

## Consistency and Compensation in Mercy

# Consistency and Compensation in Mercy: Commutation in the Era of Mass Incarceration

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This multi-method paper presents a model of individual and contextual variation in commutation, a form of clemency that lessens the severity of criminal sentences. In the contemporary US context of high incarceration, commutation is one of few “back-end” mechanisms available for early release. We first describe national trends, showing a significant decline in commutation releases, as well as great geographic variation. We then test whether commutation decisions reflect *consistency* or *compensation* with other forms of punishment. Our mixed-effects logit analysis reveals state-level compensation (greater commutation in more punitive states) but individual-level consistency (greater commutation for more advantaged groups). Commutation is most likely for those presenting a “mercy package” of White race, female sex, and less violent criminal histories. In contrast, Black men convicted of violence are exceedingly unlikely to be commuted. Nevertheless, qualitative evidence suggests that the apparent “female advantage” in commutation may reflect differences in the nature of the underlying offense and subsequent prison behavior. These results both parallel and extend sociological research on punishment, pointing to commutation as an understudied and underutilized mechanism for mercy.

Since the 1970s, policy choices to lengthen criminal sentences, require prison time for minor offenses, and stiffen penalties for drug crimes have produced historically high US incarceration rates ([National Research Council 2014](#), 4). Flexibility in sentencing diminished over this period, with the rise of mandatory minimum sentences, truth in sentencing laws, and three strikes provisions ([Clear and Frost 2013](#)). Yet both state and federal legal remedies remain in place to adjust unfair, overly harsh, or otherwise inappropriate sentences. This article

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examines the process, use, and predictors of commutation, a form of mercy in which state executives act to reduce the severity of prison sentences.

Although former president Barack Obama granted more federal commutations than any other president since Harry Truman (Gramlich and Bialik 2017), the overall use of executive clemency declined dramatically during the era of rising incarceration from 1975 to 2008. As former US pardon attorney Margaret Love (2007) and others (Gill 2010) have noted, a sharp drop in presidential commutations occurred during the Reagan administration. The rarity of clemency clashed sharply with the rise in criminal punishment during this period, as observers noted that presidents and governors were granting “only a handful” of commutations, while sentences were escalating (Barkow 2009, 153).<sup>1</sup> That clemency would decline during this era should come as no surprise. As Simon (2007) argues, the very people making clemency decisions—governors and presidents—were using crime (and public fear of crime) as a governance strategy. When “criminals” are visibly pitted against the rest of society (including potential victims and law enforcement), it becomes ever more risky for politicians to demonstrate any sympathy toward individual prisoners. Politicians have been especially loath to release people convicted of violence since 1988, when then-presidential candidate Michael Dukakis was repeatedly attacked for the prison furlough program that operated during his tenure as Massachusetts governor (Mendelberg 2001).

Sociological research on clemency has emphasized its historical use as a mechanism of power and control (Foucault 1977; Garland 2010; McEvoy and Mallinder 2012). A large literature examines recent individual- and state-level predictors of punitiveness, but this research often stops at sentencing. Although some have observed a general decline in executive clemency over time, the predictors and determinants of successful commutation applications have generally been neglected, both conceptually and empirically. Moreover, extant research on commutation often focuses on death penalties being commuted to life sentences, rather than release from prison via commutation (Sarat 2008; Wolfgang, Kelly, and Nolde 1962).

Executive clemency, particularly pardons and commutations, can be broadly categorized as a “back-end” adjustment to sentencing, similar to increases in “good time” (sentence reductions for good behavior) and early release. Commutations and pardons are distinct from other forms of mercy, such as exonerations, reprieves, and compassionate release.<sup>2</sup> As more people faced harsher punishment during the mass incarceration era, via higher arrest rates, greater odds of incarceration after arrest, and lengthier prison terms (Blumstein 2011; Clear and Austin 2009; Clear and Frost 2013), there has been a corresponding growth in potential candidates for clemency. Although incarceration rates have recently leveled off and begun to decline, a *mass* reduction (e.g., to pre-1980 levels) is unlikely in the foreseeable future without radical legal and policy changes (Clear and Austin 2009; NRC 2014). A thorough examination of the current state of commutation is thus an important first step in appraising the viability of existing mechanisms for mercy in reducing correctional populations.

## Toward a Conceptual Model of Intersectionality and Mercy

To date, there have been few systematic quantitative studies of commutation rates, particularly in state rather than federal systems, and few detailed qualitative examinations of commutation processes within states. It has thus been unclear what drives commutation, and whether the determinants of mercy are similar to or different from factors that predict “leniency” in sentencing. [Foucault \(1977\)](#) argued that displays of mercy, like displays of torture, publicly reinforced the absolute power of the sovereign in earlier periods. [Garland \(2010\)](#) similarly notes that eighteenth-century pardons extended power and control over subordinates, leaving them forever indebted and grateful for being spared. In these contexts, extreme punishments gave mercy substantial weight ([McEvoy and Mallinder 2012](#)). Mercy, then, has historically operated alongside punishment to establish, demonstrate, and maintain power and social control. Yet both [Foucault \(1977\)](#) and [Garland \(2010\)](#) conclude that executive clemency no longer serves this function in modern penal practice.

To explain variation in *contemporary* clemency, it seems plausible to posit consistency in punishment and mercy: that factors known to contribute to leniency and punitiveness more generally may drive the probability of commutation, both at the individual level (in terms of who receives a commutation) and at the state level (in terms of which states have higher rates of commutation release from prison). Yet it is equally plausible to suggest that commutation rates may be higher in areas where punishment is most extreme. For example, logic and history would point to greater need for mercy (and, arguably, greater demand) in states that routinely impose sentences of death and life without possibility of parole.

Like punishment, clemency may reinforce collective sentiments about crime and justice, while also performing a safety valve function that curbs excesses in the system ([Durkheim \[1895\] 1982, \[1893\] 1984](#)). Even if applications are rarely granted, the mere existence of clemency procedures helps legitimate the institutions in which it is embedded. As we will show, successful commutations are exceedingly rare, due to the stigma attaching to the original offense and because almost any post-conviction misbehavior is sufficient to disqualify applicants. Such standards echo [Durkheim’s \(\[1895\] 1982\)](#) famous discussion of the relative nature of deviance. If commutation proceedings hold applicants to standards appropriate in a “society of saints,” even trivial faults will arouse scandal and result in rejection.

