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THE DEATH PENALTY AND THE POLITICS OF RACIAL RESENTMENT IN THE POST CIVIL RIGHTS ERA

*Michael K. Brown**

INTRODUCTION

Public support for the death penalty remains very high today at 64%, even though it has declined slightly from its 1994 peak of 80%.¹ Although we are accustomed to think of Americans as relentlessly predisposed to favor execution despite questions about the fairness of the death penalty and its uncertain effect in deterring homicides, public support has fluctuated significantly over the last fifty-five years. Support for the death penalty was almost as high shortly after World War II as it is today, but public opinion turned against the death penalty in the early 1960s, declining to a low of 42% by 1966.² Since then, opinion shifted sharply in favor of the death penalty, notably after the Supreme Court reinstated the death penalty in 1976.³ It is a mistake to assume that a disproportionate number of Americans have always been in favor of executing people.

The public's embrace of the death penalty during the late 1960s was not an isolated occurrence. Since then, public support for increased punitive crime control measures (i.e., longer, mandatory sentences,

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1. Gallup, Death Penalty, <http://www.gallup.com/poll/1606/Death-Penalty.aspx> (last visited Feb. 13, 2009). The Gallup Poll has asked the same question of respondents since 1953: "Are you in favor of the death penalty for a person convicted of murder?" See Tom W. Smith, *A Trend Analysis of Attitudes Toward Capital Punishment, 1936-1974*, in *STUDIES OF SOCIAL CHANGE SINCE 1948*, at 310 (James A. Davis ed., 1976); Lydia Saad, *Racial Disagreement Over Death Penalty Has Varied Historically: Whites Consistently More Supportive, But Only Occasionally Have Majority of Blacks Favored It*, GALLUP NEWS SERV., July 30, 2007, available at <http://www.gallup.com/poll/28243/Racial-Disagreement-Over-Death-Penalty-Has-Varied-Historically.aspx>.

2. Gallup, *supra* note 1.

3. See *id.* The Supreme Court reinstated the death penalty in *Gregg v. Georgia*. See 428 U.S. 153, 186-87 (1976).

limits on parole and probation), and opposition to means-tested welfare policies also rose.⁴ A significant portion of the public believes that the government spends too much money on welfare. At its peak in the late 1970s and early 1990s, about 63% of the public opposed more spending for welfare, though opposition to welfare diminished after Congress enacted the 1996 welfare reform law.⁵ Similarly, since the early 1970s, about two-thirds of the public believes that the government has failed to aggressively suppress crime and has not done enough to fight drug addiction.⁶

Contemporary public support for the death penalty, repressive crime control policies, and hostility toward welfare are part of an ideological and cultural syndrome that defines the post civil rights racial order; it is a palpable shift in public opinion and ideology.⁷ It is impossible to understand the incarceration boom of the last forty years, the public's seemingly unquenchable desire for execution, or the repeal of the Aid to Families with Dependent Children (AFDC) program⁸—all key elements of conservative state-building over the last forty years—without acknowledging and analyzing these broad changes in public opinion and ideology. Obviously, there is never a one-to-one relationship between shifts in public opinion and policy changes, but these policies had and continue to have broad public support at the same time as they have had devastating consequences for African Americans. For example, black men are far more likely to be incarcerated or sentenced to death than white men, and poor African Americans are more likely to be subjected to harsh, punitive welfare rules.⁹

4. See PAUL M. KELLSTEDT, *THE MASS MEDIA AND THE DYNAMICS OF AMERICAN RACIAL ATTITUDES* 78 fig.3.5, 79 fig.3.6, 80 fig.3.7 (2003); JAMES A. STIMSON, *PUBLIC OPINION IN AMERICA: MOODS, CYCLES, AND SWINGS* 83 fig.4.5(a) (2d ed. 1999). Kellstedt traces the changes in attitudes toward the welfare state from the 1950s to 1996. See KELLSTEDT, *supra*.

5. NAT'L OPINION RES. CTR., *GENERAL SOCIAL SURVEYS, 1972-2006* (Cumulative File), available at <http://www.norc.uchicago.edu/GSS+Website/Download/SPSS+Format> (last visited Feb. 12, 2009).

6. *Id.*

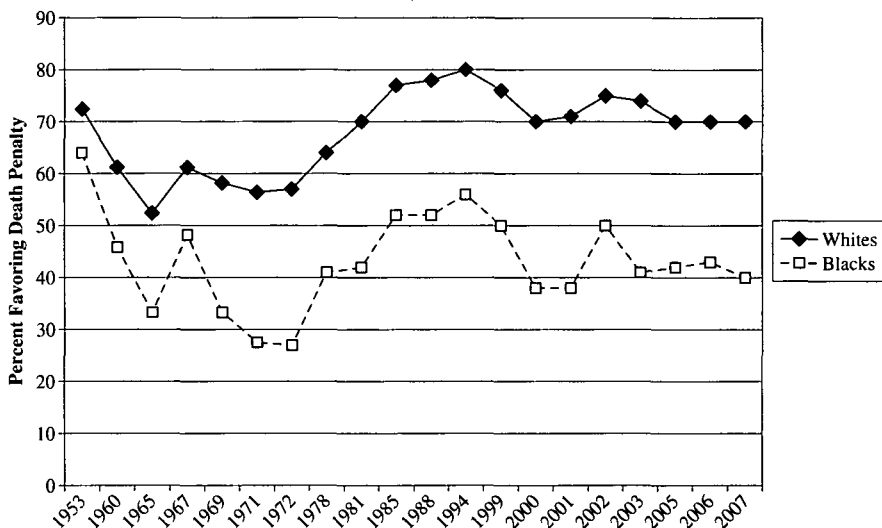
7. See STIMSON, *supra* note 4, whose analysis of a wide variety of surveys demonstrates a conservative shift in public opinion across policy domains including education, urban problems, health, welfare, and race since the 1960s.

8. In 1996, Congress repealed the AFDC (Title IV of the 1935 Social Security Act), which legally entitled poor women and their children to cash payments, and replaced it with Temporary Assistance to Needy Families (TANF). See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 8 & 42 U.S.C.); 1935 Social Security Act (Title IV), Pub. L. No. 74-271, 49 Stat. 620 (repealed 1996). TANF sets time limits on cash payments and imposed tough mandatory work requirements and sexual regulation. See GWENDOLYN MINK, *WELFARE'S END* 43, 51 (2002).

9. See MICHAEL K. BROWN ET AL., *WHITEWASHING RACE: THE MYTH OF A COLORBLIND SOCIETY* 147 (2003) [hereinafter BROWN ET AL., *WHITEWASHING RACE*]; Joe Soss et al., *The*

The conservative turn in public attitudes toward the death penalty, welfare, and crime stem mainly from a shift in the views of white Americans. African Americans and whites are sharply divided over the legitimacy of the death penalty and have been since the onset of the civil rights movement. As Figure 1 demonstrates, a majority of African Americans have generally opposed the death penalty while the vast the vast majority of white Americans from the early 1950s to the present favored imposing the death penalty.¹⁰

FIGURE 1
PUBLIC SUPPORT FOR DEATH PENALTY BY
RACE, 1953–2007



With the exception of the late 1980s and early 1990s, only a minority of African Americans, an average of 43%, viewed the death penalty favorably.¹¹ Today, about 70% of whites favor the death penalty compared to 40% of African Americans.¹²

Hard Line and the Color Line: Race, Welfare, and the Roots of Get-Tough Reform, in RACE AND THE POLITICS OF WELFARE REFORM 225, 225–26 (Sanford F. Schram et al. eds., 2003); BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 15–18 (2006); Glenn C. Loury, *Why Are So Many Americans in Prison?: Race and the Transformation of Criminal Justice*, 32 BOSTON REV. 7, 9 (2007); Loïc Wacquant, *Deadly Symbiosis: When Ghetto and Prison Meet and Mesh*, 3 PUNISHMENT & SOC'Y 95, 96 (2001). For an account of African Americans' relationship to the U.S. welfare state from its inception in the 1930s to the 1980s, see generally MICHAEL K. BROWN, RACE, MONEY, AND THE AMERICAN WELFARE STATE (1999) [hereinafter BROWN, RACE MONEY].

