorney}_{ij} = \alpha_j + \beta_j * \text{Vote}_{ij} + \varepsilon_{ij}$$

Before computing these statistics numerically, I visualize the relationship between positions and opinions, plotting one against the other, in Figure 3. Consistent with the prior two figures, for most propositions we see observations concentrated on the bottom portion of the plots, indicating conservative district attorney positions, regardless of what side of the horizontal axis voters are on. Points in the lower left and upper right quadrants of the figure indicate congruence. For instance, in the top left panel (the first death penalty measure), we see evidence of congruence, as constituencies to the left of the vertical dashed line are represented by conservative district attorneys, while the lone liberal district attorney represents a very liberal district. On other issues, such as marijuana repeal shown in the bottom middle panel, we see virtually no congruence, as all but one constituency votes liberally while no district attorney takes a liberal stance.

Figure 3 also shows preliminary evidence of responsiveness, but only on some issues. Each panel includes a solid line representing the regression equation given previously. In most cases, the slope of the line is positive, though a lack of variation in district attorney positions means the line can not be computed for some of the issues. Even when the lines are positive, furthermore, the

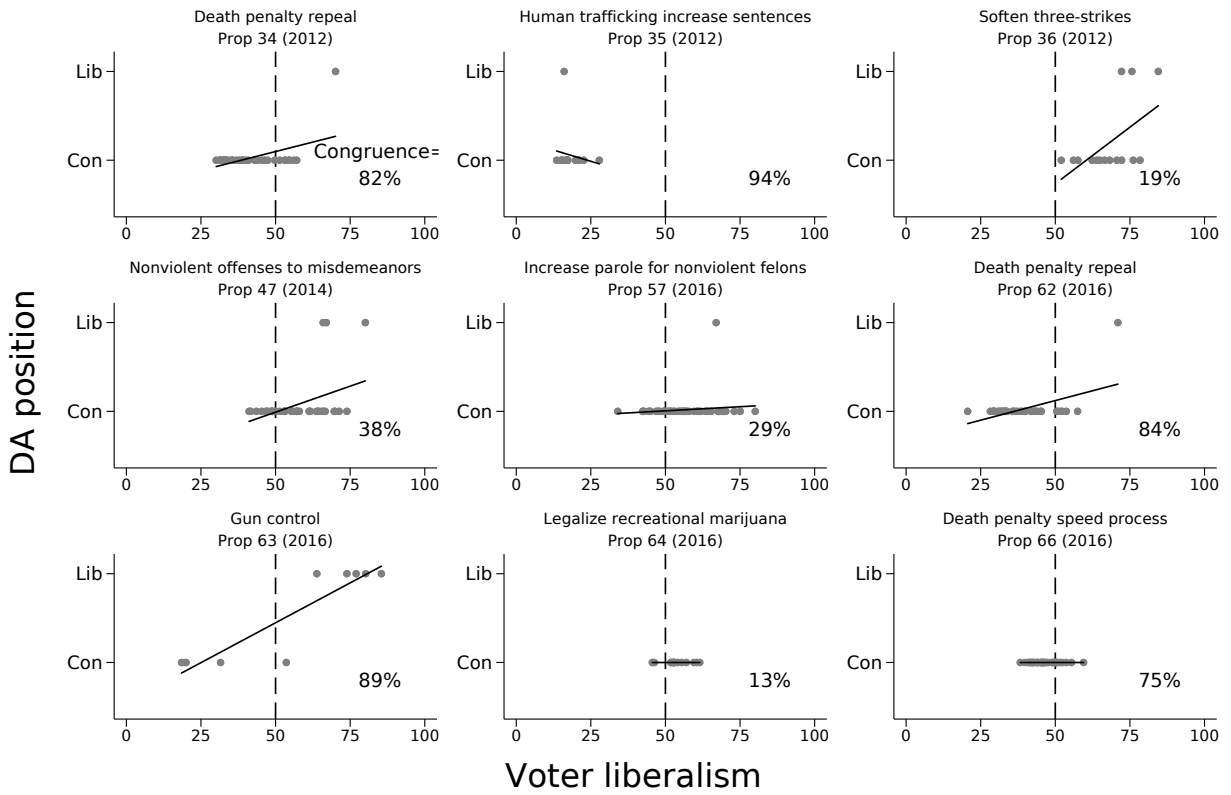


Figure 3: District attorney positions and constituency opinion.

