

Between Laws and Norms: Criminal Sentencing and the Decline of Racial Disparities in Imprisonment

The U.S. imprisonment rate was so high in the early 2000s that prison became an expected part of the life course for some populations. Criminologists even identified imprisonment, and the felony record that accompanies a bout of incarceration, as an axis of stratification that has implications for health, economic wellbeing, and inequality generally. More recently, imprisonment rates have been declining, although it is unclear if racial disparities in imprisonment are also waning. And if they are declining, what accounts for the change? An analysis of nearly 500,000 sentenced cases over 41 years from one U.S. state suggests that racial disparities in prison sentences have indeed declined. The case-level analysis, along with data from interviews with fifteen judges, suggests several causes: a change in the types of cases appearing in felony courts; legal changes that lessened the weight of criminal histories; and judicial discretion. Most notably, although policies became stricter and increasingly punitive over time, appellate court rulings enabled judges to use their discretion in ways that worked against higher imprisonment. Longstanding judicial norms that considered mitigating factors at sentencing allowed for less punitive sanctions, particularly for Black defendants, but only when the appellate courts permitted judges to exercise discretion. Implications for disparities in wellbeing are discussed.