

Politics and State Punitiveness in Black and White

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## ***Politics and State Punitiveness in Black and White***

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Recent findings from the literature on imprisonment policy suggest that in addition to traditional social and economic variables, imprisonment rates are also strongly related to changes in the state political environment. In this study, we extend this literature by testing a theory of state punitiveness which posits that (1) the political environment of states influences the degree to which they incarcerate their citizens, and (2) the political determinants of state punitiveness may be conditional upon the racial subpopulation being incarcerated. Our results suggest that increases in state political conservatism in recent decades have contributed to increases in both the growth in black imprisonment rates and black imprisonment disparity (relative to whites), but that these effects are, to a degree, tempered by countervailing political conditions.

**I**t is generally well understood that the rate of a government's imprisonment—the percentage of its citizens incarcerated at a given time—is an effective gauge of its punitiveness (Greenberg and West 2001, 615). There is also reason to believe that the use of incarceration by governments is appropriately considered as being highly political in nature (Garland 1990; Mauer 2001). Laswell's (1936) well-known observation that "politics is the process by which it is determined who gets what, when and how," seems to ring especially true with regard to imprisonment policy. The government's ability to deprive citizens of liberty stands as one its most important and intrusive powers. Thus, determining who the government chooses to imprison and the conditions under which imprisonment rates rise or fall taps directly into Laswell's central question of the process of politics as well as the nature of the relationship between citizen and state.

Trends in national imprisonment rates in recent decades bring to bear two equally important policy themes, the examination of which may provide important theoretical insights as to the political nature of governments' use of imprisonment: the rising rate of imprisonment generally and the prominent disparity between rates of imprisonment for blacks and whites. First, the political nature of incarceration policy has been highlighted by critics of the criminal justice system who note the weak connection in recent decades between the rapidly rising

national imprisonment rate and the relatively flat national crime rate (e.g., Blumstein and Beck 1999). As a general matter, crime as a policy concern has risen to the forefront in national politics over the past few decades as evidenced by studies indicating increasing attention being paid to the crime problem by the public, politicians campaigning for office, the president, and the media (e.g., Beckett 1997). As many observers have noted, however, this increase in attention to crime has occurred during a period in which crime has generally remained stable, or in recent years, has been declining (Beckett and Sasson 2000).

This fact is demonstrated in the upper panel of Figure 1, which displays national trends in the number of state prisoners per 100,000 population, along with national crime rates, from 1975 to 1995. Clearly, the two series are not strongly related. Between 1975 and 1995, the crime rate fluctuated around a mean of approximately 5,500 reported crimes (per 100,000 population) per year. Although the crime rate does vary during this period, the greatest deviation from the period mean was in 1980, when the crime rate rose to 5,950. However, this figure is only 8.5% greater than the period mean. In contrast, the imprisonment rate in this period increased 279%. Clearly, there is more to the imprisonment boom than simply an increase in the crime rate.

Second, if we consider incarceration policy as being political in nature, then we might reasonably consider relative imprisonment rates as a political outcome in which blacks have not fared well. The lower panel of Figure 1 highlights the conspicuous disparity in white and black imprisonment rates. As the figure demonstrates, state imprisonment rates steadily increased for both races throughout the entire 1975–95 period. As noted by analysts, however, since the mid-1980's the gap between black and white imprisonment rates has widened, thus leading to record levels of imprisonment disparity. By the mid-1990's, blacks were approximately eight times more likely to be incarcerated than whites. This level of disparity is not only the highest ever seen in recent American history, but is also among the highest in all industrialized democracies (Tonry 1995).

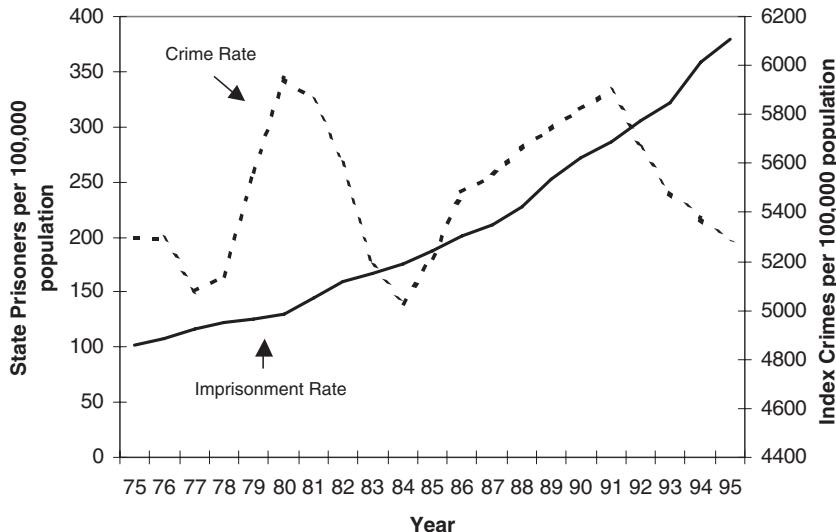
Accordingly, the astonishing difference in imprisonment rates between whites and blacks detailed in Figure 1 has prompted debate over its causes. Some attribute such racial discrepancy in prison populations to inordinate black involvement in serious crime (e.g., murder, rape, etc.) that typically leads to lengthy incarceration (Blumstein 1982, 1993). Others argue that factors such as racism by criminal justice actors or social class bias are at the root of disproportionate black incarceration (e.g., Bridges and Crutchfield 1988).

All of this suggests that while there may be some common ground in the factors leading to higher imprisonment rates for races across the board, there may be theoretically interesting differences in the sources of change in imprisonment rates for whites and blacks. We test a theory of state punitiveness which posits that (1) the political environment of states influences the degree to which they incarcerate their citizens, and (2) the political determinants of state punitiveness may be conditional upon the racial subpopulation being incarcerated. We test this proposition by estimating pooled cross-sectional time-series models of the

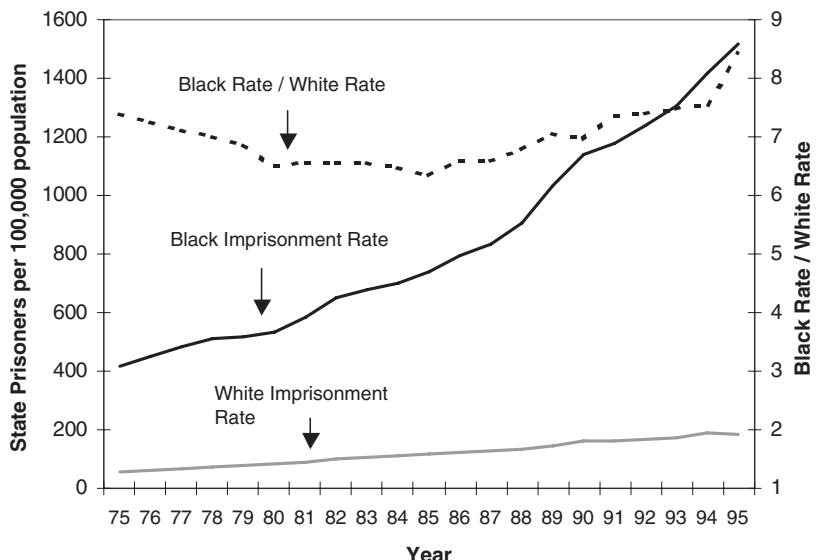
FIGURE 1

National Trends in State Imprisonment Rates, Crime Rates, and Racial Imprisonment Disparity, 1975–1995

