The Growth of Incarceration in the United States: Exploring Causes and Consequences

Jeremy Travis and Bruce Western, Editors; Committee on Causes and Consequences of High Rates of Incarceration; Committee on Law and Justice; Division of Behavioral and Social Sciences and Education; National Research Council

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The Underlying Causes of Rising Incarceration: Crime, Politics, and Social Change

The growth of the penal system and high rates of incarceration did not occur by accident. As discussed in Chapter 3, they resulted from a series of policy decisions that were intended to increase the severity of sanctions. Less well understood are the underlying causes of this turn toward tougher sanctions.

This chapter examines the social, political, economic, and institutional forces that help explain why politicians, policy makers, and other public figures responded to changes in U.S. society in the decades after World War II by pursuing harsher practices, policies, and laws—and why they succeeded. Running through those explanations is a uniquely American combination of crime, race, and politics that shaped the adoption of more punitive criminal justice policies. The salient forces include social and political unrest following World War II, especially in the 1960s; a major electoral realignment as the Democratic Party divided over civil rights and other issues and as the Republican Party became competitive in the south for the first time since Reconstruction; a decades-long escalation in national crime rates beginning in 1961; and major transformations in urban economies that included the disappearance of many well-paid jobs for low-skilled workers. They also include distinctive features of American political institutions, including the election and partisan political appointment of judges and prosecutors, a winner-take-all two-party electoral system, and the use of ballot initiatives and referenda in some states to develop criminal justice policy. These conditions made the United States more vulnerable than other developed democracies to the politicization of criminal justice in a punitive direction.

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The shift in criminal justice practices, policies, and laws in the postwar era that resulted in high incarceration rates was distinctive. It was a departure in some important ways from the historical experience of the United States prior to World War II. It was also distinct from the experience of many other Western countries during the latter part of the twentieth century.

Before World War II, the making, implementation, and enforcement of criminal justice policy in the United States were almost exclusively within the purview of the states or local authorities, not the federal government. From the 1940s onward, public officials and policy makers at all levels of government—from federal to state to local—increasingly sought changes in judicial, policing, and prosecutorial behavior and in criminal justice policy and legislation. These changes ultimately resulted in major increases in the government's capacity to pursue and punish lawbreakers and, beginning in the 1970s, in an escalation of sanctions for a wide range of crimes. Furthermore, criminal justice became a persistent rather than an intermittent issue in U.S. politics. To a degree unparalleled in U.S. history, politicians and public officials beginning in the 1960s regularly deployed criminal justice legislation and policies for expressive political purposes as they made "street crime"—both real and imagined—a major national, state, and local issue.

Although rising crime rates are a key part of this story, it is only by examining those trends within their social, political, institutional, and historical context that one can understand the underlying causes of the steep increase in incarceration rates. Most other Western countries experienced rising crime rates beginning in the 1960s. However, because of underlying differences in the social, political, economic, and institutional context, other Western countries did not respond to increased crime by adopting markedly harsher policies and laws.[1]

This chapter examines the conditions for the emergence of a criminal justice system characterized by harsh policies, practices, and laws and unprecedented high rates of incarceration: the beginnings in the 1940s of efforts made at the federal level to change criminal justice policies and practices nationally; a growing federal role in crime policy, the political impact of rising crime rates after 1961, the subsequent political and electoral realignment triggered by the civil rights movement, the wars on drugs declared by President Nixon and his successors, rising public anxiety about crime and the influence of racial factors on those attitudes, U.S. political

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[1]As discussed in Chapter 2, the U.S. incarceration rate is approximately 5 to 12 times the rates in other Western countries and Japan. That said, some Western countries have embraced harsher policies in recent years, but nowhere near the extent of the United States (Tonry, 2007a).

institutions and culture, and growing economic distress in U.S. cities in the 1970s and 1980s.

THE POLITICS OF CRIME AND CRIMINAL JUSTICE FROM THE 1940S TO THE EARLY 1960S

Concerns about crime and criminal justice have surfaced periodically as major issues in U.S. politics at the national, state, and local levels, dating back to the nation's founding. While the committee members varied in their views on the weight to be given to the political origins of crime policy before the 1960s, it is clear that the poor and racial and ethnic minorities often were associated with the problem of crime in policy debates and popular culture throughout the nation's history.

The problem of crime has been central to discussions of a number of leading issues, including the meaning and significance of the American Revolution, the rise and fall of slavery and the convict-leasing system, Reconstruction, the modernization of the south, economic development, and race relations. In the late nineteenth and early twentieth centuries, national campaigns were waged against specific categories of crimes and types of lawbreakers, including family violence, prostitution, alcohol, gangsters, ransom kidnappings, marijuana use, sexual psychopaths, juvenile delinquents, and organized crime. These highly publicized campaigns often marked certain groups as inherently "criminal," including, depending on the moment, the Irish, Mexicans, African Americans, and single women (Gross, 2006; Hicks, 2010, Chapter 7; Muhammad, 2010; Chávez-Garcia, 2012; Blackmon, 2009; Stewart-Winter, forthcoming; Gottschalk, 2006, Chapter 3; Musto, 1999).

The country's criminal justice apparatus developed fitfully in the course of these intense and often morally and racially charged campaigns. These efforts typically produced at most a relatively small rise in the incarcerated population—not the very large and sustained shift toward harsher penal policies and consequences of the sort witnessed since the 1970s. Nevertheless, they left increasingly fortified law enforcement institutions in their wake (McLennan, 2008; Blue, 2012; Janssen, 2009; Murch, 2010, Chapter 3; Gottschalk, 2006). This proved important in the second half of the twentieth century as a growing number of politicians, policy makers, and other public figures chose to respond to the social and political turmoil that gripped the country from the 1940s to the 1970s and to the rise in crime rates in the 1960s by greatly expanding the nation's penal capacity.

How issues of crime and disorder were framed and debated in the context of this turmoil helps explain why the United States embarked on an unprecedented prison expansion that has lasted for four decades. The country had experienced crime waves prior to the 1960s, but they did not

result in a sustained and increasing reliance on incarceration in criminal justice policy. Furthermore, these earlier crime waves did not spur sustained and wide-scale political attacks on judges, other public figures, and experts who sought to stem crime by addressing its structural causes and who emphasized the rehabilitation of lawbreakers rather than increased incapacitation and retribution.

There is a long history in the United States of debates over criminal justice policy, often in relation to the issues of race and civil rights. To many African Americans and Mexican Americans, dramatic, often violent confrontations in the years immediately after World War II illustrated serious problems of bias on the part of police forces. These confrontations included the lynching of black veterans returning home to the south after World War II; the numerous clashes between long-time white residents and new black and other migrants in U.S. cities, notably the infamous "Zoot Suit Riots" in Los Angeles in 1942[2] and the 1943 race riot in Detroit; and rising urban-suburban tensions with the rapid expansion of suburbia after the war (Sugrue, 1996; Murakawa, forthcoming; Mazon, 1984; Kruse and Sugrue, 2006; Theoharis and Woodard, 2003). These developments led many to demand that more attention be paid to episodes of police brutality as well as to police inaction in the face of organized and wide-scale white violence.