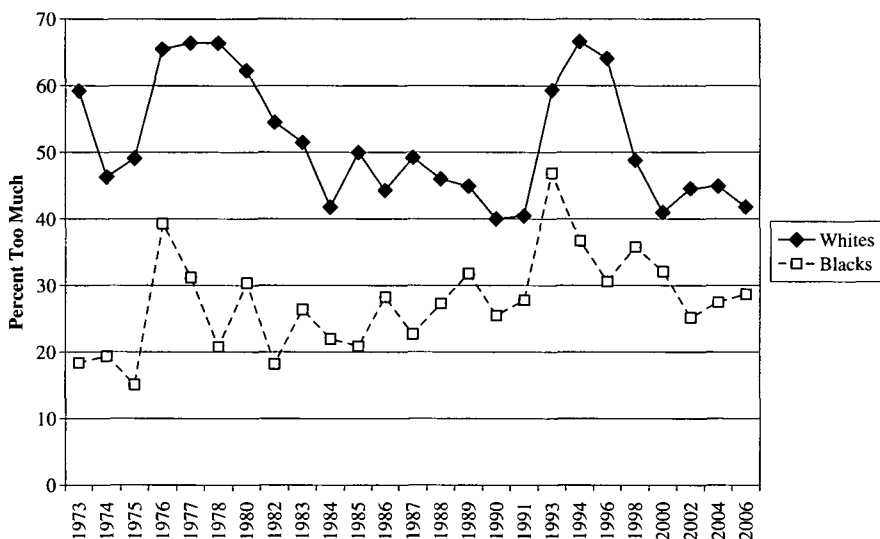
10. See Smith, *supra* note 1, at 271 tbl.3; Saad, *supra* note 1.

11. Average calculated by author.

12. Saad, *supra* note 1.

A similar racial divide exists over welfare spending; between 1973 and 2006, an average of 51% of whites thought that the government was much too generous to welfare recipients while only 28% of blacks agreed.¹³ In fact, historically African Americans are far more likely than whites to support increased spending for social policies such as welfare, food stamps, health care, and Social Security. It is not that white Americans are opposed to the welfare state; on the contrary, they tend to favor Social Security and Medicare and have consistently supported helping the poor, albeit with guaranteed jobs rather than cash handouts.¹⁴

FIGURE 2
OPINION OF WELFARE SPENDING



But African Americans, regardless of their class status, consistently favor more generous social provisions and display far less hostility toward welfare (including food stamps).¹⁵ Perhaps more significantly, white attitudes toward the death penalty, crime and punishment, and welfare are all racially stigmatized. Over the past ten years, a number of studies have shown that racial attitudes, racist stereotypes, or both

13. See NAT'L OPINION RES. CTR., *supra* note 5. Percentages calculated by author.

14. See MICHAEL C. DAWSON, BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS 183 tbl.8.1 (1994).

15. See BROWN, RACE MONEY, *supra* note 9, at 346-48; DAWSON, *supra* note 14, at 183 tbl.8.1.

are the most important factors in explaining white support for the death penalty and white opposition to welfare.¹⁶

With the emergence of the post civil rights political order in the late 1960s, beliefs about race, racial justice, and policies such as desegregation, affirmative action, and civil rights were fused with beliefs about the welfare state and the government's role in the economy and society. Prior to 1965, there was almost no relationship between welfare state policy beliefs—defined as a preference for social policies such as welfare, Social Security, and government regulation—and racial policy beliefs—consisting of measures of whether the public supported or opposed civil rights policies.¹⁷ Before the civil rights movement and the emergence of black protest and riots in Northern cities in the 1960s, the public understood these two kinds of policies to be separate and unconnected; the correlation between the indices of each type of policy was 0.03.¹⁸ After the 1960s, these beliefs were strongly related and moved in tandem: Americans' views of the welfare state *and* racial policies became more conservative after 1971, and then switched directions and became more liberal in the 1980s.¹⁹ In the early 1990s, the public's view again became more conservative.²⁰ After the 1960s, the correlation between the two indices was 0.68.²¹ Sociologist David Garland correctly concludes, "The institutional and cultural changes that have occurred in the crime control field are analogous to those that have occurred in the welfare state more generally."²²

In the post civil rights political order white racial resentment buttressed an ideology of individual choice and personal responsibility, which was sustained by widening class and racial inequality. Conservative political elites created this racial order by exploiting the 1960s political upheaval to forge an electoral coalition that united

16. MARTIN GILENS, *WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY* 2–3 (1999); ANGE-MARIE HANCOCK, *THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN* 52 (2004); LAWRENCE D. BOBO & DEVON JOHNSON, *A Taste for Punishment: Black and White Americans' Views on the Death Penalty and the War on Drugs*, 1 DU BOIS REV. 151, 170–72 (2004); MARK PEFFLEY & JON HURWITZ, *Persuasion and Resistance: Race and the Death Penalty in America*, 51 AM. J. POL. SCI. 996, 1006 (2007); JAMES D. UNNEVER & FRANCIS T. CULLEN, *The Racial Divide in Support for the Death Penalty: Does White Racism Matter?*, 85 SOC. FORCES 1281, 1290–91 (2007).

17. KELLSTEDT, *supra* note 4, at 78, 80 tbl.3.3. Kellstedt uses an index that measures whether the public supports or opposes government policies for education, urban problems, health, and welfare. *Id.* at 78. Kellstedt's racial policy index includes items gauging support for affirmative action, school busing to achieve integration, open housing policies, etc. *Id.* at 68–69, 142–45.

18. *See id.* at 80 tbl.3.3.

19. *See id.* at 78 fig.3.5.

20. *Id.*

21. *Id.* at 80 tbl.3.3.

22. Loury, *supra* note 9, at 8 (quoting David Garland).

white southerners, religious conservatives, and fiscal conservatives and was dedicated to rolling back regulation of the economy, repealing progressive taxation, and ultimately undoing as much of the Great Society and New Deal as possible. Racial hostility and polarization were instrumental in bringing this political coalition to power and race has been foundational to its stability.

Research has shown that stigmatizing media portrayals of blacks as lazy, dependent on government handouts, and prone to violent crimes likely bolstered public support for the death penalty, repressive crime control policies, and punitive welfare policies.²³ These media portrayals, however, are an artifact of and were shaped by the changes in political discourse wrought by opponents of the civil rights movement and opportunistic politicians playing the race card. Reporters and editors, whether print or TV journalists, do not frame their stories and write their accounts in a political vacuum. The media operates more often like a political megaphone than an independent voice. While reporters are not necessarily mere secretaries, recording what politicians tell them, it is the politicians and their adversaries, not reporters and editors, who set the agenda, identify the issues, and establish the foundations of political discourse. The words of politicians as they try to fashion electoral coalitions, defeat opponents, and champion policies—the political context—matter to the images and stories that the media produce and reproduce.

Changes in public support for the death penalty, repressive crime control policies; or punitive social welfare policies will occur only as this racial order changes. Whether and how it might be changing is an open question—one I will consider in the conclusion to this Article. My argument proceeds by first defining the concept of racial orders and elaborating on the origins of the post civil rights racial order—its roots in a conservative political movement that exploited white racial resentment—and analysis of its three constituent elements: durable racial inequality, widening wealth and income inequality, and the emergence of racial voting blocs.²⁴ I argue that racial resentment underpins a contemporary ideology of choice and individualism, which is linked to the ascendance of conservative crime, welfare, and tax and budget policies, particularly in the 1980s.²⁵ Available empirical evi-

23. See, e.g., GILENS, *supra* note 16, at 102–32; CRAIG HANEY, DEATH BY DESIGN: CAPITAL PUNISHMENT AS A SOCIAL PSYCHOLOGICAL SYSTEM 27–44 (2005); Mary Beth Oliver, *Race and Crime in the Media*, in A COMPANION TO MEDIA STUDIES 421, 421–36 (Angharad N. Valdivia ed., 2003).

