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# The Transformation of America's Penal Order: A Historicized Political Sociology of Punishment<sup>1</sup>

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Comparative historical methods are used to explain the transformation of the U.S. penal order in the second half of the 20th century. The analysis of multiple state-level case studies and national-level narratives suggests that this transformation has three distinct, but interconnected, historical periods and reveals that the complex interaction between national and state-level politics and policy helps explain the growth in imprisonment between 1970 and 2001. Specifically, over time, national political competition, federal crime control policy, and federal court decisions helped create new state-level political innovation and special interest groups that compelled lawmakers to increasingly define the crime problem as a lack of punishment and to respond by putting more people in prison for longer periods of time. In turn, state-level developments facilitated increasingly radical crime control politics and policies at the national level that reflected historical traditions found in Sun Belt states.

## INTRODUCTION

The United States constitutes less than 5% of the world's population but incarcerates more than 20% of the world's prisoners. Yet more than the

<sup>1</sup>The authors' names are in alphabetical order; each author contributed equally to this collaboration. We thank Kitty Calavita, David Jacobs, Joshua Page, and the *AJS* reviewers for their encouraging and helpful comments. We also thank Joachim Savelsberg, Philip Goodman, and Mona Lynch for participating in engaging panels at the Law and

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sheer number of people behind bars, the emergence of mass incarceration in the United States illustrates the interplay of unique American political structures with fundamental shifts in political influence across the American states in the last half of the 20th century. As a result, politicians have increasingly adopted “tough-on-crime” rhetoric, lawmakers have repeatedly enacted harsh criminal sanctions, and courtrooms across the country have sentenced more and more offenders to prison. Between 1977 and 2000, every state’s incarceration rate more than doubled, with an average increase of 285% (Harrison 2011). By 2008, an astounding one in every 100 Americans was in jail or prison, including one in every 15 African-American adult men (Pew Center on the States 2010)—making the criminal justice system a prime mechanism in the reproduction of racial and class inequality. Penal ideology and crime-control strategies, such as “zero tolerance,” have suffused other social institutions, including family, education, and work; crime, itself, has become a central metaphor for state governance (Simon 2007). In light of these developments, sociologists from diverse subfields have increasingly factored mass incarceration into their inquiries on inequality, race, social provision, political participation, survey methods, and more (Pager 2003; Haney 2004; Pettit and Western 2004; Manza and Uggen 2006; Western 2006; Pettit 2009; Saperstein and Penner 2010).

As a relatively new, unique, and seemingly durable institution, mass incarceration (and its attending attributes) should be understood as “an important accomplishment” or something to be explained (Clemens 2005). Yet a satisfactory explanation must account for one of the central paradoxes of mass incarceration in the United States. Namely, if incarceration rates are first and foremost the result of decisions at the local level (arrests, prosecutions, and sentencing) and state level (sentencing policy, prison capacity), how is it that imprisonment grew in every state during roughly the same time period? The national character of the punitive turn is all the more puzzling given the diversity of regional and state histories, cultures, and political ideologies (Greenberg and West 2001).

Recent scholarship proposes several theoretical frameworks for understanding the punitive turn in the United States. Structural explanations emphasize how fundamental socioeconomic change in the late 20th century and attendant increases in crime produced public anxiety that caused a dramatic shift in society’s approach to crime control (e.g., Garland 2001a; Wacquant 2011). Political accounts, meanwhile, contend that politicians, aided by the media, created and exploited crime as a proxy for a more ex-

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PLICIT politics of race (e.g., Jacobs and Helms 1996; Beckett 1997). Relatedly, institutional explanations posit that the nature of the political system and the policy-making process in the United States create incentives for tough-on-crime politics and policy (e.g., Zimring, Hawkins, and Kamin 2001; Miller 2008). All of these accounts have been complicated by new state-level case studies that point to state-level political and cultural dynamics in facilitating the punitive turn (e.g., Barker 2009; Lynch 2010). Yet none of these accounts, on their own, sufficiently addresses both the national and state-level character of changes to punishment over the second half of the 20th century (but see Lynch [2011] and Page [2012] for recent attempts).

Our aim is to develop a “new political sociology of punishment” that can explain how states’ diverse backgrounds and paths interacted with national-level politics and American political institutions to create broad consistent patterns across states (Jacobs and Jackson 2010). Our second aim is therefore to specify the mechanisms of the federal-state interaction that has produced consistency but that, at the same time, allows for variation in punishment at the state and regional levels over time. And third, we wish to historicize the punitive turn as a transformation over three distinct but interrelated periods, thereby showing how over time this federal-state interaction created a specific, and decidedly punitive, penal order.

To do this we engage in original comparative historical analysis of multiple state-level case studies and national-level research, including new research by each of the coauthors on three states. Our analytic approach is influenced by historical institutional analyses that track the empirical reality of gradual institutional change (Clemens 2007). To incorporate “historical contingency, multiple and mutable patterns of causality, and the causal importance of temporality itself,” we utilize an inductive periodization strategy on a comparison of state-level narratives of changes to politics and punishment (Haydu 1998, p. 349). Periodization helps highlight how mass incarceration’s rise was not a historical inevitability, but a developmental process shaped by specific actors’ choices in particular historical conditions.

Our analysis demonstrates that broad changes in the socioeconomic structure and balance of political power nationally gave rise to national and state-level developments that interacted in complex and multidirectional ways. Specifically, we find that over time national political competition, federal crime control policy, and federal court decisions helped to create state-level political innovation and special interest groups that pushed lawmakers to increasingly define the crime problem as a lack of punishment and to choose policy solutions that put more people in prison for longer periods of time. In turn, state-level developments created new opportunities and resources for national and state politicians—with important consequences for changes to the approach to crime control. Importantly, our analysis privileges certain

Sun Belt states, or those states roughly stretching across the southern United States from Virginia on the Atlantic seaboard to California, because of their growing influence in national politics.<sup>2</sup> We argue that the new dominance of the Sun Belt in the national political scene produced national politics and policies that reflected the political and penal traditions of those states in ways that expanded incarceration and changed fundamental notions about the use and purpose of prison (see also Lynch 2010). Following Page's (2011) use of Bourdieu's (1987) field theory, we further suggest that the unique merging of the penal and political field in the U.S. context helps to explain why politicians use criminal sanctions to accumulate political power and how this produced an extreme form of crime policy in the late 20th-century United States.

#### TOWARD A NEW UNDERSTANDING OF THE U.S. PUNITIVE TURN

Most accounts of the punitive turn in the United States begin in the post-Civil Rights era when incarceration rates began to rise from a relatively stable base of approximately 100 inmates per 100,000 (for exceptions, see Gottschalk 2006; Perkinson 2010). According to the dominant historiography, penal sanctioning before 1970 was marked by a consensus that government agencies could and should reform individual offenders (Garland 1985; Zimring and Hawkins 1995). In this view, social work and criminal justice professionals implemented an agreed-upon set of practices, including probation supervision, indeterminate sentencing, parole release, and individualized assessment and treatment (Simon 1993). New research, however, challenges this view, demonstrating extreme regionalization in pre-1970 penal orders, with penalty in southern and southwestern states better characterized by haphazard, cheap, mean, and racialized punishment (Lynch 2010; Perkinson 2010; Miller 2012).

Despite these important caveats, it is undeniable that in the last quarter of the 20th century, *the penal order*, or the constellation of ideologies, actors, and institutions that produce and impose the dominant mode of criminal sanctioning in the United States, underwent a dramatic transformation.<sup>3</sup> Scholars have variously labeled the new penal order "the new

<sup>2</sup> While the Sun Belt includes diverse regional and state political cultures, with some choosing to reference the old or South Sun Belt (e.g., North Carolina and Florida) and the new or West Sun Belt (e.g., Arizona and New Mexico), we refer to Florida, Texas, Arizona, and California as Sun Belt states. Additionally, we look at two western states, Oregon and Washington, one midwestern state, Minnesota, and one northeastern state, New York.

<sup>3</sup> Our definition of penal order draws on both Garland's (1985) definition of penality and Page's (2011) definition of penal field. Garland (1985) defines penality as the discourses,

penology" (Feeley and Simon 1992), "mass imprisonment" (Garland 2001*b*), a "culture of control" (Garland 2001*a*), "governing through crime" (Simon 2007), the "new Jim Crow" (Alexander 2010), the "penal-assistential complex" (Wacquant 2009*b*), or "hyperincarceration" (Wacquant 2010). Yet they all agree that the new order is characterized by a set of ideas, including that the purpose of prison is incapacitation and retribution, that criminals are "other" and not worthy of redemption, and that being labeled soft on crime is the ultimate political liability (or conversely that tough-on-crime credentials are a political necessity). It contains a specific "penal field" where penal policies are shaped by politicians, law enforcement, and victims' organizations rather than by judges, social workers, criminologists, or community organizations (Simon 2007; Miller 2008; Page 2011). And it includes penal policies with one primary goal: to incarcerate or "supervise" masses of criminal offenders for long periods of time. As a result, the new penal order is distinguished by uniquely high and racially disproportionate incarceration rates (the average state-level incarceration rate in 2000 was 432 per 100,000 state residents) and an expansive correctional supervision apparatus (1 in 32 U.S. residents in 2000; Beck and Harrison 2001; Bureau of Justice Statistics 2001).

The current penal order in the United States is not without variation (Mathews 2005), contradictions (Garland 2001*a*), and alternative rationales for criminal sanctioning (Goodman 2012). In fact, each state in the United States has distinct criminal laws and procedures and criminal justice policies that result in varying levels of incarceration and different patterns of growth.<sup>4</sup> Although the decentralization of penal policy should in theory moderate the extreme values of individual states, the overwhelming trend between 1980 and 2007 is sustained high rates of incarceration growth, with no state's incarceration rate increasing less than 150% and the vast majority increasing between 200% and 600% (Zimring 2010, p. 1235). The taken-for-granted nature of the idea that all criminals should be incapacitated or supervised for as long as possible, regardless of cost, became even clearer after 9/11, when terrorism and national security supplanted crime as a governing rationale (Feeley 2003). By 2003, discourse about criminal sanctioning for ordinary criminals had declined to a murmur, yet efforts to scale

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institutions, and practices that make up criminal law, criminal justice, and penal sanctioning. Following Bourdieu and Wacquant (1992), Page (2011) defines penal field as the social space in which agents struggle to accumulate and employ the legitimate authority to determine penal policy and priorities and the rhetoric, signs, and symbols that they use. Penal order encompasses the penal field (actors and their positions and prevailing doxa) and the policies and practices that they produce (see also Page 2012).

<sup>4</sup>Between 1970 and 2000, incarceration rates grew between 150% (Maine) to 900% (Hawaii). By 2000, Maine and Minnesota had the lowest incarceration rates (128 per 100,000 residents—on par with many European nations), while Louisiana and Texas had the highest (801 and 730 per 100,000 residents, respectively; Beck and Harrison 2001).

back previous measures were quietly defeated.<sup>5</sup> Even recent reforms in more lenient directions are being sold as economic imperatives, not fundamental reconsiderations of dominant penal ideology (for recent developments, see Porter [2011]).

The existence of a unique contemporary penal order in the United States is especially clear when juxtaposed to comparable Western democracies, whose average incarceration rate varied from around 90 to 140 per 100,000 in 2000 (Walmsley 2005).<sup>6</sup> Nations such as Germany, the Netherlands, and Canada tend to use prison as a last resort and generally avoid pitting the needs of criminal offenders against those of victims (Savelsberg 1994; Sutton 2004; Whitman 2005; Gottschalk 2006). The low levels of incarceration in the recent past in the United States and in comparable democracies suggest that the contemporary penal order is not a given, but an extreme outcome that needs to be explained.