During this period, whites in the south and increasingly in the north also demanded that greater attention be paid to problems of crime and disorder. Many of them believed that these problems could be solved only with tougher laws; tougher sanctions; and tougher police, prosecutors, and judges. They sought greater protection from what they perceived to be disorderly protests by blacks and their allies seeking to desegregate U.S. society. Arguing that integration breeds crime, they sought an expanded criminal justice apparatus as a way to stem what they perceived as the increased lawlessness of blacks and their supporters who were challenging the Jim Crow regime (Sugrue, 1996; McGirr, 2002; Biondi, 2006; Countryman, 2007; Thompson, 2001; Jones, 2010; Murakawa, forthcoming; Weaver, 2007).

In response to this unrest and other political pressures at home and abroad, President Harry S. Truman and his supporters invoked the need for more "law and order" as they sought a greatly expanded role for the federal government in the general administration of criminal justice and law enforcement at the local and state levels and in the specific prosecution

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[2]In the Zoot Suit Riots, Mexican American youths became the targets of violence by rioting white sailors following the release of inflammatory reports by government agencies suggesting that Mexicans had a greater propensity to crime because of their cultural inferiority and certain psychological characteristics (Grebler et al., 1970).

and punishment of civil rights crimes.[3] They introduced a flurry of bills in the 1940s and 1950s aimed at offering federal assistance to improve local and state police forces by making them more professional and providing them better equipment and training. They also proposed numerous measures to expand the federal role in areas that historically had been almost exclusively within the purview of states and municipalities, such as regulation of police brutality, antilynching measures, and anticonspiracy statutes (Murakawa, forthcoming).

Most of these bills were not enacted. However, all this legislative activity in the 1940s and 1950s deeply influenced how future discussions of law and order, crime, and the federal role in law enforcement would unfold. In advocating these measures, Truman and his allies helped establish a federal role in state and local law enforcement. They also hoped that greater procedural protections would ensure that members of minority groups would be treated fairly in the criminal justice system. By rendering the criminal justice system more legitimate in the eyes of minority groups, such protections, in their view, would eliminate a main source of protests and political discontent and also an important cause for criminal behavior on the part of groups that did not view the system as fair and legitimate (Murakawa, 2008).

The American Bar Foundation's expansive research agenda in the 1950s and 1960s on the problem of discretion and arbitrary power also was a contributing factor to the political push for more uniformity, neutrality, and proceduralism in law enforcement and sentencing. Two other key factors were the American Legal Institute's project to devise a Model Penal Code (to guide sentencing policy) and the Warren Court's series of decisions expanding the procedural rights of suspects, defendants, and prisoners (Stuntz, 2011, pp. 266-267; Murakawa, forthcoming).

This was the context in which Barry Goldwater, the Republican presidential nominee, ran a stridently law-and-order campaign in 1964 that sought white electoral support through explicit and implicit race-based appeals and denunciations of the civil rights movement.[4] From then on, the law-and-order issue became a persistent tripwire stretching across national and local politics. Politicians and policy makers increasingly chose to trigger that wire as they sought support for more punitive policies and for expansion of the institutions and resources needed to make good on promises to "get tough." In the past, crime and punishment concerns would burst on

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[3]In signing the executive order creating the Presidential Committee on Civil Rights in December 1946, Truman lamented how in some places "the local enforcement of law and order has broken down, and individuals—sometimes ex-servicemen, even women—have been killed, maimed, or intimidated" (President's Committee on Civil Rights, 1947, p. vii).

[4]See Appendix A for a supplementary statement by Ricardo Hinojosa on this sentence and other similar committee findings in this chapter.

the scene and then usually recede without leaving behind a massive increase in the state's penal capacity. After 1964, however, the issue of law and order did not ebb, for several reasons discussed below.

THE JOHNSON ADMINISTRATION AND THE WAR ON CRIME

The social, political, and economic pressures that northern and southern whites felt from the Second Great Migration and from the civil rights movement persisted and intensified in the 1960s and 1970s. Leading public figures and their supporters—including mayors of large northern cities, such as Frank Rizzo of Philadelphia and Richard J. Daley of Chicago, and conservative southern Democrats, such Sen. Sam Erwin and Sen. Strom Thurmond—began calling for even more law enforcement power in response to rising crime rates and the demands of blacks for greater rights in the cities to which they had migrated. In response to these pressures, the Johnson Administration reformulated the law-and-order problem and expanded federal support for crime policy. Because Johnson-era initiatives expanded the role of the federal government in state and local crime policy but did not directly promote harsher penal policy, there are a variety of views on the significance of these measures for later policy. For some of the committee members, Johnson's initiatives laid some of the most important foundations for the "war on crime."

When President Johnson launched the war on crime,[5] he linked it to his war on poverty and to the need to address the "root causes" of crime. This approach suggested investing more in education, health, welfare, and other social and economic programs, not just law enforcement. Numerous presidential and other national commissions assembled in the late 1960s and early 1970s also highlighted the social and ecological dimensions of crime prevention.[6] But the root causes approach lost out for several reasons.

While conservatives fashioned a coherent point of view on the crime and punishment issue during these years, liberals had trouble finding a clear voice on the issue (Flamm, 2005, p. 124). As mentioned earlier, some liberals had been arguing since the 1940s for greater investments in law enforcement. They also had been arguing for more neutral procedures to

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[5]See http://www.presidency.ucsb.edu/ws/?pid=27478 [February 2014] for President's Johnson's "Special Message to the Congress on Crime and Law Enforcement" in 1966.

[6]The President's Commission on Law Enforcement and Administration was convened in March 1965 and issued its report in 1967; the National Advisory Commission on Civil Disorders—known more frequently as the "Kerner Commission" or the "Riot Commission"—was formed in the summer of 1967 and issued its report in 1968; the National Commission on the Causes and Prevention of Violence was formed in 1968 and issued its report in 1969 (Haney, 2010; Flamm, 2005); and the National Advisory Commission on Criminal Justice Standards and Goals was created in 1971 and issued six reports in 1973.

resolve the law-and-order problem, which they characterized primarily as an issue of police brutality, organized white violence against those who challenged the color line, and discriminatory enforcement of laws. Others had been arguing for this greater investment in law enforcement, but for more punitive reasons. In short, strengthening investments in cities and social programs to mitigate the stresses and strains of the Great Migration had long been a secondary priority for many liberals, along with enhancing law enforcement and professionalizing the police.

In 1965, with strong support from the Johnson Administration, Congress enacted the Law Enforcement Assistance Act. This legislation established the Office of Law Enforcement Assistance to award grants and administer other programs aimed at improving and expanding law enforcement, court administration, and prison operations at the state and local levels. The dollar amounts involved were small, but the political significance was considerable. This measure engaged the federal government in criminal justice and law enforcement, both rhetorically and substantively, to an unprecedented degree (Flamm, 2005; Thompson, 2010).

The 1965 act garnered strong support spanning the political spectrum. Liberal Democrats, who had been ardently pushing since the 1940s for more proceduralism, neutrality, and uniformity in policing practices and sentencing policies, generally supported the act. Some of them rallied for greater police professionalism in the hope that this would yield racial fairness and thus reduce political unrest and crime among minority groups. Some of them also viewed an increase in expenditures on the police as complementing the recent series of Supreme Court decisions that had expanded procedural rights for suspects and defendants. In contrast, conservatives in both parties sought to use the expansion of federal involvement in law enforcement as a means of empowering police to deal forcefully with urban unrest. Many of them also hoped to counteract the Warren Court decisions that in their view had procedurally handcuffed the police and prosecutors (Kamisar, 2005; Allen, 1975). Thus, with mixed motivations, both liberals and conservatives helped clear the political ground for this and subsequent measures that expanded the criminal justice system and ultimately gave local, state, and federal authorities increased capacity for arrest, prosecution, and incarceration.

