

Race and American Political Development

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10 The origins of the carceral crisis: Racial order as “law and order” in postwar American politics

Naomi Murakawa

Tonight there is violence in our streets, corruption in our highest offices, aimlessness among our youth, anxiety among our elders and there is a virtual despair among the many who look beyond material success for the inner meaning of their lives . . . The growing menace in our country tonight, to personal safety, to life, to limb and property, in homes, in churches, on the playgrounds, and places of business, particularly in our great cities, is the mounting concern, or should be, of every thoughtful citizen in the United States. Security from domestic violence, no less than from foreign aggression, is the most elementary and fundamental purpose of any government, and a government that cannot fulfill that purpose is one that cannot long command the loyalty of its citizens. History shows us—demonstrates that nothing—nothing prepares the way for tyranny more than the failure of public officials to keep the streets from bullies and marauders.

Barry Goldwater, accepting the nomination for president at the
28th Republican National Convention, July 16, 1964

At the height of the civil rights era, after President Lyndon Johnson signed the 1964 Civil Rights Act and while thousands of blacks registered to vote during the 1964 Freedom Summer, the Republican presidential candidate Barry Goldwater campaigned using a particular indictment of the struggle for black freedom: black civil rights, he suggested, are linked to crime. Throughout his campaign speeches, Goldwater traced rising crime rates to black civil disobedience, black demands for equality under the law, and black reliance on the welfare state. Goldwater conflated civil disobedience with “violence in our streets” and black activists with “bullies and marauders,” and in so doing he contended—subtly but undeniably—that black freedom necessitates a strong “law and order” response.

In the years following Goldwater’s defeat, political leaders declared victory over Jim Crow while simultaneously passing more mandatory minimums, funding more prison construction, and reinstating the death penalty, all with disproportionate impact on black Americans. Incarceration rates have increased more than five-fold since Goldwater warned of the “growing menace” to “personal safety” in 1964, and during this same period the black-to-white

incarceration disparity has increased from roughly three-to-one to roughly seven-to-one. This combination of scale shift and disparity increase has brought seismic demographic ruptures for black Americans: nearly 10 percent of the black voting-age population is currently disenfranchised due to a felony conviction; there are more black men in jails and prisons than in colleges and universities; incarceration rates for black women are roughly six times those of their white counterparts; and nearly one million black children have a parent in jail or prison (Mumola 2000; Manza and Uggen 2006: 253; Western 2006: 15–16). If “political development” is considered a “durable shift” in the “exercise of control over persons or things that is designated and enforceable by the state” (Orren and Skowronek 2004: 123), then the modern growth of the carceral state—propelled in large part by the incarceration of black Americans—should be a prime area of study in American political development.

When and how did “law and order” become so conflated with racial order, so politically prominent, and so consequential to the development of the U.S. carceral state? Scholars mark the mid- and late 1960s as pivotal years for crime policy, with Goldwater identified as a kind of inaugural figure for the era of mass incarceration. Scholars emphasize different factors that made the 1960s ripe for “law and order” appeals, giving particular attention to the roles of crime, riots, public punitiveness, and racial backlash (for detailed literature review, see Gottschalk 2006: chapter 2).¹ Crime rates began rising in the early 1960s, urban riots accelerated through 1967 and 1968, and some scholars argue that consequently public opinion turned to favor longer prison sentences (Wilson 1975; Page and Shapiro 1992: 90–4; Marion 1994). Other scholars suggest that 1960s liberalism went too far too fast for white Americans, who became disillusioned with the excesses of the Great Society, black power, and black rioters. In this line of analysis, carceral state development is part of a broader racial backlash that retrenches black progress through race-coded appeals to welfare, school choice, and crime (Edsall and Edsall 1992; Beckett 1997; Flamm 2005). In the 1960s context of crime and racial tension, analysts credit Goldwater with “setting the scene for debate about crime” (Rosch 1985: 25), as Goldwater “constructed what would become the standard conservative formulation of law and order” (Flamm 2005: 33).²

This chapter represents an effort to retrace the trajectory of race-laden “law and order” political appeals. Conventional wisdom suggests that the 1960s ushered in a new era of racialized crime politics, but this chapter suggests that national leaders explicitly and routinely addressed black civil rights in criminological terms—and they did so nearly two decades before escalating crime rates, before widespread riots, and before the Goldwater presidential campaign of 1964. Since President Harry Truman’s creation of the Committee for Civil Rights in 1946, opponents and supporters of black civil rights linked “the Negro problem” with “the crime problem.” Specifically, civil rights opponents and southern Democrats in Congress argued that crime was a manifestation of black civil rights that had gone too far: civil rights breed crime, they claimed, by disrupting the naturally harmonious segregation of the races

and by validating black discretion on selective law-obedience. Civil rights proponents and many northern Democrats responded that street crime was evidence that black civil rights had not gone far enough: unfulfilled civil rights agendas breed crime, they claimed, because racial inequality sustains black deprivation and engenders black distrust of laws. While seemingly opposite interpretations, both explanations attribute crime to black civil rights, and both interpretations identify blacks as default suspects in the crime problem (Murakawa 2005).

The postwar transformation of racial order into “law and order” is more than just a back-story to current scholarship. Historicizing “law and order” actually challenges notions that 1964 “set the scene for debate about crime;” in a sense, deeper racial antecedents emerge when “law and order” itself is studied in a long-term political sequence rather than in a cross-sectional moment of all factors contemporaneous with the 1964 presidential campaign. That is, a snapshot of the Goldwater moment can seem like a perfect storm for tough on crime appeals: many white voters disapproved of the pace of civil rights reform, southern Democrats were disenchanted with their party, and, most importantly, crime rates were actually rising and riots were actually accelerating in frequency and severity. Instead of a snapshot of 1964, this chapter retraces how concerns for racial order were articulated as “law and order” over the entire postwar period, even before the perfect-storm conditions of increased crime and accelerated riots.

Conventional wisdom holds that the U.S. faced an actual crime problem in the 1960s that was infused with racial politics. This chapter suggests the opposite. The U.S. did not confront a crime problem that was then racialized; it confronted a race problem that was then criminalized. The battle to preserve Jim Crow in the 1940s and 1950s segued into the battle against crime in the mid-1960s. Section I of this chapter identifies early “law and order” political rhetoric as developed through resistance to anti-lynching legislation, school and neighborhood integration, and civil rights legislation in the years 1946 through 1963. Section II traces how “law and order” claims from black civil rights debates were then transplanted into crime debates in the years 1964 through 1968.