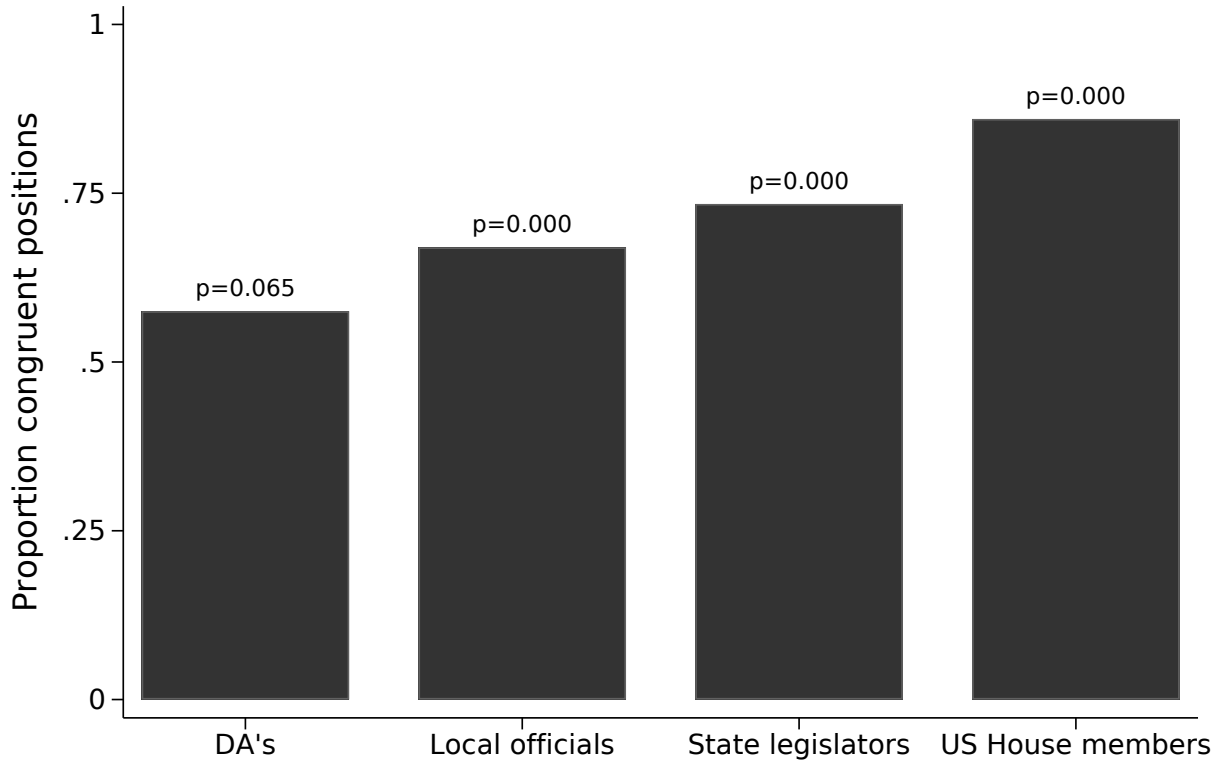


Figure 4: Congruence by office. Bar heights are the share of observations where officials take a congruent position. P-values from the test that the true share is 50% (and thus “random” congruence) are displayed above each bar.

relationships are weak, suggesting that even large liberal shifts in constituency opinion would not shift district attorney positions by very much.

Congruence Across Issues and Offices

Figure 4 summarizes DA congruence, plotting the proportion of the time DA’s take positions that are congruent with their constituents. Across 259 positions, DA’s are congruent with their voters about 58% of the time. This is substantively not much higher than 50%, which is the degree we would see DA’s congruent with their voters if incumbents simply flipped a coin. Statistically, we can’t reject the null hypothesis that the true share is 50% at conventional levels.¹⁵

¹⁵To conduct this test, I use the block bootstrap, blocking at the level of the district, with 1,000 replications.