In 1965, Johnson also established the President's Commission on Law Enforcement and Administration of Justice. Three years later, Congress enacted the controversial Omnibus Crime Control and Safe Streets Act of 1968 in response to the commission's findings. Liberals were generally supportive of initial drafts of this legislation, which provided federal grants to police for equipment, training, and pilot programs and also greater federal investments in rehabilitation, crime prevention, and alternatives to incarceration. But as the bill moved through the legislative process, southern

Democrats and their Republican allies were able to substantially modify the final bill (Flamm, 2005, Chapter 7). They added funding formulas that gave state governments—not cities or the federal government—great leeway to distribute the large amounts of federal money that would be funneled over the years through the new Law Enforcement Assistance Administration. Furthermore, they successfully inserted provisions on wiretapping, confessions, and use of eyewitnesses that curtailed the procedural protections that had been extended by Supreme Court decisions (Flamm, 2005).

Still, some liberals viewed passage of the Safe Streets Act as another important step toward modernizing, professionalizing, and federalizing the criminal justice system. A number of them also saw it as an important mechanism for containing the growing social and political unrest in their own cities and states (Murakawa, forthcoming; Hinton, 2012). However, many other liberals were strongly opposed to the measure. They objected to what they saw as an emphasis on law enforcement solutions as the cost of addressing the "root causes" of crime. They also were strongly opposed to several provisions in the bill that they viewed as an inappropriate erosion of core civil liberties.

The assassination of Robert F. Kennedy in June 1968, near the end of the primary season, helped tip the balance in favor of the Safe Streets Act (Flamm, 2005, pp. 138-140; Simon, 2007, pp. 49-53). Two weeks after the assassination, Johnson signed the Safe Streets Act, though with considerable reluctance. He calculated that a veto might result in even harsher legislation and could irreparably harm Vice President Hubert Humphrey's campaign for the presidency (Flamm, 2005, p. 140).

LAW AND ORDER AND THE RISING CRIME RATE

The national crime rates had started to turn upward in 1961, and they continued rising through 1981. The lack of political consensus at the time on the causes of the increase in violent crime and what to do about it served to increase public concern. Fear of crime continued to provide political opportunities for candidates and office-holders even after crime rates began to fall. The responses of politicians, policy makers, and other public figures to rising crime rates were political choices not determined by the direction in which the crime rate was moving. Certain features of the social, political, and institutional context at the time help explain why in the U.S. case, those choices ultimately entailed embracing harsher policies rather than emphasizing other remedies (such as greater public investment in addressing the root causes of crime and in developing alternatives to incarceration), as well as stoking public fears of crime even after crime rates had ceased to increase.

Republican Party leaders were in an especially good position during these years to tap into public fears and anxieties about crime and to turn crime into a wedge issue between the two parties. As the Democratic Party split over civil rights issues, the south became politically competitive for the first time since the end of Reconstruction a century earlier. This development ushered in a major political realignment. Furthermore, key features of the political structure of the United States, which are discussed in greater detail below, made it especially vulnerable to politicians seeking to exploit public fears concerning crime and other law-and-order issues.

Rates for most serious crimes counted in the Uniform Crime Reports (UCR), compiled by the Federal Bureau of Investigation (FBI), increased significantly after 1961. Between 1964 and 1974, the U.S. homicide rate nearly doubled to 9.8 per 100,000,[7] and rates of other serious crimes also jumped. The homicide rate continued to oscillate around a relatively high rate of 8 to 10 per 100,000 until the early 1990s, before beginning a steady and significant drop that has since continued. Other Western countries have experienced strikingly similar patterns in their crime rates, although from smaller bases (Tonry, 2001).

The rise in homicide rates was concentrated geographically and demographically. As far back as the 1930s, the homicide rate for blacks in northern cities was many times the rate for whites (Lane, 1989). The gap in black-white homicide rates widened further over the course of the Second Great Migration as millions of blacks moved to urban areas outside the south, and it continued to grow thereafter (Jacoby, 1980).[8] The homicide rates in poor neighborhoods of concentrated disadvantage often were many times higher than those in affluent urban neighborhoods. Before crime rates began their steep drop in the early 1990s, the homicide rate among young black men aged 18 to 24 was nearly 200 per 100,000, or about 10 times the rate for young white men and about 20 times the rate for the U.S. population as a whole (Western, 2006, p. 170). Unfortunately, historical data on homicides among Latinos have been largely missing or unreported in existing official sources such as the UCR. Still, homicide rates for Latinos in 2005 were 7.5 per 100,000, as compared with 2.7 for white non-Latinos (Vega et al., 2009). The disparities are more pronounced for young men aged 15 to 24, with 31 deaths per 100,000 for Latinos compared with 10.6 for white non-Latinos.

Like the Great Migration, earlier waves of immigration from Ireland and southern and central Europe that flowed into U.S. cities in the

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[7] The national homicide rate stood at 5.1 in 1960 and fluctuated around that level until 1964, when it was at 4.9.

[8] Pre-1980 homicide data are from the Historical Violence Database, available: http://cjrc.osu.edu/researchprojects/hvd/ [February 2014]; post-1980 homicide data are from the annual volumes of the UCR.

nineteenth and early twentieth centuries prompted "widespread fears and predictions of social deterioration," including public alarm that crime would rise as the number of immigrants rose in U.S. cities (MacDonald and Sampson, 2012, p. 7). Yet in the early twentieth century, a "hopeful vision of white criminality" eventually took hold in the wake of waves of immigration from Europe (Muhammad, 2010, p. 98). This vision grew out of the view that white criminality in urban areas was rooted primarily in the strains of industrial capitalism and urban life. Thus, policy makers, legislators, and social activists in the Progressive era sought to ameliorate those strains by pressing for greater public and private investments in education, social services, social programs, and public infrastructure in urban areas with high concentrations of European immigrants. The empirical findings of leading sociologists of the early twentieth century (Sutherland, 1947; Sellin, 1938) bolstered claims in the public sphere that "it was not immigration per se that accounted for social ills" but the poor living conditions in those overcrowded, unhealthy urban areas that tended to be magnets for immigrants entering the United States (MacDonald and Sampson, 2012, p. 7).

In contrast, the country responded to the rise in urban crime rates that followed the influx of many African Americans into U.S. cities and of many Mexicans into southwestern states by adopting increasingly punitive policies. For example, the rise in Mexican immigration to communities in the southwest was associated with increases in arrests without cause, denial of legal counsel, and harsh tactics ranging from interrogation sessions to beatings (Grebler et al., 1970). Research also suggests that the federal anti-marijuana law of 1937 was directed primarily against Mexican Americans (Hoffman, 1977).