24. See *infra* notes 28–81 and accompanying text.

25. See *infra* notes 82–115 and accompanying text.

dence, I suggest, demonstrates that white racial resentment is a key explanation for whites' political support for the death penalty, tough anti-crime policies, and punitive welfare policies.²⁶ In the conclusion I consider whether and how the post civil rights racial order may be changing.²⁷

II. THE POST CIVIL RIGHTS RACIAL ORDER

What is a racial order and what characterizes the post civil rights racial order? A racial order is defined as a "social structure where race is the organizing principle for distribution of material and psychological resources as well as a racial schema which assigns roles, scripts, behaviors, expectations, stereotypes, and normative evaluations based on citizens' racial assignment."²⁸ Racial orders affect the life chances and opportunities of individuals; structure politics, particularly party competition, and political institutions; and shape ideological beliefs and attitudes. Underpinning racial orders are racialized labor markets that historically have enslaved, subordinated, or excluded black labor. Given the historical significance of slavery and Jim Crow laws, both instances of ruthless exploitation of black labor, it is apparent that racial orders embed a "durable kind of ascriptive civic status in the context of American capitalism."²⁹ Politicians construct racial orders by forging coalitions, restructuring governmental institutions, and crafting policies that embed racial hierarchies in American society and perpetuate white privilege while justifying the subordination and exploitation of black workers.³⁰

In any racial order, race and racism, as Thomas Holt notes, "colonize other categories and concepts—like economic rationality and justice, and notions of value and entitlement."³¹ In this regard, racial orders in the United States reflect what Toni Morrison has called "American Africanism," the construction of a "nonwhite, Africanlike

26. See *infra* notes 99–115 and accompanying text.

27. See *infra* notes 116–127 and accompanying text.

28. Michael C. Dawson & Cathy Cohen, *Problems in the Study of the Politics of Race*, in *POLITICAL SCIENCE: THE STATE OF THE DISCIPLINE* 488, 492 (Ira Katznelson & Helen V. Milner eds., 2002).

29. Adolph Reed, Jr., *Unraveling the Relation of Race and Class in American Politics*, 15 *POL. POWER & SOC. THEORY* 265, 266 (2002).

30. See generally Dawson & Cohen, *supra* note 28; THOMAS C. HOLT, *THE PROBLEM OF RACE IN THE TWENTY-FIRST CENTURY* (2000); Warren Whately & Gavin Wright, *Race, Human Capital, and Labour Markets in American History*, in *LABOUR MARKET EVOLUTION: THE ECONOMIC HISTORY OF MARKET INTEGRATION, WAGE FLEXIBILITY AND EMPLOYMENT RELATIONS* 270, 270–91 (George Grantham & Mary MacKinnon eds., 1994); Desmond King & Rogers Smith, *Racial Orders in American Political Development*, 99 *AM. POL. SCI. REV.* 75 (2005).

31. HOLT, *supra* note 30, at 76.

(or Africanist) presence or persona” and its incorporation into public ideology and discourse.³² For most of U.S. history, the racialization of public discourse was explicit, and politicians were expected as a matter of course to appeal to the opinion and preoccupations of white men. Abraham Lincoln went out of his way during the famous Lincoln-Douglas debates to reassure his white audience that his opposition to slavery in no way entailed repudiating the privileges of white men.³³ With the repudiation of Jim Crow and the assertion of color-blind equality after the civil rights revolution, statements of racial and biological inferiority and subordination were purged from public discourse.³⁴ Such statements simply are not tolerated any longer.³⁵ This does not mean that politicians forgo issuing racial appeals or exploiting racial divisions, however. Today, racial appeals are coded through implicit references to the fear of black crime or lazy blacks who receive undeserved handouts.³⁶

In the aftermath of the civil rights legislation and the Great Society, a powerful legacy of racial resentment has shaped public discourse and public opinion. George Wallace, Richard Nixon, a multitude of Republicans, and Southern opponents of civil rights forged a new racial language by capitalizing on white resentments and fears arising out of the wrenching political upheaval of the 1960s.³⁷ Whites’ resentment toward African Americans or Latinos is often expressed in the language of individualism. Indeed, we may say that the core American value of individualism has become racialized—whites’ antipathy to blacks or to color-conscious policies is expressed in the language of individualism. Donald Kinder and Tali Mendelberg argue that whites use individualism as a political weapon and they are “preoccupied with matters of moral character.”³⁸ Whites focus on blacks’ shortcomings and specifically believe that “blacks fail to display the virtues of

32. TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* 6–7 (1992).

33. TALI MENDELBERG, *THE RACE CARD: CAMPAIGN STRATEGY, IMPLICIT MESSAGES, AND THE NORM OF EQUALITY* 38 (2001).

34. *See id.* at 18.

35. *Id.* at 17–18.

36. *See id.* at 17.

37. THOMAS EDSALL & MARY EDSALL, *CHAIN REACTION: THE IMPACT OF RACE, RIGHTS, AND TAXES ON AMERICAN POLITICS* 77–79 (1991). *See generally* EDWARD CARMINES & JAMES STIMSON, *ISSUE EVOLUTION: RACE AND THE TRANSFORMATION OF AMERICAN POLITICS* (1989); MENDELBERG, *supra* note 33, at 81–84, 88–107.

38. Donald R. Kinder & Tali Mendelberg, *Individualism Reconsidered: Principles and Prejudice in Contemporary American Opinion*, in *RACIALIZED POLITICS: THE DEBATE ABOUT RACISM IN AMERICA* 44, 58, 61 (David O. Sears, Jim Sidanius & Lawrence Bobo eds., 2000); *see also* BROWN ET AL., *WHITEWASHING RACE*, *supra* note 9, at 34–65.

hard work and self-sacrifice that white Americans claim as central to their own lives and to their society.”³⁹

The language of the so-called American Dream—hard work, success, and bootstrapping—was joined to white racial resentment, a belief that the civil rights laws and social programs of the Great Society handed blacks undeserved advantages and privileges they did not earn. For many whites, there must be some recognition of how people arrived in the middle class, because “[t]o wipe away . . . symbols of achievement and security is to undermine significantly the self-interest and psychic well-being of a major portion of the American middle class.”⁴⁰ Or as one distraught constituent, a “self-described ‘staunch Democrat,’” expressed in a letter to Democratic Illinois Senator Paul Douglas in the heat of the 1966 elections: “I feel Mr. [Lyndon] Johnson is much responsible for the present riot by his constant encouragement for the Negro to take any measure to assert himself & DEMAND his rights—Rights, and respect are earned!”⁴¹ Similarly, Beth Roy shows in her retrospective study of white students at the Little Rock, Arkansas high school when it was integrated that white resentment has hardly dissipated in the forty-five years since the end of Jim Crow. One white woman told Roy, “They think that a lot is owed to them, they do, they think we owe them. And maybe we do, but they’re getting more and more, you see it on TV, they’re getting, they’re getting, they’re being given, given, given, and that makes us bitter.”⁴² A study of white racial attitudes in the 1980s revealed that on average about 60% of whites think blacks received advantages they did not deserve.⁴³

The post civil rights racial order is based on formal equality before the law and a public ideology of color blindness. It combines persistent racial inequality with deep and widening inequalities in wealth and income. The political fulcrum of this racial order is the post-1960s electoral realignment of the political party system on the basis of racial issues. The New Deal electoral re-alignment of the 1930s was a class alignment; it forged a political coalition of Northern workers

39. Kinder & Mendelberg, *supra* note 38, at 60.

40. DONALD I. WARREN, *THE RADICAL CENTER: MIDDLE AMERICANS AND THE POLITICS OF ALIENATION* 174 (1976).

41. RICK PERLSTEIN, *NIXONLAND: THE RISE OF A PRESIDENT AND THE FRACTURING OF AMERICA* 117 (2008).

42. BETH ROY, *BITTERS IN THE HONEY: TALES OF HOPE AND DISAPPOINTMENT ACROSS DIVIDES OF RACE AND TIME* 305 (1999).

43. DONALD R. KINDER & LYNN M. SANDERS, *DIVIDED BY COLOR: RACIAL POLITICS AND DEMOCRATIC IDEALS* 107 tbl.5.1 (1996).

with white Southerners.⁴⁴ The viability of this coalition depended on the Democrats intentionally suppressing racial issues, leaving Jim Crow intact. President Franklin Roosevelt avoided racial issues, even refusing to support an anti-lynching law, and agreed to the exclusion of agricultural and domestic workers from New Deal social and labor policies in exchange for the votes of southern legislators.⁴⁵ Only as blacks moved North where they could vote, and World War II produced the racial consciousness that led to the civil rights movement, did the Democratic Party begin to address the exclusion and subordination of African Americans. Beginning with the 1964 election, the parties split over racial issues leading to a durable shift in partisan identification and the emergence of racial voting blocs.⁴⁶ After the 1960s, a racial cleavage bisected the electorate and cross-cut the original New Deal realignment.⁴⁷

In exploring the connection between public opinion and white racial resentment in the post civil rights era, I am not making a causal argument so much as I am trying to understand the genesis and implications of contemporary conservative political discourse. There is a relationship between political support for the death penalty and crime control policies such as “three strikes and you’re out,” the 1996 welfare reform law, and other staples of the Republican political agenda, such as tax cuts and the repeal of the estate tax.⁴⁸ Conservative political discourse and racial resentment are linked through an ideology of choice and individualism, which is nourished by racial inequality and racial competition for jobs, education, and the accouterments of the American Dream. Forged by conservative political elites in the aftermath of the civil rights revolution, this link percolates down to and shapes public sentiment. In a nutshell, racial inequality and the resentment of efforts to remedy it is one of the roots of an ideology of choice and personal responsibility that appeals to the values of ordinary Americans. At the same time, widening class inequality and the racial competition it exacerbates intensify racial inequality. To understand this link analytically, it is necessary to explore the three constituent elements of the post civil rights racial order in more detail.