### Explaining the Punitive Turn

The task of explaining why the U.S. penal order transformed over the second half of the 20th century and why it took the shape it did is at its core a question about complex institutional change. On one hand, scholars have traced the punitive turn in the United States to exogenous “late modern” broad socioeconomic structural changes, including deindustrialization, the diffusion of risk, and the rise in crime (O’Malley 1992; Simon 1993; Garland 2001a).<sup>7</sup> Yet these explanations cannot explain the relative rise of incarceration in the United States compared to other Western democracies that also experienced broad socioeconomic changes during this same period (Hannah-Moffat 2005; Oberwittler and Hofer 2005; Whitman 2005). Here comparative research and cross-national analyses of imprisonment rates suggest that the United States’ brand of federalism, with decentralized political and policy-making structures and weak political parties, obliges policy makers to bend toward populist demands for harsh pun-

<sup>5</sup> For example, efforts in California to scale back the state’s harsh three-strikes law were defeated by the California Correctional Peace Officers Association and similarly funded victims’ rights groups (Page 2011).

<sup>6</sup> Garland (2001a), however, makes the argument that the United Kingdom has tended in the same direction as the United States, at least since the 1980s, and Wacquant (2009a, 2009b) demonstrates parallels between France and the United States, where French officials have made explicit attempts to emulate U.S. crime control measures.

<sup>7</sup> However, crime is one of the less evenly distributed social risks—in 1993, Simon observed that middle- and upper-class Americans living in the suburbs experience substantially lower risks of crime than they did in 1972 (Simon 1993, p. 3). Since then their risk of crime has reduced even further (Zimring 2007). However, the perception of the risk of crime remains relatively broad based and fear of crime is seen as a problem in and of itself (Garland 2001a, p. 10).

ishment, while societies with strong state power allow for mercy or mildness in punishment (Savelsberg 1994; Sutton 2000, 2004; Jacobs and Kleban 2003; Whitman 2005; Gottschalk 2006).

On the other hand, structural accounts of mass incarceration have been critiqued for ignoring the extent to which penal policy choices, especially in the 1980s and early 1990s, were driven by political calculation (Beckett and Western 2001; Feeley 2003). In this perspective, penal change is the result of a “political project”—facilitated by political arrangements in the United States—to remake the state to adhere to conservative or neoliberal ideology (Beckett 1997; Wacquant 2009*a*, 2009*b*; Hagan 2010). Contrary to explanations that point to penal populism, this scholarship points out that politicians’ rhetoric reshapes public opinion, which then reinforces politicians’ policy priorities. Beckett (1997), for example, argues that conservative politicians’ framing of “street crime” as a problem of “lack of control” was an effective vehicle for reconstructing popular conceptions of the poor and therefore creating support for conservatives’ larger agenda to replace social welfare with social control as a governing theme. Hagan’s (2010) research supports a variation on this claim, finding that while the Reagan administration increased social control of poor and vulnerable populations, it simultaneously reduced control over corporations, industry, and financial markets.

In the United States, public support for increased social control is intimately linked to the politics of racial resentment. The United States’ unique history of categorization, political subjugation, and empowerment along lines of race, and cultural beliefs about racial categories (Lowndes, Novkov, and Warren 2008) structures political competition, political institutions, and policy choices and implementation (Quadagno 1994; Gilens 1996; Lieberman 1998; Orloff 2002). This is especially true for the politics of crime and crime control policy, where policy makers are more likely to manipulate and be influenced by racial stereotypes that link African-Americans or racialized immigrants with crime (Provine 2007; Murakawa 2008). This research suggests that conservative rhetoric around “welfare cheats” and “drug pushers” was effective in part because it tapped into racial resentment in order to explain away the declining social and economic position of the white working class (Beckett 1997, p. 87). More broadly, others have argued that important features of American culture that shape penal policy in the United States, such as contempt of state power and degradation of criminal offenders, also have roots in the history of slavery in the United States (Whitman 2005).

While the unique role of race in facilitating mass incarceration is difficult to measure (Jacobs and Jackson 2010), the role of political competition and ideology has been confirmed by multivariable analyses of the variation in incarceration rates by state over time (e.g., Jacobs and Helms 1996, 1999;



Beckett and Western 2001; Greenberg and West 2001; Jacobs and Chermichael 2001; Stucky, Heimer, and Lang 2005; Yates and Fording 2005; Keen and Jacobs 2009). In contrast to explanations that center on broad socioeconomic changes and the advent of “high crime societies” (Garland 2001*a*), variable-based analyses find an indeterminate or nonsignificant effect of crime rates, while pointing to the importance of state-specific political partisanship (Jacobs and Jackson 2010, p. 131). As Jacobs and Jackson conclude after surveying the literature, “the association between Republican control of major offices in the U.S. states and increased imprisonment rates [is] difficult to dispute” (p. 137).<sup>8</sup>

The task of explaining why the U.S. penal order transformed over the second half of the 20th century and why it took the shape it did is complicated by the federal structure of the United States. As such, a second generation of punishment scholarship uses state-level case studies in an attempt to explain how particular political institutional arrangements, political partisanship, and civic engagement shape the norms and resources that drive criminal law and policy (Zimring et al. 2001; Miller 2008; Barker 2009; Lynch 2010; Page 2011). For example, in her comparative study, Barker (2009) argues that the deliberative “democratic process” of Washington that “emphasizes citizen participation, discussion, compromise and self-governance” and the elite pragmatist democratic process of New York that emphasizes expertise and behind-closed-door decision making both mediated a more punitive politics of crime control (Barker 2009, p. 11). Collectively, state-level case studies have identified new explanatory factors to consider, including the historical continuity between previous penal orders and mass imprisonment (Lynch 2010), the role of prison conditions litigation in constraining or prompting action by policy makers (Schoenfeld 2010), the place of new players in the penal field (Page 2011; Campbell 2012), and the relative advantage of particular institutional actors in penal policy making (Miller 2008).

What is missing from the literature, as Page (2012) has recently noted, is an explication of how broad structural and political change, which clearly pushed states in one direction, interacts with state-specific variables to transform penal policy and practice on the ground. On one hand, structural, institutional, and political theories have not detailed the mechanisms by which changes to social and economic structure and national political dynamics in-

<sup>8</sup>Some of the more statistically sophisticated analyses attempt to identify the mechanisms by which growing Republican strength might create higher incarceration rates. However, one likely intervening mechanism—sentencing policy—is notoriously difficult to include in regression analysis because of its heterogeneity (Stemen 2005; Raphael and Stoll 2009). Another analysis found that states with Republican majorities are more likely to expand prison capacity, leading to higher incarceration (Spelman 2009).

fluence penal policy and practice at the state level. On the other hand, accounts that do address variation at the state level may miss the macrodynamics that drove all states in the same direction (toward mass incarceration), despite considerable variation in state histories and political contexts.<sup>9</sup> In other words, what is needed is a theoretical framework that can explain both the consistent, persistent punitive shift and the variation in the extent and timing of that shift.

One possible remedy as suggested by Page (2012) is for punishment scholars to deploy the theoretical device of “field”—a relatively bounded sphere of action in which actors struggle in relation to others in order to improve or conserve their position (Bourdieu and Wacquant 1992). In this view, macrolevel phenomena are refracted through state-specific “penal fields” representing the context in which state and local actors make penal policy decisions (Page 2012). The penal field is composed of the people who determine penal priorities, their relative positions, their assumptions and values, and the capital and rules by which they struggle to advance their position. In addition, the doxa and resources in the penal field are shaped in part by neighboring fields, including the political field and the media field.<sup>10</sup> Thus, the concept of state-specific penal and political fields can help explain variation in the timing and intensity of states’ punitive turn: state-level actors’ responses to changes in the national economy, racial threat, crime levels, and national politics depend on the structure of the state-specific penal and political field. Yet, at the same time, we can see how sociostructural and macropolitical changes create similar opportunities to reconfigure the penal field (and its neighboring political field) across states.

Below we build on structural, political, and institutional theories of penal change, using the theoretical device of field, to develop a comprehensive explanation of the march toward mass incarceration by the American states. In doing so, we incorporate both the national and state-level character of the penal order in the United States and the interaction between national politics and policy and state-level politics and policy. Although most of the prevailing accounts of mass incarceration give a nod to the role of American-style federalism in structuring the politics of punishment, with the exception of Miller (2008, 2010), we find that they have yet to fully account for how the federal

<sup>9</sup>The states that experienced the most growth and are widely viewed as having some of the harshest policies by 2000, such as California and Texas, had very different penal orders in 1970.

<sup>10</sup>For example, Page (2011) finds that the entrance of the federal courts and politicians to the penal field, the rise of “law and order” as new form of symbolic capital, and policies that increased incarceration all helped advance the position of the California Correctional Peace Officers Association (CCPOA) within California’s penal field, giving them a platform to set penal priorities.

structure of crime control and political decentralization brought on significant and similar changes to the penal order in all 50 states.

#### METHODS

In order to develop an explanation for the widespread transformation of the penal order across states, we employ comparative historical methods on a sample of state narratives of penal development (Mahoney and Rueschmeyer 2003). Our sample consists of eight states: Arizona, California, Florida, Oregon, Minnesota, New York, Texas, and Washington. We chose states based on both the availability of case studies on penal policy and politics and concerns for variation by region and penal history. Together the case studies, including unpublished original research done separately by each coauthor on three different states, and additional articles and research reports combine to provide detailed accounts of changes to the penal order between 1960 and 2001 in these eight states (see table 1). Collecting the type of data necessary to build in-depth case studies of this type is an arduous task that ultimately limits the number of case studies we could draw from and the level of detail we have for each case (George and Bennett 2005).<sup>11</sup> Ideally, the narratives capture the microlevel interactions between players in the penal and political field that produce changes in penal ideology and crime control policy as well as the political and social background factors that influence players' decisions. To do this, the case studies are drawn from in-depth archival research from multiple state and private archives. Primary sources included legislative bill files, internal communications between various actors in the penal and political field (including and especially governors), constituent letters, press releases, public testimonies, legal files (pertaining to prison litigation), and news articles pertaining to crime, prisons, and politics. In addition, a few of the case studies, including by the second coauthor, relied on data from interviews with corrections administrators, legislators, policy aides, lawyers, and representatives of interest groups. We supplement the state-level case studies with narratives of developments in national-level politics and penal policy post-1960 (Tonry 1995; Beckett 1997; Beckett and Sasson 2000; Garland 2001a; Simon 2007; Weaver 2007; Hagan 2010).

<sup>11</sup> For example, we draw from Barker's (2009) study of New York and Washington. However, her focus is different from ours, looking instead at democratic process in each state. In addition, she ends her analysis in the early 1990s. Therefore we supplement her analysis with other research articles, reports, and background material. In order to consider a low incarceration state we also include Minnesota in our sample. Unfortunately, there is no comprehensive in-depth case study of penal politics in Minnesota available, but we were able to draw on three dissertations, one on the origins of sentencing guidelines (Price 1980), one on penal policy making between 1987 and 1993 (Oreskovich 2001), and one on the history of reform in Minnesota's Stillwater prison (Hesselton 2007). In addition, we reference research articles on Minnesota's sentencing guidelines (e.g., Frase 2005, 2008).

TABLE 1  
MAIN DATA SOURCES FOR STATE COMPARISON

State	Study
Arizona . . . . .	Lynch 2010
California . . . . .	Barker 2009; Gilmore 2007; Page 2011; Campbell*
Florida . . . . .	Schoenfeld*
Oregon . . . . .	Cate 2010
Minnesota . . . . .	Oreskovich 2001; Frase 2005, 2008
New York . . . . .	Barker 2009
Texas . . . . .	Perkinson 2010; Campbell*
Washington . . . . .	Barker 2009

\* Original research by each coauthor.