POLITICAL AND ELECTORAL REALIGNMENT

Democrats were divided on how to respond to the increase in the crime rate. This split, together with deep differences over civil rights, the Vietnam War, and a series of controversial U.S. Supreme Court decisions that extended the rights of defendants, created a ripe opportunity for the political ascent of the Republican Party in states and localities where the Democratic Party had long been dominant, notably in the south and the southwest and in the growing suburbs around northern cities. Many leading Republican candidates and office-holders began developing political strategies that used the crime issue to appeal to white racial anxieties in the wake of the burgeoning black power movement and the gains of the civil rights movement.[9]

Some liberals interpreted the rise in the crime rate that occurred in the 1960s-1970s as a less serious threat to public safety than it was being

[9]See Appendix A for a supplementary statement by Ricardo Hinojosa on this sentence and other similar committee findings in this chapter.

depicted by conservative politicians and in the media. They viewed heightened public fears over crime as a by-product of political posturing and an artifact of inaccurate and misleading statistics. For example, Nicholas Katzenbach, who served as U.S. attorney general in the early years of the Johnson Administration, maintained that the crime figures were inconclusive and that false information about crime often intimidated or misled the general public (Flamm, 2005, p. 125).

It does appear that the UCR data exaggerated the extent and duration of the crime increase for certain offense categories (Flamm, 2005, pp. 125-126; Ruth and Reitz, 2003).[10] Prior to 1973, when the U.S. Department of Justice began its yearly household survey of crime victims (the National Crime Victimization Survey), the UCR were the major source of national-level crime statistics. These data, which were recorded and collated by local police departments and then reported to the FBI, were often systematically skewed in recording and reporting, due in part part to incentives to record more crime in order to receive more government funding to combat crime (Ruth and Reitz, 2003; Thompson, 2010).[11]

Those liberals who did take the crime jump seriously often failed to challenge conservatives when they conflated riots, street crime, and political activism, especially on the part of African Americans and their supporters, and when they attributed the crime increase to the launch of the Great Society and to the mixing of the races due to the demise of segregation. Indeed, some key liberals contended that the "crime problem" was predominantly a race and civil rights problem, suggesting that entrenched segregation had created black cultural dysfunction and social disorder that, among other things, contributed to higher crime rates in urban areas (Murakawa, forthcoming).

The rise in national crime rates beginning in the 1960s coincided with an exceptional period in which punishments for many crimes were easing. During this time, moreover, the U.S. Supreme Court issued a series of landmark decisions that restricted the authority of the police, established protections for suspects and those in custody, and overturned criminal

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[10]Trends in UCR robbery rates correspond closely with the National Crime Victimization Survey (NCVS) over the past 50 years, but trends in aggravated assault do not. The UCR aggravated assault series trended upward from the early 1970s through the early 1990s, while the NCVS aggravated assault series (which is defined similarly) was trending downward. The difference likely is due to an increase in the recording of assaults as "aggravated" by the police during that period. Since the early 1990s, the UCR and NCVS aggravated assault series have trended similarly (Rosenfeld, 2007).

[11]After 1965, for example, "thanks to a new federal commitment to fighting crime, local enforcement could net substantial infusions of money and equipment by demonstrating that crime was on the rise in their area. Significantly, when crime rates began to inch up in Detroit in the later 1960s, even the city's mayor admitted that 'new methods of counting crime' had played an important role in 'distorting the size of the increase'" (Thompson, 2010, p. 727).

convictions that violated newly articulated constitutional principles. Conservative critics of the Warren Court charged that these "soft on crime" rulings, together with misguided liberal social welfare policies, had contributed to the increase in the crime rate.

Taken together, these developments helped foster a receptive environment for political appeals for harsher criminal justice policies and laws. So, too, did the escalation of clashes between protesters and law enforcement authorities during the 1960s and 1970s. In many cases—most notably the police crackdown on protesters at the 1968 Democratic National Convention in Chicago, the shooting deaths of antiwar student protesters at Kent State and Jackson State in 1970, and the bloody assault on New York's Attica prison in 1971 that left dozens dead—a degree of public sympathy was fostered for protesters and prisoners, at least initially.[12] That sympathy dissipated, however, as civil rights opponents continued to link concerns about crime with anxieties about racial disorder; the transformation of the racial status quo; and wider political turmoil, including the wave of urban riots in the 1960s and large-scale demonstrations against the Vietnam War (see, e.g., Beckett, 1997; Flamm, 2005; Weaver, 2007; Thompson, 2010).

Internal Democratic Party divisions over civil rights and the law-and-order question created new opportunities for the Republican Party in the south and elsewhere. In the north, many urban white voters initially maintained a delicate balance on civil rights. Although personally concerned over and often opposed to residential integration at the local level, they supported national pro-civil rights candidates. This balance was undermined as crime and disorder were depicted as racial and civil rights issues; together they "became the fulcrum points at which the local and national intersected" (Flamm, 2005, p. 10; see also Thompson, 2010).

In response to this altered political context, Republican Party strategists developed what has been termed the "southern strategy."[13] Centered in racially coded appeals to woo southern and working-class white voters, this strategy gradually transformed the landscape of American politics (see, e.g., Phillips, 1969; Tonry, 2011a). As historians make clear, the term "southern strategy" is somewhat misleading. At least some Republicans and even some Democrats had been associating crime with both "black-

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[12]For example, the 1971 Attica uprising in New York State spurred a wellspring of public and scholarly interest in how to make prisons more humane and how to decrease the prison population. It also prompted numerous calls for a national moratorium on prison construction (Gottschalk, 2006, p. 181).

[13]Although Richard Nixon's presidential campaign in 1968 involved a law-and-order message combined with a tacit racial appeal to white voters (Edsall and Edsall, 1992), George Wallace's third-party run also contributed significantly to a climate in which issues of race, protest, and disorder were joined to build a conservative constituency in the south and across the country (Carter, 1995).

ness" and civil disorder more broadly, in locations outside the south. They had done so, with some success, long before Nixon political operative Kevin Phillips popularized the idea of a southern strategy in the late 1960s (Shermer, 2013; McGirr, 2002; Schoenwald, 2002; Thompson, 2001; Kruse and Sugrue, 2006).

The southern strategy was different in that it rested on politicizing the crime issue in a racially coded manner. Nixon and his political strategists recognized that as the civil rights movement took root, so did more overt and seemingly universally accepted norms of racial equality.[14] In this new political context, overtly racial appeals like those wielded by Goldwater's supporters in the 1964 campaign would be counterproductive to the forging of a new winning majority. Effectively politicizing crime and other wedge issues—such as welfare—would require the use of a form of racial coding that did not appear on its face to be at odds with the new norms of racial equality. As top Nixon aide H.R. Haldeman explained, Nixon "emphasized that you have to face the fact that the *whole* problem is really the blacks. The key is to devise a system that recognizes this while appearing not to [emphasis in original]" (Haldeman, 1994, p. 53).

The widespread loss of popular faith in liberalism's ability to ensure public safety, declining confidence in elite- and expert-guided government policies, and deeply felt anxieties and insecurities related to rapid social change and the economic stagflation of the 1970s fostered a political environment conducive to the southern strategy and populist law-and-order appeals (Flamm, 2005; Edsall and Edsall, 1992). Tough law-and-order agendas appealed to whites' anxieties about the rising crime rate, which were entangled with other anxieties about their "loss of stature and privileges as economic opportunities narrowed and traditionally marginalized groups gained new rights" (Kohler-Hausmann, 2010, p. 73; see also Rieder's [1985] classic account of whites' anxieties about crime in the 1960s and 1970s).