Jim Crow’s racial order maintains law and order, 1946–63

In the years immediately following World War II, at the same time that many whites came to believe that racism was an affront to American democracy (Myrdal 1944; Dudziak 1988), many whites also came to believe that racial integration was an affront to their safety. Even though crime rates were notably low and stable for more than a decade after the war, the frequency and meaning of interracial contact in “the street” was changing.³ Whites in the urban North complained of dangerous public parks, public schools, and public transportation; whites in the South cautioned that black civil rights would make the South

as chaotic as Chicago, Detroit, and New York. Postwar racial configurations—particularly the nexus of rising black activism, renewed federal attention to black civil rights, white violence against black veterans, and black urbanization alongside white suburbanization—led many white Americans to express racial anxiety in criminological terms.

In detailing the mobilization of “law and order” rhetoric from 1946 through 1963, this section sketches a timeline and a rhetorical trajectory for crime on the national agenda. During this period, “law and order” rhetoric is a subsidiary of the postwar struggle for black freedom, so major benchmarks proceed from President Truman’s creation of the Committee on Civil Rights in 1946, to *Brown v. Board of Education* in 1954, to the Civil Rights Act of 1957, to the sit-ins in 1960, to the March on Washington in 1963. Southern Democrats in Congress, as well as many whites in the South and the urban North, defended Jim Crow by suggesting that segregation maintains law and order while integration breeds crime; that black civil rights protesters are criminals.

To Secure These Rights through *Brown v. Board of Education*: segregation maintains law and order; integration breeds crime

At the end of World War II, black veterans returning home to the South faced public beatings and lynchings sometimes involving local police, and subsequent black protest made “race . . . an issue the federal government was unable to ignore” (Dudziak 1988: 77). In September of 1946, the newly formed National Emergency Committee Against Mob Violence met with President Harry Truman to call for federal intervention against lynching. After the meeting, President Truman established the Committee on Civil Rights to study racial violence and discrimination. The Committee’s 1947 report, *To Secure These Rights*, proposed federal antilynching protection, elimination of the poll tax, creation of a Fair Employment Protection Commission, and other legislation to strengthen federal civil rights.

Racial conflict—particularly white violence against black veterans—prompted the creation of Truman’s Committee on Civil Rights, and southern Democrats protested by offering their own interpretations of federalism, race, violence, and lawlessness. In the 1948 presidential campaign, southern Democrats protested President Truman’s civil rights advocacy by forming the States’ Rights Party. Southern Democrats in Congress mobilized familiar arguments: federal civil rights legislation violates states’ rights, duplicates protections already imparted to blacks, and threatens to destroy the salutary and natural social system of segregation (Caro 2002: 954–7). Southern Democrats also issued another, less commonly recognized set of arguments against civil rights legislation: segregation maintains law and order, while integration breeds crime.

Southern Democrats opposed Truman’s plan by sketching a picture of crime and disorder in the “integrated” urban North, juxtaposed against lawful and orderly living in the segregated South. This argument was nothing new: antebellum defenders of slavery presented the image of a peaceful South,

where whites were benevolent patriarchs who nurtured and disciplined blacks, maintaining a mutually beneficial racial order (Mendelberg 2001: 75). Following World War II, southern Democrats argued that race riots in Detroit, public-school disorders in New York, and crime in Washington, DC, were the inevitable injuries of integration. In contrast, they contended, "the social structure of the South is best for all concerned," yielding "less inter-racial crime and less racial friction than any section of the country" (Senator James Eastland (D-Mississippi), *Cong. Rec.* 1948: A2337; see also Representative William Norrell (D-Arkansas), *Cong. Rec.* 1948: A1571). Southern Democrats in Congress claimed to "understand the Negro;" antilynching laws were unnecessary because southern officers knew to be "more lenient on the Negro who violates the law" (Representative William Winstead (D-Mississippi), *Cong. Rec.* 1948: 1008).

Antilynching debates prompted an even more specific defense of segregation as order maintenance. Truman's Committee on Civil Rights proposed antilynching legislation wherein federal criminal law would allow imprisonment of lynch-mob participants and local police that failed to control them. Betraying their assumption that the lynching of a black man was a response to his actual raping of a white woman, southern Democrats suggested that the antilynching bill "ought to be called a bill to encourage rape" (Representative John Rankin (D-Mississippi), *Cong. Rec.* 1948: A4739). Southern Democrats suggested that Truman should show less concern for black men and more concern for "bringing about the conditions whereby the women of the Nation can walk without fear of attack and assault" (Representative Stephen Pace (D-Georgia), *Cong. Rec.* 1948: 1233). Of course, the political idea of the "black male rapist" has deep historical antecedents: opponents of Emancipation and Reconstruction frequently spoke of the hypersexual black male and his uncontrollable lust for white women (Oshinsky 1997: chapter 4). Following World War II, the political idea of the "black male rapist" held renewed currency because of challenges to Jim Crow, questions of whether white women would happily return home after their wartime jobs, and the lynchings of black veterans.

White citizens of the South similarly held that integration would simply make them easy prey for black criminals. Following the *Brown v. Board of Education* decision to overturn the "separate but equal" doctrine in 1954, southern segregationists formed the White Citizens' Council. Publications from the White Citizens' Councils stated that blacks possess genetically determined "criminal tendencies," and that "savages stalk corridors in northern 'blackboard jungles.'" The Mississippi Association of Citizens' Councils released a one-page flier entitled *Crime Report Reveals Menace of Integration*, which claimed to prove that blacks are innately more devious than whites (quoted in McMillen 1971: 186–7).

White citizens in the urban North also suspected that integration would increase black-on-white crime. Residential integration in Detroit, for example, prompted whites to form at least 192 neighborhood organizations between 1943 and 1965, with organizations variously called "protective associations"

or "homeowners' associations" (Sugrue 2005: 211). Neighborhood associations sought to maintain residential segregation in the name of protecting homes from devaluation and protecting families from black-on-white crime. One neighborhood association poster recruited members through references to gangsters and crimes of immorality: "Home Owners Can You Afford to . . . Have your children exposed to gangster operated skid row saloons? Pornographic [sic] pictures and literature? Gamblers and prostitution? You Face These Issues Now!" In a sense, race-mixing did bring more crime in the streets, but of whites against blacks, not blacks against whites, as blacks who moved into formerly all-white neighborhoods faced vandalism, arson, assault, and harassment instigated by white Detroiters. White violence against blacks breaking residential barriers was organized and involved thousands of whites, and most incidents followed neighborhood association meetings (Sugrue 1996: 217–33).