To put the figure of 58% in perspective, the remaining bars re-compute the proportion of congruent positions for other offices. Across 212 instances of position-taking, local officials (mayors, city councils, and county supervisors) are congruent 67% of the time. Across 173 positions, CA state legislators are congruent 73% of the time. And across 50 positions, US House members from California are congruent 86% of the time. In contrast to the figures for DA's, for all three of these figures we can easily reject the null hypothesis of "random" congruence at conventional levels.¹⁶

As another way of exploring the coincidental nature of any DA congruence, Figure 5 plots an indicator for congruence against voter liberalism, pooling all issues for each type of office. Points in these figures are jittered for legibility, and the solid lines represent moving averages from quadratic regressions. Interestingly, for the three non-DA offices, the data have a "U" shape suggesting a dip in congruence in more divided electorates. This suggests that officials in these districts seek to adopt positions in line with their voters, but that they find it harder to discern voter opinion (or easier to shirk) when voters are not overwhelmingly on one side. In contrast, for DA's there is no such apparent curvature. Instead, whether a DA is congruent is almost entirely a result of whether the constituency is conservative. If so, voters get a DA in line with their views. If not, they do not.

Responsiveness Across Issues and Offices

The evidence in Figure 3 suggests DA's are weakly responsive on some issues, and entirely unresponsive on others. To summarize these patterns, I pool all issues into a single regression, with results reported in Table 2. As with the analysis of congruence, I also perform the analysis for other offices for the purposes of comparison.

¹⁶For the non-DA offices, I rely exclusively on lists of endorsements, foregoing the more extensive searches of the web and newspaper databases, to measure elite positions. To measure voter positions, for 2014 and 2016 measures I rely on official election results released at the level of legislative districts. Legislative districts were redrawn for the 2012 election, meaning the legislative districts given on the 2012 election results were for future, not current, constituencies. Thus to calculate voter opinion in 2012, I construct my own measure of constituency opinion by aggregating precinct-level results to pre-2012 legislative districts using GIS software. I obtained precinct-level results and pre-2012 district maps from the Statewide Database at <https://statewidedatabase.org/>.