Furthermore, the increase in the crime rate coincided with the heyday of Lyndon Johnson's Great Society programs. Although there were many factors contributing to the rise in crime, this coincidence created an opportunity for claims that greater investment in social and other programs did not reduce crime. Some commentators argued that social programs actually contributed to rising crime rates by fostering a host of personal pathologies they claimed were the "real" roots of crime (O'Connor, 2008). A number of politicians contended that a weak work ethic, poor parenting practices, and a culture of dependency had all been created or exacerbated

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[14]See Appendix A for a supplementary statement by Ricardo Hinojosa on the passage, which begins on the previous page beginning with "In the north . . ." and ends here, and other similar committee findings in this chapter.

by expanded public assistance and other social programs, and that these personal and cultural shortcomings were the major sources of the rise in disorder and violence.

OTHER POLITICAL FACTORS

Emerging research is helping to illuminate why the southern strategy was so effective in politicizing and further racializing the law-and-order issue, and why the war on drugs and other shifts toward harsher penal policies did not face more effective countervailing pressures and coherent counterarguments in opposition. The southern strategy was soon followed by the rise of a number of new social movements and interest groups whose messages and actions in some ways reinforced the punitive direction in which the nation was beginning to move. They included the victims' rights movement, the women's movement, the prisoners' rights movement, and organized opposition to the death penalty. Advocating for victims and against criminal defendants became a simple equation that helped knit together politically disparate groups.[15] Unlike prisoners' movements in other Western countries at the time, the movement in the United States was closely associated with broader issues involving race, class, and various struggles around injustice. As a consequence, criminal activity became associated in the public mind with controversial issues relating to race and rebellion, which fostered zero-sum politics that reduced public sympathy for people charged with crimes and thus was conducive to the promotion of harsher penal policies (Gottschalk, 2006, Chapter 7). Finally, legal battles over the death penalty "legitimized public opinion as a central, perhaps *the* central, consideration in the making of penal policy," which further enshrined the zero-sum view of victims and defendants in capital and noncapital cases (Gottschalk, 2006, p. 12 and Chapters 8-9).

Although African Americans experienced the largest absolute increases in incarceration rates, there is evidence that the black community was divided in its support for tough crime control policy. On the one hand, as discussed in further detail below, blacks have been generally less supportive than whites of punitive criminal justice policies, and survey data from as early as 1977 and 1982 show that blacks are less likely than whites to support severe sentences for violent crimes (Blumstein and Cohen, 1980; Miller et al., 1986; Secret and Johnson, 1989; Bobo and Johnson, 2004; Western and Muller, 2013). And while the attitudes of both black and white Americans have become less punitive over the past few decades, whites are

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[15]For further discussion of how the political mobilizations against rape and domestic violence contributed to a more punitive political atmosphere, see Gottschalk (2006, Chapters 4-6), Bumiller (2008), and Richie (2012).

consistently more likely than blacks to report that court sentences are not harsh enough (Blumstein and Cohen, 1980; Miller et al., 1986; National Center for State Courts, 2006; Secret and Johnson, 1989; Western and Muller, 2013).

On the other hand, new research also finds that some black leaders supported tougher laws, most notably in the early years of the war on drugs, while others were fierce opponents. The growing concentration of violence, drug addiction, and open-air drug markets in poor urban neighborhoods; disillusionment with government efforts to stem these developments; and widening class divisions among blacks help explain why some African American community leaders endorsed a causal story of the urban crisis that focused on individual flaws, not structural problems, and that singled out addicts and drug pushers as part of the "undeserving poor" who posed the primary threat to working- and middle-class African Americans (Fortner, 2013; Barker, 2009, p. 151; Gottschalk, forthcoming; Cohen, 1999; Dawson, 2011).[16]

Other black leaders endorsed what Forman (2012) describes as an "all-of-the-above" approach, calling for tougher sanctions and aggressive law enforcement but also for greater attention and resources to address underlying social and economic conditions. According to Forman, this helps explain why African American political, religious, and other leaders in Washington, DC, the only black-majority jurisdiction that controlled its sentencing policies (after home rule was granted in 1973), supported tougher crime policy. Opposition to these policies remained muted, even after their disproportionate toll on blacks, especially young black men, became apparent. Forman (2012) attributes this stance to the stigmatizing and marginalizing effects that contact with criminal justice had on former prisoners and their families, inhibiting them from taking public positions or engaging in political debates about these policies. Black leaders, politicians, and advocacy groups clearly were not the main instigators of the shift to harsh crime policy, but at least in some instances, their actions helped foster this turn, in many cases unwittingly.

THE WAR ON DRUGS

As discussed in Chapters 2 and 3, the war on drugs has disproportionately affected African Americans and Latinos and has been an important contributor to higher U.S. rates of incarceration. Researchers have related racial considerations to the war on drugs in much the same way that social

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[16]Similar attitudes often are seen among segments of the Latino community that favor stronger drug and anticrime laws. This is evident in how Latinos split their vote on Proposition 19—the State of California's proposition to legalize marijuana—in 2010 (Hidalgo, 2010).

and status conflicts between native Protestants and newly arrived Irish Catholics provided context for the temperance and prohibition movements in the late nineteenth and early twentieth centuries (see, e.g., Gusfield, 1963). In the war on drugs, politicians characterized addicts and pushers as "responsible not only for their own condition" but also for many of the problems plaguing inner-city neighborhoods where blacks predominated, including crime, eroding urban infrastructure, and widespread social and economic distress (Kohler-Hausmann, 2010, p. 74).

President Nixon declared the war on drugs in 1971 after initially having embraced greater investment in treatment, rehabilitation, and public health to combat substance abuse (Musto and Korsmeyer, 2002, Chapter 2). Two years later, Republican Governor Nelson Rockefeller of New York, who had authorized the assault on Attica and was trying to reposition himself politically in the face of the southern strategy and a possible run for the White House, led the state in enacting some of the nation's toughest drug laws. These new laws mandated steep minimum sentences for the sale and use of controlled substances, notably heroin and cocaine.[17] New York's new drug laws also influenced other states that sought to enact tough lengthy sentences for drug offenses.

These opening salvos in the war on drugs drew significant support from some leading black politicians and community leaders, as well as from some residents in poor urban areas (Kennedy, 1997, pp. 370-371; Barker, 2009; Fortner, 2013; Forman, 2012; Meares, 1997). For example, some black activists in Harlem supported the Rockefeller drug laws, as did the city's leading black newspaper (Barker, 2009; Fortner, 2013). In New York City and elsewhere, black leaders called for tougher laws for drug and other offenses and demanded increased policing to address residents' demands that something be done about rising crime rates and the scourge of drug abuse, especially the proliferation of open-air drug markets and the use of illegal drugs such as heroin and then crack cocaine (Barker, 2009; Fortner, 2013; Forman, 2012).

The Reagan Administration dramatically escalated the war on drugs even though drug use had been falling for most illicit substances since

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[17]For much of the 1970s, New York's new drug laws had only a modest impact on the state's incarceration rate, thanks to "selective pragmatic enforcement" by local criminal justice authorities (Weiman and Weiss, 2009, p. 95). That situation changed in the 1980s and 1990s as incoming mayor Ed Koch of New York City sought to "retake the streets" and made a highly publicized shift toward "quality-of-life" policing in 1979, and Governor Hugh Cary promised significant additional support for prison construction, state prosecutors, local law enforcement, and a new joint state-local initiative to target drug trafficking. As a result, the proportion of all inmates serving time in New York State prisons for felony drug convictions soared as the Rockefeller laws belatedly became a major driver of the state's prison population (Weiman and Weiss, 2009).