While our data are necessarily drawn from a limited sample of available case studies, there is a reason scholars of punishment, including ourselves, have focused on Sun Belt states: states such as Arizona, California, Texas, and Florida set the tone for national politics and policy in the second half of the 20th century (Nagourney 2012). In addition, they are high incarceration states. Table 2 lists each sample state's incarceration rates and percentage growth for select years from 1977 to 2007. By 2000, New York, California, Texas, and Florida incarcerated 37% of the nation's prisoners. Yet, even within the Sun Belt, the timing and intensity of incarceration varies. For example, California's incarceration rate started growing earlier and by more, but by 2000, Arizona, Florida, and Texas have higher incarceration rates. Our sample also includes Minnesota and Washington, which are historically less punitive states, and New York and Oregon, which fall into the middle third of state-level imprisonment rates. Yet even the states with lower levels of incarceration saw impressive growth over the period we examine. In fact, if the time frame is extended until 2010, even Minnesota experiences an almost three-fold jump in its per capita imprisonment. Combined, our cases encompass large and small states, include the four largest states, and include cases with considerable variation in their political and penal histories, and our time frame includes periods of stability, growth, and even decline in prison populations.

Our initial comparison of the state narratives led to an analytic strategy that we are calling *inductive periodization*. Periodization has long been a useful device of historical analysis, allowing for the simplification of history and designation of certain events or processes as more "important" than others (Katznelson 1997). While historians tend to mark periods with reference to dates and events, sociologists, including the classic sociological theorists, define periods by structural relationships and their underlying logics (Hernes 1976; Isaac and Griffin 1989) or "on the basis of contrasting solutions for recurring problems" (Haydu 1998, p. 354). Periods, in this sense, like "regimes," are more akin to "ideal-types" that help demarcate social outcomes or

TABLE 2  
 INCARCERATION RATES AND PERCENTAGE CHANGE BY STATE, 1977–2007

	Arizona	California	Florida	Minnesota	New York	Oregon	Texas	Washington
1977 . . . . .	129	80	221	44	108	122	176	118
1982 . . . . .	209	135	257	50	158	146	233	148
1987 . . . . .	307	231	265	60	229	200	231	134
1992 . . . . .	409	339	355	85	340	174	644	192
1997 . . . . .	484	470	437	113	381	232	715	234
2002 . . . . .	513	452	450	141	346	342	692	261
2007 . . . . .	554	471	535	181	322	369	669	273
Change (%):*								
1977–92 . . . . .	217	324	61	93	215	43	266	63
1992–2007 . . . . .	35	39	51	113	–5	112	4	42

NOTE.—Incarceration rates per 100,000 residents and percentage change in incarceration rate. Table based on data from U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in State and Federal Institutions.

\* Incarceration rates in California, New York, and Texas peaked in 1999 and decreased by 2%, 20%, and 12%, respectively.

“typical modes of action” to be explained (Weber 1968; Esping-Andersen 1990). Historical social science has mainly used variations of “periodization strategies” to demonstrate the long-term effect of institutional arrangements and therefore explain the differentiation in contemporary policy regimes (see Clemens and Cook 1999; Lieberman 2001). We suggest that periodization can also be used as a methodological device to explain the process of institutional change (see also Clemens 1999).

Following Haydu’s (1998) strategy of reiterative problem solving, our method involves three steps: designating periods, identifying causes of period-specific outcomes, and determining causes of change (or difference) between periods. First, we analyze each state narrative for within-case changes to orienting penal logics, understandings of the “crime problem,” and proposed policy solutions. We then compare cases to identify common orienting penal logics, understandings of the “crime problem,” and proposed policy solutions across cases. We designate these commonalities as *ideal-type periods* for the purpose of analysis.

Second, we analyze the narratives for factors that could explain the variation in solutions across periods or “why at a given time human beings pursued one solution rather than another” (Haydu 1998, p. 354). In line with the empirical literature on mass imprisonment, we expect that differences in political partisanship and competition help explain dominant actors’ definition of the crime problem and the policy outcomes in each period. That is, as Page (2012) suggests, macrosocial, macropolitical, and macroeconomic shifts reconfigure specific state and local penal and political fields or contexts

to shape policy solutions. As Campbell (2004) points out, actors' ability to cause change is heightened when they are "located at the borders and interstices of several social networks, organizational fields, or institutions" (p. 74). Thus, for actors specially situated in both the penal and political fields, reconfiguration provides new opportunities to transform penal capital into political capital and vice versa. In each period reconfiguration engenders a different type of crime politics defined by the extent to which the penal and political fields share dominant actors, forms of capital, and prevailing doxa. Given our interest in understanding the role of federalism in penal transformation, we consider how national-level influences reshape penal and political fields (and crime politics) at the state level and, therefore, definitions of the crime problem and respective solutions.

The final step in our inductive periodization strategy is to identify links between periods or how prior policy solutions shaped changes over time. Drawing on ideas of "policy feedback" (Weir, Orloff, and Skocpol 1988; Skocpol 1992; Orloff 1993), we hypothesize that outcomes or solutions in one period will incorporate contradictions that precipitate later crises, structure available options, and shape the choices made at later junctures (Haydu 1998, p. 353; Rhomberg 2010). Important to this literature is the idea that "policy creates politics" or, in other words, policy choices create physical and discursive resources that positively or negatively influence the capacity of interest groups, political parties, or individual candidates within the political field. This is similarly true within the penal field—policy can provide previously marginalized groups with new opportunities to advance in the field and assert their priorities (Page 2011). Consequently, we explicitly examine the narratives to assess if and how prior crime politics, definitions of the "crime problem," and policy solutions create opportunities and limits for competition within (and between) the political and penal fields, which in turn shape the possibilities for penal transformation within the subsequent period.

## FINDINGS

Our analysis of state-level narratives of penal development over the second half of the 20th century reveals a common trajectory of *transformation* of the dominant consensus around penal sanctioning through three periods: *destabilization* (~1960–75) or an unsettling of the penal status quo; *contestation* (~1975–92) or a contested or fraught period; and *reconstruction* (~1992–2001) or a solidification of a new penal consensus. In each period, we have identified a different type of crime politics or extent to which the actors, forms of capital, and ideologies are shared between the penal and political fields. Mapping on to our periodization, this typology includes *emergent crime politics*, or the first and tentative use of crime control to advance one's posi-

tion in the political field; *high crime politics*, or the prioritization of crime control for political advancement and the prioritization of political considerations for penal policy making; and *captured crime politics*, where penal policy priorities are held captive to political considerations even as crime control becomes less effective for advancement in the political field. We find that in each period dominant actors in the penal and political fields defined the “problem of crime” differently and developed different policy solutions. We summarize this periodization and its characteristic components in table 3.

We argue that the variation in solutions across periods and between states was the result of a dynamic interaction of national and state processes. Specifically, we find three key mechanisms by which the national level influences state-level penal and political fields. First, we find, as Beckett (1997) suggests, that media coverage of presidential politics and sitting presidents’ crime control discourse sets the boundaries of political debate at the state level.<sup>12</sup> Second, federal policy mandates, federal funding, and administrative directives create new problems, ideas, and resources for state politicians, policy makers, bureaucrats, and interest groups. And third, we find that federal court behavior, and specifically their willingness to regulate state criminal justice practices, also shapes how lawmakers defined the problem, thus constraining their policy options. These three factors produce political innovation around crime control at the state level, and organization and activism by interest groups associated with law enforcement and crime victims. In turn, these developments shape lawmakers’ definitions of the crime problem, legislative experimentation, and policy solutions.

Importantly, our findings also point to potential sources of variation in the timing and intensity of penal transformation between states in each period. First, state-specific political history and political institutions influence the actions of players in state-specific penal and political fields. Second, the timing of national influences with state-level sociopolitical context, including the structure of state-specific political partisanship and competition (political field), and the growth of minority populations and changes to the economy (socioeconomic structure), created differences in opportunities for political innovation, interest group activity, and legislative experimentation. And third, as we highlight below, early policy choices by state actors worked to either mediate or amplify crime politics and punitive policy solutions.

Finally, we find that developments at the state level in each period had significant feedback effects, shaping political and penal developments in the next period. First, due to the nature of electoral politics in the United States, presidential candidates drew from political innovation and penal

<sup>12</sup> Presidential discourse also shaped state politics through congressional campaigns enmeshed in both national and state political fields.

TABLE 3  
 PERIODIZATION IN THE TRANSFORMATION OF THE PENAL ORDER

	Destabilization	Contestation	Reconstruction
Dates . . . . .	~1960–75	~1975–92	~1992–2001
Description . . . . .	Questioning and challenges to the penal status quo	Political contestation over the direction of penal policy	Solidification of a new penal order
Type of crime politics . . . . .	Emergent crime politics	High crime politics	Captured crime politics
Definition of policy problem . . . . .	Ineffective criminal justice response	Crisis in confidence	Leniency
Policy outcome . . . . .	Capacity-building/Reform	Constrain discretion/Build prisons	Lengthen sentences/Equip law enforcement

policy experimentation in populous and growing states that could help deliver an election. Second, along with macrodemographic and political trends, new interest groups and state-level political innovation permanently reconfigured the penal and political fields over time. Finally, legislative experimentation at the state level in each period created new problems to be solved in the next period, new players in the political and penal fields who helped define those problems, and new opportunities for the political use of crime.

In figure 1 we lay out our framework of penal transformation that includes background factors, state-specific context, the interaction of national influences and state developments, and feedback effects. In the

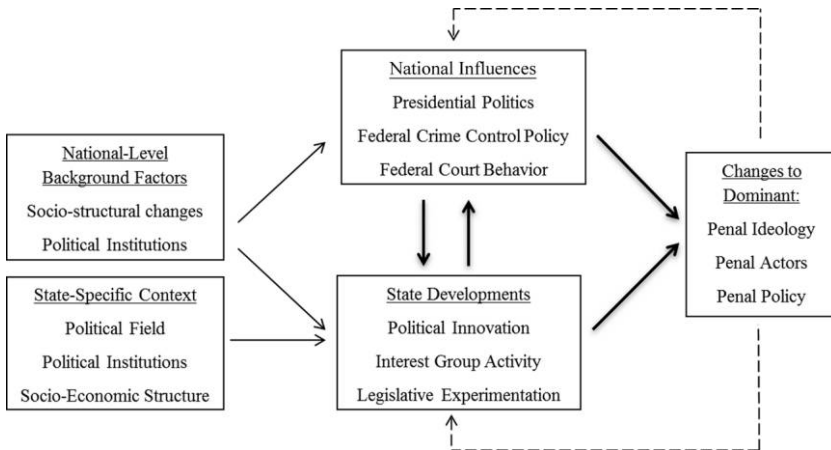


FIG. 1.—Framework of penal transformation



following three sections we demonstrate how this interactive process continually reinforced crime politics, eroding the distinction between the penal and political spheres—especially in key states, such as Arizona, California, Florida, and Texas. In turn, crime politics reinforces political fields that repudiate moderation and produces crime policies that prioritize an aggressive and warlike vision of crime control.

#### DESTABILIZATION OF THE PENAL ORDER (1960–75)

Our comparison of state narratives reveals that between 1960 and 1975 the penal order in each state underwent a process of destabilization where politicians, policy makers, and bureaucrats began to question the penal status quo. At the macrolevel, social and political events, such as such civil rights and antiwar protests, advances for African-Americans, and increases in reported crime, began to reconfigure and create new opportunities in the penal and political fields. The macrolevel changes and presidential politics, along with demographic shifts within some states, created a fertile ground for what we call *emergent crime politics*, where state politicians in certain contexts began to use crime for political gain. In turn, the emergent political rhetoric around crime, new federal resources for crime control policy, and new federal court challenges to state prison systems prompted state policy makers to begin to define the “crime problem” as “ineffective criminal justice system response” and funnel funds toward upgrading and reforming the systems that processed criminal offenders.