Yet even among those with exemplary post-conviction behavior, we anticipate race and sex differences in the likelihood of success. Discrimination and bias have been focal concerns of the literature on sentencing and punishment, and the extent of such bias in commutation is a fundamental question for science, law, and policy. People perceived as less threatening—generally, those who are White, female, and of higher socioeconomic status—generally receive less punitive sentences than those in other demographic categories ([Doerner and Demuth 2014; Freiburger and Hilinski-Rosick 2013](#)). Nevertheless, these long-held findings are complicated by recent intersectional work on the interaction

between race and gender. In particular, some studies find a larger race effect for men than for women (i.e., [Brennan and Spohn 2009](#); [Steffensmeier and Demuth 2006](#)). Peggy Giordano and colleagues have used the concept of a “respectability package” to describe how factors such as gender, marital status, and employment are linked to desistance from crime ([Giordano, Cernkovich, and Rudolph 2002](#)). It is plausible that such factors also cohere in a “mercy package,” which would also include the severity of the original offense and salutary post-conviction behavior. This would be consistent with [Durkheim’s \(\[1893\] 1984\)](#) conception of symbolic moral boundaries between insiders and outsiders, where collective sentiments deem particular groups as more (or less) deserving of membership and, hence, mercy.

Conceptions of mercy and deservingness are clearly bound up with fear, race, and racial discrimination. Among whites, especially those residing in low-crime areas, exposure to local news predicts preferences for more punitive crime policies ([Simmons 2017](#)). It is not coincidental that “Willie Horton,” the man demonized in advertisements portraying Michael Dukakis as soft on crime, became a public symbol of the threat of early release. As a Black man convicted of violence after a prison furlough, the image of his “mug shot” in the 1988 presidential campaign tapped into white fears and the association of dangerousness with blackness, maleness, and prior violence. As Horton told James [Elliot \(1993, 204\)](#), “My name is not ‘Willie,’ It’s part of the myth of the case... It was created to play on racial stereotypes: big, ugly, violent, black ‘Willie.’” Such men, the advertisements implied, are irredeemable and unworthy of mercy, early release, or commutation.

Apart from individual characteristics like race and sex, scholars have identified macro-level predictors of punitiveness at the state level and over time. For instance, [Greenberg and West \(2001\)](#) found a relationship between violent crime rates, percent African American in the population, unemployment, political conservatism, and state rates of incarceration. [Jacobs and Carmichael \(2001\)](#) similarly linked conservative political ideology, high unemployment, and state racial composition to incarceration rates. Consistent with this research, [Spelman \(2009\)](#) tied crime rates, political conservatism, and unemployment rates to state growth in incarceration.

Although these correlates of punishment are well established, we noted at the outset two countervailing possibilities regarding which states and periods will have higher rates of release by commutation. One is driven by *consistency* of treatment at the front- and back-end of the justice system, the other by use of back-end adjustments to *compensate* for overly harsh punishment at the front-end. If the known macro-level predictors of punitiveness may exert a similar influence on commutation, Whites, women, and the better educated would be *more* likely to be commuted (and the practice would be less common in states with Republican leadership, high unemployment, high crime, and high incarceration rates). Such results would largely parallel findings on state incarceration growth.

Alternatively, commutation could be more prevalent in the *most* punitive states, as back-end sentencing adjustments are most imperative in states that

punish most harshly. Additionally, the case for mercy may be stronger and institutional actors (and the public) more sympathetic in such places. That is, where punishment is harsher and the need for mercy is greater, it may be less risky politically to issue clemency in sympathetic cases. If so, the individual-level process would still privilege Whites, women, and the better educated, but Republican leadership, high unemployment, and high crime and incarceration would predict *higher* commutation rates.

The acting governor's political party affiliation is likely to be particularly important in commutation cases, since state executives play a strong decision-making role in almost every state (Martin 1983). Moreover, the political risk of granting mercy likely depends on party affiliation (that is, the Democratic candidate Michael Dukakis was particularly vulnerable to a charge of appearing "soft on crime"). Consistent with this pattern, Republican governors such as Mike Huckabee appear to have greater political latitude in granting commutation and absorbing the political consequences when those commuted commit a new crime (Gill 2010).

At the individual level, the consistency argument would predict greater commutation for people presenting the prototypical "mercy package": white, female, and non-violent prisoners likely represent the politically safest commutation cases. In contrast, Black men convicted of violent offenses would be least likely to be released via commutation, with this constellation of characteristics perceived as riskier or more dangerous. Implicit bias and the historical dehumanization of black men would lead both decision-makers and the public to be less sympathetic to their appeals for clemency and less understanding should they commit new crimes after commutation (see, e.g., Goff et al. 2008).

In contrast to this view, there is some evidence in the parole literature that boards are more sympathetic to applicants who do not fit the standard mercy package, but have been subject to unusually harsh or "incongruent" punishment at sentencing (Turpin-Petrosino 1999). In such cases, commutation could be a "back-end" mechanism to redress "front-end" injustices in punishment. For example, commutation boards may look favorably upon Black women who received long sentences for peripheral involvement in drug crimes or, perhaps, young White men convicted of murders in which they played a relatively minor role.

Both the consistency and compensation accounts suggest two-way and three-way interactions among individual-level variables (such as gender, race, and offense) and between individuals and state context (such as race and political ideology), though in different ways. For example, Republican governors would be less willing to commute men and people of color under the consistency model, but more likely to commute these potentially "risky" cases should the compensation model hold true.

## Data and Measures

Our quantitative data source is the National Corrections Reporting Program 2000–2014. Collected by the Bureau of Justice Statistics, these multipart NCRP

data contain individual-level information on all persons sentenced to, released from, or incarcerated in US prisons. We use two of the datasets included in this compilation, Prison Term Records and also the partial cases submitted by each state that were not used to build term records (including prison admissions, releases, and custody). These data contain 16,504,818 cases, which we used to create a case-year dataset of 38,587,441 case-years. Our qualitative data source is a complete record of all commutation transcripts ( $n = 97$ ) from 2000 to 2014 within a single state (Iowa). We obtained these transcripts with a Freedom of Information Act request to the Iowa Board of Parole.

### ***Dependent Variable***

Our outcome in the quantitative analysis is a dichotomous indicator for whether a prisoner was released via “commutation or pardon,” based on the RELEASE\_TYPE variable in NCRP. Anyone not released from prison during the observation period (2000–2014) or released via other means (e.g., conditionally released on parole) is coded as 0.

### ***Individual-Level Variables***

We compiled individual-level demographic variables from NCRP, including race (White, Black, or Other Race), sex, years of education,<sup>3</sup> and year of birth (to indicate age). We also created individual-level variables for the recency and severity of the offense. These include a continuous variable for year of admission, indicator variables for offense type (property, drug, other offense, or person crime—though our final models include only person and drug crimes), and a criminal history variable<sup>4</sup> coded as 1 for prior felony imprisonment and 0 otherwise. As we discuss below, these covariates are insufficient to account for all aspects of the crime or criminal record, so our quantitative models are not intended to provide a residual variance analysis of system discrimination. Instead, these models provide an important baseline overview of commutation release, which is expanded upon in our qualitative analysis.

