

# THE NATIONAL POLITICS OF MASS INCARCERATION

Pamela E. Oliver (Working paper last updated August 2012)

This working paper pulls together the national-level political trends in the interplay of race and partisanship in the politics of crime control. The main empirical trends it addresses are (1) rising incarceration rates for everyone after 1970 and (2) the increase in the Black/White disparity in imprisonment in the late 1980s and early 1990s arising primarily from the drug war.

The idea that the criminal justice system is intertwined with political repression seems obvious from the standpoint of the racial history of the United States. Prior to the 1960s, the use of the criminal justice apparatus to maintain racial hierarchy in the US was a relatively taken-for-granted part of the political system. Slaves were subject to violence for attempted escape or disobedience, and slave owners feared the violent potential of their slaves. White terrorists supported the re-institutionalization of White supremacy in the post-Reconstruction era. In the segregated South, it was a crime to violate the segregation laws and segregation was routinely enforced by legal forms of arrest and incarceration as well as by illegal or extralegal forms of violence and intimidation. Convict labor was explicitly and intentionally permitted by the thirteenth amendment, which abolished slavery and involuntary servitude “except as a punishment for crime where of the party shall have been duly convicted” and the convict-lease system is often seen as a way in which slavery was de facto permitted to continue in the South.<sup>1</sup> A wave of state felon-disenfranchisement acts passed after the Civil War similarly had the clear intention of linking the systems of criminal justice and racial hierarchy (Behrens, Uggen and Manza 2003). Jim Crow segregation was maintained by criminal penalties for violations of the segregation laws. Non-violent Black civil rights protests were frequently met with violence from both police and civilians, and those who protested were often incarcerated on trumped-up criminal charges.

The relation between the criminal justice system and the structures of ethnic and racial repression was less overt in the North, but still present. Studies in historical criminology regularly find clear ethnic patterns in law enforcement.<sup>2</sup> Broadly speaking, criminal enforcement in both the South and the North was generally oriented toward keeping Black crime out of White areas and typically involved tolerance for crime that occurred within Black areas, as long as it did not threaten Whites or White control. Thus, paradoxically, a common Black complaint

was about there being too little law enforcement in segregated Black areas (Kennedy 1997). Blacks in the Northern cities were generally rigidly segregated into certain neighborhoods by a whole host of formal rules and contracts and informal practices.<sup>3</sup> Police in the North as well as the South typically focused on keeping Blacks and Black crime out of White areas and gave less attention to controlling “Black on Black” crime within segregated Black areas.<sup>4</sup> These patterns show up in the available imprisonment data.<sup>5</sup> From at least 1926 on, prison admission rates were more racially disparate in the North than in the South.<sup>6</sup> There were also dozens of communal urban riots of the early 20<sup>th</sup> century, generally involving relatively one-sided White attacks on Blacks, but sometimes involving two-sided battles. A frequent issue in these riots was one-sided policing, in which White police often either sided with the White rioters, or stood back and failed to prevent their attacks on Blacks.<sup>7</sup>

## 1950-1970: CIVIL RIGHTS AND RIOT ERAS: THE RACIAL POLITICS OF LAW AND ORDER

The Civil Rights Movement challenged these taken-for-granted assumptions about race and policing and led to a reconfiguration of partisan politics along racial lines and a politicization of crime. With the soft lens of history, many younger White Americans today are unaware of the intensity of the political struggle around race in the 1960s. “Non-violence” was a stance of the protesters, not a description of events. Non-violent protest was a disruptive political tactic in which Black Americans and their allies collectively defied segregation laws. Non-violent protesters underwent training and practice to refrain from fighting back when under verbal or physical attack. Black and White Americans were beaten, shot and killed by White Americans for their individual and collective defiance of segregation laws. It was images of these violent attacks on non-resisting protesters and the disruptions of White collective violence that forced the federal government to act to overturn legal segregation. Black leaders and the Black masses hotly debated these tactics. Some thought Black people should eschew all protest to avoid White violent retaliation. Some agreed with Dr. King and the Civil Rights Movement that Black people should engage in disruptive protest and respond passively and prayerfully to White violence to gain a moral victory with their “unmerited suffering.” Others saw nonviolent resistance as a useful tactic but not an inviolate principal. Still others—most vocally Malcolm X but also much of the mass base—thought it was wrong to let people attack you without fighting back. The discipline of nonviolence did not always hold, and there were sometimes riots spinning off from civil rights protests. Many of those who practiced strategic non-violence in the early 1960s became

angrier and less non-violent in ideology if not practice as the decade wore on. By the late 1960s, Black Power organizations were expressing political anger and advocating defiance of White law and self-defense. Before he was killed in 1965, Malcolm X had received wide publicity for criticizing nonviolence as a strategy in the face of White violence. In 1966 SNCC publicly launched the slogan "Black Power" during the march through Mississippi where King and Carmichael debated strategy in front of reporters. Malcolm X, Carmichael and most other Black Power advocates understood the slogan to involve economic and political power and the willingness to meet White violence with self-defense, not as a call for armed aggression against White power, but the slogan was as frightening to most Whites as if it had been a call to race war. Many if not most Whites associated the phrase "Black power" with Black riots.<sup>8</sup> Even Whites who were sympathetic to the Black Movement could feel fear. There is telling footage in the first episode of part 2 of the Eyes on the Prize PBS video (newly re-released): one of the White civil rights workers who participated in the 1966 Mississippi march tells the camera that he felt very frightened when standing in the middle of an angry Black crowd shouting "Black Power."<sup>9</sup>