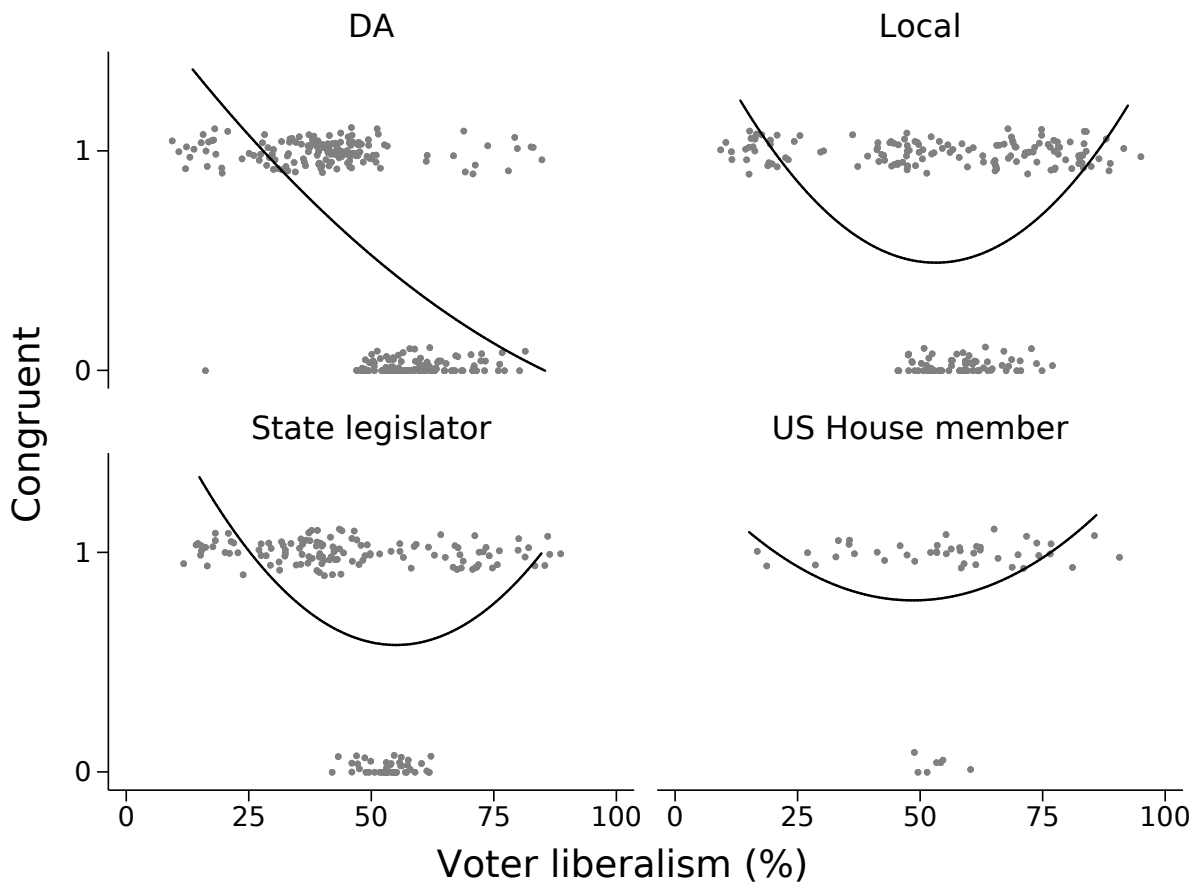


Figure 5: Congruence against voter liberalism, by office. Solid lines represent quadratic fits. Points are jittered for legibility. For most offices, congruence is less likely when voter opinion is more divided, as reflected by the “U” shape. For DA’s, congruence is simply less likely when voters are more liberal, as reflected by the relative lack of curvature.

Column 1 of Table 2 confirms that DA’s are *responsive*, in the sense that more liberal electorates are represented by more liberal DA’s. Specifically, for every one percentage point increase in voter liberalism, the probability the DA adopts the liberal position increases by one half of one percentage point. While this estimate is statistically significant at the 5% level, it is substantively small, suggesting that even a shift from 0% to 100% liberalism would only make a DA only 50 percentage points more likely to adopt the liberal position. Given the “default” DA position is conservative, this again suggests that liberal voters get something akin to random representation from their DA’s, in line with their views maybe half the time. In contrast, all of the other offices

	(1) District attorneys	(2) Local officials	(3) State legislators	(4) US House members
Voter liberalism	0.005* (0.002)	0.016*** (0.001)	0.018*** (0.001)	0.021*** (0.003)
Constant	-0.208* (0.093)	-0.531*** (0.055)	-0.581*** (0.059)	-0.440* (0.194)
Observations	259	212	173	50
Clusters	57	164	82	28

Table 2: Responsiveness: Does the official take the liberal position? Cell entries reflect how the probability of taking the liberal position changes as the proportion of liberal voters increases by one percentage point, with standard errors in parentheses. Standard errors computed using the block bootstrap, clustering on office, using 1,000 replications. * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

are more responsive (and the estimates are far more precise). In particular, local officials and state legislators are over three times as responsive as DA's, while US House members are four times as responsive.¹⁷

Conclusion

For decades, the conventional wisdom has been that candidates for district attorney must style themselves as “tough on crime” to appease voters. In our current era of reform, the DA's supposed over-responsiveness to punitive electorates has been blamed for the rise of the carceral state, with the DA's continued responsiveness to a new, reform-minded electorate seen as a path to criminal justice reform. Yet despite the presumption that DA's seek to represent their electorates, no existing study has examined this question directly. Using a series of ballot propositions on criminal justice reform in California, I conduct this comparison for the first time. Contrary to the conventional

¹⁷One difference between district attorneys and these other elected offices is election timing. Typically in California, there is a first round of elections for district attorney in June of midterm election years (e.g., 2014, 2018, etc.). If no candidate receives more than 50% of the vote, there is then a runoff in November. My measures of voter preferences come from November elections in even-numbered years. So, it could be that district attorneys are responding to their June electorates, which are more conservative. (Most CA municipal races are in November of even years, so using the local races does not account for this explanation; see Marschall and Lappie 2014.) However, given district attorneys should know they could potentially face voters in a November runoff, then they would pay attention to the preferences of November voters if they seek to represent their constituents.

wisdom, I find DA's are in fact systematically unrepresentative of their voters, both in terms of congruence and in terms of responsiveness. What is more, I find DA's are abnormally unrepresentative when compared to other elected officials at the local, state, and federal levels. My results suggest that while DA's own preferences may have played a role in the rise of the carceral state, this may have been in spite of, rather than because of, their constituents' opinions.