### ***Macro-Level Variables***

Our state-level characteristics are taken from standard US Census Bureau and Bureau of Justice Statistics sources (e.g., the annual *Statistical Abstract* and *Prisoners in the United States* series). These include an indicator for Republican governor, percent White population, lagged state unemployment, the female-to-male ratio in state prisons, incarceration rate, and violent crime rate.

### ***Analytic Strategy***

Because few state-level studies have examined commutation, we first describe variation in the use of commutation over time and space. We use mixed-effects logistic regression to estimate the effects of pertinent individual-level and aggregate-level factors. In particular, we focus on describing the race, gender,

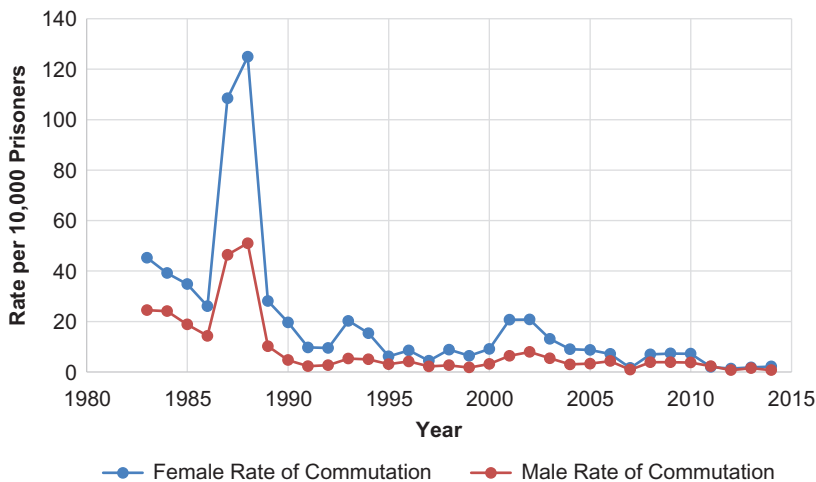
and offense distribution of commutation, recognizing that our capacity to make strong causal claims regarding *discrimination* is limited by the small number of covariates available to adjust for the particular characteristics of each case. We then use interactions (including cross-level interactions) to examine whether a sex-by-race-by-offense “mercy package” predicts commutation. Our quantitative analysis thus provides an important overview of the use of commutation at present and a conceptual model for understanding patterns in commutation release. Our data are well suited to describe the intersections of who gets a commutation and in what contexts, yet there are important omitted variables (such as the applicant’s role in the offense) that have the potential to bias our quantitative findings. We therefore rely on our qualitative analysis of Iowa commutation transcripts to uncover elements of the offense and applicants that are not captured by our quantitative analysis, describing and interpreting patterns in light of the processes observed in Iowa hearings.

## Results

### Time

Figure 1 shows sex-specific commutation rates over time, as reported in National Prison Statistics data.<sup>5</sup> As the figure illustrates, there has been a general decline in the rate of releases via commutation since 1983, with a notable spike in years 1987 and 1988. This peak can be attributed in large part to a mass commutation release in Georgia to relieve prison overcrowding.<sup>6</sup> With this important exception, however, there is a general decline in the rate of commutation release—in 1983, about 24 men and 45 women per 10,000 prisoners were released in this way. By 2014, that number had declined to less than one release per 10,000 prisoners for both men and women. Women have had a higher rate

**Figure 1. Male and female commutation rate per 10,000, 1983–2014**



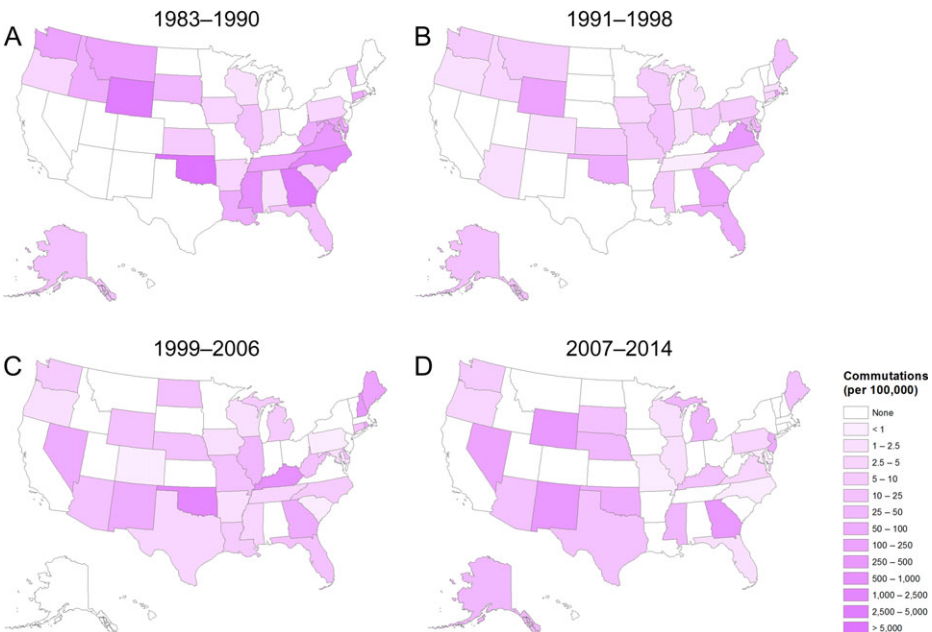
of commutation release in most years (and markedly so from 2001 to 2003), though the female commutation advantage has clearly declined over time.

### **Spatial Patterns**

Commutations are unevenly distributed across US regions, as shown in figure 2. The panels roughly divide the 1983 to 2014 period into four equal periods, with more darkly shaded regions indicating higher state commutation rates. Some (but not all) Southern states, Midwestern states, Western states, and Mountain states had higher rates of commutation across these periods. On average, commutation rates are generally lower in the North Central and Northeast regions. Low-incarceration states such as Minnesota and Maine have lower rates of commutation than relatively high-incarceration states such as Florida and Louisiana. This suggests some initial support for the idea of compensation: that commutation is more common in states that punish more harshly, rather than more leniently.