Several scholars have documented how crime became a partisan political issue beginning in the 1960s (e.g. Beckett 1997; Weaver 2007). This began in the 1950s as the Civil Rights Movement gained momentum and White Southern conservatives (who were Democrats ) worked to portray civil rights protest as criminal and to pass new legislation that would further criminalize civil rights protest. As long as the dominant image of Civil Rights was non-violent protesters being attacked and beaten by Whites, this equation remained problematic and contested among Whites outside the South. But as the 1960s progressed, the Black urban riots provided a better foil for this attempt to cast protest and rebellion as an instance of crime in a coherent and meaningful discursive package. (Weaver 2007) compiles compelling historical evidence to show how the Congressional shift toward punitive crime control policies in the 1960s was directly and explicitly linked to racial politics as opponents of civil rights consciously and strategically reframed debates to link civil rights and the war on poverty to urban violence and crime. She calls this process "frontlash" to emphasize that it was an intentional elite political strategy. Although the initiators of this discursive package were Southern Democrats, it was embraced by Republicans, at first unsuccessfully by Goldwater and his followers in a 1964 Republican convention that effectively purged Black Republicans from the party<sup>10</sup> but experienced resounding defeat in the fall election, and then successfully by Richard Nixon in his 1968 "Southern Strategy" in the wake of the urban riots.

Democrats were not passive in the face of this discursive turn. For one thing, many of its originators were Democrats. Even though many Southern Democrats (known popularly as Dixiecrats through the 1960s) switched parties in the Civil Rights Era, there continued to be many conservative White Democratic politicians in the South and elsewhere. But even liberal Democratic supporters of Civil Rights had to engage the rhetoric. Their attempts to speak to the underlying sources of crime in inequality and oppression made sense to many voters, who even said they would support increasing their own taxes to help improve the lives of Black people<sup>11</sup>, but did not address the widespread fears arising from the riots. Democratic politicians and Civil Rights leaders generally conceded the definition of the riots as crime rather than political rebellion, trying to draw a discursive boundary between non-criminal peaceful protest and criminal collective violence, the latter a consequence of failure to accede to the legitimate demands of the former. In making these concessions, they signed onto the need for more punitive policies to control social turmoil and tacitly accepted the equation of political rebellion and common crime. After the 1965 Watts riot, President Johnson called for measures to “reverse the trend toward lawlessness” and signed the Law Enforcement Assistance Act of 1965 and the Safe Streets Bill of 1967 (Beckett 1997 p 37).

In 1968, Richard Nixon successfully exploited this discursive equation of rebellion and crime in his presidential campaign. Ordinary individualized crime and political rebellion were inextricably linked in the phrases “crime and civil disorder,” “crime and urban violence,” “safety in the streets” and “law and order.” Common street crime and collective rebellion were linked even in the questions asked in supposedly-neutral public opinion polls of the late 1960s<sup>12</sup>. Chambliss (1995) cites a Gallup poll in 1968 that blurred crime and dissent in asking about “crime, lawlessness, looting and rioting” as the most important issue. The phrases “law and order” and “crime in the streets” referred simultaneously to Black riots and fear of ordinary street crime. The idea that Black political rebellion encompassed theft, muggings and unprovoked assaults percolated into the popular culture.<sup>13</sup> Concerns about ordinary individual crime were not irrelevant: crime rates were at historic highs in the late 1960s for a variety of reasons, including demographic trends as the baby boomers hit the crime-prone ages.<sup>14</sup>

A substantial body of scholarship has documented the political consequences of the riots. For example, Button’s (1978) detailed compilation of qualitative interview data and quantitative expenditure patterns show substantial impacts on policies to prevent riots through welfare payments, low income housing, jobs programs – especially summer jobs programs for youths, which were seen as “riot insurance” – and training for police in better

community relations, especially before 1968. Feagin and Hahn provide another summary of these responses (1973). Haines (1983) showed that foundation funding for moderate Black political organizations also escalated in response to the riots.

But alongside the “carrot” of improved social provision was the “stick” of coercive social control. Comparing the percentage increase in per capita expenditures of various types in all the cities over size 50,000 that did and did not have Black riots, Welch (1975) found a strong positive effect of riots on increases in police expenditures; the difference for welfare expenditures was positive but not significant, while there was no difference for the other kinds of expenditures. There were substantial expenditures on riot control, including increasing funding and training to the National Guard and the Army as military back up to police for riot control, a build-up of domestic intelligence and surveillance capacity and coordination, including undercover agents from both military and the FBI as well as local police, and increased federal funding for local police departments (Urban America and Urban Coalition 1969; also see Button pp. 107-179 and Feagin and Hahn 1973 pp. 226-238). By 1968, there had been a huge military build-up to prepare for a possible civil war, as well as a huge build up in police departments all over the country. Local police, the FBI, the US Army, and the CIA all had major domestic surveillance operations that had placed informers and agents in virtually every radical or militant movement organization in the country.