#### National-Level Influences

##### *Presidential Politics*

The fight over civil rights for black Americans prompted many working-class white voters to leave the Democratic Party, cementing the end of the New Deal coalition that had prevailed since the “age of Roosevelt” (Teixeira and Rogers 2000; Hagan 2010). The political linkage between race and crime was pivotal to that loss and to fundamentally altering the federal-state relationship around crime control. Local politicians, especially in the South, were the first to make this link, referring to civil rights protests as criminal acts (Weaver 2007) and later blaming civil rights protesters for rising crime rates (Flamm 2005). At the federal level, opponents of civil rights legislation argued that civil rights would engender a crime wave and integration would bring lawlessness (Weaver 2007, p. 242).

During the 1964 presidential campaign, Arizona senator Barry Goldwater’s “law and order” rhetoric struck a political cord, compelling the Johnson administration to rethink its crime control policy (Feeley and Sarat

1980; Flamm 2005). Though Lyndon B. Johnson won the election, crime's ascent in presidential politics, along with urban riots and new statistics revealing rising crime, fanned the flames of concern over crime and disorder. Both Republican Richard Nixon and Independent George Wallace later made "law and order" the signature of their 1967 campaigns in an effort to appeal to antiblack sentiment, especially in southern states and among working-class whites (Alexander 2010). A Nixon advisor later said of that time that President 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 not appearing to" (Alexander 2010, p. 44).

#### *Federal Crime Control Programs*

Johnson's administration responded by proposing to expand the federal government's role in crime control (Weaver 2007). The Democratic Congress passed the Omnibus Crime Control and Safe Streets Act in 1968, which established the Law Enforcement Assistance Administration (LEAA) to make grants to individual states (Feeley and Sarat 1980; Gest 2001). In a sign of a new era of cooperation over crime policy, southern Democrats and western Republicans in Congress fought to distribute LEAA funds through block grants to the states rather than directly to more liberal local governments (Simon 2007). More of a "procedure for distributing federal funds . . . than a coherent definition of and attack upon the crime problem," the act required states to establish state-level planning committees to diagnose their own crime problem and assess their own criminal justice capacity (Feeley and Sarat 1980, p. 47). Once in office, President Nixon expanded federal funding for state crime control grants sevenfold, facilitating the professionalization and centralization of criminal justice systems across the United States and drastically increasing law enforcement capacity (Law Enforcement Assistance Administration 1972).

#### *Federal Courts*

Before the mid-1960s federal courts maintained a hands off doctrine to avoid intervention in the management and operations of penal facilities. But as the Civil Rights movement gained ground, federal courts began a prolonged focus on arrestees', defendants', and prisoners' constitutional rights (Feeley and Rubin 1998). Civil rights lawyers turned to the federal courts to impose racial integration, due process protections, and minimal health and safety standards in prisons, especially in the South, where some prisons still resembled slave plantations (Feeley and Rubin 1998; Perkinson 2010). Ultimately, six of the 10 state correctional systems subjected to federal control were in the South (Schlanger 1999, n. 151). By the early 1970s, federal rulings in favor of inmates and the threat of litigation became a perpetual matter of concern for

state governments and penal managers. By 1980 prisons or prison systems in 35 jurisdictions had been ruled unconstitutional (Feeley and Rubin 1998, p. 39). Ultimately, by extending federal protection of civil rights behind bars, federal courts and civil rights lawyers became powerful new players in state penal fields, helping to destabilize the old penal order and changing the terms under which it could be reconstructed.

### State Developments

#### *Political Innovation*

In most of the cases we analyzed, the Civil Rights movement and changes to the federal political landscape unsettled state political fields. In California, a rapidly growing and racially segregated population experienced some of the most intense urban unrest in the 1960s, including antiwar and countercultural activity, and radical black activism. Echoing the national law-and-order rhetoric, Republican gubernatorial candidate Ronald Reagan reiterated the link between social protest and crime: "Charges of brutality are being raised by a small but disruptive segment of society, which is constantly challenging the authority of the law. . . . For the law abiding, the policeman is a friend. For all our science and sophistication, for all our justified pride in intellectual accomplishment, *the jungle is waiting to take over*. The man with the badge helps to hold it back. Too often the only thanks he gets is a charge of police brutality" (quoted in McGirr [2001, p. 204]; emphasis in original). Although known for its history of progressive welfarism (Simon 1993), California also has a strong history of populism as evidenced in its ballot initiative process (McGirr 2001). And in 1966, Reagan harnessed this populist anxiety to overwhelmingly defeat his Democratic opponent in a gubernatorial campaign focused on crime and disorder (McGirr 2001).

In New York, citizens similarly felt the effects of social upheaval, but the state's centralized and elitist governance structure, which relied on bureaucrats with expertise, may have helped short-circuit an earlier emergent crime politics (Barker 2009, p. 142). At the same time, however, Governor Nelson Rockefeller, who ran for the Republican presidential ticket throughout the 1960s, significantly built up police capacity and adopted "stop and frisk" and "no-knock" laws to strengthen police powers (State of New York 1973). And in 1973, in an attempt to stay one step ahead of other potential Republican nominees for president, including Governor Reagan, Governor Rockefeller pushed through the first extremely harsh punishments for drug offenders, which continue to bear his name today (Hagan 2010, p. 13).

#### *Interest Group Activity*

States used federal crime control dollars for a variety of purposes that had long-term consequences for the transformation of the penal order, including

hiring and training police, building riot squads, and collecting crime and criminal justice statistics. Of critical importance, LEAA funding helped create and organize victims' rights groups (Gottschalk 2006) and law enforcement agencies as political players. Sheriffs, prosecutors, and police chiefs had traditionally relied on local funding for their crime control efforts. The availability of new resources at the state level (and later directly from the federal government) prompted law enforcement to organize and lobby in order to direct funds as they saw fit (Feeley and Sarat 1980). Their mobilization was facilitated by new state-level law enforcement agencies (e.g., Florida Department of Law Enforcement established in 1967) that brought police chiefs, sheriffs, and county prosecutors together for workshops and trainings. In particular, prosecutors and sheriffs, enmeshed in both local political fields and penal fields, were well positioned to use their capital to advance their penal priorities in the legislative arena. For example, LEAA funding in Texas helped professionalize the state's prosecutors association, which rewrote the state's criminal code in the early 1970s (Campbell 2011).

*Policy Solutions for a "Crime Problem" of Ineffective Systems*

Our analysis shows that the proximate causes of destabilization varied across states. In states with penal welfarist traditions, such as New York and California, emergent crime politics and the critique of indeterminate sentencing and prison conditions from the Left (American Friends Service Committee 1971; Jackson 1972) undermined belief in the penal status quo. Similarly, in Minnesota and Washington the rehabilitative model of prisons came under attack (Price 1980; Barker 2009). In Arizona, Florida, and Texas federal court injunctions to reduce prison populations eventually forced lawmakers to reexamine their corrections systems (Lynch 2010; Schoenfeld 2010; Campbell 2011).<sup>13</sup> In Arizona and Florida the litigation coincided with efforts to professionalize, centralize, and initiate rehabilitative programming in their criminal justice systems; and reformers used federal funding to bring in experts who helped convince policy makers of the need for more effective and modern systems (e.g., Ohmart and Bradley 1972; see also Lynch [2010, p. 67] on Arizona).

As a consequence, lawmakers across the states we examined agreed that the penal status quo was untenable and initiated a series of reform efforts aimed at strengthening the criminal justice system. By the early 1970s California legislators, citing critiques from the Right and Left, began debating a wholesale change in sentencing structure (Simon 2007). Arizona similarly initiated sentencing reform while implementing a host of temporary fixes to

<sup>13</sup> See, for Florida, *Costello v. Wainwright* (1972), Arizona, *Harris v. Cardwell* (1979), and Texas, *Ruiz v. Estelle* (1980).

prison overcrowding (Lynch 2010), and in 1978 Florida officials began serious negotiations to settle prison litigation by upgrading facilities (Schoenfeld 2010). In Minnesota and Washington reformers began advocating for a sentencing scheme based on equality (Price 1980) and parsimony (Barker 2009), respectively, eventually leading both states to establish sentencing guidelines commissions that would set judges' options depending on the criminal offense and criminal offense history of the defendant (Frase 2005). Thus in Washington, at least, the outcome of destabilization was rhetoric and policies specifically focused on decarceration (Barker 2009). And in Oregon, a state with fewer serious crime problems, less political contestation, and no official challenges to the prison system, destabilization did not occur until "law and order" once again appeared on the national scene with the election of Ronald Reagan (Cate 2010).

#### State Feedback Effects

Importantly, political innovation, interest group activity, and policy experimentation at the state level during the destabilization period created new problems, players, ideas, and resources that shaped politics and policy moving forward. First, California's high profile and Reagan's media appeal introduced Reagan into the national political field and his administration's success on law and order created an important precedent for national-level politics in the contested period. In the 1980s, Reagan's political and policy advisors applied their experiences with emergent crime politics in California to the national field (Hagan 2010).

Second, policy experimentation generated new ideas and new problems that informed state and federal policy making in the contested period. For example, Congress later drew on determinate sentencing systems and mandatory minimum sentences first adopted by state legislatures. In addition, the professionalization and capacity enhancements to state law enforcement agencies, local police departments, and state courts all but guaranteed that offenders would continue to be sent to already overcrowded correctional agencies—prompting new problems for state officials and further response by the federal courts.

Finally, additional investments to state criminal justice systems continued to strengthen LEAA-funded state-level law enforcement associations. Moreover, LEAA's funding in the mid-1970s for victims' rights organizations through prosecutors' offices created "a very particular kind of victim's movement . . . that viewed the rights of victims as a zero-sum game predicated on tougher penalties for offenders" (Gottschalk 2006, p. 86). In the subsequent periods, prosecutors' associations, correctional officers' associations, and crime victims' groups became key players in the battles over the direction of criminal justice reform.

## CONTESTATION OF THE PENAL ORDER (1975–92)

The destabilization of the penal order created both new dilemmas and opportunities for politicians and policy makers that had profound implications for state politics and, consequently, for penal policy. Between the mid-1970s and the early 1990s, the penal order entered into a contested period, best characterized by frenetic and confused attempts to grapple with the collapse of the status quo in the penal field. In the official parlance “rehabilitation didn’t work,” but “incapacitation” had yet to emerge as a dominant framework for policy or practice (Zimring 1991).<sup>14</sup> Indeed, states became central locations for experimentation, generating new strategies for resolving the dilemmas emerging from destabilization, including perpetual overcrowding. In Washington and New York, legislative leaders implemented policies in the late 1970s and early 1980s that limited imprisonment for nonviolent offenders and drug users (Barker 2009). In the South and Southwest, a powerful tradition of fiscal conservatism and antistatism led legislators to pass alternatives meant to lower prison populations (Lynch 2010; Schoenfeld 2010; Campbell 2011).

Thus, mass incarceration was not a historical inevitability in 1980, but over the course of the decade the interaction of federal influences and state developments infused enormous resources into prison expansion. Specifically, President Reagan’s victory reintroduced crime control rhetoric as political capital, and this time insurgent state Republicans latched on to his political coattails. Reagan thus helped create what we call *high crime politics*, or the political use of crime control and the prioritization of political considerations in crime policy. In addition, Reagan’s war on drugs created new prison capacity problems for state governments and corrections departments; and law enforcement agencies began lobbying for enough prison cells to hold incoming drug offenders. Combined with an increase in federal court monitoring of prison conditions, political gridlock and high crime politics led state policy makers to frame the “crime problem” as a “crisis in confidence” in the justice system and commit extensive state resources to contain criminal offenders in new state prisons.