Beyond district attorney elections, my results suggest limits to electoral accountability among local criminal justice officials, echoing recent work by Thompson (2020) on elected sheriffs. Future research should further explore whether this pattern holds; if so, it may mean criminal justice reform will have a better chance of succeeding at the state and federal level, rather than the local level. Future work can also explore the barriers to representation among elected criminal justice officials, and the extent to which they are driven by features of the candidate pool (e.g., professional norms that encourage conservative policy views) or by voters (e.g., a preference for technical skill over issue congruence).

These results also speak to the need for scholars of subnational politics to pay special attention to the distinct institutional environments often faced by the officials we study (Rogers 2012). For some local offices, these environments may be similar enough to those at the national level that theories of representation developed for Congress may be an adequate guide. But for other offices, such theories may fail.

References

- Achen, Christopher H. 1978. "Measuring Representation." *American Journal of Political Science* 22(3): 475-510.
- Arango, Tim. 2019. "In California, Criminal Justice Reform Offers a Lesson for the Nation." *New York Times* (Jan. 21). <https://www.nytimes.com/2019/01/21/us/california-incarceration-reduction-penalties.html>
- Bafumi, Joseph, and Michael C. Herron. "Leapfrog representation and extremism: A study of American voters and their members in Congress." *American Political Science Review* (2010): 519-542.
- Ballotpedia Authors 2020a. tk
- Ballotpedia Authors 2020b. tk
- Ballotpedia Authors 2020c. tk
- Ballotpedia Authors 2020d. tk
- Ballotpedia Authors 2020e. tk
- Ballotpedia Authors 2020f. tk
- Ballotpedia Authors 2020g. tk
- Ballotpedia Authors 2020h. tk
- Ballotpedia Authors 2020i. tk
- Ballotpedia Authors 2020j. tk
- Bandyopadhyay, Siddhartha, and Bryan C. McCannon. "The effect of the election of prosecutors on criminal trials." *Public Choice* 161, no. 1-2 (2014): 141-156.
- Bartels, Larry M. *Unequal democracy: The political economy of the new gilded age*. Princeton University Press, 2018.
- Bazon, Emily, and Miriam Krinsky. 2018. "A Wave of New Prosecutors Means Justice." *New York Times* (December 13). Page A29. <https://www.nytimes.com/2018/12/11/opinion/how-local-prosecutors-can-reform-their-justice-systems.html>
- Boston, J. O. S. H. U. A., and BERNARDO S. Silveira. *The electoral connection in court: How*

sentencing responds to voter preferences. Technical report, Mimeo: UCLA, 2019.

Brenan, Megan. 2020. "Fewer Americans Call for Tougher Criminal Justice System." Gallup.com (November 16). <https://news.gallup.com/poll/324164/fewer-americans-call-tougher-criminal-justice-system.aspx>

Brunner, Ross, and Washington 2013. tk

Dippel, Christian, and Michael Poyker. 2019. "How Common are Electoral Cycles in Criminal Sentencing?" No. w25716. National Bureau of Economic Research.

Downs, Anthony. "An economic theory of democracy." (1957): 260-276.

Dyke, Andrew. "Electoral cycles in the administration of criminal justice." *Public Choice* 133, no. 3-4 (2007): 417-437.

Ellis, Michael J. 2012. "The origins of the elected prosecutor." *Yale Law Journal* 121(6): 1528-1570.

Enns, Peter K. 2014. "The public's increasing punitiveness and its influence on mass incarceration in the United States." *American Journal of Political Science* 58(4): 857-872.

Erikson, R.S., Wright, G.C., Wright, G.C. and McIver, J.P., 1993. *Statehouse democracy: Public opinion and policy in the American states*. Cambridge University Press.

Giger et al 2020. tk.

Gordon, Sanford C., and Gregory A. Huber. 2002. "Citizen oversight and the electoral incentives of criminal prosecutors." *American Journal of Political Science* 46(2): 334-351.

Gordon, Sanford C., and Gregory A. Huber. 2007. "The effect of electoral competitiveness on incumbent behavior." *Quarterly Journal of Political Science* 2(2): 107-138.

Gordon, Sanford C., and Sidak Yntiso. "A Silent Corrupting Force? Criminal Sentencing and the Threat of Recall." *Criminal Sentencing and the Threat of Recall* (June 4, 2020) (2020).

Hessick, C.B. and Morse, M., 2019. *Picking Prosecutors*. Iowa L. Rev., 105, p.1537.