In the 1964 election, Goldwater made “safety in the streets” and opposition to civil rights part of his campaign platform, and Black Republicans were essentially driven out of the party (Branch 1998); Goldwater was soundly defeated by Johnson even as White Southerners changed from Democrat to Republican. By the 1968 election, support for the repressive response to riots had grown. Humphrey argued that riots were caused by discrimination and deprivation, and many still agreed with him, but it was Nixon’s law and order program and the “Southern strategy” that won the election, with overtly-racist George Wallace taking another 13% of the popular vote. Although Nixon continued funding for many of the social welfare “prevention” programs until the threat of riots was deemed low after the 1972 election, his administration and especially his attorney general, John Mitchell, escalated the federal support for the repressive approach to riot control. There was a huge increase in federal funding for police between 1968 and 1972, including a doubling of federal funding for riot control by local police (Button pp 138-9).

It was not only riots that were being repressed in the 1960s. The White populace in general and key elements of the White elite – particularly the FBI and the US military – believed that the Black riots were planned and orchestrated by Black militants with Communist connections, or by Black Muslims (who, while not Communist, were seen as just as dangerous), or perhaps both. Communist conspiracies were also believed to underlie the other radical movements of the period, including especially the student anti-war movement and all of the various left-wing parties and tendencies that flowered in that era, but also all the radical ethnic movements, including the Chicano and American Indian movements, as well as Black separatists and militants. The massive repression of all types of “radical” social movements is well documented (e.g. Marx 1970; Marx 1973; Marx 1974). There was massive surveillance and infiltration of the whole array of left-wing and ethnic minority organizations, and also of the KKK, and there is no question that this repression played a major role in disrupting the organizations against which it was directed. However, the repression directed toward the White leftist movements should not blind us to the even more violent and coercive repression directed against Black Nationalist groups (Davenport 2005) as well as anyone who was deemed an instigator or likely participant in a Black riot (i.e. a poor young Black man). In particular, it is important to recognize the perceived threat represented by the Black urban riots and the massive military and paramilitary forces put together to deal with this threat.

Studies from the late 1960s suggested that the potential rioters were precisely the people most likely to offer strong political challenge to those in power, to push forward a militant Black movement. Feagin and Han (1973) argue that riots fostered the development of militant Black Power ideology, that Black militants saw riots as direct coercive action to force political change and cite Caplan’s “New Ghetto Man” (Caplan 1970) as describing rioters and other Black militants as “resolutely dedicated to the eradication of exploitation and oppression by open confrontation with white America” (p. 300) and politically more active, more likely to vote, more knowledgeable about politics, and more likely to see riots as justified. They also quote Tomlinson (1969) as calling rioters the “cream of urban Negro youth in particular and urban Negro citizens in general.”

## **1970s REPRESSING THE RIOTERS, OPENING THE DRUG WAR**

The apparatus of coercive repression was ramped up in response to the Black urban riots and other social disorders, including disorderly anti-war protests on campuses. But policing and coercion in Black communities

stayed high, even after the disorders died down, as figure 1 clearly shows. In fact, social control expenditures continued to rise and the US started escalating policing and incarceration. Police funding in the 1970s was increased more in cities with larger black populations and that had strong civil rights movements (Carroll and Jackson 1982), and crime was higher in cities that had strong civil rights movements (Jackson and Carroll 1981). Gary Marx, who had been studying covert repression of political movements in the 1960s and early 1970s, showed how these same techniques were being used to police Black communities by the late 1970s in anti-crime efforts such as undercover fencing operations and infiltration of criminal gangs (Marx 1980; Marx 1981; Marx 1982). In the 1980s and 1990s, these same surveillance operations were put in the service of the drug war, the major source of the mass incarceration of Black people after the mid-1980s.

Several studies found that police expenditures were higher in cities that had experienced Black riots (Jackson and Carroll 1979; Jacobs 1979; Liska, Lawrence and Benson 1981). (Erskine 1974-75) summarized polls from the mid-1970s showing that public opinion generally had become more punitive and Republicans were more “repressive and authoritarian” than Democrats. (Da Costa Nunes 1980) analyzed Congressional voting on crime bills 1965-1973, contrasting “hard” anti-crime bills emphasizing stiffer penalties with “soft” bills supporting rehabilitation or crime studies. Table 1 summarizes Da Costa Nunes’s results. There was little party difference in the support for “soft” crime measures, but a large difference for the “hard” punitive bills. As expected, he found that Republicans overwhelmingly favored tougher measures. Also as expected, Southern Democrats were somewhat more likely to adopt the “tough” positions than Northern Democrats, but this difference was not large (data not shown). Instead, the racial composition of the district had a strong curvilinear effect on Democrats’ votes on the “hard” legislation category. Democrats’ support for punitive measures increased with the proportion of the district that was Black until Blacks were an actual majority in the district, when support for punitive measures plummeted. (Note that no majority-Black districts had Republican representatives.

Gottschalk (2006; 2008) reminds us that although race was central to the punitive shift, race was not the only issue in play in these years: the women’s movement politicized rape and domestic violence and contributed to the rise of the victim’s rights movement. Gottschalk also argues that crime victimization was feminized and that images of White women as crime victims were important parts of the punitive shift.