1979.[18] After President Reagan launched his own version of the war on drugs in 1982 and renewed the call to arms 4 years later, public opinion surveys in 1986 indicated that fewer than 2 percent of the American public considered illegal drugs to be the most important problem facing the country (Beckett, 1997, p. 25). Surveys conducted 2 years later, however, showed that a majority of the public now identified drug abuse as a leading problem (Roberts et al., 2003). The shift in public opinion was partly a consequence of the enactment of tough new federal drug laws in 1986 and 1988, spurred by reports that crack cocaine had been introduced into urban drug markets.

These new drug laws resulted in historically unprecedented rates of imprisonment for drug use and possession (Reuter, 1992; Thompson, 2010). People convicted of drug offenses grew to make up about one-fifth of all state prison inmates and nearly two-thirds of all federal inmates by 1997 (Mumola and Karberg, 2006, p. 4). Since then, the portion of state prisoners serving time for drug offenses has stabilized at about the same rate, while the portion of federal inmates serving time for drug offenses has declined somewhat, to about one-half (Carson and Sabol, 2012, p. 1).

In the 1980s, some Democratic politicians notably joined the war on drugs effort that had been initiated by the Republican administration in the 1970s. The two parties embarked on periodic "bidding wars" to ratchet up penalties for drugs and other offenses. Wresting control of the crime issue became a central tenet of up-and-coming leaders of the Democratic Party represented by the center-right Democratic Leadership Council, most notably "New Democrat" Bill Clinton (Stuntz, 2011, pp. 239-240; Murakawa, forthcoming, Chapter 5; Schlosser, 1998; Campbell, 2007).[19]

Statistical analyses indicate that Republican Party control, especially at the state level, generally has been associated with larger expansions of the prison population (Western, 2006; Jacobs and Helms, 2001; Smith, 2004; Jacobs and Carmichael, 2001).[20] However, it is also the case that some leading Democrats—including Governor Mario Cuomo of New York in the 1980s and early 1990s (Schlosser, 1998), Governor Ann Richards of Texas in the early 1990s (Campbell, 2007), and President Clinton in the 1990s—presided over large increases in prison populations or the adoption of harsh sentences. As criminal justice policy in the United States continued to rely more heavily on incarceration, official party positions on crime control differed less and less. For example, Murakawa (forthcoming) observes that the

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[18]Reported drug use reached its peak in the late 1970s and continued to fall until the early 1990s, when it turned upward but remained considerably below the late 1970s peak (Johnston et al., 2012, p. 167).

[19]See Appendix A for a supplementary statement by Ricardo Hinojosa on this paragraph and other similar committee findings in this chapter.

[20]However, Greenberg and West (2001, p. 634) found that "the party of the state's governor was essentially irrelevant" in explaining prison growth from 1971 to 1991.

Democratic Party platforms of the 1980s and 1990s invoked law-and-order rhetoric that differed little from what Richard Nixon had expressed two decades earlier, and extolled the long list of harsh penal policies the party had been instrumental in enacting.[21]

CRIME, PUNISHMENT, RACE, AND PUBLIC OPINION

As shown above, the role of public opinion in penal policy is complex, and public concern about crime and support for punitive crime control policy does not necessarily rise and fall in tandem with fluctuations in the crime rate (Beckett, 1997). Important intervening variables include the kind of crime-related initiatives that are promoted by politicians, the nature and amount of media coverage of crime, and the interplay of racial and ethnic conflict and concerns.

Consequently, crime-related public opinion can be volatile. Public opinion surveys and electoral outcomes demonstrate clear public support for certain hard-line policies, such as "three strikes" laws and increased use of incarceration (Cullen et al., 2000). But support for such punitive policies often is soft and therefore highly malleable, partly because public knowledge about actual criminal justice practices and policies is so limited (Cullen et al., 2000; Roberts and Stalans, 1998). For example, the public consistently overestimates the level of violent crime and the recidivism rate (Gest, 2001). Perhaps because people in the United States and elsewhere possess limited knowledge of how the criminal justice system actually works, they generally believe the system is far more lenient toward lawbreakers than it actually is (Roberts, 1997; Roberts and Stalans, 2000; Roberts et al., 2003).

Public opinion surveys that use simplistic approaches tend to reinforce the assumption that the U.S. public is unflinchingly punitive (Cullen et al., 2000). They also mask significant differences in the perspectives of certain demographic groups—especially African Americans and whites—on issues of crime and punishment. For example, African Americans are more likely than whites to perceive racial bias in the criminal justice system (Bobo and Thompson, 2006, 2010; Peffley and Hurwitz, 2010). And as noted above, African Americans also are traditionally less likely to support harsh punishments for violent crime. Moreover, some evidence suggests that public officials and policy makers misperceive or oversimplify public opinion on crime, focusing on Americans' punitive beliefs but deemphasizing or

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[21]Although the Republican Party's southern strategy promoted harsher crime policy and the Republican administrations of Presidents Nixon and Reagan encouraged tougher drug enforcement and sentencing, the committee members varied in their views of the role played by Democratic Party policy makers in this process.

ignoring their support for rehabilitative goals (Gottfredson and Taylor, 1987; Cullen et al., 2000).

The influence of race on public opinion about crime and punishment is particularly complex, as discussed in Chapter 3. Research on racial attitudes suggests a decline in overt racism—or what Unnever (2013) calls "Jim Crow racism"—founded in beliefs about the innate inferiority of blacks and in adamant support for racial segregation. Survey research also shows that people generally believe racial discrimination is wrong and that they almost universally endorse norms of racial equality (see, e.g., Tonry, 2009a; Thernstrom and Thernstrom, 1997; Mendelberg, 2001; Bobo, 2001). Nonetheless, there are large and in some cases widening gaps in white, black, and Hispanic public opinion on racial issues. Nearly 50 percent of white Americans surveyed in 2008 said they believed blacks had achieved racial equality, compared with only 11 percent of blacks. Nearly three-quarters of blacks surveyed agreed that racism is still a major problem, compared with more than half of Latinos and about one-third of whites (Dawson, 2011, pp. 12-13, 148). Racial bias often is revealed implicitly as well. As discussed in Chapter 3, results from the Implicit Association Test (IAT), designed to measure people's implicit attitudes, demonstrate consistent bias against African Americans (Greenwald and Krieger, 2006).

Although overt racial hostility is less pervasive than it was years ago, latent and often unconscious stereotypes and prejudices still influence political and policy choices in subtle but powerful ways. Such subtle but powerful prejudice may play an important role in public policy preferences on crime and punishment. For example, results of both experimental and survey research suggest that racial resentment is a strong predictor of whites' support for capital punishment (Unnever et al., 2008; Bobo and Johnson, 2004) and that whites' support for the death penalty is undiminished even when they are reminded of racial disproportionality and bias in its application (Peffley and Hurwitz, 2010; Bobo and Johnson, 2004). Research also shows that racial prejudice is associated with increased support for punitive penal policies (Johnson, 2008).

