

# Introduction to the American Political Process

## Class 22: The Carceral State

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# The First Face of the State

American political science overwhelmingly focuses on the liberal-democratic **first face of the state**:

- Interactions with the state are citizenship-**enforcing**
  - Political engagement → turnout
  - Benefits from government → turnout (Michener)
  - Representation → belonging
- Therefore, state-citizen interactions are assumed to be a normative good (the more the better)
- Conversely, democratic failures stem from a **lack** of state-citizen engagement:
  - Collective action problems
  - Differential responsiveness

# The Second Face of the State

*The activities of governing institutions and officials that exercise social control and encompass various modes of coercion, containment, repression, surveillance, regulation, predation, discipline, and violence.*

How does this alternative view of the state complicate the picture?  
What institutions are worth subjecting to this style of analysis?

- August 9, 2014: Fatal shooting of Michael Brown by police officer Darren Wilson in Ferguson, MO (a suburb of St. Louis)
- August 10, 2014: Unrest in Ferguson; militarized police response
  - 1 civilian death; 321 civilians arrested
- September 4, 2014: Department of Justice investigation opened into Ferguson PD
- November 24, 2014: Grand jury does not indict Wilson; DoJ concludes Wilson shot Brown in self-defense
- March 4, 2015: Ferguson Report released

# The Ferguson Report: Methodology

- Interviews with city officials: city manager, mayor, chief of police, finance director, half of FPD's sworn officers...
- 100 in-person days on site
- Ride-alongs with police officers
- 35,000 pages of police records and emails
- Statistical analysis on stops, searches, citations, arrests
- Observation of municipal court proceedings
- In-person and telephone interviews with community members

# The Ferguson Report: Findings

1. *Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs.*
  - *This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing*
  - *and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community.*
2. *Further, Ferguson's police and municipal court practices both reflect and exacerbate existing racial bias, including racial stereotypes.*
  - *Ferguson's own data establish clear racial disparities that adversely impact African Americans.*
  - *The evidence shows that discriminatory intent is part of the reason for these disparities.*
3. *Over time, Ferguson's police and municipal court practices have sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy among African Americans in particular.*

# 1. Revenue Generation through Law Enforcement

- Funding of essential services through fines and fees generated by law enforcement
  - Evaluations and promotions of the police driven by “productivity”: citations for violations of the municipal code
  - → incentives for stops without reasonable suspicion, arrests without probable cause (4th Amendment violation), and excessive use of force
- Municipal court uses its judicial authority to compel payment
  - 9,000 warrants on cases stemming from parking infractions, traffic tickets, or housing code violations (2013)
  - Failure to appear in court → fines and fees → incarceration; license suspension until all fines and fees paid in full; mounting debt; loss of housing and employment

## 2. Racial Bias in Policing

Compared to white residents, African Americans:

- are more than twice as likely to be searched during vehicle stops even after controlling for non-race variables, e.g. the reason the vehicle stop was initiated
- account for 85% of vehicle stops, 90% of citations, and 93% of arrests made by FPD officers, despite comprising only 67% of Ferguson's population
- are found in possession of contraband 26% less often
- are more likely to be cited and arrested following a stop regardless of why the stop was initiated
- are more likely to receive multiple citations during a single incident
- nearly 90% of documented force used by FPD officers was used against African Americans



## 2. Racial Bias in the Courts

Compared to white residents, African Americans:

- are 68% less likely than others to have their cases dismissed by the court
- are more likely to have their cases last longer and result in more required court encounters
- are at least 50% more likely to have their cases lead to an arrest warrant
- accounted for 92% of cases in which an arrest warrant was issued by the Ferguson Municipal Court in 2013

These differences cannot be explained by differential rates at which different racial groups violate the law.

### 3. Lack of Community Trust

Consequences of lack of trust?

- State's "legitimate monopoly on violence" no longer legitimate
- **System avoidance**
  - Reporting crime, cooperation with police (even 311 calls)
  - Take-up of other government services
  - Methodological note: how do we measure this phenomenon?
- Interactions with first face of the state (will return to this)

# The Power of Institutions

*Notwithstanding our findings about Ferguson's approach to law enforcement and the policing culture it creates, we found many Ferguson police officers and other City employees to be dedicated public servants striving each day to perform their duties lawfully and with respect for all members of the Ferguson community.*

**Incentives** created by legal institutions:

- Highest level: revenue maximization
- Medium level: performance and promotion
- Note that **federalism** creates space to make this possible

Returning to the first and second faces of the state, what do these approaches each have to say about Ferguson?