Montgomery bus boycotts through the march on Washington: black protesters are insolent criminals; federal civil rights legislation encourages black lawlessness

As black civil rights gained momentum, southern states deployed their criminal justice apparatus to combat black protesters as if they were criminals. During the Montgomery bus boycotts, initiated in December 1955 by Rosa Parks's arrest for breaking a segregation ordinance, Montgomery's mayor declared what he called a "get tough" policy. Montgomery police ticketed and arrested blacks driving in car pools; they arrested blacks waiting for rides on charges of vagrancy or hitchhiking; they arrested Dr. Martin Luther King, Jr. for driving five miles an hour faster than the speed limit (Barkan 1984).

A year after the bus boycotts, the Democratic Congress passed, and President Dwight Eisenhower, signed the Civil Rights Act of 1957—the first law to redress racial inequality since the Civil Rights Act of 1875. The enacted legislation established a national Commission on Civil Rights and a civil rights division at the Justice Department. In vocalizing opposition to the Civil Rights Act of 1957 and its failed previous version in 1956, southern Democrats continued to argue that integration made whites vulnerable to black criminality. This line of argument is spelled out explicitly by Representative Elijah Forrester (D-Georgia):

The truth is, that at the present time, where segregation has been abolished, such as public parks, restaurants, theaters, schools, and transportation, the Negro has virtually had the full use thereof. In the District of Columbia, the public parks have become of no utility whatever to the white race, for they enter at the risk of assaults upon their person or the robbery of their personal effects. This will be denied, but not successfully, for no matter how strenuously it is denied, it remains absolutely true. The District of Columbia, the guinea pig for the social

experiments, has now become a place that schoolchildren of this Nation cannot come into and walk the streets at night with safety. Unless the pendulum swings back before it is too late, I predict that in 10 years, the Nation's Capital will be unsafe for them in the daytime.

(*Cong. Rec.* 1956: 12946)

In this account, integration gives way to black domination of public places, which gives way to black assault and robbery of whites, which gives way to white retreat and an inability to safely walk the street. White fear of social equality between the races takes a decidedly spatial tone in these arguments, as does the phrase "crime in the streets." In 1865, southern whites complained that newly emancipated blacks shoved white people off the sidewalks. In the 1920s, southern opponents of antilynching bills warned that southern blacks would resume disrespectful street behavior if lynching became a criminal offense, and opponents stated that blacks shoving whites on the street was an everyday occurrence in the North (Rable 1985: 205).

Like White Citizens' Councils, many southern Democrats protested who the Civil Rights Act of 1957 offered "proof" of segregation's benefits by favorably comparing southern crime rates to northern crime rates. Representative Thomas Abernathy (D-Mississippi) reasoned that "race relations are much better in the South than in the North," and civil rights legislation will only "stir strife and discord among us" (*Cong. Rec.* 1956: 12939). Representative Abernathy highlighted crime control as a specific benefit of segregation, stating that "there is less crime among the Negroes of the South than among those in the North" (*Cong. Rec.* 1956: 12943; see also Representative Basil Whitener (D-North Carolina), *Cong. Rec.* 1957: 8658). In the same vein, Representative James Davis (D-Georgia) asserted that "racial violence between southern white people and southern Negroes is rare indeed;" in contrast, "racial animosity and racial violence is greater in your section than it is in mine" (*Cong. Rec.* 1956: 14154).

Few directly rebutted the charge that integration breeds crime. Senator Jacob Javits (R-New York), a supporter of the Civil Rights Act of 1957, characterized crime in the North and the South as the "penalty for a long number of years in which we have failed to bring up to parity the education, housing, and employment opportunities of the Negro members of all our communities" (*Cong. Rec.* 1959: 18384). Liberal Republicans and northern Democrats of later years would echo Senator Javits's logic: accepting the presumption of crime's black center, they would argue that black crime is a manifestation of structural, not volitional, failures (Scheingold 1984, 1991).

In addition to perpetuating the argument that integration breeds crime, southern Democrats also contended that the Civil Rights Act of 1957 would empower black organizations to defend black criminals under the guise of civil rights. Representative Basil Whitener (D-North Carolina) opposed the establishment of a Civil Rights Division of the Department of Justice on the grounds that it was simply an avenue for the exoneration of black criminals.

Representative Whitener stated that "there are many good law-abiding Negroes in this country," but "nevertheless the bulk of the crimes of violence are committed by Negroes." "Radical" organizations like the NAACP, "under the guise of protecting civil rights," run to "the assistance of Negro criminals and seeks to protect them from the punishment for the crimes they commit." In this line of thinking, the establishment of a Civil Rights Division would therefore "tie the hands of law-enforcement officers throughout the country, and would place law-abiding men, women, and children at the mercy of brutal, merciless, hardened criminals" (*Cong. Rec.* 1957: 8658).

In this argument, the Civil Rights Division is a special privilege for blacks, and as such it could become a vehicle for black organizations to suppress law enforcement and defend the worst of their race. This logic was not new to Congress: opponents of Reconstruction argued that efforts to redress racial inequality, such as the Fourteenth and Fifteenth Amendments and the Freedman's Bureau, were giving blacks undeserved and unfair privileges (Mendelberg 2001: 75). In this framework, efforts to redress racial inequality are nothing more than special privileges for blacks, and, in the case of a Civil Rights Division, such special privileges could lead to the dangerous exoneration of black criminals.