## THE 1970S DRUG WAR

The politics of the drug war began in the 1970s, when punitive policies grew alongside widespread support for marijuana legalization and less punitive policies toward addicts. The use of illegal drugs – especially marijuana – was widely accepted among many relatively affluent and educated White people, especially younger people, but was seen as a sign of cultural or moral decay among other more socially conservative White people. At the same time, heroin addiction among poor Black people was seen (by Black people as well as White) as a serious problem that destroyed lives and led to crime. The 1970 Controlled Substances Act (CSA), enacted during the Nixon administration, reflected this ambivalence (Courtwright 2004). It was at its core a bipartisan reform act with origins in the Johnson administration, designed to rationalize and organize a hodgepodge of laws and programs, but embodied both "liberal" treatment-oriented approaches and "conservative" punitive approaches. It included no mandatory minimums; recognized that psychoactive drugs had medical uses as well as harmful non-medical uses; emphasized the need for flexibility; distinguished among casual users, addicts, and dealers, and included substantial education and treatment programs alongside supply control. The CSA placed marijuana in Schedule I (high abuse potential, no medical use, always prohibited) even as there was widespread belief that it was no more harmful than alcohol and should be decriminalized.

President Nixon had successfully campaigned for office on a law and order platform, but as Black urban riots subsided, he confronted the political problem (as Reagan would later) that the federal government has no jurisdiction over street crime. It does, however, have jurisdiction over drug interdiction, and Nixon named drug abuse as "public enemy number one in the United States" in 1971 and expanded a number of drug enforcement activities. The successful 1972 raid on the Marseilles heroin ring, the so-called "French Connection," broke the international heroin cartel, which raised the price of heroin and probably contributed to opening the market for cocaine. Nixon backed off on the drug war after re-election. Taking office after the Watergate scandal, President Ford shifted federal policy toward tolerance and treatment. President Carter advocated legalization of marijuana in his 1976 campaign and continued the shift toward less punitive drug policies in the early years of his administration.

Even as federal policy was moving away from punitive approaches, there were counter-trends, most notably New York's 1973 "Rockefeller drug laws" which mandated life sentences for people convicted of selling



two ounces or possessing four ounces or more of controlled substances (Wilson 2000). The politics of these also reflected the tensions of the times. Rockefeller himself and most New York elites were initially relative liberals who supported treatment rather than punishment for addicts. At the same time, heroin addiction was a serious problem among the poor in New York and there was strong Black and Puerto Rican support for doing something about the problem. There was widespread support among Blacks and Puerto Ricans as well as Whites for escalating the punishments for drug dealing (Bayer 1974; Weiman and Weiss 2009).<sup>15</sup> Rockefeller embraced punitive laws for addicts as well as dealers despite the belief of most law enforcement, public health, and corrections officials that addicts belonged in treatment, not in prison. Weiman and Weiss say that officials in New York City refused to prosecute large numbers of drug addicts under the law until later, in the changed climate of the 1980s, and that heroin addiction in New York was already beginning to decline before 1973. But the laws were on the books.

A national rebound of the punitive mood toward marijuana was initiated by an anti-drug parents' movement that began in 1976<sup>16</sup>. Cocaine use was spreading among the affluent. Toward the end of the 1970s, there was increasing violence in the cocaine trade including a deadly shootout in 1979 in a Miami shopping mall that received extensive news coverage.<sup>17</sup> Thus, the 1980s opened with a deep conflict among Whites. Marijuana and cocaine were still widely accepted and used among affluent Whites as safe recreational drugs in the late 1970s and into the early 1980s, at the same time other Whites were mobilizing to push back against drug use. Young affluent Whites were seen as victims of drug dealers who were infecting youths with a deviant and racialized counter-culture.<sup>18</sup> As scholars have shown<sup>19</sup>, marijuana, opium, and heroin have long been portrayed as tied to ethnic minority subcultures and as representing an intrusion of these deviant cultures into the world of affluent law-abiding Whites. In the 1980s, this equation took a particularly extreme turn.

### 1980S DRUG WAR

Key legislation in the 1980s associated with higher incarceration rates included the 1984 Comprehensive Crime Control Act which established sentencing guidelines and eliminated parole in federal system and the 1986 Anti-Drug Abuse Act which established mandatory minimums for federal drug offenses. (Schneider 2006) The largest escalation in incarceration and the rise in the Black/White disparity between 1986 and 1996 were

associated with the 1986 federal drug law, the steep escalation in Black drug sentences, and what was generally called the “crack epidemic.”

Beckett (1997) traces the political origins of the drug war in the Reagan administration after 1981. Republican strategists saw a tough stance against street crime as the best way to gain White working class votes. President Reagan campaigned on opposition to street crime and, after he won, initially directed the FBI and other federal agencies to shift focus from white collar crime to street crime. However, they faced the same problem as Nixon had: street crime is under state and local jurisdiction and there was little that federal agencies could do. Drug crimes were under federal jurisdiction. As early as February 1981, FBI Director Webster (entering his third year on the job) was quoted by the *New York Times* (1981) as complaining about proposed budget cuts for the FBI and the reduced emphasis on organized crime, but proposing that the FBI alter its past unwillingness to do drug enforcement, citing the public’s fear of violent crime and the link between violence and the drug trade. The article specifically references drug-related violence in Miami. In January of 1982, Miami citizens lobbied the federal government for help with drug violence in their city, which was occurring because the Colombian drug cartel was battling to take the Miami drug trade away from the Cubans who had been running it. In response, in February 1982, Reagan created a cabinet-level task force, the Vice President’s Task Force on South Florida, which combined agents from the DEA, Customs, FBI, ATF, IRS, Army and Navy to mobilize against drug traffickers.<sup>20</sup> In 1983 this was reconfigured as the National Border Interdiction System (NNBIS) headed by Vice President Bush with six regional task forces. In September of 1982, Attorney General Smith lobbied internally for declaring a “war on drugs,” and a month later Ronald Reagan announced this war. Between 1980 and 1984, FBI antidrug money rose from \$8 million to \$95 million, and the DEA, the Department of Defense, and the Customs Department all saw increases in drug funding of 50 to 300% (Beckett 1997 p. 51-54). In 1984, Nancy Reagan gave her “just say no speech.”<sup>21</sup> This was at the same time that the Reagan administration had pushed for deep tax cuts and fiscal radicals under the leadership of David Stockman were slashing funding to all branches of federal government. Beckett documents the conflicts between the fiscal conservatives and the anti-drug warriors over these funding increases at a time of general budget-cutting. This early “drug war” was against marijuana and was happening several years before the “crack epidemic” hit the public consciousness with a *New York Times* story in November of 1985.