44. See generally BROWN, RACE MONEY, *supra* note 9.

45. See generally *id.* at 1–28, 61–96 (providing a summary on blacks and the New Deal); IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA (2005) (also providing a summary on blacks and the New Deal).

46. See generally CARMINES & STIMSON, *supra* note 37.

47. Edward Carmines and James Stimson provided a detailed analysis of this transformation. See *id.*

48. See *infra* notes 87–114 and accompanying text.

A. Durable Racial Inequality (DRI)

Deeply embedded racial inequalities in income, employment, access to public social welfare, and residential segregation persist after passage of the Civil Rights Act. Individual African Americans have succeeded economically in the last forty years largely because of the civil rights laws, affirmative action policies, and the growth of federal social programs. Yet persistent economic inequality between blacks and whites define the limits of the civil rights revolution.⁴⁹

The facts are not in dispute. Indeed, it is now understood that the racial gaps in income, wages, and employment are much larger than usually reported because imprisoned black men and women are excluded from the government statistics.⁵⁰ Black family income at all levels remains considerably lower than white family income. In 2006, the median black family income was 58% of white family income, only slightly higher than it was in 1980 (56%).⁵¹ The average income of black families in the bottom 20% of the income distribution was about 45% of similarly situated whites.⁵² Black families in the top 20% of income made about two-thirds of what similar white families earned.⁵³ Between 1980 and 2006, the absolute dollar gap in median family income grew by \$5000 between blacks and whites.⁵⁴ As of 2006, the black poverty rate remained about three times higher than the white poverty rate (24.3% to 8.2%).⁵⁵

Despite economic gains, blacks experience less upward mobility than whites and, at least by some accounts, more downward mobility. A racial mobility gap exists such that at any given level of income, the probability of black children moving up is lower than that of white children. One economic study shows that even when their parents earnings were similar, the incomes of black children are about 33% lower than white children, and this cannot be explained by family

49. See generally BROWN ET AL., *WHITEWASHING RACE*, *supra* note 9, at 34–65.

50. See WESTERN, *supra* note 9, at 87–88.

51. See U.S. CENSUS BUREAU, *Table F-5. Race and Hispanic Origin of Householder—Families by Median and Mean Income*, in *HISTORICAL INCOME TABLES—FAMILIES* (2009), available at <http://www.census.gov/hhes/www/income/histinc/incfamdet.html> [hereinafter *Table F-5*].

52. See U.S. CENSUS BUREAU, *Table F-3. Mean Income Received by Each Fifth and Top 5 Percent of Families*, in *HISTORICAL INCOME TABLES—FAMILIES* (2009), available at <http://www.census.gov/hhes/www/income/histinc/incfamdet.html>.

53. See *id.*

54. See *Table F-5*, *supra* note 51.

55. See U.S. CENSUS BUREAU, *Table 2. Poverty Status, by Family Relationship, Race, and Hispanic Origin*, in *HISTORICAL POVERTY TABLES—PEOPLE* (2008), available at <http://www.census.gov/hhes/www/poverty/histpov/perindex.html>.

background characteristics.⁵⁶ Moreover, blacks experience more *downward mobility* than whites. Julia Isaacs found that 45% of black children born into middle class families end up in the bottom 20% of the income distribution compared to 16% of white children.⁵⁷

The negative impact of durable racial inequality compounds over time. Consider the racial wealth gap:

[In 2002] white median net worth was [sixteen] times that of blacks, and all whites, even those at the bottom of the income distribution, have a higher net worth than African American or Latino families. In 2000, for example, the median net worth of white families in the bottom income quintile was almost \$26,000; the median net worth of African American families in that same income bracket was \$61.⁵⁸

The economic boom and stock market bubble of the late 1990s did not change this. Even though blacks made gains in home ownership in the 1990s,⁵⁹ the median net worth of black households actually declined. Between 1995 and 2002, whites' net worth rose by 77.5%, whereas blacks' net worth declined by 23%.⁶⁰ If one looks at financial net worth (excluding housing equity), one finds that white median net worth increased by 32.5% at the same time that black median net worth fell by 58.5%.⁶¹ Even the modest gain in black home ownership during the technological bubble in the 1990s has largely been wiped out by the subprime mortgage crisis.⁶²

56. TOM HERTZ, UNDERSTANDING MOBILITY IN AMERICA 13, 19 (2006), available at http://www.americanprogress.org/kf/hertz_mobility_analysis.pdf.

57. JULIA B. ISAACS, ECONOMIC MOBILITY OF BLACK AND WHITE FAMILIES 6 (2007), available at http://www.brookings.edu/~media/Files/rc/papers/2007/11_blackwhite_isaacs/11_blackwhite_isaacs.pdf.

58. See Michael K. Brown & David T. Wellman, *Embedding the Color Line: The Accumulation of Racial Advantage and the Disaccumulation of Opportunity in Post-Civil Rights America*, 2 DU BOIS REV. 187, 201 (2005); ALFRED O. GOTTSCHALCK, U.S. CENSUS BUREAU, NET WORTH AND THE ASSETS OF HOUSEHOLDS: 2002, at 14 tbl.6 (2008), available at <http://www.census.gov/prod/2008pubs/p70-115.pdf>. All calculations made by author.

59. AMANDA LOGAN & TIM WESTRICH, CTR. FOR AM. PROGRESS, AN UPDATE ON THE STATE OF MINORITIES: KEY INDICATORS SHOW THAT MINORITIES CONTINUE TO FARE POORLY IN THE CURRENT ECONOMY 5 (2008), available at http://www.americanprogress.org/issues/2008/09/pdf/state_of_minorities.pdf.

60. MICHAEL E. DAVERN & PATRICA J. FISHER, U.S. CENSUS BUREAU, HOUSEHOLD NET WORTH AND ASSET OWNERSHIP: 1995, at xiv tbl.G (2001), available at <http://www.census.gov/prod/2001pubs/p70-71.pdf>; GOTTSCHALCK, *supra* note 58, at 14 tbl.6. All calculations made by author.

61. See DAVERN & FISHER, *supra* note 60, at xiv tbl.G; GOTTSCHALCK, *supra* note 58, at 14 tbl.6; see also Brown & Wellman, *supra* note 58, at 201–02; MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 107 (10th anniversary ed. 2006). Brown and Wellman's theory of durable racial inequality challenges reigning conservative and liberal narratives of black poverty and racial inequality.

62. Regardless of income, African Americans were three times as likely as whites to receive high cost (subprime) mortgages. See ELLEN SCHLOEMER ET AL., CTR. FOR RESPONSIBLE LEND-

B. Class Inequality

Durable racial inequality is nested in a widening gyre of class and income inequality. It is well known that the income and wealth inequality widened substantially over the last twenty-five years as the wages of middle- and low-income earners have either stagnated or declined while the income and salaries of those in the top quintile have increased in real dollars.⁶³ This is less attributable to capital gains than it is to a growth of salaries and entrepreneurial income, which by 1998 accounted for 80% of the income of the top 1% of earners.⁶⁴ The new wealth accumulation is driven by the rise in salaries and changes in compensation, such as providing stock options for CEOs and top managers in private firms.⁶⁵ The “working rich” have replaced “coupon clippers,” and the new crew has every incentive to hold on to its capital rather than see it taxed away.⁶⁶

More importantly, income and wealth inequality coincide with a shift in class structure and changes in the organization of work that reinforce class inequality. Labor markets are far less secure than twenty-five years ago. Layoffs, displacement, and part-time temporary work no longer affect only blue collar workers; white collar workers, even managers, work in a more insecure environment. Insecurity in labor markets stems from deindustrialization and a shift to “shareholder value”—driven by the changes in class structure—from stakeholder rights.⁶⁷ The result is an increased volatility of family incomes, especially during the 1990s; the erosion of public and private safety nets—a shift from defined benefit to defined contribution pensions (401ks), decreasing access to health insurance as costs rise and employers cut back or eliminate contributions to health plans; and lim-

ING, LOSING GROUND: FORECLOSURES IN THE SUBPRIME MARKET AND THEIR COST TO HOMEOWNERS 23 (2006), available at <http://www.responsiblelending.org/pdfs/foreclosure-paper-report-2-17.pdf>; see also Chris Mayer & Karen Pence, *Subprime Mortgages: What, Where, and to Whom?*, at 14 (Divs. of Research & Statistics & Monetary Affairs, Working Paper No. 2008-29, 2008), available at <http://www.federalreserve.gov/pubs/feds/2008/200829/200829pap.pdf>. Foreclosures are statistically more likely in areas with substantial black populations. See SCHLOEMER ET AL., *supra*.