(A) Imprisonment and Crime



(B) Imprisonment Disparity



determinants of state incarceration rates for both blacks and whites, over the years 1977–95. In addition to testing the differential impact of political forces on incarceration rates, we also account for other factors, including criminal activity, socioeconomic considerations, and specific state policies. Our results suggest that there are important differences across the races in the determinants of state imprisonment rates.

### A Political Model of State Punishment

While use of incarceration by governments has long been a topic of scholarly examination, quantitative studies of the political determinants of state punishment have been relatively sparse in comparison (Jacobs and Carmichael 2001, 80). Given that numerous state policy outputs, including many types of social policies, have been found to be affected by state political machinations, it is perhaps not too surprising that such factors might also impact states' use of imprisonment to maintain the social order. As others have argued, the link between politics and punishment is likely rooted in the relationship between "law and order" political values and ideology. As studies have shown, the perceived causes of and potential solutions to the problem of crime typically differ, with those having conservative predilections leaning toward punitive responses to crime based upon rationales of retribution, deterrence, and incapacitation, as opposed to the social welfare and rehabilitation solutions often proposed by more moderate or liberal factions (e.g., Beckett 1997). Scholars examining the relationship between ideology and punishment as a social policy have proffered three primary explanations for this relationship. First, conservatives are more inclined to view crime as a matter of personal choice and focus upon offenders' personal accountability for their deeds, as opposed to the explanations proffered by liberals and moderates that concentrate more on the potential influence of offenders' socioeconomic constraints and limited opportunities for legitimate success (Scheingold 1984). Second, some social theorists have argued that conservatives are more apt to employ law enforcement and incarceration as a means of asserting political authority to manage members of the economically marginal or "dangerous" underclass who may threaten socioeconomic elites (Beckett and Western 2001; Garland 1990). Finally, conservative Republicans have stressed a retributive and deterrence-based law and order agenda in an attempt to realign the electorate by building an ideological bridge on the issue of crime between well-to-do fiscal conservatives and middle- to lower-class social conservatives, with whom they might otherwise have little in common (Beckett and Sasson 2000).

Such punitive ideological inclinations do not merely manifest themselves in political rhetoric. Indeed, empirical studies indicate that Republican politicians tend to spend more on law enforcement and corrections than do Democrats (Caldeira and Cowart 1980; Scheingold 1984). Further, scholars analyzing state incarceration rates typically find a relationship between state ideology/partisanship and the use of imprisonment (e.g., Jacobs and Helms 1996; Greenberg and

West 2001). The more robust assessments of the connection between the state political environment and state punitiveness consider the relationship both across states and over time. Beckett and Western (2001) analyzed state rates of citizen imprisonment, pooling state imprisonment rates for 1975, 1985, and 1995. While their primary finding was that state imprisonment rates were, in part, driven by welfare system dynamics, they also determined that rates of imprisonment were affected by state Republican legislative strength. In a study of state imprisonment rates for the three census years of 1970, 1980, and 1990, Greenberg and West (2001) found that the political conservatism of the states' citizenry was positively related to imprisonment rates, yet the political party of the governor had no such effect.

In a study employing a similar pooled approach (three census years, 50 states), Jacobs and Carmichael (2001) found a relationship between state imprisonment rates and a measure of state Republican strength that tapped the party's control of the executive branch and legislative clout. Their finding survived the introduction of a litany of controls, and they found that the relationship grew stronger over time. State citizen ideology and religious fundamentalism also emerged as viable explanations for imprisonment rates. However, what is perhaps more intriguing in this regard is that the effect of Republican political strength persisted despite the controls for underlying citizen sentiment. This suggests that the influence of partisanship is not merely based on the preexisting conservatism of the citizenry driving politicians' reactions (Jacobs and Carmichael 2001, 82). Finally, Smith (2004) provides perhaps the most extensive analysis of state politics and incarceration. He examines state imprisonment rates in a pooled model (1979–95). He posits competing theoretical models of state punitiveness along with a combined model including all of his proposed explanations. He concludes that imprisonment rates are not driven by crime rates or state officials' responses to citizen sentiment, but rather by Republican control of the legislature, gubernatorial electoral considerations, and state racial cleavages.

### Imprisonment and Racial Disparity

The above studies provide a powerful argument that partisan politics and state imprisonment expansion are closely tied. However, these studies do not provide the precision necessary to discern how the effects of such law and order policy-making are allocated across the races. This is due to the aggregated nature of the dependent variable used in all of these analyses (overall citizen imprisonment), which prevents such studies from examining how changes in the partisan political environment may have disparate effects across racial subgroups within the state citizenry. Despite the aforementioned disparity between black and white incarceration rates and the political tumult over such inequities, few studies address the potentially distinctive determinants of incarceration rates for whites and blacks. Bridges and Crutchfield (1988) assessed black and white incarceration rates separately, but their cross-sectional state study encompassed only one

year and did not consider potential political explanations for state incarceration dynamics. They found that both black and white imprisonment rates were influenced by relative criminal involvement and states' usage of prison release mechanisms (negatively related to incarceration for both races). In comparing black/white rates of imprisonment they discovered that blacks are inordinately incarcerated when they are a small percentage of the state population, are segregated to the inner cities, and have lower socioeconomic standing than whites—even after racial differences in arrests are controlled.

In a similar vein, Yates (1997) analyzed racial incarceration disparity in the states, measured as a black to white imprisonment rate ratio. This study suggested that racial imprisonment disparity was driven primarily by relative arrest rates and socioeconomic disparities between blacks and whites. His results further indicated that such disparity was ameliorated, at least to a degree, by black political mobilization, both through traditional electoral mechanisms and political insurgency. However, like Bridges and Crutchfield, this study did not consider imprisonment rates over time, and, due to the study's dependent variable, did not parse out whether racial imprisonment disparity was due to elevated rates for blacks or deflated rates for whites.