Before 1986, the focus of public debates about the drug war was on international interdiction. There were huge US-led drug busts in Colombia and Mexico in 1982-4. In the mid-1980s, after the pressure on Colombia, the drug transport routes moved to Mexico and the violence increased in Mexico. In 1984 and 1985, several reports criticized the NNBS for hampering drug interdiction efforts, and there were also criticisms of Reagan for cutting customs agents when (the critics said) more were needed for drug interdiction. In 1984, Oliver North leaked a story about Medellin's operations to implicate the Nicaraguan Sandanistas in the drug trade. In 1984, Reagan used the term "narco-terrorism," claiming that Cuba ran the drug trade for political purposes and then, after a Nicaraguan government employee was convicted of drug-dealing in Miami, repeatedly claimed that the Sandanista government was exporting drugs to US youth. Then in December of 1985, two AP reporters filed a story claiming that the Contras dealt drugs to finance their activities. These charges and counter-charges heated up as Congress approached a vote on funding for the Contras in the first part of 1986. (A Congressional committee headed by Democrat John Kerry concluded in 1989 that the Contras were dealing drugs and the CIA was, at best, taking pains not to notice. )<sup>22</sup>

Beckett clearly shows that public concern about drugs followed the media blitz. When the "crack epidemic" did become a public issue in 1986 after the cocaine-related deaths of athletes Len Bias and Don Rogers, it was the product of a concerted media relations campaign by the DEA beginning in October 1985 (Beckett 1997 pp 55-56) and contributing to the November 1985 *New York Times* story. By the end of 1986, there was a huge wave of news coverage of drugs. *Newsweek* said crack was the biggest story since Vietnam and Watergate, and *Time Magazine* called crack "the issue of the year."

Although the campaign was started by Republicans, the Democrats had no intention of being labeled the pro-drug party. House Democrats pulled together an anti-drug bill that included \$2 billion in funding, required military participation in anti-drug efforts, increased penalties including adding the death penalty for some drug offenses, and relaxed the evidence required in drug trials; the Senate proposed even tougher legislation, and the Anti-Drug Abuse Act of 1986 was signed by President Reagan on October 28. The Anti-Drug Abuse Act of 1986 and the later Anti-Drug Abuse Act of 1988 required five-year mandatory prison sentences for federal conviction of possession of five grams or more of crack cocaine, and states followed suit with their own enhanced penalties for drug possession and sales. The anti-drug frenzy reached such a pitch that in 1989 President Bush called drugs "the

most pressing problem facing the nation.” After this speech (not before it), public opinion polls showed a rise to an all-time high of 62% of the population saying drugs was the nation’s most pressing problem. This story is deeply political and it is clear that the initiative was in Republican hands, but the Democrats joined in the action.

The discursive package linking crime and rebellion among Blacks became one of the pillars of the largely-successful Republican strategy from 1968 to 1992 (e.g. Beckett 1997; Weaver 2007). Clearly tied to collective racial conflict in its origins, the language shifted to racially-coded references to an underclass of people who preferred crime and welfare to work. Social scientists documented (see Beckett 1997) and politicians knew that support for tough on crime policies was highly correlated with anti-Black sentiment and tapped the resentments of White working class people who felt that Blacks had gained at their expense.

Tonry (1995) argues that the specific direction the "drug war" took was political, targeted and racial. The enforcement effort against marijuana had driven up the price of marijuana while the price of cocaine was falling.<sup>23</sup> He summarizes the available statistical data from the era, showing that illegal drug use was generally declining from 1980 on and cocaine use was declining after 1982, but that data on emergency room admissions and urinalysis of arrestees indicated that poor, marginalized inner-city Black people were exhibiting increased use of cocaine. Tonry cites sources from the era who were explicitly debating policy options in light of these data, and argues that policy makers had data that told them that a focus on cocaine rather than marijuana and on crack cocaine rather than powder cocaine would focus drug enforcement on poor Black people and create a new symbol for the racialized other that was a linchpin of the national Republican political strategy of the 1980s. By the end of the 1980s, what Chambliss (1995) calls a “moral panic” had ensued. Major publications referred to crack cocaine as the number one problem in the country using images that were virtually all Black, despite the fact that the number of White crack cocaine users was actually higher than the number of Black users. Poor pregnant women were subjected to mandatory drug tests and arrested and imprisoned for child abuse when they tested positive for drugs because of alarms about permanently-damaged "crack babies"—a myth, as subsequent medical studies showed. Public mainstream media were publishing highly exaggerated and manifestly incorrect claims that crack cocaine was instantly addictive and qualitatively different from other forms of cocaine.