Although these figures are useful for showing the overall trend and regionalization of commutation, they cannot speak to individual- and state-level predictors. To do so, we conduct multivariate analyses predictors using NCRP data from 2000 to 2014. Table 1 contains descriptive information on individual-level variables for three different datasets. The first, titled “All Case-Years,” contains our entire population, a total of 38,587,441 cases. The second, “Dropping Empty States,” contains information for only those states that reported at least one commutation release during the entire 15-year period, a total of

**Figure 2. Mean rate of commutation by state in four eras**





**Table 1. Individual-Level Descriptive Statistics across Samples**

	All case-years		Dropping empty states		Analytic sample	
	N	Mean/%	N	Mean/%	N	Mean/%
Commuted	7,366	0.02	7,366	0.02	7,366	2.25
Not comm.	38,580,075	99.98	31,051,624	99.87	320,010	97.75
<i>Race and sex</i>						
White race		41.30		40.92		41.33
Black race		49.91		49.51		49.47
Other Race		5.18		5.93		5.63
Hispanic		15.80		16.83		16.62
Not Hispanic		63.51		67.54		68.17
Missing		20.69		15.64		15.21
Male		92.96		92.83		92.51
Female		7.04		7.17		7.49
<i>Offense history</i>						
Priors		22.49		25.19		25.47
No priors		77.51		74.81		74.53
Missing*		48.08		42.86		41.59
Person crime		46.84		48.64		47.77
Property crime		19.57		19.78		20.05
Drug crime		20.68		20.59		21.10
Other crime		10.91		10.99		11.09
Years educ.		10.89 (1.19)		10.91 (1.19)		10.92 (1.19)
Birth year		1970 (11.44)		1970 (11.43)		1970 (11.47)
Admission year		2002 (6.61)		2002 (6.57)		2002 (6.59)
Case year		2007 (4.18)		2007 (4.15)		2007 (4.15)

**Note:** Omitted states: Alabama, Delaware, Hawaii, Idaho, Indiana, Kansas, Maine, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont.

31,058,990. This eliminates the states in which commutation was not a viable option for *any* prisoner over the entire observation period (which are arguably “structural zeros”). The final column, titled “Analytic Sample,” is the one used in our mixed-model analysis. This dataset contains the full population of state commutations recorded in the National Corrections Reporting Program and a random 1 percent sample of non-commutation cases. Because commutation is

such a rare event, we created this analytic dataset to estimate our mixed-effects logistic regression models.

Note that in all three datasets the number of commutation cases remains the same—as it should—at 7,366. The percentage of commuted cases, however, changes across datasets. Over all case-years, commutations make up only 0.02 percent of cases. When we drop the “empty” states in which commutation is not a reasonable possibility, this percentage drops slightly. About 2.25 percent of the cases in our analytic sample (of all the commutations and 1 percent of all non-commutation and non-dropped case-years) were commuted. We include descriptive statistics for all three samples to illustrate how similar the three datasets are in terms of race, ethnicity, sex, criminal history offense type, education, age, and year of admission.

As anticipated, our analytic sample (again, the third column in table 1) mimics what we know to be true about the US prison system. Racial and ethnic minorities are overrepresented in our data, with Black prisoners making up almost 49 percent of our analytic sample and Hispanic prisoners making up about 17 percent. Men are also dramatically overrepresented, making up almost 93 percent of cases. About a quarter of prisoners are known to have had a prior felony conviction before their current case, but there is a substantial amount of missing data (about 42 percent of cases). Person (violent) crimes comprise about 48 percent of cases, drug crimes about 21 percent, property crimes about 20 percent, and other offenses about 11 percent of our analytic sample. On average, our sample had completed about 11 years of education. The mean year of admission is 2002, and the mean birth year is 1970.

### ***Macro-Level Determinants***

Table 2 shows descriptive statistics for our aggregate- (state-year) level predictors. To understand the distinguishing characteristics of states that commute more or fewer people, we begin with a simple two-group comparison. Table 2 separates the state-years that had any commutations from those state-years with no commutations, testing the significance of mean differences with bivariate *t*-tests. Of the 750 total state-years, 468 saw no commutation, and 282 saw at least one commutation. As table 2 illustrates, there are significant differences between these groups for three variables. Commutations are more likely in states with high violent crime rates, high incarceration rates, and a high ratio of female-to-male punishment. Each of these characteristics is typically associated with greater rather than lesser state punitiveness, again consistent with greater “mercy” in states that punish more harshly.

### ***Mixed-Effects Logistic Regression***

We next use mixed-effects logistic regression to predict the odds of commutation based on individual and state characteristics and selected cross-level interactions. Each model includes a random effect for state. Our strategy is as follows: we first estimate a basic additive model including variables of interest (individual and

**Table 2. Descriptive Statistics of State-Level Predictors of Commutation (state years)**

	<i>Any commutation</i>						Difference <i>t</i>
	No			Yes			
	Mean	SD	<i>N</i>	Mean	SD	<i>N</i>	
Incarceration rate	368.97	121.77	468	448.15	428.06	282	7.37***
Unemployment rate	5.94	2.14	468	5.76	2.22	282	1.07
Violent crime rate	376.31	168.02	468	412.67	158.12	282	-2.93**
Percent White	82.72	12.57	468	83.39	10.01	282	-0.75
Female to male ratio	0.08	0.03	468	0.09	0.02	282	-3.59***
Republican gov. (prop)	0.59	0.02	468	0.62	0.03	282	-0.93

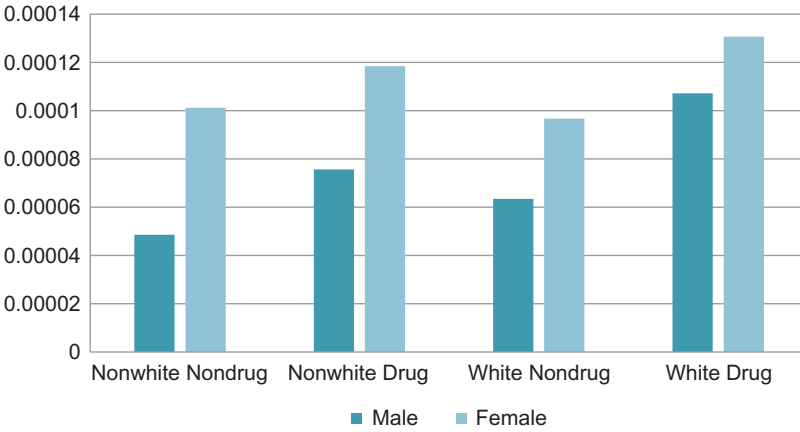
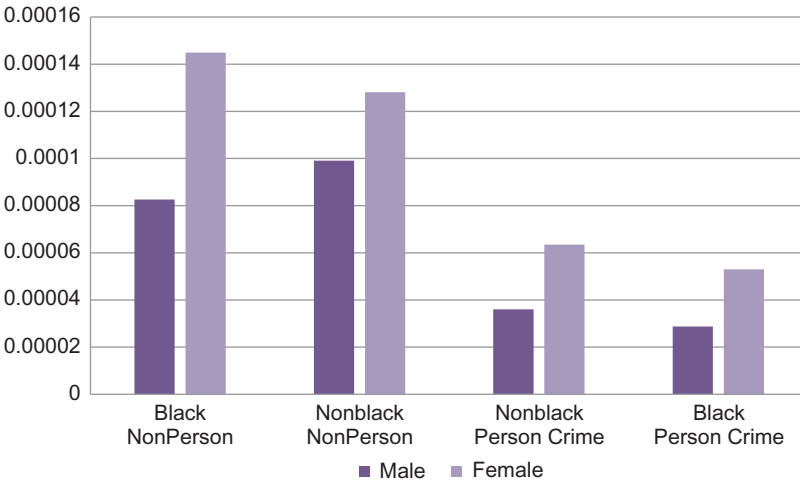
\*\*\*  $p < 0.001$

aggregate) with no interactions. Appraising constructs such as the “mercy package,” however, requires models that more precisely specify intersections of race, sex, crime of conviction, and state characteristics. We therefore estimate interaction models, starting with an interaction between race and sex (model 2), then adding three-way interaction terms that include offense type (model 3). In figures 3–5, we show results for cross-level (that is, state- and individual-level) four-way interactions that include characteristics such as Republican governors.<sup>7</sup>