### **Politics and Imprisonment Disparity**

Like most policymaking, criminal justice policymaking takes place in a highly politicized environment by policymakers who are to some degree influenced by party leaders and their constituents. Indeed, the evidence demonstrating a link between state partisanship and overall imprisonment would suggest that this must be the case. In addition to affecting *general* policy goals concerning the overall level of state punitiveness, however, the influence of these partisan and constituent forces should also extend to the *specific* policy choices made by policymakers when deciding exactly how such policies will be crafted and implemented. Such choices are potentially affected by the political environment and may have important consequences in determining which groups bear the burden of increased efforts to control crime. The question, then, is whether there are systematic differences in the policy preferences of Republican and Democratic officials that might lead them to craft and implement crime policies that affect blacks and whites differently. There are two reasons to believe the answer to this question may be "yes." The first is based on recent accounts of trends in electoral strategies employed by Republicans in the aftermath of the Civil Rights movement. As Jacobs and Carmichael explain:

Conservative candidates use law and order appeals to attract less affluent voters who are more likely to be crime victims and who are more likely to live in or near areas where violent crime is problematic. Officials in the Nixon administration have acknowledged that they deliberately used the law and order issue to appeal to anti-minority sentiments (Edsal & Edsal 1991). By emphasizing street crime and other social problems readily blamed on a racial underclass, parties closer to the right can win elections by attracting votes from the less prosperous (Beckett

1997) and still pursue economic policies that help their affluent core supporters (Hibbs 1987). (2001, 64–65)

Beckett and Sasson similarly argue that the Republican Southern Strategy of the 1960s necessitated finding a core issue on which wealthy conservatives along with “White suburbanites, ethnic Catholics in the Northeast and Midwest, and white blue-collar workers and union members” might find a common ground. They assert:

New sets of Republican constituencies were thus courted through the use of racially charged “code words”—phrases and symbols that ‘refer directly to racial themes but do not directly challenge popular democratic or egalitarian ideals.’ The ‘law and order’ discourse is an excellent example of such coded language, and it allowed for the indirect expression of racially charged fears and antagonisms. (2000, 58)

Kinder and Sanders (1996) make a similar argument, asserting that conservatives transitioned during the early 1960s from explicit racial appeals to more euphemistic and calibrated political appeals on “racial code” issues such as crime. They note that, “racial codewords make appeals to prejudice electorally profitable even when, as in contemporary American society, prejudice is officially off limits” (1996, 223). It is plausible that such law and order campaigns would not be effectual if, in implementation, such policies were palpably affecting those who were being courted (lower/middle-class white conservatives). Thus, if criminal justice policymaking, whether at the agenda-setting stage or the implementation stage, is subject to the same types of partisan pressures witnessed in other policy areas, we might plausibly expect that the impact of policies passed and implemented in white-dominated Republican environments would be greater for African Americans.

A second possible reason why we might observe racial disparities in the impact of criminal justice policies produced under different partisan environments concerns the electoral demands facing the Democratic Party. As is well-known, African Americans make up an important part of the Democratic electoral coalition. While Frymer (1999) laments that blacks have become a captured constituency for the Democratic Party, and hence marginalized in presidential elections, he is careful to note that this phenomenon is much less pervasive in Congress and in state and local politics. Indeed, there is a good deal of support for the proposition that Democrats have been more liberal than Republicans on civil rights issues of all kinds and more responsive to black interests (e.g., Cameron, Epstein, and O'Halloran 1996; Swain 1993). This being the case, we might expect Democrats to be more responsive to African Americans in criminal justice policymaking, and thus less inclined (than Republicans) to support criminal justice policies that are expected to have a racially disparate impact.

Whether Republican policymakers are more likely to propose criminal justice policies that disproportionately impact African Americans, or whether Democrats seek to avoid such policies (or both), we are left with the same implication, thus leading to our first hypothesis:

*Hypothesis 1: Criminal justice policymaking in Republican-dominated states should contribute to higher levels of imprisonment, and the effect should be greater for black imprisonment rates than white imprisonment rates.*

Helms and Jacobs (2002) provide some support for such a conditional partisan effect in their study of the political context of sentencing decisions. They assessed sentencing in 337 jurisdictions (in seven states) and used an interactive model to parse the differential influence of the political environment on sentencing for whites and blacks. They found that while the political environment of the courts (i.e., the percentage of votes in the county for George H.W. Bush's candidacy in 1988) did not affect sentencing for whites, blacks received longer sentences in jurisdictions in which Bush received more votes. While compelling, the study provides only a broad gauge of the impact of ideology on racial sentencing dynamics, since the discrete effects of political elites (versus citizens) on sentencing for whites and blacks were not tested. Below, we provide a more comprehensive test of this conditional hypothesis by examining incarceration rates in a large sample of states and incorporating a broad range of institutional actors.

In addition to analyzing the possible link between partisan political strength and racial imprisonment dynamics, we also consider two extensions of this basic hypothesis that political values of policymakers may differentially affect imprisonment rates. First, we examine the influence of black elected officials. Recent studies of voting in Congress show that black representatives tend to be more liberal than white representatives on civil rights issues, even within the Democratic Party (e.g., Cameron, Epstein, and O'Halloran 1996). While some have expressed concern that the presence of black representatives ("descriptive representation") does not necessarily equate to support for policies that are traditionally aligned with black interests ("substantive representation") (e.g., Swain 1993), studies have consistently shown that black representation in government tends to promote more beneficent government outcomes for minorities, including municipal services and programs (e.g., Browning, Marshall, and Tabb 1984), civil service employment (Eisinger 1982), police practices and oversight (Saltzstein 1989), sentencing policy (Welch, Combs, and Gruhl 1988), welfare (Fording 2003) and civil rights and civil liberties legislation (Herring 1990), among others. As black elected officials tend to be more liberal than other members of their party, we expect their presence to be associated with lower incarceration rates across the board. However, we would expect black representatives to be especially concerned about inequities in treatment and criminal justice policies that might target racial and ethnic minorities. Accordingly, we generate a second hypothesis concerning the effect of the political environment on incarceration rates:

*Hypothesis 2: Increases in black political representation are expected to be negatively related to state imprisonment rates, and the effect should be greater in magnitude for blacks than for whites.*

In addition to the effects of black representation, many studies have shown that gender can also play an important role in state policymaking. Mirroring gender differences in mass public opinion, several studies have shown that female policymakers have distinctive policy interests. As one might expect, female elected officials tend to be significantly more concerned about “women’s issues” than their male counterparts. More importantly for our purposes, female elected officials also tend to take more liberal positions on a range of social policy issues, including social welfare, environmental protection, gun control, civil rights, and public safety (Barrett 1995; Dodson and Carroll 1991). In addition, Bratton and Haynie (1999) found that female state legislators were significantly more likely to introduce bills that were supportive of “black interests.” Thus, there is good reason to believe that female legislators have been less likely to support punitive state criminal justice policies across the board and that they may be especially less supportive of criminal justice policies that disproportionately affect African Americans. We thus propose a third hypothesis:

*Hypothesis 3: Increases in female political representation are expected to be negatively related to state imprisonment rates, and the effect should be greater in magnitude for blacks than for whites.*

### An Empirical Model of State Imprisonment Rates

To test our hypotheses, we employ a pooled cross-sectional time-series design to examine the determinants of race-specific state imprisonment rates for the years 1977–95. Our estimation sample consists of the 45 states for which data are available for all the variables in our analysis.<sup>1</sup> We estimate separate models of state imprisonment rates for blacks and whites, where imprisonment rates are hypothesized to be driven by the state political environment, state economic conditions, existing criminal justice policies, rates of criminal involvement, and state fiscal health. The general model is given below in equation 1.

$$\begin{aligned}
 \text{Imprisonment Rate}_{i,t} = & \alpha_t + \beta_1 \text{Repub Legislature}_{i,t} \\
 & + \beta_2 \text{Repub Governor}_{i,t} + \beta_3 \text{Judicial Conservatism}_{i,t} \\
 & + \beta_4 \text{Black Elected Officials}_{i,t} + \beta_5 \text{Female Legislators}_{i,t} \\
 & + \beta_6 \text{Citizen Ideology}_{i,t-1} + \beta_7 \text{Election Year}_{i,t} \\
 & + \beta_8 \text{Criminal Involvement}_{i,t} + \beta_9 \text{Overcrowding Litigation}_{i,t} \\
 & + \beta_{10} \text{DSL}_{i,t} + \beta_{11} \text{Poverty Rate}_{i,t} + \beta_{12} \text{Unemployment Rate}_{i,t} \\
 & + \beta_{13} \text{Revenue Capacity}_{i,t} + \varepsilon_{i,t}
 \end{aligned} \tag{1}$$

<sup>1</sup> Our time frame is limited by the availability of state imprisonment data by race and state arrest data by race. We exclude Alaska and Hawaii because data on imprisonment and unemployment do not distinguish between blacks and nonwhites. We exclude Vermont and Illinois due to a lack of black imprisonment data and black arrest data and Nebraska due to its nonpartisan legislature.

The subscripts  $i$  and  $t$  denote the state and year of observation, respectively. Our dependent variable is labeled *Imprisonment Rate* and for each race is defined as the annual change in the number of prisoners incarcerated per 100,000 state (white or black) population.<sup>2</sup> The remaining variables are described below.

### *Political Variables*

To test our first hypothesis, we include three variables that measure the partisan or ideological orientation of the three most powerful state political institutions—the legislature, the executive, and the judiciary. First, we include *Republican Legislature*—the annual change in the average percentage of seats held by Republicans within each chamber of the state legislature. Second, we include *Republican Governor*—the annual change in party control of the executive, where 1 = change from Democrat to Republican, -1 = change from Republican to Democrat, and 0 = no change. Third, we include *Judicial Conservatism*—the annual change in the measure of state supreme court ideology developed by Brace, Langer, and Hall (2000). Prior to differencing, this variable has a theoretical range of 0–100, and has been rescaled so that higher values correspond to greater levels of conservatism. As measures of state conservative strength, we expect each of these variables to be positively related to state imprisonment rates. We further hypothesize that the magnitude of the effects will be greater for black imprisonment rates than for white imprisonment rates.

Our second and third hypotheses suggest that imprisonment rates should be related to the racial and gender composition of elite state political actors. Accordingly, we include *Black Elected Officials*—the annual change in the percentage of black elected officials in each state, along with *Female Legislators*—the average percentage of females across both chambers of the state legislature. Consistent with our hypotheses, we expect each of these variables to be negatively related to imprisonment rates, and the magnitude of the effects to be greater for blacks.

We also consider two additional political variables—the liberalism of the electorate (*Citizen Ideology*)—the annual change in Berry et al.'s (1998) measure of citizen ideology and whether or not there is a gubernatorial election (*Election Year*). Based upon past research we expect *Citizen Ideology* to be negatively related to state imprisonment rates and *Election Year* to be positively related to state imprisonment rates (e.g., Smith 2004).

### *Control Variables*

We also control for a number of other factors that may influence imprisonment rates, including rates of criminal behavior, state economic conditions, state fiscal

<sup>2</sup> We use the first difference of state imprisonment rates as panel stationarity tests suggest that imprisonment rates for both races are nonstationary.

health, and specific state criminal justice policies. These variables are discussed in turn below.

**CRIMINAL INVOLVEMENT.** Many researchers have examined the influence of crime rates on incarceration. While some studies have found crime to be an important determinant of incarceration rates (e.g., Carroll and Cornell 1985), several others have found little if any relationship (e.g., Carroll and Doubet 1983). One possible reason for the discrepancy in findings may be the less than perfect relationship between the crime rate and the level of law enforcement. To account for this, we therefore control for criminal involvement using two alternative measures. First, consistent with past studies, we include the *Crime Rate*, which is measured as the annual number of reported index crimes per 100,000 state population. Second, for each race we include *Arrest Rate*, which is the total number of violent crimes, property crimes, and drug offenses, per 100,000 state (white or black) population. These data have not previously been published by the Federal Bureau of Investigation, and we believe that ours is the first state-level study of racial imprisonment rates to utilize such data (for more than one year).

**ECONOMIC CONDITIONS.** In their influential *Punishment and Social Structure*, Rusche and Kirchheimer (1939) argued that incarceration increases with unemployment due to the potential threat to the social order from the unemployed. Since the initial formulation of this hypothesis, many empirical studies have indeed found this relationship to hold (e.g., Colvin 1990; Fording 2001). The effect of unemployment on incarceration need not result from threat, however, as there are additional, if not alternative reasons to expect such a relationship. As Cappell and Sykes (1991) point out, defendant employment status is an important determinant of sentencing outcomes, and thus we should expect that as unemployment rates increase, incarceration rates should increase as well. Consequently, for each model we include *Unemployment Rate*—the annual change in the (race-specific) state unemployment rate. This variable is expected to be positively related to state imprisonment rates.

In a similar vein, many researchers have posited a direct relationship between levels of poverty and incarceration (e.g., Colvin 1990; Smith 2004). Consistent with the threat hypothesis for unemployment, we might also expect states with higher levels of inequality to be subject to greater potential threat from the lower classes, thus resulting in greater levels of incarceration. As with unemployment, however, an alternative explanation can be given for a positive relationship between inequality and incarceration. As Reiman (1996) explains, defendants with greater financial resources are better able to defend themselves in the criminal justice process, thus increasing the probability that they will not be incarcerated for very long, if at all. We therefore include *Poverty Rate*—the annual change in the (race-specific) state poverty rate, as a measure of inequality.