The other side to this racial story is the fact that poor Black neighborhoods were hardest hit by the devastation of crack cocaine addiction and the side effects of drug dealing in their neighborhoods. As the 1980s

and then the 1990s progressed and Democrats as well as Republicans displayed tough on crime rhetoric, punitive responses to crime became almost unquestioned common sense and Blacks as well as Whites increasingly endorsed punitive responses to crime and drug problems. Many Black activists and politicians supported the highly punitive attacks on drug dealers. Public opinion data also indicated that Black respondents were almost as punitive in their attitudes as Whites (Useem 2010) Many White and Black local officials were subject to demands from Black constituents to "do something" about the drug problems in their communities.<sup>24</sup>

The drug war was the major source of the escalation of Black imprisonment in the 1980s and early 1990s. In its form and consequences, it was clearly racially targeted and clearly repressive. The racial dynamics of partisan politics clearly led to the racially targeted character of the drug war. The continuity in strategies of policing between the repression of the riots and the radical movements of the 1960s and the policing of drug users and dealers in the late 1980s and the 1990s are undeniable. But the historical evidence about the motives of actors combined with the statistical evidence we will review later show that the dynamic of the system evolved over time. Even if the consequences were highly repressive, the dynamics are much more subtle and complex than a simple Jim Crow image might imply.

## THE EVOLVING POLITICS OF THE 1990S

The drug war continued in the 1990s, but the move toward increasing punitiveness spread beyond drug offenses and pulled more Whites into prison in the 1990s. Mauer (2001) cites a 1996 Bureau of Justice Assistance study saying that every state "had adopted some form of mandatory sentencing." By 1996, 38 states had some sort of mandatory minimum for drug offenses (and all states had some sort of mandatory minimum for some offense) (Bureau of Justice Assistance 1996) In addition, "three strikes" laws were enacted in half the states (Mauer citing Clark et al. 1997) along with "truth in sentencing" laws.<sup>25</sup> There has also been a steep rise in revocations from probation and parole. Murakawa (2008) examines Congressional politics and argues that after 1984, both parties abandoned debate on punishment and instead waged punitive bidding wars. Examining federal mandatory minimums from 1789 to 2000, she found a post-1984 "mandatory minimum electoral staircase," in which elections were preceded by rounds of punitive legislation. She argues that these punitive bidding wars are a central feature of post-civil rights racially-stratified governance. In 1992, Democratic President Clinton successfully captured the

“tough on crime” mantle. Holian (2004) performed a quantitative content analysis of “elite attention to crime” between 1981-2000 using vector autoregression and argues from his data that President Clinton’s rhetoric neutralized the Republican advantage on crime control and shifted discussion from a focus on punishment to a focus on prevention through gun control and more police on the streets.<sup>26</sup> His administration supported the 1994 Violent Crime Control and Law Enforcement Act which provided matching funds for prison construction to states on the proviso that they have “truth in sentencing” laws to ensure that offenders served at least 85% of their sentence Schneider (2006).

## SUMMARY

The punitive turn was a response to a period of extreme social disruption in the late 1960s involving the Black riots but also the intense mobilization of many sectors of society, ranging from overt White racists to racial liberation movements, feminists, and leftist movements. Primarily White anti-war activists and White supremacists also had violent elements in their movements, and challenges to dominant cultural and political domination came not only from the Black movement but from feminists, hippies, and leftists of my stripes. Ordinary crime was at historically high levels alongside this social disruption. “Violence in the streets” connoted riots more than muggings, but social disruption and crime were conflated in a conscious rhetoric designed to win political adherents. The rhetoric had a racial dimension from the outset, but for many White people, the racial challenge symbolized just one dimension of a larger challenge to the social order. Politicians of both parties sought to address this issue, and both parties pursued policies that were both generally punitive and had unambiguous racial dimensions. As we dig into the problem we need to recognize that the racial dynamic and the general punitive climate fed each other. The punitive crackdown transcended race. At the same time, there is no question that crime and disruption were discursively racialized. Whites as well as Blacks and other minorities were subject to increased social control, but what happened to Blacks cannot simply be reduced to what happened generally. Teasing apart these different strands is a complex and unfinished project. But we can make progress by looking carefully at the data.