### **Additive and Interactive Models**

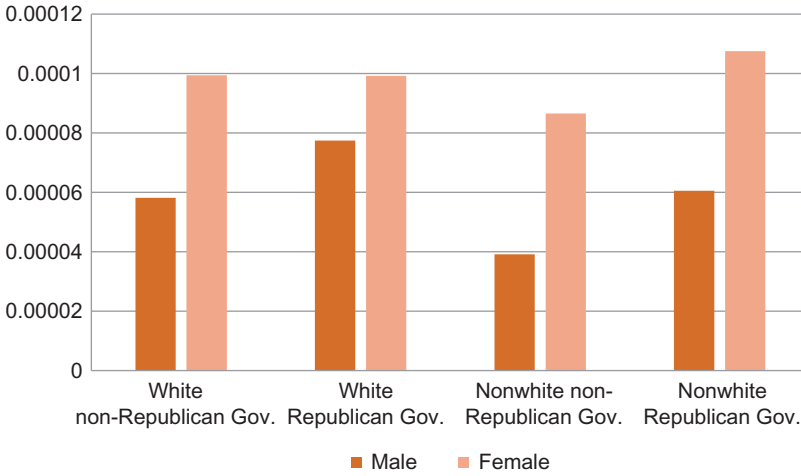
We first estimated an unconditional model with no covariates. This revealed that only 10 percent of the total variation in commutation occurred at the individual case level, whereas 90 percent occurred at the state level. As anticipated, most of the variance in commutation is due to state differences in procedures and characteristics (e.g., the governor’s party affiliation) rather than individual differences (e.g., in the race, sex, or offense history of the prisoner). In short, a prisoner’s likelihood of commutation is driven more by their state of residence than by their individual characteristics or the particulars of their case.

Next, we add covariates. Table 3 contains results for our initial additive model predicting commutation. Given the large sample, which includes the full population of state clemency recipients, odds ratios are more informative than significance tests. As expected, Black prisoners have substantially lower odds of commutation release, about 84 percent those of White prisoners (and those in the other race category have even lower odds). Compared to women, men have 44 percent lower odds of receiving a commutation. As expected, people convicted of violent or “person crimes” have dramatically lower odds of being released by commutation, about 64 percent lower than those convicted of a drug crime. Being younger slightly improves the likelihood of commutation, as does being admitted to prison more recently. Higher levels of education also lead to a

**Figure 3. Predicted probabilities of commutation by race, sex, and drug offense****Figure 4. Predicted probabilities of commutation by race, sex, and person offense**

higher rate of commutation; for each additional year of education, the odds of commutation increase by almost 5 percent (cases for which education data are missing are significantly less likely to be released by commutation). Having a prior felony record, on the other hand, cuts the odds of commutation in half. These results largely parallel those found in prior research on sentencing disparities, providing individual-level support for consistency in punishment and commutation.

Among our macro-level predictors, being incarcerated in a state with a high violent crime rate increases the odds of commutation release, as does living in a state with a higher ratio of women to men in prison. Alternatively, the unemployment rate, percent non-White in the population, and incarceration rate are all negatively related to commutation release—that is, they are associated with a

**Figure 5. Predicted probabilities with Republican governor interaction**

decrease in the odds of release by commutation. Most notably, living in a state with a Republican governor increases the odds of commutation release by 40 percent. In contrast to the individual-level characteristics, the macro-level predictors do *not* consistently parallel the literature on state punitiveness, at least as measured by incarceration rates. Rather than consistency, several of these results suggest “compensation.” States with Republican governors and high violent crime rates, for example, have higher rates of commutation. As expected in light of the trend data shown above, the linear year variable indicates a commutation decline over time. In each successive year from 2000 to 2014, the odds of commutation release drop by about 13 percent, net of the other covariates.

Table 4 highlights some key findings from our interaction models. These estimates are taken from specifications that include all the main effects shown in model 1 of table 3, but for simplicity we present only the relevant main and interaction effects. Based on the extant literature on race, sex, and punishment and more general research on implicit bias, we had expected White women to be shown greater mercy in the commutation process (and Black men to be shown the least mercy). In model 2, however, we find no significant difference between Black and White women. There is also no significant difference between White women and women of other races. Nevertheless, we do observe sizeable sex differences overall. Among Whites, being male reduces the odds of commutation by 24 percent. The interaction between Black and male is sizeable, indicating that Black men have sharply reduced odds of commutation relative to White women, White men, and Black women. The “other” race by male interaction is also large in absolute magnitude, but not statistically significant (due in part to the rarity of cases in this group).

Next, model 3 of table 4 adds an interaction by type of offense. As anticipated, we find less mercy being granted to those convicted of violent personal crimes (relative to drug and other offenses), net of the other covariates. In this

**Table 3. Mixed-Effects Logistic Regressions Predicting Commutation (additive model)**

<i>Fixed effects</i>	<i>Model 1</i>		
	Coefficient	S.E.	Odds ratio
<i>Individual characteristics</i>			
Black (vs. White)	-0.172 ***	(0.029)	0.84
Other race (vs. White)	-0.244 ***	(0.077)	0.78
Male (vs. female)	-0.410 ***	(0.039)	0.66
Property or other offense (vs. drug)	-0.019 **	(0.030)	0.98
Person crime (vs. drug)	-1.026 ***	(0.036)	0.36
Year of birth	0.001 **	(0.001)	1.00
Years of education	0.048 ***	(0.011)	1.05
Missing education (dummy)	-0.163 ***	(0.076)	0.85
Year of admission	0.061 ***	(0.004)	1.06
Prior felony criminal record	-0.660 ***	(0.032)	0.52
Missing criminal record (dummy)	-0.655 ***	(0.040)	0.52
<i>State characteristics</i>			
Violent crime rate	0.005 ***	(0.000)	1.01
Unemployment rate (lagged)	-0.105 ***	(0.011)	0.90
Republican governor (vs. Other)	0.337 ***	(0.030)	1.40
Percent non-White in population (logged)	-1.541 ***	(0.226)	0.21
Incarceration rate	-0.004 ***	(0.001)	1.00
Female to male ratio in prison	0.007 ***	(0.002)	1.01
Year	-0.144 ***	(0.007)	0.87
Constant	161.227 ***	(12.86)	-
<i>Random effects</i>			
State (variance)	3.147 ***	(0.443)	
<i>Observations</i>	313,696		
<i>Groups</i>	27		
<i>Wald chi-square (df)</i>	3,650.36***		
<i>Log likelihood</i>	-22,972***		