Finally, we consider the possibility that imprisonment rates may be related to a state's ability to build and maintain prisons. This hypothesis is suggested by recent analyses of incarceration rates that cite the significant expense of prison

construction, along with competition for state resources from other important programs (e.g., Jacobs and Carmichael 2001). We therefore include *Revenue Capacity* as an indicator of state economic capacity, which is measured as the annual change in per capita state tax collections. This variable is expected to be positively related to state imprisonment rates.

**GOVERNMENT POLICY.** We control for two types of government policies that might be expected to affect state incarceration rates. First, we examine the effect of determinate sentencing laws (DSLs). In states with DSLs, judges set fixed periods of imprisonment that are only reduced for good behavior. According to many criminologists, DSLs have the potential to increase prison populations by significantly increasing the length of sentences due to the abolition of parole (Sorensen and Stemen 2001). However, in the most comprehensive analysis of the effects of DSLs, Marvell and Moody (1996) found that DSLs often serve to reduce state prison populations. To assess the impact of DSLs, we include *Determinate Sentencing Laws* (coded 1 if a state has a DSL, and 0 if it does not). Given the significant disagreement in the literature on the effects of DSLs, we remain agnostic about this variable's ultimate effect on state imprisonment rates.

We also control for prison population pressures by including a dichotomous variable indicating the presence of a court order concerning overcrowding (*Overcrowding Litigation*). Since 1965, overcrowding lawsuits have been brought in 47 states, with at least partial victory achieved in over 60 cases (Levitt 1996). In most cases, judges do not order states to release prisoners, but rather impose caps on prison populations or prohibit certain prison practices (e.g., "double ceiling"). Although the states are left to determine how they will come in compliance, such court mandates undoubtedly increase the costs of letting their prison population continue to grow. Therefore, we expect *Overcrowding Litigation* to be negatively related to state incarceration rates.<sup>3</sup>

## Estimation and Results

To examine the determinants of imprisonment rates for both blacks and whites, we estimate our models as a system of equations, relying on Zellner's (1962) Seemingly Unrelated Regression Estimation (SURE). This choice is primarily driven by theoretical considerations, as it is expected that unmeasured exogenous shocks affecting the incarceration rates of one group (whites) are also likely to affect the incarceration rates of the other group (blacks). Estimating these equations independently (e.g., OLS) effectively ignores the possibility of correlation across the error terms of the models, which in turn results in a loss of efficiency. SURE estimation incorporates error correlation through the use of feasible generalized least squares, thus resulting in more efficient estimates of the parameters of both models.<sup>4</sup>

<sup>3</sup> Variable details, descriptive statistics, and data sources are provided in a supplementary appendix, available online at <http://www.journalofpolitics.org>.

<sup>4</sup> The SURE approach also facilitates the use of cross-equation hypothesis tests of the equality of coefficients. Although we were led to the decision to use SURE based on theoretical considerations,

TABLE 1

## Regression Results for Determinants of State Imprisonment Rates and Racial Imprisonment Disparity, 1977–1995

Independent Variables	White Imprisonment Rate		Black Imprisonment Rate		Imprisonment Disparity (Black/White)
	I	II	I	II	
<i>Repub Legislature</i> <sub>i,t</sub>	.0316	.0103	1.7546*	1.6514*	.0338*
<i>Repub Governor</i> <sub>i,t</sub>	2.6917*	2.8624*	20.7809*	21.6501*	-.0326
<i>Judicial Conservatism</i> <sub>i,t</sub>	.0302	.0380	2.5246*	2.5875*	.0147*
<i>Black Elected Officials</i> <sub>i,t</sub>	-.5503	-.4477	-8.8650*	-11.8500*	.0330
<i>Female Legislators</i> <sub>i,t</sub>	.1803	.1350	-3.2212*	-3.5728*	-.0840*
<i>Citizen Ideology</i> <sub>i,t-1</sub>	.0007	.0070	-.3033	-.3538	.0068
<i>Election Year</i> <sub>i,t</sub>	1.2211	1.3033	12.2090	11.8635*	-.0176
<i>Arrest Rate</i> <sub>i,t</sub>	.0048*	—	.0081*	—	—
<i>Arrest Rate Disparity</i> <sub>i,t</sub>	—	—	—	—	.0699*
<i>Crime Rate</i> <sub>i,t-1</sub>	—	.0011*	—	.0047*	—
<i>Overcrowding Litigation</i> <sub>i,t</sub>	-.1700	-.6607	8.3086	1.7076	.0232
<i>Determinate Sentencing Laws</i> <sub>i,t</sub>	-3.3791*	-3.1163*	-11.7202	-10.2759	.6067
<i>Poverty Rate</i> <sub>i,t</sub>	7.5411*	7.6203*	7.7341*	8.3389*	—
<i>Poverty Rate Disparity</i> <sub>i,t</sub>	—	—	—	—	.9951*
<i>Unemployment Rate</i> <sub>i,t</sub>	-.6411	-.5391	-.9336	-.9390	—
<i>Unemp Rate Disparity</i> <sub>i,t</sub>	—	—	—	—	-.0311
<i>Revenue Capacity</i> <sub>i,t</sub>	11.2791	12.7229	-538.1899	-518.1411	-132.1251
R <sup>2</sup>	.12	.16	.13	.16	.83

Note: Column entries are unstandardized slope coefficients generated by Seemingly Unrelated Regression Estimation (for Blacks and Whites) and FGLS (for Disparity). Significance tests are based on panel corrected standard errors (PCSEs). Two-tailed tests are employed for *Determinate Sentencing Laws*, and one-tailed tests for all other variables. \* $p < .05$ .

All models were estimated including fixed effects for years, which effectively control for all omitted variables that are invariant across states, yet vary over time.<sup>5</sup> To deal with problems in the error term posed by the pooled data structure, we report panel-corrected standard errors, which are consistent in the presence of heteroskedasticity and contemporaneous correlation (Beck and Katz 1995). After first differencing the dependent variable, residual diagnostics indicated an absence of serial correlation. The parameter estimates for our models are presented in Table 1,<sup>6</sup> which presents results for both white and black imprisonment rates, and for each race, reports the results of two alternative models.

this choice is also supported by model diagnostics (Breusch-Pagan test), which suggest modest ( $r = .33$ ), yet statistically significant residual correlation across the two models ( $p = .000$ ).

<sup>5</sup> While joint F-tests confirmed the necessity of including year dummies, the inclusion of state dummies proved unnecessary after first-differencing the dependent variable.