Integration-breeds-crime arguments were impotent in stopping the Civil Rights Act of 1957, but southern Democrats stuck to this logic in subsequent civil rights debates. The Civil Rights Act of 1960, passed by a Democratic Congress and signed by President Eisenhower, established criminal penalties for obstructing voter registration and voting. The enacted legislation was a modest effort to secure black voting rights, and it proffered little in the way of "promoting integration" per se, but southern Democrats still countered with warnings that the new civil rights legislation would bring crime waves because of increased race-mixing. In opposing the bill in 1959, Senator Strom Thurmond (R-South Carolina) argued that "political demands for integration of the races" would bring a "wave of terror, crime, and juvenile delinquency." As proof for this claim, Senator Thurmond pointed to "crime after crime in integrated New York" and other "integrated sections of the country" (*Cong. Rec.* 1959: 18382, 18385). Senator James Eastland (D-Mississippi) argued that "law enforcement is breaking down because of racial integration," and he advised northern politicians to address "the rape, the murder, the muggings, the crime on the streets of northern cities, rather than point their finger at the South, which is the most peaceful section of the United States" (*Cong. Rec.* 1960: 3982). Senator William Fulbright (D-Arkansas) stated that southern cities have seen an upsurge in strife "that grew out of the Supreme Court decision," and in integrated northern cities like Washington, DC "one does not feel safe to walk on any street" (*Cong. Rec.* 1960: 3982). Southern Democrats were quick to cite mainstream news sources that validated their claims, including a *U.S. News & World Report* article that claimed "terror on the streets is a growing problem in big American cities." The reason: "Police say racial frictions are closely related to the upsurge in crime. Trouble brews,

for example, when Negroes or Puerto Ricans move into neighborhoods once regarded as predominantly Irish or Italian" (*U.S. News & World Report*, September 14, 1959: 65).

Echoing their opposition to President Truman's antilynching proposal, Southern Democrats again suggested that black men raping white women was a consequence of the racial mixing encouraged by legislation like the Civil Rights Act of 1960. Senator Johnston (D-South Carolina) listed "three women, including a girl of 13 years of age," "the 60-year old wife of a Presbyterian minister," and "many other instances" of rape. According to Johnston, "a colored man instigated and is tied in with each of these cases;" the victim, presumably white, needs no racial specification (*Cong. Rec.* 1960, 106, pt. 3: 3983). Senator Eastland (D-Mississippi) stated that the culture and conditions of the integrated north mean that "a white woman is not safe on the streets of their cities or in their schools or within the walls of an apartment house" (*Cong. Rec.* 1960: 3984).

Southern Democrats were so insistent that civil rights generate crime that they proposed making the Civil Rights Commission responsible for collecting crime data. Following a recommendation from former President Herbert Hoover, in 1960 Senator Eastland (D-Mississippi) proposed a bill (H.R. 8315) requiring the recently established Civil Rights Commission to conduct a census of all criminal victimizations in the country. Specifically, this census would show "what races the offenders come from," with the intended effect of "stir[ring] the leaders of various racial groups to action" in disciplining their own. This task is rightly entrusted to the Civil Rights Commission, argued Senator Eastland, because the Commission serves no "useful purpose," and because there is no civil right more important than "the God-given right of all people to be secure in both their persons and property from the trespass of others."

Senator Eastland then asserted a central argument of this chapter: when national leaders attribute crime to black civil rights, then federal intervention in crime control logically follows. Senator Eastland explained: "If the multitude of bills proposing Federal legislation on so-called civil rights constitutes a legitimate exercise of power on the part of the Federal Government under the Constitution, certainly security of person should also be classified as one of the paramount Federal rights . . . If the Negro is entitled to equal social status, why does not he earn equality? Why is he responsible for most of the crimes in this country?" (*Cong. Rec.* 1960: 4020-2). In Senator Eastland's logic, if black civil rights are the legitimate exercise of federal power, then so too is control of black crime; if blacks assume full citizenship, then they must face full punishment for their crimes; if the federal government promotes black civil rights, then it must control the ensuing black criminological mess. Like Barry Goldwater, Senator Eastland issued a threatening prediction that black freedom would require harsher law and order. Senator Eastland and Barry Goldwater lost their immediate battles, but their rhetoric of racial order as "law and order" prevailed.

In the eyes of many segregationists, the rise of black civil disobedience in 1961 and 1962 only further reinforced the idea that black civil rights activists were disrespectful agitators and deliberate lawbreakers. The Woolworth's lunch counter sit-ins in February 1960 prompted student sit-ins in 54 cities in nine states, and Freedom Riders of 1961 penetrated the South to fight for full service in buses, terminal restaurants, and waiting rooms (McAdam 1982: chapter 7). At the state level, southern politicians deployed the criminal justice arsenal—criminal law, police, jail, and prison—against black activists engaged in nonviolent direct action and civil disobedience. State police arrested participants of all variety of sit-ins, marches, and demonstrations, and they also arrested known activists outside of any protest context (Barkan 1984). Arrests were made of grounds of criminal trespass, breach of the peace, and criminal mischief, to name just a few (Heyman 1965: 167-8).

In this context, southern Democrats opposed the civil rights bill in Congress with an argument that would persist with only mild variation over the coming decade: civil rights protest is lawbreaking, they argued, and therefore federal civil rights legislation rewards black lawlessness. In this calculus, black protest is a form of criminal extortion, and therefore civil rights legislation is misguided federal capitulation to extortion. Southern Democrats warned of the "growing tendency to force the passage of legislation" by "demonstrations, mob violence, and disrespect to peace officers," and now even "court orders and court decisions are being influenced by illegal demonstrations and surging mobs" (Representative William Jennings Bryan Dorn (D-South Carolina), *Cong. Rec.* 1963: 11804). Southern Democrats called black demonstrators "street mobs," and faulted them for making the streets unsafe, saying that "Negro demonstrators are flowing into the streets, rampaging as an unruly, unchecked mob" (Representative George Huddleston, Jr., D-Alabama, *Cong. Rec.* 1963, 109, pt. 9: A3740). Southern Democrats insisted that the "federal Government should never permit illegal demonstrations and marches upon this Capitol designed to coerce and force Congress to submit to mob rule and the law of the jungle" (Representative William Jennings Bryan Dorn (D-South Carolina), *Cong. Rec.* 1963: 11804).⁴ In an article often quoted by southern Democrats, conservative columnist David Lawrence of *U.S. News & World Report* suggested that civil rights legislation represents "the coercion of our legislative or executive process by street mobs" (1963: 104).

In arguing that integration breeds crime, southern Democrats blended criminological street crime—robbery, assault, stranger rape—with black people simply being in the streets unregulated by Jim Crow—using parks, schools, buses, and other public spaces as if they had equal right to them. In arguing that civil rights reward black lawlessness, southern Democrats conflated predatory, stranger street crime with politically-motivated, group-organized lawbreaking in the form of civil disobedience against unjust laws and traditions. This early conflation of black freedom with black crime calls into question the assertion that Barry Goldwater "constructed what would become the standard conservative formulation of law and order;" instead, Barry Goldwater

simply continued a dialogue put in play by southern Democrats nearly two decades earlier.