63. See generally Peter Gottschalk & Sheldon Danziger, *Inequality of Wage Rates, Earnings, and Family Income in the United States, 1975–2002*, 51 REV. INCOME & WEALTH 231 (2005).

64. Thomas Piketty & Emmanuel Saez, *Income Inequality in the United States, 1913–1998*, at 12 (Nat'l Bureau of Econ. Research, Working Paper No. 8467, 2001).

65. See *id.* at 26.

66. *Id.*

67. Neil Fligstein & Taek-jin Shin, *The Shareholder Value Society: A Review of the Changes in Working Conditions and Inequality in the United States, 1975–2000*, in SOCIAL INEQUALITY 401, 423 (Kathryn M. Neckerman ed., 2004).

ited unemployment insurance and anti-poverty benefits.⁶⁸ Labor market instability, income volatility, and the shredding of social safety nets exacerbate and deepen racial inequality. Today, inequality of wealth, income, and the insecurities of labor markets intensify racial labor market competition, which in turn, sustains—if not deepens—durable racial inequality.⁶⁹

C. Racial Voting Blocs

The third element of the post civil rights political order consists of racial voting blocs that anchor party coalitions and the accompanying class compression of the electorate.⁷⁰ Between 1972 and 2008, an average of 40% of white voters cast their ballots for Democratic presidential candidates. As shown in Figure 3, only an average of 37% of white men over this period voted for Democratic presidential candidates compared to about two-fifths (42%) of white women, although the vote of the latter is more volatile.⁷¹

In part, these National Exit Poll data reflect the realignment of the South from a region dominated by the Democratic Party that excluded blacks, to a region with a predominantly white Republican Party and an integrated Democratic Party heavily dependent on mobilizing black voters. In the three presidential elections from 2000 to 2008, just 30% of white Southern voters pulled the lever in the voting booth for Al Gore, John Kerry, or Barack Obama. On average, in the same three elections, 45% of whites living in the Midwest voted Democratic, just 46% did so in the West, but in the East, 51% voted Democratic. The Democratic Party failed to win the vote of a majority of white men in all regions in 2000 and 2004.⁷²

On the other side of the political ledger, African Americans, and to a lesser extent Latinos, are the only consistent Democratic party voting blocs in the country. African-American voters cast an average of 87% of their ballots for Democrats over the last ten elections, and there is little difference between black men and women. About two-

68. See generally JACOB S. HACKER & ELISABETH JACOBS, *THE RISING INSTABILITY OF AMERICAN FAMILY INCOMES, 1969–2004: EVIDENCE FROM THE PANEL STUDY OF INCOME DYNAMICS* (2008).

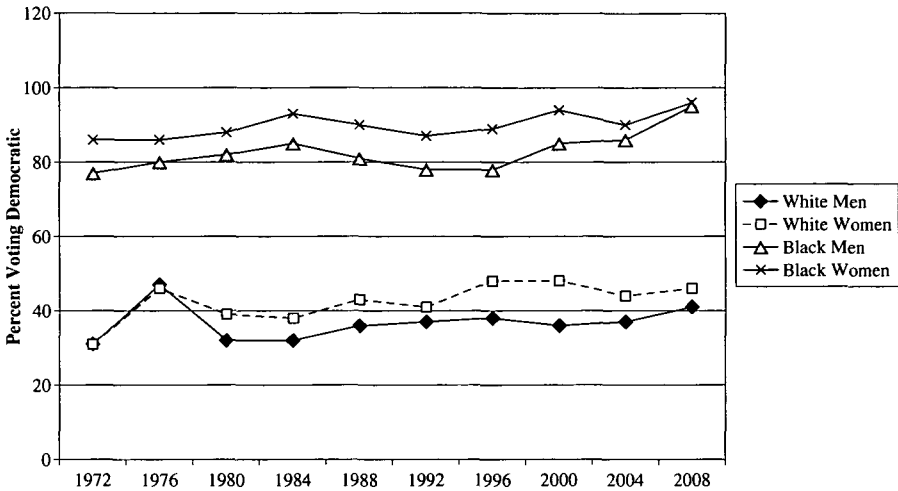
69. See generally BROWN & WELLMAN, *supra* note 58; WILLIAM DARITY, JR. & SAMUEL MYERS, JR., *PERSISTENT DISPARITY: RACE AND ECONOMIC INEQUALITY IN THE UNITED STATES SINCE 1945* (1998).

70. This is true at least through the 2004 presidential election. The 2008 election reveals growing regional differences in racial bloc voting and racial resentment.

71. These data are drawn from National Exit Polls (on file with author). All calculations made by author.

72. See *supra* note 71. Author's calculations are based on 2000, 2004, and 2008 exit poll data.

FIGURE 3
PRESIDENTIAL VOTE BY RACE AND GENDER



thirds of Latino voters consistently support Democratic presidential candidates. Over the 1990s, the Republican Party became whiter as Asian Americans shifted from voting solidly Republican to a majority voting Democratic.⁷³

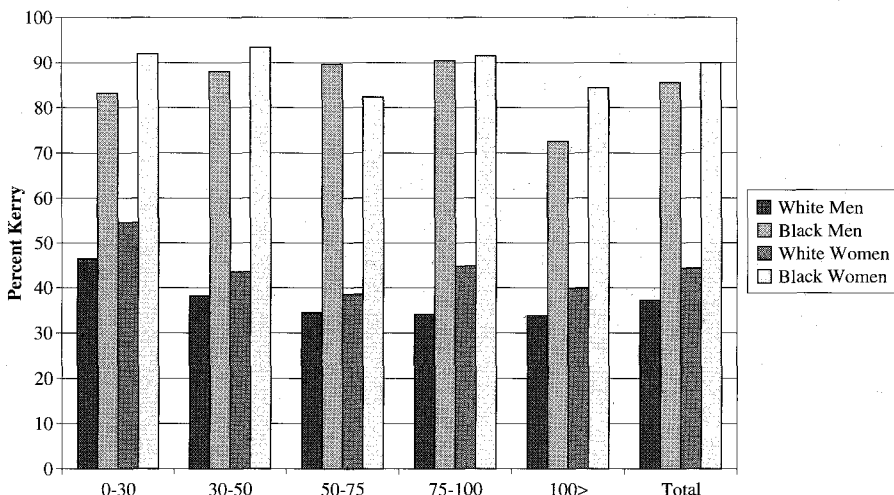
Race is a more significant division among voters than income. Racial bloc voting among whites and blacks is relatively independent of income or social class. Telling data on this point come from the 2004 election.⁷⁴ In that presidential election, John Kerry received a majority (55%) of white votes only from low-income women, those with family incomes of less than \$30,000 annually. As Figure 4 shows, among white men, Kerry received 46% of the votes of those white men earning less than \$30,000 annually, 38% of those earning between \$30,000 and \$50,000, and only 34% of the votes of white men with incomes above \$50,000 annually.

A majority of working and middle class white men, those with family incomes in the second and third quintiles of the income distribution (from the twentieth to sixtieth percentile), consistently vote Republi-

73. Only 31% of Asians voted Democratic in 1992; however, by 2008, 62% of Asian Americans voted Democratic. Author's calculations are based on exit polls of 1992–2008 national elections. See *supra* note 71.

74. This data is drawn from the 2004 exit polls and based on author's calculations. Barack Obama may have won more votes from white working and middle class men than John Kerry, but the data necessary to update Figure 4 for the 2008 election and verify this is not yet available.