<sup>6</sup>The R<sup>2</sup> statistics for these models appear relatively small; however, one must remember that the dependent variables have been converted to first differences. This will naturally lead to a reduction

Model I presents results using *Arrest Rate* to control for criminal involvement. Model II is identical, except that *Crime Rate* is substituted for *Arrest Rate*. As the results are similar across both model versions, and our substantive conclusions identical, we believe that our conclusions are not an artifact of the choice of which variable to use to control for criminal involvement.<sup>7</sup>

The results presented in Table 1 suggest some similarities across the races in the determinants of imprisonment rates. For both blacks and whites, we find that growth in imprisonment rates is positively and significantly affected by criminal involvement (*Arrest Rate* and *Crime Rate*), economic deprivation (*Poverty Rate*), and partisan control of state government (*Republican Governor*). However, the most interesting results are the differences across races in the determinants of imprisonment rates. For whites, the significant determinants of imprisonment growth were *Arrest/Crime Rate*, *Poverty Rate*, *Determinate Sentencing Laws*, and *Republican Governor*. With the exception of *Determinate Sentencing Laws*, changes in black imprisonment were affected by these same variables; however, black imprisonment growth was also significantly related to other features of the political environment, including the partisan composition of the legislature (*Republican Legislature*), judicial ideology (*Judicial Conservatism*), the representation of blacks (*Black Elected Officials*) and women (*Female Legislators*) among elected officials, and the politics of gubernatorial elections (*Election Year*). Thus, it appears that the political environment has had a highly disproportionate effect among blacks.

### *The Political Environment and Racial Imprisonment Disparity*

In addition to patterns of significance across models for whites and blacks, there are also significant differences in the *magnitude* of the coefficients for the independent variables across the races. Consistent with hypothesis 1, the coefficients for state conservative strength—*Republican Governor*, *Republican Legislature*, and *Judicial Conservatism*—were all greater in magnitude for the model of black imprisonment rates. Even for *Republican Governor*, which was statistically significant for both whites and blacks, the coefficient for the model of black

in the  $R^2$  compared to a model estimated in levels. Even so, the  $R^2$  statistics reported for our models must be interpreted with caution. Our models rely on FGTS estimation, and thus our goodness of fit statistics rely on transformed data. As Greene warns, “ $R^2$ -like statistics in this setting are purely descriptive” (1997, 509).

<sup>7</sup> Most independent variables are measured at time  $t$ , which assumes that their effect is witnessed immediately. However, *Citizen Ideology* is lagged one year due to the presumed sluggish relationship between public opinion and policy. *Crime Rate* is also lagged one year. If the effect of crime is solely due to its relationship with arrests, then one would expect the effect to be witnessed immediately. However, if the effect of crime is due more to its effect on public opinion (support for stronger law enforcement), one might expect a lagged effect. We find the strongest effect for the lagged version of *Crime Rate*.

imprisonment growth was almost seven times larger than the coefficient estimated for whites. Furthermore, the effects of *Black Elected Officials* and *Female Legislators* were both negative and much larger in the model of black imprisonment. Thus, our results indicate that growth in black imprisonment rates, much more so than white rates, has been highly influenced by changes in state political environments. This suggests that changes in the political environment have likely been associated with changes in levels of racial imprisonment disparity as well. This question is further explored by estimating equation 2 below.

$$\begin{aligned}
 \text{Imprisonment Disparity}_{i,t} = & \alpha_{i,t} + \beta_1 \text{Repub Legislature}_{i,t} \\
 & + \beta_2 \text{Repub Governor}_{i,t} + \beta_3 \text{Judicial Conservatism}_{i,t} \\
 & + \beta_4 \text{Black Elected Officials}_{i,t} + \beta_5 \text{Female Legislators}_{i,t} \\
 & + \beta_6 \text{Citizen Ideology}_{i,t-1} + \beta_7 \text{Election Year}_{i,t} \\
 & + \beta_8 \text{Arrest Rate Disparity}_{i,t} + \beta_9 \text{Overcrowding Litigation}_{i,t} \\
 & + \beta_{10} \text{Determinate Sentencing Law}_{i,t} + \beta_{11} \text{Poverty Rate Disparity}_{i,t} \\
 & + \beta_{12} \text{Unemployment Rate Disparity}_{i,t} + \beta_{13} \text{Revenue Capacity}_{i,t} + \varepsilon_{i,t} \quad [2]
 \end{aligned}$$

The dependent variable in equation 2 is *Imprisonment Disparity*, which is measured as the simple ratio of the black imprisonment rate to the white imprisonment rate. The right side of equation 2 is identical to equation 1 with the following three exceptions. First, consistent with the dependent variable in equation 2, our measure of criminal involvement (*Arrest Rate Disparity*) now takes the form of a ratio of the black arrest rate to the white arrest rate.<sup>8</sup> Second, for *Poverty Rate* and *Unemployment Rate* we now substitute similarly constructed ratios of black rates to white rates (*Poverty Rate Disparity* and *Unemployment Rate Disparity*). Finally, all variables in equation 2 are measured in levels, as opposed to changes, due to the fact that panel unit root tests fail to confirm that the dependent variable is nonstationary. The coefficient estimates for our model of *Imprisonment Disparity* are displayed in the last column of Table 1.<sup>9</sup> The results are largely consistent with the pattern of results found for the separate models of white and black imprisonment rates. As with both white and black imprisonment rates, imprisonment disparity is strongly related to racial differences in economic conditions and differences in levels of criminal involvement. What is most interesting for our purposes is that these results suggest that differences across the races in the effects of the political variables—*Republican Legislature*, *Judicial Conservatism*, and *Female Legislators*—are large enough to yield a statistically significant effect on racial imprisonment disparity.

<sup>8</sup> Since racially specific reported crime data are not available at the state level, we rely solely on arrest data to capture racial differences in the level of criminal involvement.

<sup>9</sup> We estimated equation 2 by including fixed effects for states and years. To deal with serial correlation, we estimated the coefficients using Generalized Least Squares (assuming a common AR1 process).

The results also indicate that these effects have been substantively significant. Indeed, our results suggest that holding other variables constant, a one standard deviation increase in *Republican Legislature* (18.04) is expected to cause an increase of .61 in state imprisonment disparity. Similarly, an increase of one standard deviation in *Judicial Conservatism* (15.37) is expected to cause an increase of .23 in the level of disparity. Finally, while the percentage of black elected officials has a negligible impact on state imprisonment disparity, this is not the case for the presence of female elected officials. Our estimates suggest that a one standard deviation increase in the percentage of legislators that are female would cause the level of imprisonment disparity to decrease by .63, holding other variables constant.

### *The Conditional Effects of the Partisan Environment on Black Imprisonment*

Thus far, we have found strong support for theoretical perspectives that place partisan politics at the center of state criminal justice policymaking. More importantly, the extent to which this is the case varies significantly across the races. Changes in state government partisanship and ideology appear to matter much more for blacks than for whites. While we believe this to be an important finding, a review of the literature on racial politics finds that there is good reason to suspect that the effects of state partisanship on black imprisonment rates might vary as a function of the size of the black population in a state. Interestingly, however, two different perspectives exist in the literature, suggesting alternative possibilities for exactly how a state's racial context might interact with the state partisan environment to affect criminal justice policymaking.