Reformulating the racial underpinnings of "law and order"

Early framings of "law and order" were born race-laden, with southern Democrats warning that "dangerous streets" follow from racial integration, black civil rights, and black activism. This section traces the evolution of street crime in congressional debates during the Johnson Administration, when crime hit the national agenda in its own right. The years from 1964 through 1968 deserve particular attention as years of critical firsts: the presidential election of 1964 was the first to feature crime as a central campaign issue; after 1964 national research commissions on crime and presidential messages on crime became commonplace for the first time; and from 1965 through 1968 Congress made its first forays into controlling everyday street crime, including the 1968 Omnibus and Safe Streets Act to begin distribution of vast federal monies to state law enforcement. These were foundational years for federal crime politics. For northern Democrats, this period of initial federal intervention marked a short but path-setting period of crime policy development, with pushes for equality-based and rehabilitative crime policy dovetailing with civil rights liberalization and the Great Society, all fortified with race-specific structural blame attribution. For Republicans and southern Democrats, pushes for law and order were fortified with race-specific volitional blame attribution set a decade ago. The black-rights-breed-crime argument had become more complex, more culturally than biologically grounded, but its essential logic remained, as if the same blame attribution had simply moved from congressional debates on civil rights to congressional debates on crime. While seeming to have opposite interpretations of the crime problem, both Democrats and Republicans issued race-specific blame attributions, connecting crime rates to the fate of black civil rights.

Three factors facilitated the categorization of crime as a matter of black equality during this foundational period. The first factor is that official statistics revealed an alarming increase in crime, and there was no consensus as to the cause; together, this meant that crime was a problem open to politically interested blame attribution. The total crime rate jumped 135 percent between 1964 and 1968, and in 1968 both violent and property crime rates were at their highest levels recorded to date by the FBI. There are many possible explanations for crime's sudden rise. One explanation is simply demographic: the enormous birth cohort of "baby-boomers" hit their teenage years in the mid-1960s, and generally the population aged 15 to 24 years commits 70 percent of all crimes. The baby-boom cohort as young adults elevated crime rates because of the sheer force of their numbers and the sheer age distinctiveness in predatory offending and victimization; conversely, crime's decline three decades later represents the youngest of the baby-boomer cohort ageing out of the most criminally active years (Blumstein 2000; Fox 2000). Another

explanation is simply methodological: sudden improvements in data collection exaggerated crime's increase as characterized by the *Uniform Crime Reports*. Scholars in the 1960s noted that crime data collection rather than crime itself changed significantly, with crime reporting enhanced by new centralization of complaint handling, new record automation, new 911 emergency calling, and a generally higher percentage of police and sheriff's offices reporting their crimes to the FBI (Biderman 1966: 151; Cronin et al. 1981: 8). Demographic and methodological explanations hold merit, but political blame attribution entails matching explanation not to empirical validity but to electoral and ideological interests; and, with alarming official crime rates, political leaders were well-positioned to do exactly that.

The second factor facilitating the categorization of crime as a matter of black equality was urban riots from 1965 through 1968. In 1965, riots in Watts killed 34, injured more than 800, motivated almost 4,000 arrests, and damaged roughly \$40 million worth of property. There were nearly 100 additional riots in 1966 and 1967, including riots in Detroit and Newark that matched the intensity of Watts. In 1968, the assassination of Dr. Martin Luther King, Jr. ignited riots in 175 cities. Riots eased the conflation of street crime with black frustration over equality. Few think of a riot as a traditional street crime, as a riot tends to be a time-bound group reaction to a public prompt. Despite dissimilarities, riots matched previously established markers of street crime: riots erupted on the streets, frightened people, and the rioters were predominantly black. Moreover, riots were not just incidentally black, but their triggers were specific to struggles for black equality, such as the assassination of a national black leader or police brutality against blacks. Police brutality against blacks sparked many of the urban riots, including the two major riots of 1967. In Newark, riots erupted after police beat and arrested a black taxi driver, and in Detroit, riots erupted after police raided a black "speakeasy." Public opinion on this matter divided sharply along racial lines, with more than two-thirds of black survey respondents identifying police brutality as the major contributor to riots, while only one in six white survey respondents held this opinion (*Congressional Quarterly Almanac* 1967: 796).

The third factor facilitating the categorization of crime as a matter of black equality is the rising principle of racial equality in the 1960s. By the mid-1960s, expressions of overt white superiority were largely frowned upon, treated as anachronistic and distasteful if not entirely untrue. Opinion polls reveal a profound transformation of white attitudes toward blacks from the 1940s through the 1960s. For example, when asked, "Do you think white students and black students should go to the same schools or separate schools," the portion of respondents answering "the same" was only 32 percent in 1942, but this portion jumped to 50 percent in 1956, 73 percent in 1968, and 90 percent in 1982 (Schuman et al. 1985). Perhaps some respondents silenced their "true beliefs" to voice "acceptable" answers to pollsters, but such behavior only underscores the influence of new social norms dictating the principle of racial equality. By the mid-1960s, black civil rights had won a fundamental

ideological battle in defeating overt doctrines of white superiority, and the principle of racial equality had become a genuine part of American political culture (Skrentny 2002: 65).

The ascendant principle of racial equality profoundly influenced electoral incentives in crime control—and in complicated fashion. For northern Democrats, the rising popularity of civil rights, as well as the greater enfranchisement of black voters, black migration northward, and heightened black support for the Democratic Party, all brought potential electoral benefits in categorizing crime as another manifestation of racial inequality. In 1964 and during the Johnson Administration, the Democratic Party was rapidly establishing itself as the party of black civil rights. As well-documented by Carmines and Stimson (1989), the issue of civil rights pushed the parties to align along racial lines, and 1964 marked a critical turning point. Before 1964, most Americans did not distinguish the parties in terms of civil rights; after 1964, most Americans identified the Democratic Party as the champion of civil rights and the Republican Party as the opponent of civil rights. In the national election of 1964, Republican presidential candidate Barry Goldwater ran against the Civil Rights Act of 1964; his candidacy marked the beginning of black abandonment of the party of Lincoln, and since that election African American voters have consistently supported Democratic candidates in presidential elections at rates of over 80 percent (Huckfeldt and Kohfeld 1989: 14–15; Frymer 1999: 87).