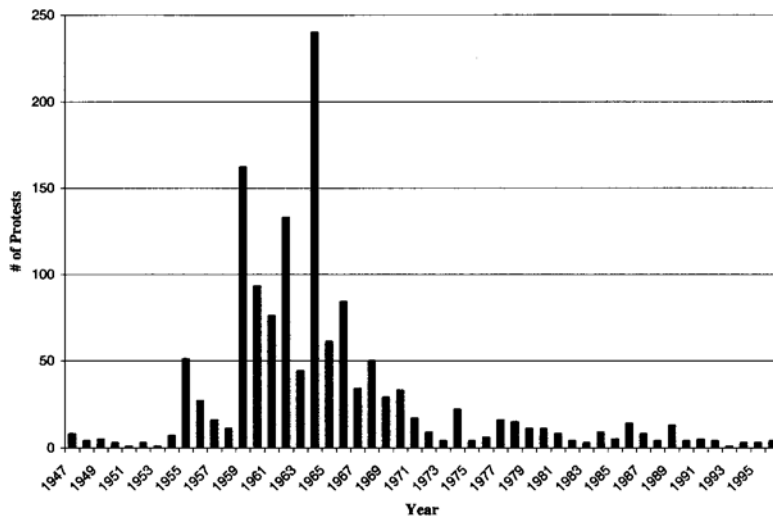


FIG. 1.—African-American protest events, 1947–97

FIGURE 1

## References

1981. "F.B.I. Director Weighs War on Drug Trafficking." Pp. 1 in *New York Times (1857-Current file)*. New York: ProQuest Historical Newspapers.
- Bayer, R. 1974. "Repression, reform and drug abuse: An analysis of the response to the Rockefeller Drug Law Proposals of 1973." *Journal of Psychedelic Drugs* 6(3):11.
- Beckett, Katherine. 1997. *Making crime pay : law and order in contemporary American politics*. New York: Oxford University Press.
- Behrens, Angela, Christopher Uggen, and Jeff Manza. 2003. "Ballot manipulation and the "menace of Negro domination": Racial threat and felon disenfranchisement in the United States, 1850-2002." *American Journal of Sociology* 109(3):559-605.
- Branch, Taylor. 1998. *Pillar of fire : America in the King years, 1963-65*. New York, NY: Simon & Schuster.
- Bureau of Justice Assistance. 1996. *National survey of state sentencing structures*. Washington, DC: : Department of Justice.
- Button, James W. 1978. *Black violence : political impact of the 1960s riots*. Princeton, N.J.: Princeton University Press.
- Caplan, Nathan. 1970. "The New Ghetto Man: a Review of Recent Empirical Studies." *The Journal of Social Issues* 26(1):59-73.
- Carroll, Leo, and Pamela Irving Jackson. 1982. "Minority Composition, Inequality and the Growth of Municipal Police Forces, 1960-71." *Sociological Focus* 15(4):327-46.
- Chambliss, William J. 1995. "Crime Control and Ethnic Minorities: Legitimizing Racial Oppression by Creating Moral Panics." Pp. 235-58 in *Ethnicity, Race, and Crime: Perspectives Across Time and Place*, edited by Darnell F. Hawkins. Albany: State U of New York Press.
- Courtwright, David T. 2004. "The Controlled Substances Act: how a "big tent" reform became a punitive drug law." *Drug and Alcohol Dependence* 76(1):9-15.
- Da Costa Nunes, Ralph. 1980. "Public Opinion, Crime and Race: A Congressional Response to Law and Order in America." *Political Studies* 28(3, Sept):420-30.
- Davenport, Christian. 2005. "Understanding Covert Repressive Action." *Journal of Conflict Resolution* 49(1):120-40.
- Erskine, Hazel. 1974-75. "The Polls: Politics and Law and Order." *Public-Opinion-Quarterly* 38(4, Win):623-34.
- Feagin, Joe R., and Harlan Hahn. 1973. *Ghetto revolts; the politics of violence in American cities*. New York,: Macmillan.
- Flamm, Michael W. 2005. *Law and order : street crime, civil unrest, and the crisis of liberalism in the 1960s*. New York: Columbia University Press.
- Gottschalk, Marie. 2006. *The prison and the gallows : the politics of mass incarceration in America*. Cambridge ; New York: Cambridge University Press.
- . 2008. "Hiding in Plain Sight: American Politics and the Carceral State." *Annual Review of Political Science* 11(1):235-60.
- Haines, Herbert H. 1983. "Black Radicalization and the Funding of Civil Rights: 1957-1970." in *Society for the Study of Social Problems, 1983*.
- Holian, David B. 2004. "He's stealing my issues! Clinton's crime rhetoric and the dynamics of issue ownership." *Political Behavior* 26(2):95-124.
- Jackson, Pamela Irving, and Leo Carroll. 1979. "Socio-Political Determinants of Policing Expenditures in 90 U.S. Cities." *American Sociological Association, 1979*.