The first perspective is often referred to as the "racial threat" hypothesis and is most commonly associated with the early work of Key (1949) and Blalock (1967). Blalock maintained that majority group repression of a minority group is largely a function of two types of perceived threats—those originating from competition over economic resources and those arising from competition for political power. An important corollary to this hypothesis is that the level of economic and political competition, and thus the level of perceived threat, is largely a function of minority group size. Most empirical tests of the racial threat hypothesis have therefore examined the relationship between black population size and various types of white hostility and repression, including the occurrence of black lynchings (Tolnay, Beck, and Massey 1989), black-targeted urban violence (Olzak 1989), support for racist political candidates (Giles and Buckner 1993), and black church arson (Soule and Van Dyke 1999). Most of these studies have found that black population size is associated with various forms of white repression or white resistance to black interests. Hence, we might suspect that in states with larger black populations, white voters may be more receptive to conservative campaigns that rely on punitive law and order rhetoric, especially if they believe that the targets of punitive policies are likely to be black. This may motivate Repub-

lican politicians to pursue such strategies, much like Nixon's "southern strategy," which was explicitly designed to court voters in states with large black populations. This leads to an elaboration of Hypothesis 1:

*Hypothesis 4: Criminal justice policymaking in Republican-dominated states should contribute to higher rates of black imprisonment (and thus racial imprisonment disparity), and the strength of the effect should be positively related to the percentage of the state population that is black.*

A separate literature on racial politics has stressed the importance of black electoral strength in overcoming any white hostility that might be associated with large black populations. This literature focuses on the behavior of white elected officials, who are seen as vote-maximizers who must balance white hostility against the competing interests of black constituents. Although there has been some disagreement on the functional form of the relationship, many studies have thus found that as the size of the black population increases, policy responsiveness to black interests increases as well. This relationship has been found to exist at all levels of government and across a variety of measures of policy responsiveness (e.g., Keiser, Meuser, and Choi 2004; Keech 1968). Given this possibility, it is quite plausible that in states with large black populations, conservatives feel constrained by black electoral strength and may be less willing to support punitive crime policies that disproportionately affect blacks.

*Hypothesis 5: Criminal justice policymaking in Republican-dominated states should contribute to higher rates of black imprisonment (and thus racial imprisonment disparity), and the strength of the effect should be negatively related to the percentage of the state population that is black.*

To test Hypotheses 4 and 5, we reestimate equations 1 and 2 by adding a series of multiplicative terms that include each of the state partisanship variables—*Republican Legislature, Republican Governor, and Judicial Conservatism*—and the percentage of the state population that is black. Since many studies have acknowledged the possibility of nonlinearity in the relationship between black population size and policy responsiveness, we estimate both linear (*Black%*) and nonlinear [ $\ln(\text{Black}\%)$ ]<sup>10</sup> interactions between the state partisan environment and black population size. In Table 2, we first examine the results for models in which the black imprisonment rate is the dependent variable. Columns two and three of the table present the linear and nonlinear interactive model results. Both versions support Hypothesis 5. While state conservative strength continues to be positively related to black imprisonment rates, the coefficients for the interaction terms strongly suggest that this relationship declines in magnitude as the black population increases. Although both versions support this conclusion, the nonlinear

<sup>10</sup>Several studies model this nonlinearity by adding a squared term for black population, rather than its natural log. We tested this specification, but it simply confirmed the results we present in Table 2.

TABLE 2

## Regression Results for Interactive Models of Black Imprisonment Rates and Racial Imprisonment Disparity

Independent Variables	Black Imprisonment Rate (Linear)	Black Imprisonment Rate (Nonlinear)	Imprisonment Disparity (Black/White)
<i>Repub Legislature<sub>i,t</sub></i>	3.0644*	3.3704*	.0433*
<i>Repub Governor<sub>i,t</sub></i>	33.4977*	50.2433*	.3059*
<i>Judicial Conservatism<sub>i,t</sub></i>	3.8554*	5.2160*	.0272*
<i>Repub Legislature<sub>i,t</sub> * Black %<sub>i,t</sub></i>	-.1894*	—	—
<i>Repub Governor<sub>i,t</sub> * Black %<sub>i,t</sub></i>	-1.2189	—	—
<i>Judicial Conservatism<sub>i,t</sub> * Black %<sub>i,t</sub></i>	-.1668	—	—
<i>Black %<sub>i,t</sub></i>	.3858	—	—
<i>Repub Legislature<sub>i,t</sub> * ln(Black %)<sub>i,t</sub></i>	—	-1.4601*	-.0112*
<i>Repub Governor<sub>i,t</sub> * ln(Black %)<sub>i,t</sub></i>	—	-16.2965	-.1771*
<i>Judicial Conservatism<sub>i,t</sub> * ln(Black %)<sub>i,t</sub></i>	—	-1.7431*	-.0077
<i>ln(Black %)<sub>i,t</sub></i>	—	4.7693*	-2.6993*
<i>Black Elected Officials<sub>j,t</sub></i>	-10.6756*	-11.7273*	.0222
<i>Female Legislators<sub>i,t</sub></i>	-3.4018*	-3.4327*	-.0757*
<i>Citizen Ideology<sub>i,t-1</sub></i>	-.3401	-.3761	.0063
<i>Election Year<sub>i,t</sub></i>	13.0712*	12.3440	-.0117
<i>Arrest Rate<sub>i,t</sub></i>	.0082*	.0079*	—
<i>Arrest Rate Disparity<sub>i,t</sub></i>	—	—	.0606*
<i>Overcrowding Litigation<sub>i,t</sub></i>	7.6081	6.2498	.0610
<i>Determinate Sentencing Laws<sub>i,t</sub></i>	-10.4026	-9.8990	.6563*
<i>Poverty Rate<sub>i,t</sub></i>	8.8291*	9.9598*	—
<i>Poverty Rate Disparity<sub>i,t</sub></i>	—	—	1.1529*
<i>Unemp Rate<sub>i,t</sub></i>	-.9457	-.8961	—
<i>Unemp Rate Disparity<sub>i,t</sub></i>	—	—	-.0338
<i>Revenue Capacity<sub>i,t</sub></i>	-509.2623	-532.2757	.0000
<i>R</i> <sup>2</sup>	.18	.19	.83