FIGURE 4
2004 PRESIDENTIAL VOTE BY RACE AND INCOME



can.⁷⁵ In 2004, about 60% of these men voted for the Republican ticket. Among black men earning up to \$100,000, however, Kerry garnered an average of 88% of the vote, and among more wealthy blacks, 72% of the vote. The same pattern is apparent with black women. The Latino vote is more sensitive to income as significant majorities of low income Latino men consistently vote Democratic but high income Latinos cast their vote for Republicans.

Unions, the organizational arm of the New Deal coalition, mitigate the defection of white men to the Republican Party, but not by much. Overall, 59% of voters who belong to a union or live in a household with a union member cast their ballots for Kerry. Only 52% of white union members voted for Kerry compared to 93% of black union members and 62% of Latino union members.⁷⁶ Black churches and organizations are crucial to the Democratic Party infrastructure. They, however, are insufficient to counter the defection of white voters to Republican candidates, the collapse of unions (along with the defection of white union members), and the emergence of a highly mobilized religious right. In the 1970s and 1980s, racial animus motivated the religious right as much as hatred of abortion and opposition

75. In 2003, income for white families at the twentieth percentile was \$29,000 annually and \$72,000 at the sixtieth percentile. U.S. CENSUS BUREAU, *Table F-1. Income Limits for Each Fifth and Top 5 Percent of Families, in HISTORICAL INCOME TABLES—FAMILIES* (2009), available at <http://www.census.gov/hhes/www/income/histinc/f01N.html>.

76. Data are based on author's calculations.

to textbooks mentioning sex or evolution. In particular, federal denial of tax exemptions for religious schools outraged southern evangelicals.⁷⁷ Many of these schools were originally set up as white academies in order to perpetuate segregation.⁷⁸ In fact, one recent study based on national election surveys from 1976 to 1992 shows that Evangelical Protestants are the “most racist, the least compassionate, and the most anti-feminist” of religious groups.⁷⁹

With Richard Nixon’s smashing electoral victory over George McGovern in 1972, racial issues increasingly defined the distinction between modern liberalism and conservatism. Race, crime, the death penalty, and social welfare issues became co-mingled and central to the difference between the Republican and Democratic parties.⁸⁰ Although coded racial rhetoric and political ads were less apparent in the 2000 and 2004 presidential elections and submerged if present at all in 2008, the racial realignment of the 1960s and 1970s remains fundamental to any analysis of the post civil rights racial order.⁸¹

III. SOME POLITICAL CONSEQUENCES OF THE POST CIVIL RIGHTS RACIAL ORDER

The racial polarization of the electorate reduces demand for redistribution and shifts the political and policy agendas of the two national parties to the right. Both parties favored tax cuts, retrenchment in means-tested welfare and some forms of social insurance such as unemployment compensation (though there remain deep party differences over social policies other than welfare), and punitive crime control policies such as the death penalty.⁸² Electoral politics revolved around cultivating white voters and assuaging their anxieties, which is one reason Democrats supported welfare reform from the mid-1980s on. This is attributable, in part, to the effect of two-party competition in a racially divided society. Given the ongoing deep ra-

77. Joseph Crespino, *Civil Rights and the Religious Right*, in *RIGHTWARD BOUND: MAKING AMERICA CONSERVATIVE IN THE 1970s*, at 90, 90–91 (Bruce J. Schulman & Julian E. Zelizer eds., 2008).

78. *See id.* at 92–93.

79. John E. Roemer & Woojin Lee, *Racism and Redistribution in the United States: A Solution to the Problem of American Exceptionalism*, at 15 (Estudios Working Papers No. 2004/203, 2004). It is certainly possible that these racial attitudes have changed since the early 1990s, but it is unclear how much.

80. *See generally* CARMINES & STIMSON, *supra* note 37.

81. For an alternate account that emphasizes income and cultural values in explaining voting divisions, see generally ANDREW GELLMAN ET AL., *RED STATE, BLUE STATE, RICH STATE, POOR STATE* (2008).

82. Woojin Lee & John E. Roemer, *Racism and Redistribution in the United States: A Solution to the Problem of American Exceptionalism*, 90 *J. PUB. ECON.* 1028, 1044, 1048–49 (2006).

cial divisions among voters, vying for black votes drives white voters to the other party, and thus both parties focus their efforts on winning the hearts and minds of white median voters. This was true after Reconstruction failed in the nineteenth century, and is true of the post civil rights era. The only difference is that in the 1880s, politicians used explicitly racist appeals to attract white voters, but in the 1980s, they relied on implicit racially coded communications. Republicans' use of the Willie Horton ads in the 1988 presidential contest is the classic example of this strategy, an appeal that only reinforced the link between race, crime, and the death penalty.⁸³

One might call this a contemporary version of the "wages of whiteness." W.E.B. Du Bois observed in *Black Reconstruction in America* that white workers were compensated for their low wages and exploitation at the hands of employers through public recognition of their whiteness.⁸⁴ They could associate with all classes of white people, they had the vote, and they were recognized members of the community.⁸⁵ In other words, they were not black.⁸⁶ Du Bois's interpretation of Reconstruction is directly relevant to many of the policy and attitudinal changes of the post civil rights racial order.

Tax and spending policies are a hardy staple of Republican administrations and are justified as a means to spur economic growth by rewarding those who work hard and take risks. Republican Party elites and corporate tax lobbyists fashioned supply side tax cuts in the volatile economic and political climate of the late 1970s—growing unemployment and high inflation—in order to capitalize on the middle class tax revolt,⁸⁷ especially the political anger that led California voters to establish limitations on property taxes when they enacted Proposition 13 in 1978. Racial resentment would seem to have little to do with state or federal tax policy. Yet there is very clear evidence that racial resentment was one of the most important factors motivating

83. Tali Mendelberg documents the importance of implicit communications and the Republicans' intentional use of implicit racial codes in the 1988 election. See generally MENDELBERG, *supra* note 33, at 134–68. Lee and Roemer provide one of the very few empirical tests of a racialized model of party competition. See generally Lee & Roemer, *supra* note 82. For a theoretical and historical analysis of race and the logic of party competition, see generally PAUL FRYMER, *UNEASY ALLIANCES: RACE AND PARTY COMPETITION IN AMERICA* (1999).

84. See W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA, 1860–1880*, at 700–01 (Atheneum 1992) (1935).

85. *Id.*

86. *See id.*

87. See generally John W. Burns & Andrew J. Taylor, *The Mythical Causes of the Republican Supply-Side Economics Revolution*, 6 *PARTY POL.* 419 (2000).

California voters to support Proposition 13.⁸⁸ Furthermore, Woojin Lee and John Roemer's quantitative study of the effects of race on party positions shows that race pushes both political parties to the right on tax and budget policies, overshadowing any effect of income class.⁸⁹ Lee and Roemer estimate that during the 1980s, the two parties proposed reducing marginal tax rates by 11% to 18% because of what they call "voter racism."⁹⁰ They argue that the power of a non-economic factor such as race explains decreasing tax rates amidst increasing inequality.⁹¹ Between 1980 and 1990 the top marginal tax rate declined from 37% to 28% and cash transfers declined by almost 20%.⁹² As Lee and Roemer explain, "some poor citizens may vote for the party that is anti-redistributive, even if they themselves desire some redistribution, because that party advocates a position on the racial issue consonant with their own."⁹³

Aside from taxes, "law and order" was the signature Republican issue that grew out of the inflamed racial resentment of the 1960s and opposition to the civil rights movement. In a recent study of the origins of crime control legislation, Vesla M. Weaver argues that opponents of civil rights legislation "shifted the 'locus of attack' by injecting crime onto the agenda."⁹⁴ She concludes that "rivals of civil rights progress defined racial discord as criminal and argued that crime legislation would be a panacea to racial unrest."⁹⁵ Richard Nixon rode this issue to victory in the 1968 presidential election, and Republican governors and legislators delivered the goods. The Republican realignment of the 1980s, particularly in the South, paved the road to massive incarceration, sentencing guidelines, mandatory sentences, abolition of parole, and more recently, enactment of "three strikes" sentencing laws.⁹⁶ Southern states have the highest incarceration rates and number of executions, but Republican governors and legislatures enacted tougher crime control policies wherever they took power.⁹⁷ Republicans were far more likely than Democrats to enact

88. DAVID O. SEARS & JACK CITRIN, *TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA* 170–73 (enlarged ed. 1985).

89. Lee & Roemer, *supra* note 82, at 1044, 1048.

90. *See id.* at 1027.