model, we test for race and sex interactions with offense type, anticipating greater commutation for White women convicted of drug crimes and less commutation for Black men convicted of personal offenses. We will highlight some notable findings from this three-way interaction model. For those convicted of drug offenses, the sex difference for Whites is reduced slightly: being male decreases the odds of commutation by about 19 percent rather than the 24 percent reported in model 2. For White women, being convicted of a person crime (relative to a drug crime) decreases the odds of commutation by about 29 percent. For White men, being

**Table 4. Mixed-Effects Logistic Regressions Predicting Commutations (interactions only)**

	<i>Model 2</i>			<i>Model 3</i>		
	Coeff.	(SE)	OR	Coeff.	(SE)	OR
Black (vs. White)	0.094	(0.075)	1.10	0.040	(0.124)	1.04
Other race (vs. White)	-0.155	(0.180)	0.86	0.317	(0.276)	1.37
Male (vs. female)	-0.275***	(0.052)	0.76	-0.215***	(0.084)	0.81
Other offense (vs. drug)				-0.106	(0.104)	0.90
Person crime (vs. drug)				-0.682***	(0.137)	0.51
Black × Male	-0.306***	(0.080)	0.74	-0.233***	(0.134)	0.79
Other race × Male	-0.472	(0.196)	0.62	-0.662	(0.310)	0.52
Black × Other offense				0.348**	(0.166)	1.42
Male × Other offense				-0.012	(0.114)	0.99
Black × Person				-0.196***	(0.213)	0.82
Male × Person				-0.385***	(0.146)	0.68
Black × Male × Other offense				-0.222*	(0.179)	0.80
Black × Male × Person				0.219***	(0.226)	1.24
Reference:	White female			White female drug crime		
<i>Observations</i>	313,696			313,696		
<i>Groups</i>	27			27		
<i>Wald chi-square</i> (df)	3,664 (20)			3,668 (30)		
Log likelihood	-22,964***			-22,952**		

**Note:** Models 2 and 3 contain each of the covariates shown in model 1, but presents only the relevant main and interaction effects for ease of interpretation. Estimates for covariates are reported in Appendix table 1.

convicted of a person crime (instead of a drug crime) decreases the odds of commutation by about 32 percent, and for Black men, this difference is 43 percent. Finally, the odds of receiving commutation for Black men convicted of person crimes is  $\exp^{(0.04+(-0.215)+(-0.682)+(-0.233)+(-0.196)+(0.385)+(0.219))} = \exp^{-1.452} = 0.23$ , or 76 percent lower than the odds of commutation for the reference category of White women convicted of drug crimes.

To clarify these and related findings, we next discuss predicted probabilities derived from the equations. Figure 3 shows predicted probabilities for being White, female, and convicted of a drug crime (and, of course, their counters—being non-White, male, and convicted of a non-drug offense). As the graph depicts, for any race/offense category there is always a substantial sex difference in which women are advantaged net of the other substantive and control variables in the model. Nevertheless, the magnitude of this sex difference is substantially smaller for Whites convicted of drug offenses than it is for non-Whites convicted of non-drug crimes. In addition, the White/non-White difference is greatest for men convicted of drug crimes.

Figure 4 similarly addresses offense type, race, and sex, but shows predicted probabilities for person crimes, Black race, and sex. Under this coding, there is a quite sizeable gender gap for Black men and women convicted of non-person offenses and person offenses, such that the probability of Black women receiving commutation is nearly twice that of Black men (though notably greater for all groups in the non-person offense category than in the person offense category). For non-Blacks convicted of person crimes this is also true; the probability of commutation release for women is almost twice that of men. But for non-Blacks convicted of non-person crimes the gender gap is less pronounced. Note also the very low probability of commutation for Black men convicted of person crimes: 0.00003, or about 0.003 percent.

Finally, figure 5 shows the predicted probabilities of the interactions between White race, sex, and Republican governor. The differences in predicted probabilities among women are less stark in this chart. More specifically, there is practically no difference in the predicted probability of commutation for White women, regardless of the political ideology of the governor. Nevertheless, for non-White women, and both White and non-White men, each group experiences a higher probability of commutation release in states with Republican governors.

## Qualitative Analysis of Gender and Conduct at Board Hearings

The preceding results suggest that women, Whites, and those convicted of drug crimes are most likely to be released via commutation—and that these individual characteristics may have a stronger impact in the context of state-level characteristics such as the governor’s party affiliation. Yet these characteristics cannot speak to many other factors that are salient to the commutation board. These include behavior in prison, reputation among staff and administrators, the



opposition of victims, and applicants' role in the underlying offense. We therefore turn to a closer analysis of this process to help explain the overall rarity of commutation and how factors such as gender contribute to the "mercy package" that improves the individual likelihood of being commuted.

Perhaps our most noteworthy quantitative finding is the rarity of commutation: only 0.02 percent of our case-year dataset were commutation releases. Although space limitations preclude a full qualitative analysis, we describe commutation hearings in Iowa, briefly discussing race and offense type, before turning an eye toward gender. We emphasize gender because there is sufficient variation in our 97 transcripts (of which 22 were female and 75 were male) to provide a sense of how gender works in Iowa commutation hearings (thus gaining a better understanding of the female advantage observed in our quantitative analysis) and the Board of Parole's explanations for denial of commutation requests (thus helping show why commutation is so rare).

Iowa has moderate rates of commutation relative to other states, such that the 97 commutation transcripts represent the entire population of hearings held by the Iowa Board of Parole from 2000 to 2014. The transcripts varied greatly in length, with some as short as three pages and others over 60 pages. We reviewed each of these transcripts closely, recording details about the prisoners, crimes, and votes for or against commutation by individual parole board members. Additionally, the discourse in these transcripts was coded and broad analytic themes were identified. To a far greater extent than our quantitative data, the hearing transcripts reveal consideration of the behavioral components of the "mercy package," particularly in-prison behavior and reputation among staff.