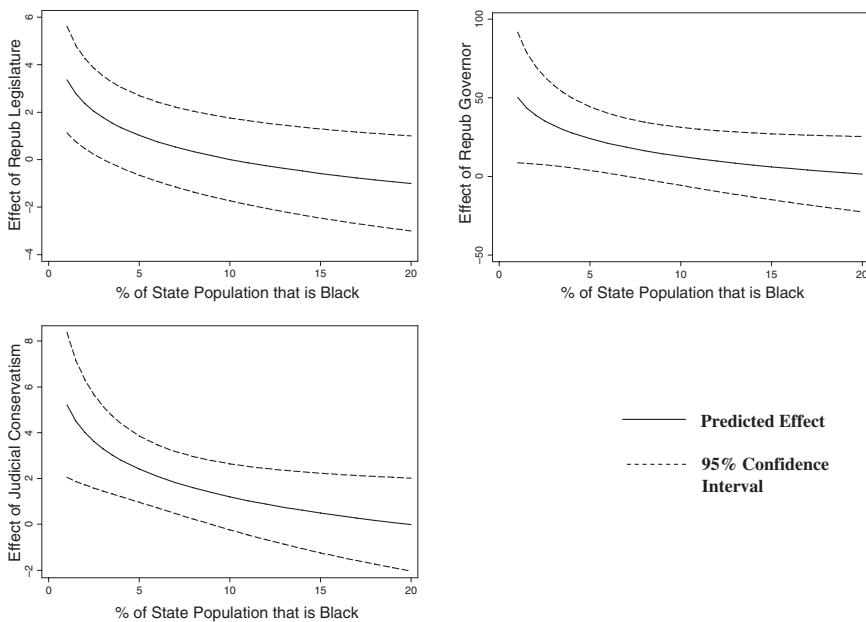
Note: Column entries are unstandardized slope coefficients generated by seemingly unrelated regression estimation (for Blacks) and FGLS (for Disparity). Significance tests are based on panel corrected standard errors (PCSEs). Two-tailed tests are employed for *Determinate Sentencing Laws* and all interaction terms, and one-tailed tests for all other variables. \**p* < .05.

version results are more robust as two of the three interaction terms are statistically significant at the .05 level, and the third [*Republican Governor \* ln(Black%)*] is close to being significant (*p* = .07).

Given the complexity inherent in interpreting the results of the nonlinear interactions in Table 2, we calculated predicted effects and associated 95% confidence intervals for the three state partisanship variables, conditional on a range of relevant values for black population size. These results are displayed graphically in Figure 2. The graphs clearly indicate that the effects of the three indicators of conservative strength are positive and statistically significant when the black pop-

FIGURE 2

Predicted Effects of State Political Variables on Change in Black Imprisonment Rate, by Percentage of the State Population that is Black



ulation is relatively small. However, as black electoral strength increases, the predicted effects rapidly decrease in magnitude, with the effect no longer deemed statistically significant at black population values ranging from a minimum of 3% (*Republican Legislature*) to a maximum of 8% (*Judicial Conservatism*). Based on the distribution of black population size across the states in 1995, this suggests that black electoral power limits the effects of the partisan environment to being statistically significant for anywhere between 33% and 50% of the American states.

Finally, the last column of Table 2 presents the results of our reestimation of equation 2, which models the (nonlinear) interactive effects of the state partisan environment and black population size on racial imprisonment disparity. Again, the disparity results are consistent with the results for black imprisonment rates and provide additional support for Hypothesis 5. The effects of all three political variables are statistically significant when the black population is small, as indicated by the coefficients for *Republican Legislature*, *Republican Governor*, and *Judicial Conservatism*. However, the coefficients for all three of the interaction terms are negative, and they are statistically significant in two cases (*Republican Legislature*, *Republican Governor*). Thus, whether we examine black

imprisonment rates alone, or imprisonment disparity, the results suggest that partisanship effects only matter when blacks lack significant electoral clout.<sup>11</sup>

## Conclusion

The extent of a government's use of imprisonment as a means of managing and controlling its citizenry, especially its underclass, provides telling information concerning the dynamics of state policymaking and the power machinations within the state political milieu. Our findings support the proposition that state punishment is an inherently political process. While states' use of imprisonment is, to a certain degree, influenced by the rate of crime, our findings suggest that there is hardly a technocratic accounting relationship between citizens' criminal involvement and states' imprisonment rates. Similarly, state punitiveness does not appear to be driven by governmental responsiveness to mass ideology, at least as measured in the aggregate. Instead, our findings suggest that states' use of imprisonment is tied to the ideological tenor of the elite political environment and politicians' electoral incentives. As others have argued in prior works (e.g., Baum 1996; Jacobs and Carmichael 2001) imprisonment has escalated in environments in which conservative political elites are prevalent. The strong relationship between imprisonment and conservative political clout, in all branches of government, provides some support for the claim that law and order policymaking has been employed by the Republican Party to provide an ideological bridge between its well-to-do fiscal conservative constituents and blue-collar and middle-class social conservatives, hence breaking up the traditional Democratic coalition.

If imprisonment policy is inherently political in nature, then the prospect that racial subgroups may experience asymmetrical outcomes is intuitively plausible. The lot of African Americans in public policy outcomes, relative to whites, has long been a topic of academic investigation, and, as our descriptive accounts of the relative incarceration rates of blacks and whites indicate, blacks have historically fared poorly on this policy outcome dimension. Our analysis suggests that while the relative imprisonment rates of blacks and whites may have certain root causes in common, there are important differences in the determinants of imprisonment between the two races. Most notably, conservative elite political environments operate to disproportionately amplify the imprisonment rates of blacks. This development is consistent with the assertions of some theorists (e.g., Beckett 1997) that the viability of the law and order policymaking of Republican political elites depends upon such policies not palpably affecting their constituents, but rather a population that has traditionally been marginal to their electoral success.

<sup>11</sup> We also examined other possible interactive relationships between our three indicators of state partisan control and various features of the state political environment. Most notable among these were interactions with *Election Year*, and interactions with a variable measuring the presence of unified or divided party control of state government. We consistently find no evidence of either type of interaction.

However, our results also support the proposition that the effects of conservative partisanship on black imprisonment may be ameliorated in two important ways. First, we find that the effect of state partisanship is conditional upon the racial composition of the state and that its effect will only endure in states where blacks lack significant electoral strength. Second, the relatively high imprisonment rates of blacks may also be ameliorated via the impact of black and female elected officials. These ameliorative effects may ultimately have limitations of their own, however, as many states impose civic disabilities upon release from prison (i.e., ex-convicts cannot vote). Thus, blacks may be faced with unfortunate predicaments on two highly related fronts. First, the law and order policy campaigns of conservative political officials yield increased (and relatively disproportionate) imprisonment rates for blacks. Second, imprisonment often leads to disenfranchisement, and thus, blacks are in jeopardy of becoming increasingly politically marginalized and unable to help elect the officials who could possibly serve to improve their relative lot in criminal justice policy outcomes.

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