## National-Level Influences

*Presidential Politics*

Ongoing demographic shifts during this period increased the national political importance and profile of Sun Belt states to the benefit of Republi-

<sup>14</sup>In fact, Phelps (2011) finds that despite the rhetoric that “nothing works” in rehabilitation, states and corrections agencies continued to fund rehabilitation programming at the same rate as they did in the 1970s up through the early 1990s. This further supports our contention that the punitive turn was not yet solidified in the contested period.

can politicians. While Sun Belt states and Snow Belt states were roughly even in electoral votes in 1970, the Sun Belt held 38 more by 1980 and 68 more by 1990 (Frey 2005). Neither President Ford nor President Carter focused on crime during their administrations, but candidate and President Reagan reemphasized crime, propelling it to the forefront of Americans' concerns, even as rates of serious offending were stable or declining (Beckett 1997). As Hagan (2010) writes, "when Reagan ran for president in 1980, he leveraged the law and order reputation he had developed in California . . . into a national campaign that began with a version of a southern law and order strategy earlier advanced by Richard Nixon" (Hagan 2010, p. 144). Reagan's campaign viewed crime as a "wedge" issue that would help attract support among those opposed to the Civil Rights movement and its consequences (Alexander 2010; Hagan 2010). In a sign of how far the country had shifted since the days of President Kennedy and President Johnson, Reagan won the election with 489 electoral votes (or 44 states).

#### *Federal Crime Control Programs*

In order to draw attention to crime even as it declined,<sup>15</sup> Reagan framed crime in simple (and often racialized) "us" against "them" terms. Exemplified best by the Reagan administration's "war on drugs," this framing precluded solutions anchored outside of the criminal justice system.<sup>16</sup> Launched in 1982, the war on drugs gained new legs in 1986 with the high profile death of basketball player Len Bias and the advent of crack, a cheaper form of cocaine available in many large urban areas (Provine 2007). Given the absence of a real need for a national war on drugs (Tonry 1995, p. 91), Drug Enforcement Agency officials in the Reagan administration worked diligently to draw media attention to the "crack epidemic," crack-related violence, and the threat to white communities (Beckett 1997; Beckett and Sasson 2000; Hagan 2010). With bipartisan support (Hagan 2010), Congress passed new anti-drug abuse laws in 1986 and 1988, which in addition to establishing draconian mandatory minimum prison terms for the sale and possession of crack also increased the incentives for the state and local enforcement of drug laws (Provine 2007). In particular, Congress provided millions of dollars in federal aid to local and state law enforcement agencies, helped establish and train local narcotics task forces, authorized the admis-

<sup>15</sup> Homicide rates fluctuated some but changed little from 1974 to 1980, peaking at 10.2 per 100,000 in 1980 (Federal Bureau of Investigation 2011), and property crime rates declined by around 11% from 1975 to 1980 (Bureau of Justice Statistics 2011).

<sup>16</sup> For example, in 1981 Reagan's administration withheld (and disregarded) an extensive study of crime and justice that it had commissioned because the report highlighted crime's complexity as a social problem and noted that simply expanding law enforcement and increasing punishment would not necessarily lower criminal offending, let alone fear of crime (Hagan 2010).



sion of some illegally obtained evidence in drug trials, and amended asset forfeiture laws to allow state and local police agencies to retain up to 80% of the value of assets confiscated (Alexander 2010, pp. 72–79). In addition, Congress allowed for and increasingly incentivized the Department of Defense and the National Guard to provide personnel and equipment to local police departments for the purpose of fighting the war on drugs (Balko 2006, p. 7).

#### *Federal Court Enforcement*

As the war on drugs drastically increased admissions to state prison systems for drug offenses, federal court judges were simultaneously attempting to settle drawn-out prison conditions cases and compel even the most resistant states to comply. Having actively engaged in penal policy throughout the 1970s, the Supreme Court's rulings in the 1980s trended away from a broad interpretation of prisoners' rights and comprehensive federal court intervention (Schlanger 2006). Starting in 1979, the Court held in *Bell v. Wolfish* (1979) that lower courts should defer to the expertise of corrections officials (and later see *Whitley v. Albers* 1986). This shift in direction by the Court provided impetus for both inmates' lawyers and federal judges to resolve ongoing prison litigation. Having overseen the cases for over a dozen years, federal judges appointed special masters who could oversee and implement the day-to-day compliance of consent decrees or rulings previously agreed to (Feeley and Rubin 1998). Importantly, special masters and the courts focused their attention on "adequate" prison capacity and the protection of inmates' basic rights, not on how many or which types of offenders states' chose to admit to prison (Schoenfeld 2010; Campbell 2011).

### State Developments

#### *Political Innovation*

President Reagan's victory and his administration's law enforcement initiatives signaled a new political pathway for insurgent state Republicans. In most states, Republicans faced historical disadvantages up through the 1980s, especially in the South, where Democrats dominated the traditional one-party system and governing bodies underrepresented urban districts, racial minorities, and high growth regions (Jacobs and Tope 2008). Across the states that we examined Republican hopefuls looked to emulate Reagan's successful use of law and order (first as governor and then as president) in order to increase their constituent base. And with the help of court-mandated reapportionment in the 1970s and in-migration of more conservative voters, Republicans began to gain ground in state legislatures and as governors (McGirr 2001). In Texas, California, and Florida (and later Arizona), Republican gubernatorial candidates replaced Democrats,



in part by drawing on their relationship to Reagan and calling for increased law enforcement efforts to combat crime (e.g., Curry 1978; Boyarsky 1982; Nordheimer 1986).

In all of these states, the changes to the political field created legislative gridlock (mainly with Republican governors and Democratic legislatures), increasing the value of tough-on-crime initiatives as a sign of government effectiveness and as one of the few avenues for political compromise. In California, for example, partisan stalemate limited potential avenues for compromise and legislative action in most realms, except for prison expansion (Jacobs 1983). At the same time, increasing oversight from the courts prompted bitter partisan battles. In Arizona in the early 1980s, the Democratic governor Bruce Babbitt fought constantly with a Republican controlled legislature over options to deal with the "crisis in corrections" stemming from overcrowded unconstitutional facilities and harsh sentencing laws. The Democrats argued for revisions to the criminal code in order to redirect low-level offenders away from prison, while Republicans wanted more prisons but could not agree on how to pay for them (Lynch 2010, p. 117).

However, crime politics were not immediately successful in all states. In Minnesota, Oregon, New York, and Washington, because of the existing political field and state demographics, Reagan's popularity did not change the fortune of Republicans as much. Yet they still drew from his playbook in their campaigns, with important policy consequences. In Oregon, for example, few major changes in crime policy occurred until 1988, when an aspiring Republican gubernatorial candidate, who headed an anti-crime interest group, began campaigning to abolish parole. And Minnesota's sentencing guidelines went without challenge until 1989 when Republicans used a series of rapes covered in the media to call for an end to sentencing guidelines, the imposition of mandatory minimum sentences, and the reinstatement of the death penalty (Oreskovich 2001). But by the 1990s the ongoing interactions between state and federal processes, combined with a sharp uptick in crime in some states, provided powerful incentives for lawmakers in these states to ramp up their own wars on crime.

#### *Interest Group Activity*

As Republicans sought to demonstrate their tough-on-crime credentials, they turned to law enforcement for endorsements, affording police associations, prosecutors' associations, and corrections officers' unions more legitimacy within the penal and political fields. Additionally, new funding streams for the war on drugs motivated law enforcement to further organize at the state level, and many established a permanent staff presence in state capitols and in legislative hearings (e.g., Miller 2008; Campbell 2011). Organizations of crime victims, aided by block grants from the Victims of Crime Act of 1984, further supported law enforcement's legislative efforts. Importantly, many of these

crime victims groups were located in or organized by county prosecutors' or sheriffs' offices, generating congruence between law enforcements' goals (including for increased prison capacity) and victims' definition of their needs (e.g., Pursell 1991; Gottschalk 2006). Together, law enforcement and victims' interest groups played a key role in shaping public perceptions of the crime problem by framing the problem in the media. In particular, they argued that the only way to keep violent criminals off the streets was to build more prisons, that it was less expensive to house prisoners than let them roam the streets, and that the system protected criminals' rights at the expense of victims (e.g., Douglas 1991).

*Policy Solutions for the "Crime Problem" as a Crisis in Confidence*

This framing, along with increased admissions to prison because of the war on drugs (Blumstein and Beck 1999) and heightened court monitoring of overcrowded conditions in state prisons, created a sense of crisis in state criminal justice systems. In addition, an increase in violent crime in states with large urban populations, such as New York and California, in the late 1980s and early 1990s (Blumstein and Wallman 2006) further undermined confidence in the state's ability to control crime.<sup>17</sup> Drawing attention to incidents of violent crime, law enforcement, media, and victims' rights activists blamed judges for insufficient prison space and for leniency (e.g., Herald Staff 1988). At first reluctant to build new prisons, lawmakers (with the important exception of California) used alternative means to manage prison overcrowding (Lynch 2010; Schoenfeld 2010). However, pressures from the court, media attention to crime and drug use, and lobbying by law enforcement ultimately forced lawmakers to reconcile their tough-on-crime rhetoric with strategies to reduce the use of incarceration (Campbell 2011). As a result, they defined the problem as a "crisis" of confidence in the system's ability to incapacitate criminals, therefore requiring a solution that repudiated fiscal conservatism in the name of controlling crime. California Governor Deukmejian summed up the logic well: "Let's never forget that getting more criminals off our streets and into prison is our goal. But this goal cannot be effectively and safely accomplished if we don't have enough prisons to house the criminals" (Deukmejian 1983).

This framing of the crime problem led state legislators to adopt policy solutions that attempted to restore public confidence by restraining judges' discretion and expanding prison capacity. All the states we examined passed legislation imposing new mandatory minimums, or limited credits for good behavior for inmates, or enacted penalty enhancements for crimes involving drugs, guns, or violence, or committed against vulnerable populations (e.g.,

<sup>17</sup> Much of the increase in violent crime was due to dramatic urban growth, new urban drug markets, and the war on drugs (which disrupted drug markets, fueled higher profits, and stimulated more competition; Miron 1999; Resignato 2000).

Schoenfeld 2010). More important, lawmakers raised the billions of dollars required for prison construction and operation from state debt (California and Texas), tax increases (Arizona), or reductions in state support for social services (Florida; Hagan 2010; Lynch 2010; Schoenfeld 2010; Campbell 2011). However, changes were not uniform across the states we examined. Several state-specific factors affected the timing and degree of the punitive shift in policy, including a state's willingness (California and Arizona) or reluctance (Texas and Florida) to abandon fiscal conservatism, the intensity of partisan competition for control of the legislature (Texas) or lack thereof (New York, Minnesota), the continued willingness to embrace alternatives to incarceration and invest in crime prevention efforts (New York, Minnesota, Washington), and the creation of state agencies that insulated sentencing policy from crime politics (Washington and Minnesota). Yet across all the states we examined, even states such as Minnesota, Washington, and Oregon, with relatively small urban populations and lower crime rates, rhetoric signaled a loss in confidence that the state could control crime, and lawmakers enacted policy solutions that enhanced sentences, limited judicial discretion, and increased incarceration rates.

#### State Feedback Effects

High crime politics, interest group activity, and policy decisions in the contested period produced feedback effects instrumental to fashioning a new political consensus around penal sanctioning in the reconstruction period. First, the advent of high crime politics in the late 1980s and early 1990s disproportionately benefited insurgent Republican politicians in unsettling entrenched Democrats in the southern and western states for which we have data. Democrats at the state level increasingly found themselves unable to effectively counter crime politics. Consequently, many decided they could not cede "crime" to the Republicans and during the reconstruction period they proactively worked to fortify their tough-on-crime credentials.

Second, legislators' investments in prison construction and corrections budgets increased the size and clout of corrections officers' unions and of the local communities where prisons were built, who then advocated for job security and job creation (Gilmore 2007; Page 2011). In subsequent years, these same law enforcement groups helped to create, or joined with, victims' rights groups to pass ballot initiatives mandating sentencing enhancements. In a cyclical fashion, in order to accomplish their goals these organizations also committed resources to increasing their status in the political field, creating more incentives for state legislators to agree to law enforcements' priorities.