For Republicans, the principle of racial equality, as well as black defection from the Republican Party and growing white resentment toward the racial liberalism of the Democratic Party, added up to a complicated calculus about how to frame crime for electoral gain. Statements issued a mere decade ago—references to blacks as “lawless jungle dwellers” and claims that “forced race-mixing breeds crime”—were too overtly white supremacist for the new racial zeitgeist. At the same time, however, growing white disenchantment preserved the electoral incentive to call crime a problem of excessive racial liberalism. To negotiate this delicate racial terrain, Republicans began to deploy negative racial code words and images to increase their base of primarily white voters and to win over resentful white Democrats (Edsall and Edsall 1992; Frymer 1999: 87; Mendelberg 2001).

These three factors—rising crime, riots, and the new social norm of racial equality—facilitated the categorization of crime as a matter of black equality. But facilitation is not determination; political leaders could have grappled with crime in a number of ways. They could have highlighted methodological shifts in crime measurement; they could have emphasized age specificity and demographic transformations; they could have decoupled race from crime, talking about street crime only in terms of the “real” street crime of robbery, theft, and assault. As I will discuss below, however, members of Congress intensified racial blame attributions, with northern Democrats endorsing structural explanations for black crime, and Republicans and southern Democrats embracing volitional explanations for black crime.

President Lyndon Johnson and the Democratic-controlled Congress faced rising crime rates, urban riots, and Republican criticisms that Democratic leniency toward crime and civil rights activism foments lawlessness. Despite these challenges, Democrats managed to hold true to their 1964 Democratic platform vow of combating crime by seeking to “eliminate its economic and social causes.” From 1964 through 1967, the unified Democratic government passed crime legislation oriented toward equality, rehabilitation, and alternatives to incarceration. Democrats established legal counsel for poor federal defendants with the Criminal Justice Act of 1964; they established “halfway houses” for prisoner re-entry with the Prisoner Rehabilitation Act of 1965; they created civil commitment for drug addicts as an alternative to incarceration with the Narcotic Rehabilitation Act of 1966; they made bail procedures easier with the Bail Reform Act of 1966; they funded state after-school youth programs with the Juvenile Delinquency Prevention and Control Act of 1968; and they established serious gun restrictions with the Federal Gun Control Act of 1968. In short, in the four years before passage of the massive Omnibus Crime Control and Safe Streets Act of 1968, Democrats were remarkably successful in casting crime policy in rehabilitative, equality-oriented terms. During this same period, the Warren Court also bolstered the rights of criminal defendants, particularly poor criminal defendants. In 1963, the Supreme Court held in *Gideon v. Wainwright* that poor state defendants were entitled to state-provided legal counsel for all felony offenses. In 1964, the Supreme Court held in *Escobedo v. Illinois* that police must inform suspects of the right to remain silent and the right to consult an attorney before answering questions. In 1966, the Supreme Court reaffirmed rights of the accused with *Miranda v. Arizona*, which provided guidelines for carrying out *Escobedo*.

In total, the first major federal initiatives did not begin with a punitive bang. Instead, Johnson and the Democratic-controlled Congress opened the possibility of orienting federal crime control away from prison-centered policy. Central to this approach was the move to think of crime as the problem of a broad range of political institutions; crime was not just a failing of criminal justice administration, but it was also a failing of agencies of social welfare, employment, and housing. This reorienting of crime control developed alongside the federal government’s heyday of civil rights liberalization. Pressure from the civil rights movement, Kennedy’s death, and fears of American credibility in the communist world all pushed the Democratic-controlled government to pass significant civil rights legislation during the Johnson Administration, most notably the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968 (Frymer 1999: 99).

While some scholars suggest that only Republicans racialized crime to win disgruntled white voters (Friedman 1993: 274–5), northern Democrats also proffered race-specific blame attributions. Race was central to Democratic structural blame attribution, as northern Democrats claimed that white racism and blocked economic opportunities generate crime. In explaining crime through the lens of black equality, northern Democrats incorporated crime

policy in their broader ideological and electoral commitments to civil rights liberalization and the Great Society.

In contrast to Republicans and southern Democrats, northern Democrats argued that crime was an indication that civil rights had not gone far enough. For Johnson, crime reduction was inextricably linked to the promotion of civil rights and antipoverty programs. In criticizing Barry Goldwater, Johnson said that "there is something mighty wrong when a candidate for the highest office bemoans violence in the streets but votes against the War on Poverty, votes against the Civil Rights Act, and votes against major educational bills that come before him as a legislator" (Johnson 1964: 1371). For northern Democrats, the solution to crime was "compassion for those warped by the discrimination and bigotry of the past" (Representative James Ottara (D-California), *Cong. Rec.* 1967: 19960). In opposition to one of the more than 90 bills of the 90th Congress that criminalized "riot-inciting," Representative Emanuel Celler (D-New York) argued that such punitive measures were "futile" because they are "neither preventative nor curative," failing to address the root cause, which is "the discontent of the Negro, his disenchantment as to promises made but not fulfilled, the dreary, slow pace by which he achieves equality" (*Cong. Rec.* 1967: 19352). According to Celler, black leaders "ask for better housing" and "we offer them jail;" black leaders "ask for better facilities for education" and we "read them a riot act;" black leaders ask for more employment" and we give them jobs "in prison garb" (*Cong. Rec.* 1967, 131, pt. 15: 19352). Adherents to this view even sympathized with black criticisms of the police, characterizing the police as a "powerful instrument of the status quo" that has no "legitimacy in the ghetto" (Representative William Ryan (D-New York), *Cong. Rec.* 1967: 21102).