Deeply held racial fears, anxieties, and animosities likely explain the resonance of coded racial appeals concerning crime-related issues, such as the infamous "Willie Horton ad" aired during the 1988 presidential election (see, e.g., Mendelberg, 2001). But racial indifference and insensitivity—as distinguished from outright racial hostility—may help explain the long-term public support for criminal justice policies that have had an adverse and disproportionate impact on blacks (and Latinos). For example, policing practices with large racially disparate impacts, such as the war on drugs and New York City's "stop-and-frisk" policies, are much more likely to be supported by whites than by blacks. In 2011, 85 percent of the approximately 685,000 stop-and-frisks conducted by the New York City

police involved people who were black or Latino. In recent polling, whites approved of stop-and-frisk policies at more than twice the rate of blacks (57 percent versus 25 percent) (Quinnipiac University, 2012).[22]

In short, a sizable body of research supports the thesis that public opinion about crime and punishment is highly racialized. Whites tend to associate crime and violence with being black and are more likely than blacks to support harsh penal policies. Whites who harbor racial resentments are especially likely to endorse tougher penal policies and to reject claims that the criminal justice system discriminates against blacks. Blacks are much more likely than whites to say the criminal justice system is racially biased and much less likely to endorse capital punishment and other tougher sanctions (Unnever, 2013).

POLITICAL INSTITUTIONS AND CULTURE

Trends in crime rates and public opinion had much larger effects on criminal justice policy in the United States, compared with other Western countries, because they interacted with and were filtered through specific institutional, cultural, and political contexts that facilitated the growth in incarceration. As discussed in detail in Chapter 3, during the decades-long rise in imprisonment, determination of sentencing and other penal policies increasingly became the domain of the legislative branches of government. Legislators gained power over sentences from the executive branch by, among other things, eliminating parole, limiting commutation powers, and reducing early release programs. They also gained power over the judicial branch by, among other things, eliminating indeterminate sentencing, setting mandatory minimum sentences, and enacting truth-in-sentencing legislation. These shifts allowed the more populist impulses in the United States to have direct impacts on sentencing and other criminal justice policies. The most vivid example of this—what some have called the "democratization of punishment"—is the direct enactment of more punitive measures through ballot initiatives, most notably the three strikes ballot initiative in California (Barker, 2009; Zimring et al., 2001; HoSang, 2010).

Compared with the criminal justice systems of many other developed countries, the U.S. system is more susceptible to the influence of "short-term

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[22]As noted above, studies show that blacks who are stopped and frisked are less likely than whites to be in possession of guns or other contraband and are no more likely to be arrested. Because so many more blacks than whites are stopped in the first place, however, many more blacks are taken into police custody as a result of being stopped (Center for Constitutional Rights, 2009). The racial gap in support of stop-and-frisk did not keep a federal judge from ruling in *Floyd v. New York* (2013) that the policy violated the constitutional rights of minorities and from recommending a series of reforms (including a monitor) to oversee changes. This controversial ruling had been stayed and was under appellate review at the time this report was being written.

emotionalism" and partisan and interest group politics (Gottschalk, 2006; Tonry, 2011a; Garland, 2010). As Murakawa (forthcoming, Chapter 5) shows, the U.S. House and U.S. Senate have been far more likely to enact stiffer mandatory minimum sentence legislation in the weeks prior to an election. Because of the nation's system of frequent legislative elections, dispersed governmental powers, and election of judges and prosecutors, policy makers tend to be susceptible to public alarms about crime and drugs and vulnerable to pressures from the public and political opponents to quickly enact tough legislation. Such actions serve an expressive purpose over the short run but may have negative long-term consequences (Tonry, 2007b, p. 40).[23] Incentives for supporting certain kinds of crime-related initiatives also tend to be misaligned across different levels of government. For example, it is relatively easy for local government officials to advocate increased sentence lengths and higher incarceration rates that state government officials are typically responsible for funding (including the building and running of state penitentiaries). Yet, despite taking hard-line positions on crime control, local governments often hire too few police officers (since cities and counties are responsible for paying nearly all local police budgets) (Stuntz, 2011, p. 289; Lacey, 2010, p. 111).

Lappi-Seppälä (2008) finds that democracies that are "consensual" (i.e., having a larger number of major political parties, proportional representation, and coalition governments) have lower rates of incarceration and have experienced smaller increases in incarceration since 1980 than winner-take-all, two-party democracies, such as the United States. Lacey (2008) and others (Cavadino and Dignan, 2006; de Giorgi, 2006) find that countries (such as Germany) with consensual electoral systems and coordinated market economies tend to be less punitive and more conducive to inclusionary and welfarist policies than the United States and Britain, whose electoral systems are less consensual and whose market economies are relatively less regulated.

In the United States, most prosecutors are elected, as are most judges (except those who are nominated through a political process). Therefore, they are typically mindful of the political environment in which they function. Judges in competitive electoral environments in the United States tend to mete out harsher sentences (Gordon and Huber, 2007; Huber and Gordon, 2004). In contrast, prosecutors and judges in many European countries are career civil servants who have evolved a distinctive

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[23]It is also important to note, however, that in England and Wales, the *concentration* of political power rather than its dispersal has made it possible to adopt and implement a wide range of punitive policies. And although Switzerland shares many of the dispersed and populist features of the U.S. system, its penal policies generally have been stable over the past several decades (Tonry, 2007b).

BOX 4-1
Regional Variation in U.S. Incarceration: Historical Context

In the late nineteenth and early twentieth centuries, the nation's northeastern cities tended to have large police forces, small and stable prison populations, and low rates of criminal violence. The south, in contrast, tended to have small police forces, larger but highly variable prison populations, and high crime rates.* The west mimicked the south for most of the nineteenth century but came to resemble the northeast by century's end; as its police forces grew, crime rates shrank, and mob justice faded (Stuntz, 2011).

Although the nature and operation of penal systems today vary among the states, there is no scholarly consensus on the extent to which regional identity, history, or culture may have led either the criminal justice system of a given state or that of the nation as a whole in a much more punitive direction over the past four decades. Some scholars make strong arguments that regional history and culture matter a great deal. For example, they suggest that the nation's overall tough-on-crime policy should be seen as the eventual embrace of the south's more punitive form of justice, originally created and maintained in a region not only marked by slavery but also with a criminal justice system that treated African Americans with notable brutality following the Civil War (Perkinson, 2010; Lichtenstein, 1996; Oshinsky, 1997; Blackmon, 2009; Butterfield, 1995). Other scholars, however, point to the long history of punitive justice policies that were directed as well at communities of color in the north and west; they see the nation's embrace of unprecedented high rates of incarceration as an extension of policies and practices that were less narrowly regional in nature (Gross, 2006; Muhammad, 2010; Hicks, 2010; Chávez-Garcia, 2012, Chapter 1; Lynch, 2010). Recent research also suggests that any difference between the racial ethos of the south and the north became much less marked as African Americans moved in record numbers between 1880 and 1950 from the south to the north, where they were greeted by white northerners (particularly by European immigrants, who themselves were struggling for full rights of citizenship) with suspicion, hostility, and even violence (Muller, 2012).

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*According to Gottschalk (2006, p. 48), "the association in the South of crime and race made it impossible to embrace rehabilitation, the *raison d'être* for the penitentiary. . . . The roots of the penitentiary were shallow in the South" and were uprooted by the Civil War. After the Civil War, the convict leasing system was widely adopted in the south as an alternative means of punishment and played an important role in the region's economic life.

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occupational culture with a less punitive orientation, partly as a result of differences in legal training and career paths between the United States and European countries (Savelsberg, 1994).