Third, sentencing laws that shifted discretion from judges to legislators gave state legislatures the power to increase criminal sentences in response

to political pressure in the reconstruction period. Moving forward, lawmakers passed continuous streams of sentencing enhancements for a variety of crimes—especially when they received extensive media attention. In turn, mandatory minimums and sentencing enhancements increased the power of prosecutors, whose charging decisions increasingly determined the applicable criminal sanction. Legal changes thus gave prosecutors even more incentive to support tough-on-crime measures (e.g., East 1992).

#### RECONSTRUCTION OF THE PENAL ORDER (1992–2001)

Beginning in the early 1990s up through the first few years of the 21st century, our analysis revealed the reconstruction of a new penal order that largely resolved political competition over crime control. While the contested period still revealed some efforts to rein in prison populations and criminal justice spending,<sup>18</sup> reconstruction is differentiated by a relentless political pressure to toughen criminal sanctions and a dominance of ideas and policies that demonized offenders and privileged victims and law enforcement (Simon 2007). Unlike the contested period where presidential politics and federal crime control programs steered state-level policy responses, during the reconstruction period national-level politics and policy drew upon and ultimately reinforced increasingly radical state-level policies. As Democrats sought to bolster their tough-on-crime image, newly elected president Bill Clinton drew from state initiatives such as “three-strikes and you’re out” and “truth-in-sentencing,” and Congress used federal crime control policy to subsidize and encourage the diffusion of similar measures across the states. At the same time, the federal courts severely weakened their role in prison reform.

Encouraged by national-level rhetoric and policy and ongoing media attention to violent crime, state correctional unions, prosecutors’ associations, and crime victims’ groups organized, lobbied, and waged public campaigns for harsher sentences and more prisons.<sup>19</sup> The solidification of law enforce-

<sup>18</sup>In Florida, e.g., liberal Democrats attempted in the 1991, 1992, and 1993 legislative sessions to remedy racial disparities in sentencing and the excessive commitment of drug offenders to prison. Their efforts resulted in a compromise sentencing reform act which was to be completely gutted only two years later. In Arizona, an independent report by the Institute for Rational Public Policy helped a Democrat-controlled Senate make a case for scaling back incarceration, which was ultimately trounced by prosecutors (through the media; Lynch 2010, p. 149).

<sup>19</sup>Although serious crime spiked in certain high-profile places like California and New York in the early 1990s, much of the violence was concentrated in the poorest urban neighborhoods, where unsettled drug markets and increased access to firearms contributed to the uptick (Blumstein and Wallman 2006). The media in particular focused on violent crime committed by children (Brownstein 2000). In the mid-1990s, a small group of academics coined the term “juvenile ‘super-predators,’” whom they characterized as “radically im-

TABLE 4  
HOMICIDE RATES BY STATE, 1960–2005

	Arizona	California	Florida	Minnesota	New York	Oregon	Texas	Washington
1960 . . . . .	6.0	3.9	10.6	1.2	NA	2.4	8.6	2.1
1965 . . . . .	5.0	4.7	8.9	1.4	4.6	3.4	7.5	2.2
1970 . . . . .	9.5	6.9	12.7	2.0	7.9	4.6	11.6	3.5
1975 . . . . .	8.6	10.4	13.5	3.3	11.0	6.2	13.4	5.7
1980 . . . . .	10.3	14.5	14.5	2.6	12.7	5.1	16.9	5.5
1985 . . . . .	8.0	10.5	11.4	2.1	9.5	4.7	13.0	5.2
1990 . . . . .	7.7	11.9	10.7	2.7	14.5	3.8	14.1	4.9
1995 . . . . .	10.4	11.2	7.3	3.9	8.5	4.1	9.0	5.1
2000 . . . . .	7.0	6.1	5.6	3.1	5.0	2.0	5.9	3.3
2005 . . . . .	7.5	6.9	5.0	2.2	4.5	2.2	6.1	3.3

NOTE.—Murder and nonnegligent homicide per 100,000 residents. Table based on data from FBI, Uniform Crime Reports, as prepared by the National Archive of Criminal Justice Data.

ment associations as players in the penal and political fields, along with Democrats’ embrace of high crime politics, created what we call *captured crime politics*—where lawmakers were compelled by political necessity to toe the “law and order” line, even as crime rates sharply declined and stabilized (see table 4). Consequently, Republican and Democratic lawmakers in most states defined the crime problem as too much leniency and passed ever more severe laws certain to increase incarceration.

National-Level Influences

*Presidential Politics*

Arkansas governor Bill Clinton’s presidential campaign, and subsequent victory, marked a dramatic turn for Democratic politics (Hale 1995). Demographic changes continued to shift political power to the Sun Belt in the 1990s and 2000s. By 1990 Sun Belt states represented 303 of 538 electoral votes, and by 2000 this extended to 313, an 88-vote advantage over Snow Belt states. Shifts in electoral power not only played a central role in shaping presidential politics, they also redistributed congressional apportionment, considerably strengthening Sun Belt representation in Congress (Frey 2005). In order to regain the votes of white working- and middle-class voters from Sun Belt states and to challenge President George H. W. Bush, a Reaganesque drug warrior, Clinton sought to bolster his own (and the Democratic Party’s) tough-on-crime credentials (Lin 1998, p. 314). During the 1992

pulsive, brutally remorseless youngsters, including ever more pre-teenage boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs and create serious communal disorders” (Bennett, Dilulio, and Walters 1996, p. 27).

presidential campaign he dramatically flew back to Arkansas to oversee the execution of a mentally disabled African-American (Alexander 2010, p. 56). And while campaigning in George H. W. Bush's hometown of Houston, Texas, he blasted President Bush for cutting funding for local police, winning him support from the National Association of Police Organizations, which had endorsed Reagan in 1980 and 1984 (Gest 2001). Clinton's southern roots, his choice of Al Gore as a running mate, his relationship with the Democratic Leadership Council, and his decidedly moderate positions helped him win eight Sun Belt states that had gone to Bush in 1988 as well as Florida and Arizona in 1996.

#### *Federal Crime Control Programs*

Once in office, Clinton worked to follow through on one of his key campaign promises—to put “100,000 more police officers on the streets” (Decker 1992). Responding to Clinton's call to pass a “strong, smart, tough crime bill,” the majority-Democratic Congress enacted the Violent Crime Control and Law Enforcement Act of 1994 (“the 1994 Act”) a few days before the midterm congressional elections (Simon 2007, p. 102). As Jonathan Simon notes, the 1994 Act was “many times bigger and more expensive than the Safe Streets Act [of 1968]—[and] reflect[ed] the stunning variety of groups now seeking to be represented in crime legislation: women's groups, minority citizens living in poverty, the elderly and law enforcement agencies” (Simon 2007, p. 103). The act provided \$8.8 billion to hire more “community policing officers,” \$6 billion for state grants for crime prevention programs (Republican lawmakers cut most of this the next year), and approximately \$10 billion in grants to states to expand prisons (U.S. Congress 1994; U.S. Department of Justice 1994).

Importantly, President Clinton and Congress drew many provisions of the 1994 Act, including “three-strikes and you're out,” “truth-in-sentencing,” and stricter liability for juveniles, from state initiatives. President Clinton threw his support behind a federal three strikes law after the high profile murder of a California child prompted California voters to pass an expansive three-strikes initiative (Clinton 1994). The 1994 Act also required states to pass truth-in-sentencing legislation in order to qualify for federal money, a mechanism that rewarded more punitive states and diffused harsher sentencing nationally.

#### *Federal Court Exit*

During the reconstruction period federal courts largely exited the penal policy stage in regulating conditions of confinement and sentencing, giving state legislatures a free hand in reconstructing new penal regimes. In 1991, the Supreme Court in *Wilson v. Seiter* (1991) raised the standards for find-

ing violations of the Eighth Amendment in prison cases and began chipping away at precedents that provided inmates access to law libraries and legal assistance (*Lewis v. Casey* 1996). As Lynch (2010) writes about *Casey*, which originated in Arizona: “Justice Scalia’s opinion characterized [the district Judge’s] requirements as ‘inordinately . . . wildly intrusive’ into state business” (p. 186). The exception to this trend was in the Northern District of California, which continued to find violations by the California Department of Corrections over the course of the 1990s (see *Madrid v. Gomez* 1995; *Coleman v. Schwarzenegger* 2009).

With many southern states still under contest decrees, in 1993 and 1995 congressional representatives from Florida and Arizona introduced legislation to limit judicial “interference” in the management of the nation’s prisons and jails (Lynch 2010, p. 190; see also Nurse 1993). And in 1996, Congress passed the Prison Litigation Reform Act requiring inmates to fully exhaust administrative remedies before filing in federal court and to pay more court fees. Additionally, the law limits the number of “frivolous,” “malicious,” or improper claims that an inmate can file, all of which has drastically reduced the number of federal claims filed by prisoners (Schlanger and Shay 2007).

Finally, during this period federal courts upheld (or refused to hear challenges to) long sentences for minor crimes and racially disproportionate prosecutorial practices (see *Armstrong v. United States* 1996). In 1991, for example, the Court upheld laws mandating life imprisonment for first-time drug offenders (Alexander 2010). And in 2003, the Court upheld a 25-year-to-life sentence for a California man with two previous convictions who was convicted of stealing three golf clubs worth \$400 each (*Ewing v. California* 2003), thus firmly solidifying the constitutionality of the logic behind mass imprisonment (Simon 2007, p. 168).

## State Developments

### *Political Innovation*

Crime control and adequate punishment remained a central focus of state politics in the 1990s but the partisan dynamics changed in important ways. In all the states we examined, the political focus on crime helped Republicans make considerable inroads in state legislatures and governorships (Council of State Governments 2005, p. 110). Even in states where crime had not been a central focus in the 1980s, such as New York, Washington, and Oregon, by the early 1990s Republican politicians began touting their support for ballot initiatives or the death penalty to fortify their tough-on-crime credentials (e.g., Barker 2009). In Washington, for example, despite opposition from criminal justice professionals, the first three-strikes ballot initiative



drew support (and contributed to) a surge in Republican Party power in the state legislature, where Republicans in the lower house went from a 65–33 minority in 1992 to a 60–38 majority in 1994 (Clark, Austin, and Henry 1997; Council of State Governments 2010). Marking the departure from more moderate penal policies, one Oregon conservative captured the mood well: “Quit babying kids. . . . Give youths swift, sure consequences. . . . If that means warehousing them, then that’s what we’ll do” (Cate 2010, p. 58).

While rarely obstinate opponents, Democrats increasingly became aggressive supporters of punitive anticrime policies. In Texas, California, Florida, and Arizona, Democratic lawmakers began to actively support more funding for law enforcement agencies and legislation that targeted a wider net of criminals (including juveniles), ensured imprisonment for even minor crimes, and established new mandatory minimum sentences (e.g., Campbell 2012). In Florida, the legislature passed truth in sentencing and new mandatory minimum sentences in 1995 with significant support from Democrats in both Houses (Miller 1995). However, in states with less partisan competition for legislative control, such as Minnesota and New York, Democratic legislators continued to modify and moderate hastily proposed crime bills that would drain state resources (Oreskovich 2001; Schneier, Murtaugh, and Pole 2009).