Race's centrality to the structural explanations was most clearly articulated in Johnson-supported research commissions on crime. Johnson's prominent national research commissions preached a new-fangled, social scientific approach to addressing the "root causes" of crime. National research commissions recommended wide-ranging policies for aggressive federal intervention in crime control, but they attributed crime to the same underlying cause: inequality and deprivation rooted in white racism. The National Advisory Commission on Civil Disorders—known as the Kerner Commission after its chair, Otto Kerner—generally fingered white racism as the underlying cause of riots. Identifying the problem as "segregation and poverty" that have created in the "racial ghetto a destructive environment totally unknown to most white Americans," the Kerner Commission advocated a solution of closing "the gap between promise and performance" (National Advisory Commission on Civil Disorders 1968). President Johnson's Commission on Law Enforcement and the Administration of Justice issued a similar punchline. The Commission's central claim was that "widespread crime implies a widespread failure by society as a whole," and it therefore advocated a crime reduction plan "to eliminate slums and ghettos, to improve education, to provide jobs." Even though crime was on the rise for all racial groups, northern Democrats kept their focus on

black crime, thereby linking their agendas on crime, civil rights, and the Great Society.

Against this progressive moment of crime policy, southern Democrats intensified their race-specific opposition to equality-based crime control, and Republicans followed suit. Republicans and southern Democrats issued two main arguments against structurally oriented crime policies, all in terms specific to blacks. The first argument, carried over from earlier debates on civil rights legislation, is that civil rights reward black lawlessness: civil rights validate selective lawbreaking, raise expectations, and keep the federal government in a position of having to grant more rights for fear of greater crime and lawlessness. The second argument is that efforts to reduce structural inequality—civil rights, antipoverty programs, and the Great Society—are criminogenic: such efforts promote crime by eroding individual work ethics, rewarding laziness, and blurring the distinction between what is earned and what is taken. These arguments are worth describing in some detail, as Republicans would preserve these arguments through the turn of the millennium, maintaining their core logic while minimizing their racial roots.

The first argument, that civil rights reward black lawlessness, mutated little from its earlier form issued in debates over civil rights legislation in the late 1950s and early 1960s. In debates over the Omnibus Crime Control and Safe Streets Act of 1968 and its failed 1967 antecedent bill of the same name, southern Democrats described the dangers of selective law-obedience in terms specific to the dangers of black discretion and collective action. Civil rights leaders "have the arrogance to place themselves above standards of civilized society and to openly defy established principles of law and order" (Representative Roy Taylor, D-North Carolina, *Cong. Rec.* 1967, 113, pt. 15: 19352). Similarly, Representative William Colmer (D-Mississippi) blamed "leaders of SNCC and other similar organizations" for "preaching 'black power' and inciting riots" (*Cong. Rec.* 1967: 19348). Representative Charles Bennett (D-Florida) indicted "individuals such as Stokeley Carmichael" who "play upon the fears and frustrations of an impressionable minority of Negro youths to vigorously encourage terrorism and violence" (*Cong. Rec.* 1967: 19351).

In addition to encouraging selective law-obedience, Republicans and southern Democrats argued that civil rights activism generates crime through the additional mechanism of the infinite escalation of rising expectations. In one particularly stark articulation of this causal claim, Representative O.C. Fisher (D-Texas) presented recent history this way:

America is plagued today with insurrections, murder, arson, looting, and violence on a scale such as might be expected to occur in darkest Africa . . . The simple undeniable fact is that the White House and the Congress, through three or four administrations, must bear a major portion of the blame for the demonstrations and riots which have rocked this nation . . . Congress enacted a major civil rights bill on May 6, 1960. The measure

was ballyhooed at the time as the ultimate answer to what the politicians claimed was America's long-neglected obligation to the Negro race. What happened? Instead of satisfying the Negroes it served to whet their appetites . . . This business of passing special laws for Negroes—grand and glorious laws—amid drum beats and false utopian promises of the new life is nothing short of a cruel hoax.

(*Cong. Rec.* 1967: 21546)

Instead of this cruel hoax, Fisher argued that blacks would be better served by fostering "friendly relationships on the local level with prospective employers, by convincing them of one's honesty and good faith and willingness to work and produce" (21546). Here, crime, demonstrations, and riots all merge as products of excessive civil rights. Government overindulgence makes blacks misplace their efforts in battles to win political justice, distracting them from the more laudable, realistic efforts of proving honesty and loyalty to potential (assumedly white) employers.

Representative Watkins Abbitt (D-Virginia) traced the development of lawlessness as a lineage from civil rights leaders, to followers who want something for nothing, to government officials who coddle criminals:

In my opinion, much of the lawlessness we have in America today was brought about by the attitude of many of our national leaders, civil rights officials, and others who have encouraged lawlessness; have encouraged certain elements of our society that they have the right to take what they want and desire regardless of the effect upon others. Then certain elements of the judiciary moved in. These criminals were coddled, treated like innocent babes, and given to understand that they were immune from prosecution.

(*Cong. Rec.* 1967: 21197)

Since 1964, Republicans have followed southern Democrats in arguing that civil rights reward black lawlessness. The Republican platform of 1964 criticized the Kennedy Administration for "exploit[ing] interracial tensions [with] extravagant campaign promises," thereby "encouraging disorderly and lawless elements" (Republican Party Platform 1964). With the successful passage of civil rights legislation and structurally oriented crime policy, Republicans intensified this same racialized blame attribution. According to the Republican critique, the Johnson Administration had "inundated" Congress with "a never-ending stream of radical social legislation designed to promote educational and residential racial balance," and Johnson's effort to control crime after liberalizing civil rights was analogous to "locking the barn door after the horse had gotten out" (Representative Paul Fino, R-New York, *Cong. Rec.* 1967, 131, pt. 16: 21198). Johnson and northern Democrats preferred "social reform" rather than "preventing crime," and their "philosophy for dealing with our racial and urban problem have, in effect, appealed only to the weaknesses

of man" rather than "individual responsibility" (Representative Don Clausen, R-California, *Cong. Rec.* 1967, 131, pt. 16: 21204).

Black selective law obedience, Republicans argued, has implications for larger trends in crime control, because "Martin Luther King, Stokely Carmichael, and Rap Brown have developed a philosophy that the Negro is justified in taking to the streets to redress his grievances," and this has pressed misguided liberals to "push further and further toward lawlessness" (Representative John Ashbrook (R-Ohio), *Cong. Rec.* 1967: 19961). In this same vein, several Republicans submitted to the *Congressional Record* editorials from George S. Schuyler, described in the record as "a Negro conservative." Like so many white Republicans and Southern Democrats in Congress, Schuyler contended that "Negro leadership itself . . . must share much of the blame for the smoking cities, the vandalism and the armed attacks by some young Negroes on the forces of law and order." Lawbreaking could not be attributed to poverty, discrimination, and cultural deprivation, Schuyler argued, because violence began with "the campaign of agitation and incitement by Negro activists" (from Schuyler editorial submitted by William Steiger (R-Wisconsin), *Cong. Rec.* 1967: 23159; also see Schuyler editorials with the same thesis as submitted by John Saylor (R-Pennsylvania), *Cong. Rec.* 1967: 23159).