1. “First face of the state”/political science so far
  - Participation failure
  - Representation failure
  - Bureaucratic drift (principal-agent problem)
2. Second face of the state: supervision, surveillance, predation, control
  - Criminal justice encounters as political experiences of government: “That’s the *only* government I know”
3. Interaction between the two:
  - Criminal justice as site of political agency (Miller)
  - Mobilization/demobilization

# Does incarceration mobilize or demobilize voters?

- **Demobilize:** Ariel White's work exploiting random assignment of cases to judges: [see here](#)
- **Mobilize:** Findings from Stop-and-Frisk in NYC suggest *conditional* mobilization effects: when a candidate runs on the issue (Laniyonu 2019)

# How did we get here?

## The War on Poverty + The War on Crime

- Part of Lyndon Johnson's "Great Society" reforms
- Bipartisan support
- Instituted a regime of "broken windows policing," "zero-tolerance" policies, incarceration for minor offenses

# “Operation Sting”



*The undercover police officers and federal agents posing as Mafia “dons” gave themselves Italian names straight out of the then-recent Godfather films, including “Angelo Lasagna,” “Mike Franzino,” “Tony Bonano,” “Rico Rigatone,” and “Bohana LaFountaine.” None of the officers were of Italian descent, but they interspersed terms like “Ciao” and “Arrivederci” as they played these roles.*

# “Operation Sting”



*Sometimes the PFF Inc agents would provoke the criminals by nonchalantly mentioning the violent mafia crimes they had supposedly committed. Tony Bonano would say in the middle of a transaction: “We gotta stiff in the trunk. Whadda we do?” to which Rico Rigatone would reply: “Tossa him in the freeze.” The officers hoped this interplay would make the thieves more comfortable in sharing details about their own crimes.*

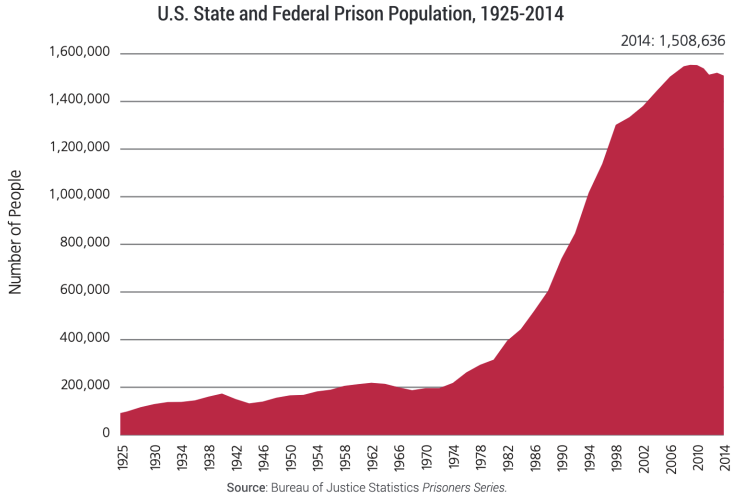


# “Operation Sting”

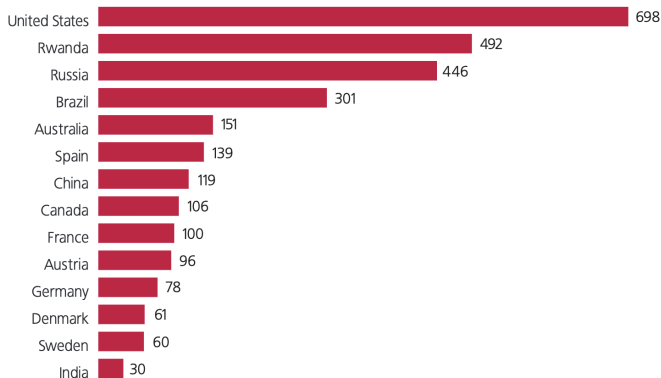


*While many constituents were comfortable with the operation's end result, they found the ethnic stereotypes the police department used to play Italian Mafia dons highly offensive. In an effort to restore the police department's public perception, Officer Lilly thanked "the Italian-Americans for the use of their mythology," and insisted the police did not act in an ethnically insensitive manner. "We meant no harm, except to the thieves," he assured the public.*

# Trends in U.S. Corrections



### International Rates of Incarceration per 100,000



Source: Walmsley, R. (2015). World Prison Brief. London: Institute for Criminal Policy Research. Available online: <http://www.prisonstudies.org/world-prison-brief>