Regarding the type of offense, the entire Iowa commutation applicant population in our study had been convicted of a violent or person offense—meaning that *no* applicant would have been eligible for the "mercy package" that predicts commutation in our 50-state analysis. In part, this is due to commutation eligibility requirements in Iowa, which only permit prisoners to apply every 10 years; commutation is reserved in practice for persons with decades-long sentences. Relatedly, although Iowa punishes harshly for violent offenses, sentences for drug offenses are typically not more than five or 10 years and do not carry the heavy mandatory minimums that many other states impose.<sup>8</sup> The vast majority of commutation applicants (74 percent) had been convicted of first-degree murder, with another 7 percent convicted of second-degree murder. About 13 percent had been convicted of kidnapping, and about 4 percent for a sex offense (in Iowa, kidnapping carries a longer penalty than rape and a number of hearings for kidnapping convictions included rape as part of the offense, even when there was no rape conviction). One applicant (or 1 percent of our sample) was convicted of robbery.

Although there was less variation in offense type relative to our national quantitative analysis, we did notice patterns regarding offense severity. In crimes involving sex or the death of a child, there was virtually no chance of commutation. When applicants had played a lesser role in the offense or been a victim themselves, they had to carefully navigate the thin line between taking responsibility for their crime while conveying its circumstances in ways that do not

appear heinous. In some cases, this led to favorable votes from some members of the board (in Iowa, the five-person board must be unanimous in approving commutation for the outcome to be considered “favorable” by the governor, who makes the final decision [Iowa Board of Parole 2004]). In these and other offense categories, most applicants were turned down.

In terms of the apparent female advantage observed in our quantitative analysis, the Iowa data show that male and female commutation applicants are not directly comparable. To a far greater extent than men, the Iowa women seeking commutation fell into a few key categories: aiders and abettors (whose primary crime was being present or not reporting a crime to the police), secondary perpetrators who played a relatively small role in the crime, and battered women who struck back against their aggressors. Commutation thus reflected a degree of “compensation” for disproportionately harsh punishment (typically life without parole), given their roles and these mitigating circumstances. Although many men fell into these first two categories (aiders and abettors and secondary perpetrators), a far greater proportion of men were the primary assailant in the crimes for which they were convicted. Additionally, a much larger proportion of men were incarcerated for crimes involving violent sex acts—specifically rape, a highly stigmatizing offense.

Institutional conduct may also help explain the apparent female advantage in commutation. The parole board obtains information on prison infractions from the institutions in which commutation applicants are incarcerated, and they use this information in making recommendations. Although a great number of men and women had records of disciplinary violations, the type and quantity of these violations vary by gender. Women were far less likely to have engaged in institutional violence and far less likely to have lengthy disciplinary records. A typical example of a female disciplinary violation was possession of contraband (e.g., tweezers, a watch), rather than assault or another serious violation.

Our quantitative analysis considered the “mercy package” in terms of gender, race, and offense, but the qualitative data show how women could “earn” elements of respectability during their time in prison. To a greater extent than men, women pointed to positive prison activities, including obtaining educational credentials, and redeeming activities such as completing victim impact and anger management courses. The qualitative data thus reveal how the board considers “achieved” as well as ascribed characteristics. Educational attainment is an important determinant of commutation in our individual-level logistic regression models. To some extent, this may reflect the known correlation between education and rates of prison misconduct (Cunningham, Sorenson, and Reidy 2005; Harer and Langan 2001). But our transcripts revealed that education conferred social as well as human capital—in terms of both the ability to navigate complex bureaucratic processes in applying for commutation, and knowing the appropriate language to use during the hearings.

For instance, during one commutation hearing, Grace, a multiracial woman in her forties who had served 23 years of a life-without-parole sentence for first-degree murder, eloquently detailed her accomplishments during her incarceration, perhaps opening a small window for mercy:

[T]he most important class that I've taken at ICIW is obviously Victim Impact, because it helped me understand what I did and the effects that it had on not just my direct victim, \_\_\_\_\_, but on everybody else involved with the process from even the very first officials who had to deal with my case, to the store clerks who had to come testify, to my friends who had to disrupt their lives to testify, and most obviously the \_\_\_\_\_ family because the impact of what I have done is never ending for them... The second most important thing that I've accomplished during my incarceration is getting the Sexual Abuse and Incest Therapy that I needed, and that I should have sought before I committed my crime, so that I would not have committed my crime. Being able to get a grant to bring a licensed social worker out here to work not just with me, but eleven or twelve other women over a three year period, really began my [inaudible] towards healing and towards doing all the things that I needed to do to become a better person. I continued that with the Trauma and Abuse Class and also with the Seeking Safety Class. I've learned the effects of my own childhood trauma and the effects of things such as witnessing my father raping my mother when I was too young to speak. I've come to understand how those things have affected me, and how I have in turn affected other people by not understand[ing] that, and by not getting the help that I needed.

In contrast, Derek, a male commutation petitioner in his fifties who had served twenty years of a life-without-parole sentence for first-degree murder, was more matter-of-fact about his prison activities:

*Parole Board Member:* What have you been doing since you've been incarcerated. Anything positive?

*Derek:* I took treatment programs. I took victims impact. I finished a course in upholstery work.

*Parole Board Member:* What do you do on a daily basis at the Institution?

*Derek:* I work at night from 10:00 at night until about 2:30/3:00. I fix the uh, I work in the kitchen as a cook, me and two other guys; we cook the meals for the 10:00 to 6:00 officers. And then I will get up about 9:30/10:00 in the morning and if I am not visiting my wife I will go to the Hobby Craft or play Tennis.

Because both the original offense and prison conduct are deemed highly relevant factors by the decision-making board, the quantitative finding regarding women's general advantage is misleading. In Iowa and likely elsewhere, the men and women are not directly comparable, and when they are, the advantage that women seem to have over men quickly dissipates. In those rare cases in which men had a record of good institutional behavior and were convicted of less stigmatizing crimes, their chances of receiving supporting votes from the parole board were comparable—if not better—than that of similarly situated women.

This is the case for Derek, whose “good behavior” seemed to influence the board in his favor.

The second major insight gained from the qualitative analysis of commutation transcripts regards the rarity of commutation, for both men and women. The parole board saw commutation as appropriate *only* in truly “exceptional” cases, using any possible reason to disqualify individuals from consideration. Virtually any misstep, or “venial fault,” to reprise Durkheim’s ([1895] 1982) characterization of the “society of saints,” could be the basis of denial. Moreover, many things an applicant could no longer change—such as the circumstances of their original crime—were cited as the basis for denial by the board.

Symbolic moral boundaries often serve to exclude particular outgroups (Durkheim [1895] 1982; Edgell et al. 2016). In their commutation decisions, the Iowa parole board seemed to draw such boundaries to effectively bar those whose original offenses were perceived as particularly egregious. John, a 65-year-old white man serving a life-without-parole sentence, had many prison accomplishments and a clean disciplinary record after 32 years of incarceration. Nevertheless, he was denied commutation because his original crime had been premeditated:

*Parole Board Member:* I too would like to commend you for the positive things you’ve done in prison. But, I too view this as a premeditated case and I think thirty-two, thirty-three years even forty years is probably not enough time for something like that. So I will vote “No.”