91. *See id.* at 1027, 1044.

92. *See id.* at 1042 tbl.2.

93. *Id.* at 1028.

94. Vesla M. Weaver, *Frontlash: Race and the Development of Punitive Crime Policy*, 21 *STUD. AM. POL. DEV.* 230, 230 (2007).

95. *Id.* at 265.

96. *See* WESTERN, *supra* note 9, at 60, 69.

97. *Id.* at 60, 66; FRANKLIN E. ZIMRING, *THE CONTRADICTIONS OF AMERICAN CAPITAL PUNISHMENT* 12 fig.1.4, 77 fig.4.4, 87 fig.4.5 (2003).

repressive crime control policies between 1980 and 2000. In fact, one study found that incarceration rates would have been lower had Democrats retained their electoral advantage.⁹⁸

IV. THE IDEOLOGY OF CHOICE AND PERSONAL RESPONSIBILITY

The conservative realignment and its consequent policies have depended on a link between white racial resentment and a conservative political ideology in which choice is understood as a form of negative freedom and is tied to personal responsibility and discipline. The morality of hard work anchors both. The ascendance of this ideology and its incorporation into everyday political discussions and speeches is a real shift in the public discourse, not simply an expression of quintessential American political beliefs. There has been a diffusion of “ideologies of choice” over the last thirty years: school choice, informed consent, IRAs, and privatization of public goods. In a lecture at the University of California at Santa Cruz, Mary Katzenstein explained that the rhetoric of choice and personal responsibility has surged in State of the Union addresses over the last two decades, peaking in the Bill Clinton and George W. Bush administrations.⁹⁹ There are few politicians today who do not champion personal responsibility and discipline.

One can see just how the ideology of choice and personal responsibility shaped political discourse by comparing the debate over welfare reform to justifications for the repeal of the estate tax—opposite sides of the same ideological coin. Conservatives redefined poverty in the early 1980s when they argued that the problem of the poor is “now more a moral one than an economic one.”¹⁰⁰ Welfare reform was about “public morality,” or more precisely, the failure of poor African Americans to work hard and their “socially irresponsible choices regarding education, marriage, work, and crime.”¹⁰¹ It was not about lack of jobs, poor education, discrimination, or anything else that

98. WESTERN, *supra* note 9, at 69. This is not to say that the Democrats did not move to the right on crime control; by the 1990s, they were proposing and enacting repressive law and order policies. See *id.* at 61. Partisan politics is only one of the factors accounting for the emergence and consolidation of repressive crime control policies. As Franklin Zimring shows, Southern execution rates are partly traceable to the distinctively harsh and violent history of lynchings in the South—a legacy of slavery and a tool of racial repression—and the lingering power of a vigilante tradition in the South. ZIMRING, *supra* note 97, at 90, 95.

99. Mary Katzenstein, *Incarceration and Ideologies of Choice in the United States*, Talk Presented at the University of California, Santa Cruz (Apr. 18, 2005).

100. Lawrence M. Mead, *Social Programs and Social Obligations*, 69 PUB. INT. 17, 19 (1982). See generally CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950–1980* (1984).

101. See BROWN ET AL., *WHITEWASHING RACE*, *supra* note 9, at 67.

might affect access to jobs and the ability to earn a living wage. Joe Soss and Danielle LeClair conclude that there is a

coherent public image of welfare recipients as poor women of color who lack the responsibility and discipline needed to stick to a job or forego casual sex. This package of perceptions reliably predicts opposition to welfare spending, opposition to welfare rights, and support for directive, supervisory, and punitive welfare rules.¹⁰²

Ange-Marie Hancock refers to welfare reform as an instance of the “politics of disgust.”¹⁰³ Welfare reform became a national issue precisely because of the salience of these images and the racial resentment it conjured up. It was no accident that Bill Clinton vowed to “end welfare as we know it” in the heat of 1992 presidential campaign.¹⁰⁴ It is not inconceivable that President Clinton signed into law a more draconian welfare reform bill than he wanted in order to take the issue off the table in the 1996 presidential election.¹⁰⁵

Consider now the thus far successful effort to repeal the estate tax, or the “Death Tax” as Republicans call it, a law that will benefit only multi-millionaires and billionaires. One proponent of repeal fulminated, “This tax should be eliminated because it’s unfair. Americans want to know that if we work hard and save, no matter how much, we can leave our assets to whomever or whatever we want, not pay half to the government as punishment for getting ahead.”¹⁰⁶ According to Ian Shapiro and Michael Graetz’s study, the debate surrounding the passage of the estate tax repeal centered on an argument about morality, not economics.¹⁰⁷ This issue, pushed by a few very wealthy individuals, should not have appealed to ordinary working or middle class voters who would not benefit. Yet a majority of voters, according to polls, supported a repeal of the estate tax and were impervious to the distributive consequences. According to Graetz and Shapiro, “what won the day for the forces of repeal was a moral argument based in

102. Joe Soss & Danielle LeClair, *Race, Sex, and the Implicit Politics of Welfare Reform*, at 23 (Apr. 2004) (unpublished paper presented at the Annual Conference of the Midwest Political Science Association), available at http://www.allacademic.com/meta/p_mla_apa_research_citation/0/8/2/5/5/p82550_index.html.

103. See HANCOCK, *supra* note 16, at 6.

104. Bill Clinton’s pledge to “end welfare as we know it” can be found in his 1992 acceptance speech to the Democratic National Convention. See Bill Clinton, 1992 Acceptance Speech to the Democratic National Convention (July 16, 1992), available at <http://www.4president.org/speeches/billclinton1992acceptance.htm>.

105. There was speculation in the national press that the 1996 election was foremost in Clinton’s mind when he signed the welfare reform legislation. See, e.g., Richard L. Berke, *The Campaign: Fulfilling '92's Promise, Capturing a '96 Issue*, N.Y. TIMES, Aug. 1, 1996, at A25.

106. Gabrielle J. Roudabush, Letter to the Editor, N.Y. TIMES, Apr. 19, 2005, at A20.

107. See generally MICHAEL J. GRAETZ & IAN SHAPIRO, *DEATH BY A THOUSAND CUTS: THE FIGHT OVER TAXING INHERITED WEALTH* (2005).

the great U.S. tradition of hard work and thrift and an argument that taxing transfers of wealth at death was an imposition on the American dream, and the faces that were put on repeal were not the billionaires . . . but were, in fact, small business owners.”¹⁰⁸ Nowhere are the ironies of race and politics more apparent than in the juxtaposition of plundering CEOs justifying their wildly excessive salaries as the reward for hard work and the condemnation of poor black welfare mothers for their laziness and lack of discipline.

Supporters justify the estate tax repeal and welfare reform on the grounds of hard work and meritocracy. The legitimacy and attractiveness of these measures to the white middle class depends, in part, on the powerful legacy of racial resentment in the aftermath of the civil rights revolution and the Great Society. Martin Gilens has demonstrated that “the perception that blacks are lazy is consistently the most powerful predictor of white Americans’ opposition to welfare,” and this attitude underlies support for time limits on welfare payments.¹⁰⁹ Equally salient is the recurrent finding that adoption of harsh and punitive welfare policies are more likely to be imposed in states where African Americans make up a significant proportion of the welfare rolls.¹¹⁰

Racial resentment is a key element in explaining not just white hostility toward welfare reform prior to 1996, but majority white support for the death penalty. Lawrence Bobo and Devon Johnson find that racial resentment is one of the most important factors influencing support for the death penalty.¹¹¹ They note, “The impact of racial resentment on support for the death penalty is about twice as large for Whites as it is for Blacks.”¹¹² James Unnever and Francis Cullen also link white support of the death penalty to racial resentment. They conclude, “the African American death row inmate encapsulates the racial animus that symbolic white racists have for those African Americans they believe intentionally flout the ethos of hard work by trying to profit through murder.”¹¹³ In fact, states with the harshest

108. Michael J. Graetz & Ian Shapiro, *Death by a Thousand Cuts: An Analysis of the Estate Tax's Demise*, Transcript of a Briefing at the Brookings Institution, at 7 (Mar. 24, 2005), available at <http://www.brookings.edu/events/200503024estatetax.pdf>.