Huber, Gregory A., and Sanford C. Gordon. "Accountability and coercion: Is justice blind when it runs for office?." *American Journal of Political Science* 48, no. 2 (2004): 247-263.

Illing, Sean. 2019. "How bad prosecutors fuel America's mass incarceration problem." *Vox.com*

(May 15). <https://www.vox.com/future-perfect/2019/5/15/18523984/mass-incarceration-prosecutors-emily-bazelon-charged>

Knox, Lowe, and Mummolo 2020

Kuklinski, James H., and John E. Stanga. "Political participation and government responsiveness: The behavior of California superior courts." *The American Political Science Review* (1979): 1090-1099.

LaCasse, Chantale, and A. Abigail Payne. 1999. "Federal sentencing guidelines and mandatory minimum sentences: Do defendants bargain in the shadow of the judge?" *Journal of Law and Economics* 42(S1): 245-270.

Lax, Jeffrey R., and Justin H. Phillips. "The democratic deficit in the states." *American Journal of Political Science* 56, no. 1 (2012): 148-166.

Lim, Claire SH. "Preferences and incentives of appointed and elected public officials: Evidence from state trial court judges." *American Economic Review* 103, no. 4 (2013): 1360-97.

Lim, Claire SH, James M. Snyder Jr, and David Strömberg. "The judge, the politician, and the press: newspaper coverage and criminal sentencing across electoral systems." *American Economic Journal: Applied Economics* 7, no. 4 (2015): 103-35.

Masket and Noel 2012. tk.

Matusaka 2017. tk

Mayhew, David R. 1978. *Congress: The electoral connection*. Yale university press.

Miller, Warren E., and Donald E. Stokes. 1963. "Constituency influence in Congress." *American Political Science Review* 57(1): 45-56.

Nadel, Melissa R., Samuel JA Scaggs, and William D. Bales. "Politics in punishment: The effect of the state attorney election cycle on conviction and sentencing outcomes in florida." *American journal of criminal justice* 42, no. 4 (2017): 845-862.

Nelson, Michael J. "Responsive justice? Retention elections, prosecutors, and public opinion." *Journal of Law and Courts* 2, no. 1 (2014): 117-152.

Park, Kyung H. "The impact of judicial elections in the sentencing of black crime." *Journal of*

- Human Resources 52, no. 4 (2017): 998-1031.
- Pitkin, Hanna Fenichel. 1972. *The Concept of Representation*. Berkeley: University of California Press.
- Rogers 2017. tk.
- Rogers, Steven. 2020. *Accountability in State Legislatures*. Book manuscript.
- Sances, Michael W. 2019. "When Voters Matter: The Limits of Local Government Responsiveness." Forthcoming at *Urban Affairs Review*. September 2019.
- Shor, Boris, and Nolan McCarty. "The ideological mapping of American legislatures." *American Political Science Review* (2011): 530-551.
- Tausanovitch, Chris, and Christopher Warshaw. "Representation in municipal government." *American Political Science Review* (2014): 605-641.
- Thompson, Daniel M. "How partisan is local law enforcement? Evidence from sheriff cooperation with immigration authorities." *American Political Science Review* 114, no. 1 (2020): 222-236.
- Vansickle, Abbie, and Manuel Villa. 2018. "California transformed its justice system. But now crime is up, and critics want rollbacks." *Los Angeles Times* (Dec. 20).
- Warshaw, Christopher. "Local elections and representation in the United States." *Annual Review of Political Science* (2019).
- Wright, R.F., 2008. How prosecutor elections fail us. *Ohio St. J. Crim. L.*, 6, p.581.

Appendix

	(1) District attorneys	(2) Local officials	(3) State legislators	(4) US House members
Voter liberalism	-0.031* (0.015)	-0.049*** (0.005)	-0.052*** (0.007)	-0.027 (0.015)
Liberalism squared	0.000 (0.000)	0.000*** (0.000)	0.000*** (0.000)	0.000* (0.000)
Constant	1.765*** (0.290)	1.805*** (0.080)	2.017*** (0.149)	1.436*** (0.335)
Observations	259	212	173	50
Clusters	57	164	82	28

Table 3: Congruence: Does the official take the position of a majority of constituents? Cell entries reflect how the probability of congruence changes as the proportion of liberal voters increases by one percentage point, with standard errors in parentheses. Standard errors computed using the block bootstrap, clustering on office, using 1,000 replications.