#### *Interest Group Activity*

Importantly, this new bipartisan consensus was facilitated and cemented by the increasingly influential activities of special interest groups, who successfully framed crime as a continuing problem of leniency. The best example is the California prison guards’ union, which emerged as the state’s single most powerful special interest group (Page 2011) and helped establish a crime victims’ group, Crime Victims United of California (CVUC) that also lobbied for harsh punishment, even for juveniles and women (Page 2011).<sup>20</sup> In addition, the CCPOA was a key player in passing California’s three-strikes law (Page 2011, p. 121). In Arizona, Florida, Texas, Oregon, and Washington, prosecutors and state prosecutor associations, and other groups affiliated with law enforcement, emerged as central players in the penal field (e.g., Campbell 2012). In Florida, for example, an influential sheriff and states attorney organized a victims’ group that sponsored a truth-in-sentencing ballot initiative in 1993 that was later ruled unconstitutional. Citing judicial leniency as the heart of the crime problem, the group later lobbied legislators to pass truth

<sup>20</sup> Page (2011, p. 87) explains that CVUC took on lobbying, endorsing, and providing money to electoral candidates and sponsoring and opposing legislation, while another CCPOA sponsored victims’ group, the Doris Tate Crime Victims Bureau (CVB), monitored courts’, judges’, and district attorneys’ treatment of victims and offenders.



in sentencing (Schoenfeld 2010). As Florida Republicans gained political power, they later opened the statehouse doors to prosecutors, who literally wrote the state's new harsher sentencing laws in 1997 (Burgess 2008).<sup>21</sup>

*Policy Solutions for the "Crime Problem" as Leniency*

Law enforcement and victims' organizations' framing of the crime problem as a matter of "early releases" from prison, too few prison beds, and lenient judges complemented antistate sentiment and rhetoric that claimed government was "lying" to the people and could not be trusted to manage the crime problem (Zimring et al. 2001). In this view, only the public, and particularly victims, could be "trusted" to impose appropriate punishments. In many states, victim and law enforcement entrepreneurs bypassed elected representatives, placing punitive measures directly on the ballot—further blurring the division between public sentiment and crime control policy. The involvement of victims' groups, in particular, created a "zero sum" framing of crime policy where anything that was good for offenders was bad for victims (Simon 2007).

The simplistic framing of crime policy and crime's heightened political salience made sentencing enhancements ripe for diffusion. By the mid-1990s, politicians across the states we analyzed found that "the short-term electoral benefits" of tough-on-crime legislation simply outweighed the potential "long-term costs" (Nicholson-Crotty 2009, p. 202). In all the states we examined, state legislatures—mainly dominated by Republicans, but not exclusively—passed waves of legislation in the 1990s that imposed longer sentences and increased time served. Lawmakers also passed legislation that allowed prosecutors to charge juveniles as adults for violent crimes, stripped away many inmate services, and reinstated chain gangs and other demeaning punishments (e.g., Lynch 2010). By 2000, 21 states had passed versions of three-strikes (Lotke, Colburn, and Schiraldi 2004) and 42 states had passed truth-in-sentencing laws (with 25 states requiring time served of 85% or more; Sabol et al. 2002, p. 7). As a consequence, despite decreases in offending rates, state inmates began serving longer sentences, and incarceration rates continued to rise (although at a slower pace than they had before 1994; Sabol 2010, p. 36; see table 2).<sup>22</sup> By 2000, California, Texas, Florida, and New York together incarcerated approximately 460,000 people in their state prisons (representing 37% of all state inmates; Beck and Harrison 2001).

<sup>21</sup> Author interview with head lobbyist of the Florida Prosecuting Attorneys' Association, September 19, 2008.

<sup>22</sup> Incarceration rates continued to rise throughout the decade in every state we examined except New York's, which went down by 9% between 1994 and 2004 for reasons that have not been adequately explored. Some argue that the strength of the judiciary provided more alternatives to incarceration (Lippman 2010). In addition, early releases for nonviolent offenders never became a political issue the way it did in other states.

While incarceration rates in most states continued to rise between 1992 and 2007, considerable variation existed between states' rates of growth (see table 2). In particular, New York's incarceration rate increased to a high of 400 per 100,000 in 1999 (an 18% increase from 1992) but then began decreasing by an average of 2.5% a year through 2010. (The incarceration rate in California and Texas also began to decline in the year 2000, but by much less.) While this trend could reflect the reality of lower crime rates, its variation is also likely due to policies passed in the mid-1990s. For example, while legislators in New York and Washington passed tough-on-crime legislation in the 1990s, they continued to worry about costs and as a consequence allowed for alternative sentencing options for select nonviolent offenders (e.g., Gainey, Steen, and Engen 2005). Both statutory and nonstatutory alternative sentencing options allowed penal actors, including prosecutors, judges, and parole officers, to adjust their practices in response to internal or external pressure (e.g., Porter, Lee, and Lutz 2002). For example, in response to an overwhelmed court system, New York state judges established specialized courts geared toward treating low-level drug offenders (Lippman 2010), contributing to a 50% decline in drug offender admissions to prison between 1997 and 2008 (Greene and Mauer 2010).

Concerns about cost and the existence of alternative sanctions, however, did not necessarily translate into a smaller price tag for corrections. In Sun Belt states, the public support of tough-on-crime initiatives, media attention to penal policy and law enforcement's lobbying efforts convinced policy makers on both sides of the aisle that the public was willing to pay "whatever the costs" were to incarcerate criminals (Yeomans [1995], quoting Florida Senate president). As a consequence, policy makers faced significant disincentives to oppose ill-conceived or ineffective sentencing enhancements, even as they were slated to cost states millions of dollars.<sup>23</sup> In states like Minnesota, which had traditionally spent more per inmate, in 2003 legislators began scaling back on "extras" in order to accommodate growing prison populations (e.g., double celling inmates; Hesselton 2007). According to estimates by the Pew Center on the States, between 1987 and 2007, state spending on corrections more than doubled (while spending on higher education only rose by 21%), such that by 2007, 1 in every 15 state general fund dollars was spent on corrections (Pew Center on the States 2008). Even in New York, where prison populations declined, the "politics of prison closures proved thorny" with rural communities and their representatives in the

<sup>23</sup> See, e.g., the Florida Governor's Office of Policy and Budget analysis of Florida's three-strikes bill finding that "with the exception of its mandatory sentences for drug crimes and crimes on law officers and elders . . . the bill's sentencing mandates are so similar to prior legislation that its capacity to be a new and different deterrent is questionable" (Governor's Office of Policy and Budget, Legislative Bill Analysis of HB 121, June 8, 1999, p. 7).

legislature effectively maintaining corrections spending levels (Greene and Mauer 2010, p. 19).

### State Feedback Effects

In a cycle where policy changes what is possible in politics and politics then determines policy options, the practice of naming crime legislation after a fallen victim, enhanced sentencing measures, and federal resources to build more prisons ultimately reshaped and converged penal and political fields, creating new incentives and institutions that help maintain mass incarceration policies. In a candid expression of captured crime politics, one Democratic Florida legislator explained that even in 2007 sentencing enhancements “put legislators in a very difficult position. Because mandatory sentences on their face look very good. Are you against a strong criminal justice system? You can’t [be]. That’s like being against American apple pie.”<sup>24</sup> This statement exemplifies a new political culture where “law and order” policies became sacred pillars of state government, consuming a growing share of state resources, regardless of their effectiveness and relative utility in an era of declining crime and fiscal crisis.

Our data reveal that captured crime politics is in significant part sustained by the organizational strength and political activism of crime-related special interest groups (see also Miller 2008). Crime politics not only prioritizes law enforcement’s policy positions, but it opens up new avenues to reinforce those priorities through engagement in the political field. Prosecutors’ associations, correctional officers’ unions, and victims’ organizations now have sophisticated methods to track legislation and legislators. They act as watchdogs in state capitols, monitoring and publicizing what were once less visible matters of crime policy. Especially in state politics, where voter knowledge and enthusiasm can be limited, law enforcement interest groups have become important institutional players (Campbell 2012).

Ultimately, the reconstruction of the penal order changed more than our approach to punishment, it changed rationales of governance such that policy makers feel compelled to “govern through crime” (Simon 2007). In this sense, captured crime politics feeds back into a wide variety of policy arenas. Examples abound demonstrating that making something “a crime” has become the appropriate cultural and political response to public problems and moral panics (Simon 2007). Not unlike the women’s movement decades ago (Gottschalk 2006), the civil rights community has also appropriated this strategy, pushing for expanded “hate crime” legislation and prosecutions of

<sup>24</sup> Author interview with Representative Robert Trammell (D. Marianna), in Tallahassee, Florida, May 2, 2007.

individual acts as hate crimes (Jenness and Grattet 2001). As a consequence, these efforts further legitimize the basic organizing orthodoxy of the new penal order—that the criminal justice system should manage social risk and that criminal offenders should be sent to prison for as long as possible.

#### CONCLUSION: PERIODIZATION AND THE PUNITIVE TURN

In this article we propose a framework for a new political sociology of punishment that accounts for the broad penal changes that unfolded across the United States at both the national and state level. Our framework highlights how the dynamic interaction between state and federal processes and institutions reshaped the penal and political fields over time in ways that privileged punitive approaches to crime control policy that were traditionally characteristic of Sun Belt criminal justice systems. We have illustrated how processes and outcomes in earlier periods created new problems and arrangements that conditioned later developments. Below we revisit our aims, highlighting our findings and new explanatory framework and exploring the implications for theories of and research on mass incarceration. We then discuss the implications of our analysis for historical and political sociology more generally.

#### Toward a Historicized Political Sociology of Punishment

For Weber, “the sources of patterned action [the appropriate focus of sociological inquiry] are extremely pluralistic. . . . All attempts to locate a ‘resting point’—a single causal force—must be seen as a futile endeavor” (Kalberg 2008, p. 277, citing Weber 1946, p. 286; 1968, p. 341). Similarly, we argue that the nature of the transformation of the penal order in the United States over the second half of the 20th century is best explained by the successive policy outcomes of back-and-forth interaction between state- and national-level political and penal processes. Our model must be understood as dynamic and recursive, where the relative importance of specific causal factors is continuously reshaped by outcomes from previous dilemmas and contradictions. Our analysis demonstrates that the punitive turn is best explained by the interaction of national developments—presidential politics, federal crime control policy, and federal court behavior—with state-specific contexts that together produce political innovation, interest group activity, and legislative experimentation around penal policy at the state level. Over time, this interaction caused the penal and political fields to overlap or converge, thereby changing the dominant penal ideology, penal players, and penal policy. When examined through historicized periods, our model helps parcel out how the relative influence of such factors as crime

rates, partisanship, and interest group activity varied at particular junctures for specific reasons.

Importantly, the outcome of this process was conditioned by historical shifts in the nation's social and demographic fabric and by stable political institutional arrangements. We see the rising political influence of Sun Belt states as an important background factor that increasingly drove presidential hopefuls to use crime (and race) for political gain because it resonated with the constituents of these states. In addition, our findings lend considerable support to and expand upon theories emphasizing the role of American political institutions in explaining the transformation of American crime policies (Miller 2008). The decentralization of criminal justice systems and crime control policy makes crime an especially important policy realm in state politics, creating ample space for policy experimentation and political posturing. While presidents sought to appear forceful and proactive in addressing crime, in reality they were ill equipped to do so (Beckett 1997; Simon 2007). Instead, they funneled resources to state governments that deployed funds in ways that reflected localized ideas and interests.

In turn, the practice of electing local and state criminal justice officials gave law enforcement interest groups a platform to help set penal priorities. State politicians sought these groups' advice and support and responded to their demands. In particular, the unique position of prosecutors as locally elected officials with widespread discretion to impose criminal sanctioning (Jacoby 1980) seemed to provide them with a privileged space from which to advocate their interests. Sheriffs are similarly locally elected and often responsible for the jailing of defendants preconviction and those sentenced to jail terms at the county (usually less than one year). Similar to correctional officers' unions, prosecutors and sheriffs also benefited from the state-level nature of crime control policy making. With publicly financed offices across the state, legal know-how, and a ready-made constituency, they could quickly organize to support or oppose criminal justice reform.