109. GILENS, *supra* note 16, at 77.

110. Richard C. Fording, “Laboratories of Democracy” or Symbolic Politics?: *The Racial Origins of Welfare Reform*, in RACE AND THE POLITICS OF WELFARE REFORM, *supra* note 9, at 93.

111. See Bobo & Johnson, *supra* note 16, at 170.

112. *Id.*

113. Unnever & Cullen, *supra* note 16, at 1292.

incarceration policies were also those that imposed the toughest work requirements for poor mothers.¹¹⁴

The individualization of racial inequality is due in large part to whites' belief that African Americans have failed to take advantage of the equality of opportunity gained with civil rights legislation. Whites' belief in African-American failure once the legal barriers to economic opportunity came down and racial prejudice subsided justifies the belief that any remaining racial gaps in income, poverty, or occupation are the result of African Americans' individual choices about work, leisure, residence, marriage, and law-abiding behavior. In this view, much of what is ordinarily understood to be racial inequality is not that at all. Instead, it reflects an individual's choices to stay in school or not, to work hard or not, to get married rather than give birth to a child out of wedlock, or to use drugs or not.

Aided and abetted by political elites who capitalized on the racial discord of the 1960s, many, but not all, whites who think they have succeeded on their own came to define themselves in opposition to blacks who, they believe, do not share their values. Thus, they identified themselves as successful individuals who are "not black" while resenting advantages they think blacks have undeservingly received from public social welfare policies and affirmative action programs.¹¹⁵ This is one, but not the only, explanation for their support for the death penalty, repressive crime control policies, and punitive welfare policies.

V. CONCLUSION: IMPLICATIONS OF THE POST CIVIL RIGHTS RACIAL ORDER AND POLITICAL IDEOLOGY

The implications of this analysis are three-fold. First, cultural and ideological shifts are central to the generation and maintenance of inequality. The ascendance of an ideology of choice and personal responsibility underpinned by racial resentment mark a change from beliefs about equality and redistribution arising from the New Deal and Great Society. It is perhaps no accident that the harsh views of race and punishment coincide with changes in norms about salaries and executive compensation—pay gaps that were unheard of thirty years ago are today blithely justified and considered legitimate, at least by those who benefit. Thomas Piketty and Emmanuel Saez argue that changes in compensation could be explained by changes in

114. Soss et al., *supra* note 9, at 243.

115. BROWN, RACE MONEY, *supra* note 9, at 348, 351.

“norms” and not technical factors.¹¹⁶ They never really define what kind of normative changes matter and could explain the public’s tolerance for wildly inflated corporate compensation—at least until the eruption of the financial crisis in fall 2008. I suggest that public tolerance of wealth and income inequality, and the justification of such inequality, was facilitated by the cultural populism and racial resentment crafted and perfected by Republican politicians. The same could be said of the receptiveness of middle class or low-income voters to tax cuts for the rich, or at least their unwillingness to vote against politicians who champion such cuts, and the imperviousness of whites to arguments about either the ineffectiveness or unfairness of the death penalty. Media images of black criminals or welfare recipients amplify the post civil rights cultural syndrome but they did not create it.

Second, the ideology of choice and individual failure has little to do with durable racial inequality. Instead, the persistence of racial wage gaps, educational differences, and black and Latino poverty feed the ideology. Durable and cumulative racial inequality is created and sustained by racial group competition and institutional practices, which fluctuates with economic changes and class inequalities. Discrimination, according to William Darity, Jr. and Samuel Myers, Jr., is “endogenously linked to the employment needs of non-black males.”¹¹⁷ In other words, labor market competition between blacks and whites will intensify during an economic downturn or deindustrialization, as was readily apparent during the Great Depression.¹¹⁸ Historically, ample evidence exists that white workers’ fear of economic competition with black workers deflects their anger toward economic elites.¹¹⁹ Thus, political elites have strong incentives to manipulate this anger. An early episode of this pattern can be found in colonial Virginia when Nathaniel Bacon turned the wrath of white yeoman on the frontier against Native Americans instead of the owners of Tidewater plantations.¹²⁰ As Edmund Morgan writes, “Discontent with upper-class leadership [in colonial Virginia] would be vented in racial hatred, in a pattern that statesmen and politicians of a later age would have found familiar.”¹²¹

116. Piketty & Saez, *supra* note 64, at 28–29.

117. Darity & Myers, *supra* note 69, at 58.

118. Brown, *RACE MONEY*, *supra* note 9, at 68–69.

119. See, e.g., David R. Roediger, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* 13 (1991).

120. See Edmund S. Morgan, *AMERICAN SLAVERY, AMERICAN FREEDOM: THE ORDEAL OF COLONIAL VIRGINIA* 269–70 (1975). Additional evidence of this pattern can be found during the labor strife and populist revolt of the 1890s.

121. *Id.* at 257.

In the post civil rights racial order, such race-based competition is not confined to labor markets, but extends to competition for what Fred Hirsch called positional or socially scarce goods.¹²² These are goods that very few can purchase or use. Examples include the beach front house or the mansion in a gated community. These socially scarce goods are desirable in part because they define one's status relative to other groups. While the quantity of national goods grows with the economy, the quantity of positional goods is static. Because racial inequality is based on whites' efforts to maintain the relative hierarchy of white over black, racial group competition is one of the social forces driving the struggle to acquire positional goods. This competition is clearly visible in the persistence of segregated housing markets.¹²³ The advent of the "winner take all" society and the hyper-competition for positional goods and advantage—the scramble for access to elite institutions, particularly elite colleges and universities, and the relentless insecurity of American workers—has unleashed a struggle for scarce positional goods and fueled opposition to race-conscious policies. This opposition is then justified in terms of the ideology of hard work and discipline.¹²⁴

Third, the post civil rights racial order shows signs of age and division and it is breaking up, though how it will change remains an open question. The failure of President Bush's plan for private social security accounts marked the limits of the conservative ideology of choice. Barack Obama's election to the presidency is widely understood, in part, as a harbinger of a generational transformation and change.¹²⁵ His election also marked the erosion of the racial voting blocs and thus the breakup of the conservative political realignment of the last four decades. Nationally, public discussion of race and the racial resentment of the 1970s and 1980s has all but disappeared, mainly due to generational changes, the dissipation of law and order and welfare as salient political issues, and the emergence of a new cadre of black politicians. In fact, racial bloc voting and racial resentment have de-

122. See generally FRED HIRSCH, *SOCIAL LIMITS TO GROWTH* (1978).

123. See DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 94* (1993). Massey and Denton observe that whites see black neighbors as "a direct threat to their social status." See *id.*

124. Not surprisingly, whites who believe that affirmative action threatens their children's chances for admission to an elite university are predisposed to be hostile to race conscious admissions policies. KINDER & SANDERS, *supra* note 43, at 63.

125. See, e.g., Adam Nagourney, *Obama: Racial Barrier Falls in Decisive Victory*, N.Y. TIMES, Nov. 5, 2008, at A1.

clined everywhere but the South.¹²⁶ The 2008 election revealed broad regional differences in racial bloc voting. A majority of whites in four Midwestern industrial states, the Mid-Atlantic states, and all New England states voted for Barack Obama. In the five deep Southern states between the Atlantic coasts of Georgia and South Carolina and the Mississippi Delta, however, fewer whites voted for Barack Obama (17%) than voted for John Kerry in 2004 (20%).¹²⁷ But even though racial voting blocs are disintegrating, whether the party system is realigning along other issues, such as class and income inequality, will not be known for sometime.

The post civil rights racial order leaves a political discourse anchored in the ideology of personal responsibility and discipline along with a legacy of institutional machinery—the machinery of the death penalty that will continue to put people on death row and execute them; the machinery of incarceration that drives up incarceration rates as the crime rate plummets; and the machinery of workfare that grinds on. The economic crisis of 2008–2009 has shifted political discourse. One of the notable characteristics of President Obama’s speeches is his skill in turning the language of personal responsibility against bankers and CEOs. Yet the development of the post civil rights racial order is an instance of state building that will not be easily dismantled in the future. That alone ensures that race will continue to shape our political discourse and elections.

126. On the decline of racial resentment outside the South, see generally Nicholas A. Valentino & David O. Sears, *Old Times There Are Not Forgotten: Race and Partisan Realignment in the Contemporary South*, 49 AM. J. POL. SCI. 672 (2005).

127. See *supra* note 71. All calculations are made by author.