Cultural differences—in particular, the degree of social and political trust and cohesion—also help explain some of the variation in incarceration rates, both cross-nationally and within the United States. (Box 4-1 provides some historical context for understanding regional variation in

incarceration.) In cross-national comparisons, Lappi-Seppälä (2008) finds a negative relationship (which has grown stronger over time) between punitiveness and social and political trust, and a positive cross-sectional relationship between high levels of social and political trust and more generous welfare policies. Within the United States, incarceration rates generally have been lower in states with higher levels of social capital, voter participation, and other forms of complex civic engagement (Barker, 2009).

In examining the underlying causes of high rates of incarceration, it is important to keep in mind that the factors that sparked the increase may not be the same as those that currently sustain it. Economic interests, for example, initially did not play a central role in the upward turn in incarceration rates. Over time, however, the buildup created new economic interests and new political configurations. By the mid-1990s, the new economic interests—including private prison companies, prison guards' unions, and the suppliers of everything from bonds for new prison construction to Taser stun guns—were playing an important role in maintaining and sustaining the incarceration increase. The influence of economic interests that profit from high rates of incarceration grew at all levels of government, due in part to a "revolving door" that emerged between the corrections industry and the public sector. Another factor was the establishment of powerful, effective, and well-funded lobbying groups to represent the interests of the growing corrections sector. The private prison industry and other companies that benefit from large prison populations have expended substantial effort and resources in lobbying for more punitive laws and for fewer restrictions on the use of prison labor and private prisons (Elk and Sloan, 2011; Thompson, 2010, 2012; Gilmore, 2007; Hallinan, 2001; Herival and Wright, 2007; Gopnik, 2012; Abramsky, 2007). Many legislators and other public officials, especially in economically struggling rural areas, became strong advocates of prison and jail construction in the 1990s, seeing it as an important engine for economic development. The evidence suggests, however, that prisons generally have an insignificant, or sometimes negative, impact on the economic development of the rural communities where they are located (Whitfield, 2008).[24]

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[24]Residents of rural counties, which have been the primary sites for new prison construction since the 1980s, are no less likely to be unemployed than people living in counties without prisons, nor do they have higher per capita incomes. New jobs created by prisons tend to be filled by people living outside the county where the prison is built. Prisons also fail to generate significant linkages to the local economy because local businesses often are unable to provide the goods and services needed to operate penal facilities. Furthermore, new prison construction often necessitates costly public investments in infrastructure and services, such as roads, sewers, and courts, where the prisons are sited (Gilmore, 2007; King et al., 2003).

URBAN ECONOMIC DISTRESS

While the political developments discussed above were marked by specific events—for example, elections, campaigns, and policy developments—long-term structural changes in urban economies also formed part of the context for the growth in incarceration rates. In American cities, problems of violence, poverty, unemployment, and single parenthood came together in minority neighborhoods as a focus of debates on crime and social policy. The connections among crime, poverty, and criminal punishment have been a long-standing interest of social theorists. They have argued that the poor are punished most because their involvement in crime and life circumstances are seen as threatening to social order. (Rusche [1978] provides a classic statement of the connection between incarceration and unemployment; Garland [1991] reviews the literature on the political economy of punishment.) In this view, the scale and intensity of criminal punishment fluctuate with overall economic cycles.

The social and economic decline of American cities in the 1970s and 1980s is well documented. William Julius Wilson (1987) provides a classic account in *The Truly Disadvantaged*. In Wilson's view, the decline of manufacturing industry employment combined with the out-migration of many working- and middle-class families to the suburbs. These economic and demographic changes left behind pockets of severe and spatially concentrated poverty (see also Jargowsky, 1997). It was in these poor communities that contact with the criminal justice system and incarceration rates climbed to extraordinary levels, particularly among young minority men with little schooling. Rates of joblessness, births to single or unmarried parents, and violent crime all increased in poor inner-city neighborhoods. These social and economic trends unfolded in the broader context of deteriorating economic opportunities for men with low levels of education, especially those who had dropped out of high school (Goldin and Katz, 2008), and the decline of organized labor and the contraction of well-paying manufacturing and other jobs in urban areas for low-skilled workers.

Rising incarceration rates overall appear to be produced primarily by the increased imprisonment of uneducated young men, especially those lacking a college education (see Chapter 2). In the wake of the civil rights movement, improved educational and economic opportunities appeared to foreshadow a new era of prosperity for blacks in the 1960s. However, the decline of urban manufacturing undermined economic opportunities for those with no more than a high school education. Fundamental changes also were unfolding in urban labor markets as labor force participation declined among young, less educated black men (Smith and Welch, 1989; Offner and Holzer, 2002; Fairlie and Sundstrom, 1999). In a careful review of labor market data from the 1970s and 1980s, Bound and Freeman

(1992) found growing racial gaps in earnings and employment that extended from the mid-1970s to the end of the 1980s.

The connections among urban unemployment, crime, and incarceration have been found in ethnographic and quantitative studies. With fewer well-paying economic opportunities available, some young men in poor inner-city neighborhoods turned to drug dealing and other criminal activities as sources of income. Ethnographers have documented the proliferation of drug dealing and violence in high-unemployment urban neighborhoods in the 1980s and 1990s (Bourgois, 2002; Anderson, 1990; Levitt and Venkatesh, 2000; Black, 2009). Qualitative researchers also argue that in poor urban areas, drunkenness, domestic disturbances, and the purchase and consumption of illegal drugs are more likely to take place in public places, whereas in suburban and more affluent urban areas, these activities tend to transpire in private homes and other private spaces. Consequently, poor urban residents are more exposed to police scrutiny and are more likely to be arrested than people residing in the suburbs or in wealthier urban neighborhoods (Duneier, 1999, pp. 304-307; Anderson, 1990, pp. 193-198). Field observation is consistent with the finding of quantitative studies that, controlling for crime, incarceration rates increased with joblessness among African American men with no college education (Western, 2006; Western et al., 2006).

In short, poor inner-city neighborhoods were increasingly plagued by higher rates of unemployment among young men, crime, and other social problems. These same neighborhoods were the focal points of debates over crime and social policy, and the places where incarceration became pervasive.

CONCLUSION

The policies and practices that gave rise to unprecedented high rates of incarceration were the result of a variety of converging historical, social, economic, and political forces. Although debates over crime policy have a long history in the United States, these various forces converged in the 1960s, which served as an important historical turning point for prison policy. Crime rates also increased sharply beginning in the 1960s, with the national homicide rate nearly doubling between 1964 and 1974. The relationship between rising crime trends and increased incarceration rates unfolded within, and was very much affected by, the larger context in which debates about race, crime, and law and order were unfolding.

The powerful institutional, cultural, political, economic, and racial forces discussed in this chapter helped propel the United States down a more punitive path. Yet the unprecedented rise in incarceration rates in the United States over this period was not an inevitable outcome of these forces.

Rather, it was the result of the particular ways in which the political system chose to respond to the major postwar changes in U.S. society, particularly since the 1960s. Unlike many other Western countries, the United States responded to escalating crime rates by enacting highly punitive policies and laws and turning away from rehabilitation and reintegration. The broader context provides a set of important explanations for both the punitive path that many politicians, policy makers, and other public figures decided to pursue and, perhaps more important, why so many Americans were willing to follow.