Our findings provide conditional support for structural accounts that emphasize the role of broad socioeconomic shifts as the driving force behind crime control policies emphasizing incarceration. Social unrest was a primary factor in unsettling existing political arrangements and the penal orders they sustained. Rising crime rates were also an important source of concern, at least initially, but this declined in significance as bellicose anticrime rhetoric overshadowed any empirically grounded consideration of changes in criminal offending. However, we found little to suggest that some inherent aspect of the social and economic arrangements of late-modern society necessarily equated to stricter forms of state-sanctioned social control. For southern states, mass incarceration reflected long historical traditions of harsh punishment that had always disproportionately targeted racial minorities and that had never really embraced rehabilitation as an orienting ethos. And in states like

Minnesota, Oregon, and Washington, politicians only embraced harsh approaches in the 1990s after crime politics had become a national phenomenon. These states experienced social and economic anxieties in the 1970s and early 1980s, but those anxieties did not necessarily translate into harsh anticrime policies.

Although beyond the scope of this article, in line with Beckett (1997), Tonry (1995, 2011) and others, we believe that the unique system of racial exclusion, discrimination, and stratification in the United States created the context in which crime politics could flourish. As Provine (2011, p. 50) notes in a recent review of racial inequality in the war on drugs, “the system could not operate without an underlying racial hierarchy that deems African Americans mostly responsible for their situation.” Research has documented the purposeful appeals to antiblack sentiment in law-and-order messages in the 1960s and 1980s (at least at the national level; Weaver 2007), the tendency of study respondents to associate criminality with blackness (Russell 1998), and the more punitive attitude of whites (Bobo and Johnson 2004).

We find less support for accounts that explicitly link changes in crime control policy to a broader neoliberal political agenda (Wacquant 2009*b*). In the states we examined, punitive policies did not necessarily go hand in hand with free market policies or policies that undermined the welfare state—even if this was an eventual effect of mass incarceration (Schoenfeld 2011). Ronald Reagan’s tandem approach to social and economic policy notwithstanding (Hagan 2010), our analysis revealed confusing and often redundant policy responses that reflected short-term thinking and strategies for electoral gain rather than a unified ideology. Yet further research is needed on this point, especially to examine the ways in which policy makers, prosecutors, and other frontline criminal justice professionals understand their interests, the trade-offs they make to enact their priorities, and how their thinking is shaped by political ideology, including “racial indifference” or “color-blind racism” (e.g., Beckett, Pfingst, and Bowen 2005).

Ultimately our findings lend considerable support to and expand upon theories emphasizing the role of political context, partisan politics, and political institutions in explaining the transformation of the penal order. We find, as Barker (2009) contends, that state political context matters for states’ long-term penal trajectories by conditioning state policy makers’ responses to social, economic, and political shifts. As we discuss below, it is hard to ignore the difference in political discourse around criminals in Texas and Minnesota. Yet, macrosocioeconomic and political pressures can change levels of democratic participation, inclusion of minority groups, and partisan competition. For example, as the populations of racial minorities in smaller states grow, traditions of participation and inclusion begin to break down, creating new opportunities for crime politics (e.g., Elazar, Spano, and Gray 1999, p. 148;

Bonds 2009). Accordingly we found that, even in states like Minnesota and Washington, the gap between the penal and the political field narrowed over the time period analyzed.

Like Beckett (1997), we found that political strategies linked to race were important factors in unsettling the existing penal order and that Republicans successfully drew attention to crime in pursuing their political agendas. In particular, the political appeal of crime provided an important platform for insurgent Republicans to usurp Democrats in many states. We found partisan competition crucial to the creation of a new consensus around a martial approach to managing crime, and we demonstrate how both parties solidified the consensus through federal and state action. This finding comports well with pooled time series analyses that find strong effects for Republican strength and election years on incarceration rates (e.g., Jacobs and Charmichael 2001; Stucky et al. 2005; Keen and Jacobs 2009).

Most significantly, our account builds on political accounts by identifying some of the key mechanisms that link the national politicization of crime to changes in state penal policy. Specifically, presidential rhetoric (as reported by the media) helps state politicians conceive new political strategies and defines the terms of the debate, federal crime control resources empower interest group activity, and federal court behavior limits state policy options. Yet we show that national developments on their own would not have produced the outcomes that we find. It was the interaction of these developments with state political contexts that created different types of crime politics at the state level—emergent crime politics, high crime politics, and captured crime politics.

Consequently, as Miller (2008) suggests, the key to understanding the development of mass incarceration in the United States is to examine “who is at the table.” Our analysis demonstrates how political actors increasingly motivated crime control policy and penal actors increasingly played politics. And, importantly, we argue that the convergence of the penal field and the political field at key moments and in key states helped create the common trajectory we find across states. Thus it was the initial prioritization of crime control for political advancement in the contested period that created new penal rationales, players, and policies that were ultimately held captive to political considerations in the reconstruction period.

### Implications for Future Research on Mass Incarceration

One of the benefits of our framework is that it can help explain and guide future research on state variation in penal change. In particular, our model points to three state-specific contextual factors that mediated state-level political innovation, interest group activity, and policy solutions—result-



ing in differences in the timing and extent of overlap between penal and political fields—and thereby the intensity of punitive transformations. First, *historical political tradition and institutions* clearly influence both the early penal order in each state and its change over time. We found a common trend among states like Florida and Texas with strong political traditions of fiscal conservatism and voter suppression: initial resistance to prison expansion gave way as federal courts, the war on drugs, and crime politics created overlaps between the political and penal field. And, of course, strong public referendum systems, like those in California, intensify posturing over crime control policy (Zimring et al. 2001). Conversely, states with strong traditions of deliberative democracy or elite pragmatism (Barker 2009), such as Minnesota, New York, and Washington, began with more penal welfarist orientations and lower incarceration rates, but these traditions, as we point out below, also likely protected them from some of the excesses of high crime politics.

Second, *the timing of national influences with state-level sociopolitical context* also affected state variation. As mentioned above, it was only as Republicans had the opportunity to gain partisan advantage that high crime politics ensued. In Arizona and California this happened in the 1970s, in Texas and Florida in the late 1980s, and in Washington and Oregon in the 1990s. Thus the stability in partisan control in New York (up through 2009) and Minnesota (up through 2000) helps explain the moderation of crime politics and tough justice policies in these states. Yet as national Democrats embraced crime politics, the advantage gained by state Republicans faded. Thus we see in recent years a weakening association between Republican strength at the state level and changes to incarceration (Pager and Phelps 2012). The importance of the timing of federal-state interaction also demonstrates that the timing of destabilization, contestation, and reconstruction will necessarily vary by state-specific context.

Finally, states' *early policy choices* had the effect of either intensifying or moderating later punitive impulses. Legislators in Washington and Minnesota, for example, created Sentencing Guidelines Commissions that eventually acted as important institutional barriers to continuous increases in sentence lengths (Frase 2005, p. 204). Consistent with traditions of political participation in these states, these commissions also created space for voices of dissent and moderation in debates over sentencing enhancements. In Minnesota this included the media, judges, corrections officials, and victims' advocates concerned with issues of civility, effectiveness, and crime prevention (Oreskovich 2001).<sup>25</sup>

<sup>25</sup> For example, Oreskovich (2001) reports that in debates over changes to the sentencing guidelines to deal with sex offenders in the late 1980s and early 1990s, Minnesota actors publicly stated things like, "However heinous their crimes, each criminal is a human



In fact, pointing to the outsized corrections systems in California, Texas, and Florida, Minnesota Department of Corrections officials told legislators that “there was no indication that those expenditures have had any impact on public safety” (Oreskovich 2001, p. 221). Despite the truth of this statement, our analysis suggests that all states are not created equal when it comes to shaping national penal and political culture. States like Washington and Minnesota lacked the electoral power and national influence of these growing Sun Belt states, making it less likely that national-level politicians and other states would pick up their more moderate approaches. We argue, therefore, that the study of crime politics in populous swing states, such as Ohio, Pennsylvania, or Nevada (more recently), may be worthy of additional scholarly attention.

Again, our framework suggests that state-specific factors—political traditions and institutions, partisan control, and early policy choices—were important in part because they mediated the overlap between penal and political players, resources, and ideology. Future comparative research on states’ penal trajectories needs to elaborate on how these factors restructured the political and penal fields in specific states. New York’s experience may be illustrative of this phenomenon: though New York’s drug laws were among the most draconian, criminal justice actors in the state worked outside the political arena to experiment with varied approaches to drug offending. Ultimately, a proactive judiciary worked with nonprofits, local communities, and treatment providers to help initiate a striking reversal of the state’s incarceration rates (Porter et al. 2002; Lippman 2010). Thus we suggest that the retention of a more autonomous penal sphere—in certain contexts—reduces the likelihood of more punitive transformations.

Finally, the framework developed here also points to factors that could produce or limit penal change going forward. Some argue that the 2008 recession created a climate where change is possible: certain governors and legislators have once again put reducing incarceration on their agendas, and they have turned to research agencies and think tanks to help them set policy and implement change (e.g., Council on State Governments Justice Center 2011). Others have pointed to the reemergence of the federal courts in the penal field with the Supreme Court’s upholding of a ruling requiring the state of California to release 40,000 inmates from unconstitutionally overcrowded facilities (Simon 2011). While both of these developments give decarceration advocates a leg up from their position just a few

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being deserving of civilized treatment” (p. 143); “If we only address the criminal and corrections systems, we fail again” (p. 217); “Prevention, through education, must be our ultimate priority” (p. 217). As a result, Minnesota’s 1992 antiviolence initiative, while increasing penalties for sex offenders, also allocated two dollars for violence prevention and victims’ services for every one dollar it spent on criminals (p. 18).

years ago, our framework suggests that alone they will not significantly reconfigure the intertwined state political and penal fields that are sustaining the current penal order. The powerful interest groups forged during incarceration's expansion would have to reorient their positions, which seems unlikely, or face new interest groups that consistently advocate for responses to criminal offending that recognize its roots in deep socioeconomic disadvantage and historical social and political marginalization (Peterson and Krivo 2010).

### The Advantages of Periodization

The empirical complexity of mass incarceration illustrates a central tension in the project of historical sociology. On one hand, historical sociologists strive to reveal dominant causal mechanisms that can explain significant historical outcomes (e.g., Mahoney and Rueschemeyer 2003). On the other hand, as Weber found in his own work, sociologically relevant historical processes are more accurately characterized by "diverse historical pathways," contingencies, and multicausality (Kalberg 2008; e.g., Steinmetz 2004). We find that periodization helps identify the effects of sequence and the variation of causal forces on institutional change over time. More than the Weberian notion that multiple factors combine to produce outcomes of interest, our analysis highlights how static analyses can miss the nuanced ways that historical events interact to reorient the positions of penal and political actors and the relative influence of particular causes. In this way our analysis helps explain unresolved questions in the sociology of punishment. For example, our analysis illustrates how crime rates were important in destabilizing the penal order and in shaping policy outcomes during the contested period, but they were less important once a political consensus solidified a new penal order in the reconstruction period. Similarly, we show how Republican Party power mattered most in shaping incarceration rates after Republicans abandoned their fiscal conservatism and invested heavily in prison expansion and how partisanship was less important once Democrats embraced more southern notions of crime control and joined the new penal consensus.

Classical social theories of the transition to modernity rely on a sequence of distinct and internally coherent stages—many of which have been problematized in the various "turns" of postmodern social science (Clemens 2005). Yet as social scientists rejected grand progressive narratives in the style of Marx and even Weber, we may have inadvertently thrown out periodization as a beneficial methodological device. Our analysis suggests that the recent project of theorizing institutional change in terms of gradual recombinations and recompositions (Clemens 2005, 2007; Mahoney and Thelen 2010) is aided by the adoption of periodization strategies. While not theo-

ries in and of themselves, periods can help us to generate new explanations that make complex social phenomena more accessible (Mannheim 1940).

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