In other cases, board members cited a lack of “true remorse” in denying commutation:

*Parole Board Member:* I asked you more than once to give me a reason other than that you’ve done good time. Doing good time is part of what you are supposed to do. I did not see anything that you went beyond—anything that was just worthy of a reason to look at you for something. It was a vicious crime. There was a senseless death. You had just... Even here today, I do not feel any true remorse coming from you. You say you’re sorry. I feel words but I don’t feel those words coming from your heart. I too will vote No for any recommendation to the governor.

Even one disciplinary infraction (or several minor infractions) was enough to justify denial in commutation hearings, as was the case for David, a 36-year-old man who had served 18 years of a life-without-parole sentence for kidnapping. He had recently been overheard calling a female correctional officer a “bitch” in a conversation with a friend.

*Parole Board Member:* You know Mr. \_\_, I think you did a nice interview with the circumstances. However, I am bothered by the reports. I think what you talked about a little bit was hope. I think that you have to have some hope out there. I can’t support you today because of the reports. I feel very strongly that you have to clean those up. They may seem minor to you, but as our Chair said, there are lots of people in

there that never get any reports. So I am going to vote “No” today. But I see that you’ve done some positive things. I hope that you will keep up the good work—I see that you got your GED. Try to keep away from those reports and perhaps in the future, a commutation might be possible.

Even those with clean institutional records who took accountability for their crimes were denied by the board, on the grounds that supporting commutation would encourage others to commit similar crimes. This was the case for Vanessa, a 55-year-old white woman who had been convicted of second-degree murder for killing her abusive husband:

*Parole Board Member:* I believe you are no threat to the community and I would have no problem supporting you for parole next time your name comes up, but to recommend commutation of sentence would be like a Parole Board member supporting open season on disagreeable spouses. You’ve done very well during your incarceration and as I’ve said previously, I could support parole when your time comes up but I would have to vote no on both commutation and pardon. One thing I would commend you on, you have raised a very fine young man and if nothing else, you can be very proud of that.

## Rarity, Compensation, and Consistency in Mercy

The first and most important finding of this research is that commutation is infrequently used, with rates of approximately 4 to 5 per 10,000 prisoners in recent years. In light of the decades-long sentences already served by thousands of US prisoners, a moderate expansion of commutation could likely redress injustices without jeopardizing public safety. Moreover, despite outsized increases in the number of prisoners, there has been a steep *decline* in commutation since 1990.

Our mixed-effects logit analysis revealed state-level compensation (greater commutation in more punitive states) but individual-level consistency (greater commutation for more advantaged groups). Overall, commutation is most likely for those presenting a “mercy package” of White race, female sex, and less violent criminal histories. Notions of innocence and risk appear to guide current processes. This generally works to the benefit of women, particularly White women convicted of drug offenses. Although such findings are important in a descriptive sense, existing quantitative data do not adequately account for individual differences in culpability, prison accomplishments, and institutional misconduct. Our qualitative data suggest that such differences likely help explain why current commutation practices lead to better outcomes for women. On the other hand, racialized bias and current commutation practices appear to act to the detriment of African American men, especially when they have been convicted of violent offenses. Future qualitative research should investigate these intersections between race, gender, and offense type more closely.

Finally, our cross-level interactions help explain why we observe consistency at the individual level, but compensation at the state level of analysis. Commutation is more frequent when Republicans, rather than Democrats, hold executive power. We posit that this may stem from lesser fears of being “Willie Horton” as “soft on crime” among Republican governors than among Democrats. Theoretically, our findings are consistent with a Durkheimian explanation of commutation release; the persistence of commutation as a possible safety valve for exceptional cases gives legitimacy to the institution of criminal punishment. The rarity of its use and the characteristics of those who are granted this mercy are emblematic of how society uses lengthy incarceration to draw moral boundaries between those who have and have not committed serious crimes.

It is one thing to document the rarity of commutation, and another to consider how far it might be extended. But if state governors took an approach similar to that of former president Obama—releasing as much as 1 percent of the federal prison population—a large number of state prisoners would be released. If the states followed suit, approximately 14,000 prisoners would be released. Expanding commutation to an even larger number of prisoners would require bureaucratic and administrative shifts to extend eligibility and make such hearings routine rather than exceptional. Despite its rarity in recent years, commutation remains a substantively and symbolically important mechanism for alleviating injustice and extending mercy.

## Notes

1. *Commutations* and *pardons* are both forms of executive clemency: mechanisms to alter sentences under the presumption that individuals have been punished enough for their crime, have accepted responsibility, and have been reformed. The primary difference between the two is that when a person is pardoned, their rights are restored—they are no longer subject to the collateral consequences of a felony conviction. This is not the case with commutation (USDOJ 2017).
2. *Exonerations* and *reprieves* are similar remedies that are in theory applied to correct unjust sentences, primarily in cases where the convicted was found guilty and new evidence suggests an error by the court in finding guilt “beyond a reasonable doubt.” Reprieves temporarily postpone punishment while an investigation occurs, whereas exonerations end punishment permanently (Gross and Shaffer 2012). *Compassionate release*, in contrast, is typically applied when prisoners become terminally ill during their incarceration. As defined by its enabling statute, compassionate release is only to be used in “particularly extraordinary or compelling circumstances that could not reasonably have been foreseen by the court at the time of sentencing” (USDOJ 2013). Three such remedies can be categorized as forms of *executive clemency*: reprieves, pardons, and commutations (Stafford 1977), as the executive (for states, typically the governor) has the power to grant them.
3. Almost half of the data on this variable are missing, so a dummy variable indicating whether educational information is missing was created and included in the analysis, with missing data coded to the mean.

4. Similarly, almost half of the cases in the dataset were missing information on this variable. These missing values were coded to the mean and a dummy variable is included in the analysis to adjust for the effects of missingness.
5. Figures 1 and 2 were created from the National Prison Statistics dataset, which contains aggregate-level information at the state and year level on prison population sizes and releases.
6. See Martin (1983).
7. Because of the length and complexity of tables that include four-way interactions, we do not show all of these results in table 4. They are available upon request. Instead, we present the Republican governor findings in terms of predicted probabilities in figures 3–5.
8. First-degree murder in Iowa carries a mandatory penalty of life without parole; and second-degree murder carries a mandatory 50 years and 85 percent of time served (Truth in Sentencing) before becoming eligible for parole.

## Supplementary Material

Supplementary material is available at *Social Forces* online.

## About the Authors

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