- . 1981. "Race and the War on Crime: The Sociopolitical Determinants of Municipal Police Expenditures in 90 Non-Southern U.S. Cities." *American Sociological Review* 46(3):290-305.
- Jacobs, David. 1979. "Inequality and Police Strength: Conflict Theory and Coercive Control in Metropolitan Areas." *American Sociological Review* 44:913-24.
- Kennedy, Randall. 1997. *Race, Crime, and the Law*. New York: Pantheon Books.
- Liska, Allen E., Joseph J. Lawrence, and Michael Benson. 1981. "Perspectives on the legal order: The capacity for social control." *American Journal of Sociology* 87(2):413-26.
- Marx, Gary T. 1970. "Civil Disorder and the Agents of Social Control." *The Journal of Social Issues* 26(1):19-57.
- . 1973. "The Subversive and the Informer." *Sociologie du Travail* 15(3):241-68.
- . 1974. "Thoughts on a Neglected Category of Social Movement Participant: The Agent Provocateur and the Informant." *American Journal of Sociology* 80(2):402-42.
- . 1980. "The New Police Undercover Work." *Urban Life* 8(4):399-446.
- . 1981. "Ironies of Social Control: Authorities as Contributors to Deviance through Escalation, Nonenforcement and Covert Facilitation." *Social Problems* 28(3):221-46.
- . 1982. "Who Really Gets Stung? Some Issues Raised by the New Police Undercover Work." *Crime and Delinquency* 28(2):165-93.
- Mauer, Marc. 2001. "The Causes and Consequences of Prison Growth in the United States." *Punishment & Society* 3(1):9-20.
- Murakawa, Naomi. 2008. "The Origins of the Carceral Crisis: Racial Order as 'Law and Order' in Postwar American Politics." in *Race and American Political Development*, edited by Joseph Lowndes, Julie Novkov, and Dorian Warren. New York: Routledge.
- Schneider, Anne Larson. 2006. "Patterns of Change in the Use of Imprisonment in the American States: An Integration of Path Dependence, Punctuated Equilibrium and Policy Design Approaches." *Political Research Quarterly* 59(3):457-70.
- Tomlinson, T. M. 1969. "The Development of a Riot Ideology among Urban Negroes." Pp. 229 in *Racial Violence in the United States*, edited by Allen D. Grimshaw. Chicago: Aldine.
- Tonry, Michael. 1995. *Malign Neglect: Race, Crime, and Punishment in America*. New York: Oxford University Press.
- Urban America, and Urban Coalition. 1969. *One year later; an assessment of the Nation's response to the crisis described by the National Advisory Commission on Civil Disorders*. New York, : Praeger.
- Useem, Bert. 2010. "Prison Buildup as Repression."
- Weaver, Vesla M. 2007. "Frontlash: Race and the Development of Punitive Crime Policy." *Studies in American Political Development* 21(02):230-65.
- Weiman, David, and Christopher Weiss. 2009. "The Origins of Mass Incarceration in New York State: The Rockefeller Drug Laws and the Local War on Drugs." in *Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom*, edited by Steven Raphael.
- Welch, Susan. 1975. "The Impact of Urban Riots on Urban Expenditures." *American Journal of Political Science* 19(4):741-60.
- Wilson, Aaron D. 2000. "Rockefeller drug laws information sheet.": Partnership for Responsible Drug Information <http://www.prddi.org>.

**List of Tables**

**TABLE 1. PERCENT OF CONGRESSIONAL VOTES FOR CRIME MEASURES BY PARTY AND RACIAL COMPOSITION OF DISTRICT 1965-1973**

Percent of Congressional Votes for Crime Measures by Party and Racial Composition of District 1965-1973 (table constructed from information in the text and graphs of DaCosta Nunes 1980.)

District composition	"Hard" Bills		"Soft" Bills	
	Democrat	Republican	Democrat	Republican
>51% Black	24%	X	40%	
20-50% Black	59%	82%	48%	48%
10-20% Black	47%	79%	51%	44%
<10% Black	37%	79%	51%	47%

## Notes

---

<sup>1</sup> Gottschalk Marie. 2008. "Hiding in Plain Sight: American Politics and the Carceral State." *Annual Review of Political Science* 11(1):235-60. stresses, however, the convict-lease system actually involved many fewer Black people compared to today's incarceration rates.

<sup>2</sup> refs

<sup>3</sup> Refs e.g. American Apartheid?

<sup>4</sup> refs

<sup>5</sup> [[Erik Wright's research using Census data shows that incarceration disparities were higher in the South than the North before 1900, and that the disparity balance shifted to the North after 1900, as the Great Migration led to the widespread movement of Blacks from the rural South to the urban North and West.]]

<sup>6</sup> Add reference to the web report Oliver.

<sup>7</sup> Needs a reference

<sup>8</sup> [[There are studies of this – REFS]]

<sup>9</sup> The worker was David Dawley, a returned Peace Corps volunteer and Civil Rights worker who went on to live and work with the Vice Lords, a politicized Black gang in Chicago, and write a book about it [[ADD REF]] before moving on to be a consultant.

<sup>10</sup> refs

<sup>11</sup> [[citation above]]

<sup>12</sup> [[REFS, give examples]]

<sup>13</sup> [[CAN I GET SOURCES ON THIS?]]

<sup>14</sup> [[Flamm, Michael W. 2005. *Law and order : street crime, civil unrest, and the crisis of liberalism in the 1960s*. New York: Columbia University Press. attributes more explanatory power for the punitive turn in public opinion to a rise in juvenile delinquency in the 1950s and 1960s and a genuine concern with a rise in street crime, but agrees that the "law and order" language was a successful Republican issue. ]]

<sup>15</sup> [[NOTE: I could see only part of the W&W piece in Google books; I have bought this book and will update and refine the information]]

<sup>16</sup> [[Jacobs thesis]]

<sup>17</sup> [[my source is pbs timeline <http://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/>; I have located the relevant New York Times stories as well]]

<sup>18</sup> [Jacobs? Check sources]

<sup>19</sup> [[GET REFS]]

<sup>20</sup> [source here is PBS web site, Beckett does not discuss this]]

<sup>21</sup> [PBS]

<sup>22</sup> [Sources here are a string of New York Times and other news stories]

<sup>23</sup> [I saw this chart somewhere. In Tonry?]]

<sup>24</sup> [[Add more on this point]]?

<sup>25</sup> However, he (Mauer?) notes that the "three strikes" laws are extensively used only in California and Georgia.

<sup>26</sup> ADD REFS