Representative John Ashbrook (R-Ohio) blamed crime on indulgent government officials, elite sociologists, and, not least of all, black civil rights leaders:

A series of liberal court decisions hampering law enforcement, rewarding rioters rather than punishing them, sociological gobbledygook which gives a rationale for plunder and lawlessness, lax law enforcement by politically motivated public officials who are overly solicitous about the Negro vote, and a supine Congress which refuses to act have combined to make rioting a way of life for a small minority of city Negroes.

(*Cong. Rec.* 1967: 19961)

The second argument against structurally oriented policies, issued by Republicans and southern Democrats alike, is that they are criminogenic. From this perspective, civil rights, antipoverty programs, and the Great Society generate crime by eroding the work ethic and fostering black laziness. Representative Clarence Miller (R-Ohio) declared that "we do not need new laws" or "more welfare and assistance programs" to reduce crime; instead, "we need to reevaluate the give-away programs that have lulled a downtrodden element into the belief that society owes them a living" (*Cong. Rec.* 1967: 20037). Representative John Saylor (R-Pennsylvania) predicted that riots would end when "arsonists and looters are treated as the criminals they are. The administration may be able to buy time through premiums and promises, but there will never come a time when those who profit from the uprisings will be entirely satisfied with their booty" (*Cong. Rec.* 1967: 23158). This argument is not necessarily black-specific, but Republicans generally made it

so. Representative William Steiger (R-Wisconsin) deduced that blacks who riot must be welfare dependent, because the "Negro who has had to surmount unusual obstacles in his quest for better living would least of all want to surrender his possessions to total destruction" (*Cong. Rec.* 1967: 23158). Representative John Rarick (D-Louisiana) simply declared: "the boycotts, riots, and violence never would have occurred without the war on poverty" (*Cong. Rec.* 1967: 13394).

Just as the programmatic agenda of the Great Society faced indictment, the actual workers in antipoverty programs faced charges of "stirring up" blacks. Many in Congress believed that antipoverty workers, notably members of the Office of Economic Opportunity, incited riots. "In Newark . . . antipoverty workers fomented the race riots of last summer . . . poverty money was used to rent vehicles and sound equipment which were used to agitating during the riots" (Representative Harold Collier, R-Illinois, *Cong. Rec.* 1967: 36163). Many members of Congress noted in outrage that antipoverty workers in Newark, Memphis, Chicago, Pittsburgh, and Nashville were "black militants" and "young black power advocates" who encourage violence and "teach Negro children to hate whites" (*Cong. Rec.* 1967: 36163). In these blame attributions, the agents and programs of civil rights liberalization are at fault: over-zealous civil rights activists, over-generous programs for racial and social equality, and excessive black freedom manifest as normlessness thereby eroding respect for law.

Conclusion

While many scholars contend that national leaders began addressing "law and order" because of the sharp escalation of crime or white disillusionment with civil rights in the 1960s, this chapter identifies how "law and order" rhetoric developed in tandem with the struggle for black civil rights in the postwar period. In the years before significant crime escalation, opponents of civil rights liberalization protested in criminological terms, arguing that integration breeds crime and civil rights reward black lawlessness. The persistent opposition to civil rights in the name of impending criminological threat suggests that there was no sudden racial backlash through crime control; the "backlash" metaphor may be misleading to the extent that it implies discontinuity between a great stride forward and a sudden illiberal aftermath (Kryder and Micky 2007). This account ultimately resonates with Nikhil Singh's (2004: 8) analysis that "the notion of a backlash against the excesses of black radicalism willfully ignores historically entrenched opposition to even the most moderate civil rights reforms throughout the white South and much of the urban North across the entire post-World War II period."

The development of "law and order" explored in this chapter illuminates a crucial but poorly understood aspect of the U.S. carceral state: the alarming mass incarceration of black Americans is not just a matter of racial peaks in offending, racial profiling in policing, or racial animus in sentencing. In

addition to these forces, the evolution of racial politics at large shapes the development of the carceral state. In the years following World War II, threats to Jim Crow's racial order prompted demands for "law and order," even when crime rates were low and stable. Race set the agenda for "law and order," and the consequences for rhetoric and policy are profound. With blame for crumbling "law and order" conflated with black freedom, the regulation of black people through a growing carceral state becomes a seemingly normal state response.

Notes

- 1 Explanations for the rise of the carceral state are too complex to review here; my major point is that varying accounts collectively identify the mid-1960s as foundational years for law and order politics. Marie Gottschalk (2006: 2) concludes that the half-dozen major explanations—escalating crime, an increasingly punitive public, the war on drugs, the prison-industrial complex, changes in American political culture, and changes in electoral configurations—all "concentrate on developments since the 1960s."
- 2 There are, of course, important exceptions to the dominant trend of dating carceral state development to the mid-1960s. Marie Gottschalk (2006) suggests that law and order themes permeate American political development, and her central argument addresses why carceral state development faced so little opposition from liberal interest groups; her work does not focus on the connections between racial order and law and order.
- 3 During the prosperous decade following World War II, from 1946 to 1956, the total crime rate averaged 1,480 crimes per 100,000 population. From 1957 to 1963, as southern Democrats grew more vociferous in harnessing "rising crime" to black civil rights, the total crime rate *fell* to an average of only 1,200 crimes per 100,000 population. Southern Democrats who lamented "rising crime" in the early 1960s did not exactly lie: crime rose slightly in each year from 1960 to 1963, but only after hitting a record low in 1959, and the crime rate in 1963 had not rebounded to the postwar average.
- 4 It was not uncommon for members of Congress to classify blacks as recent descendents of jungle dwellers when debating civil rights legislation. Speaking against the Civil Rights Bill of 1956, Representative William Colmer (D-Mississippi) declared that "it is impossible by legislative enactment or judicial decree to place overnight a race of people, who until a few generations ago were unenlightened human beings, running wild in the jungles of Africa, on an equal plane with another race of people who for thousands of years have enjoyed the benefits of civilization, education, culture, and Christianity" (*Cong. Rec.* 1956: 12917).

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