

# Lethal Violence and the Racialized Failure of the American State

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Scholarly work in American politics has yet to confront one of the nation's starkest inequalities: lethal violence. The risk falls disproportionately on Black Americans, but much like poverty and inequality, lethal violence is a broadly American problem that African Americans are disproportionately likely to experience. The lack of attention to life-threatening violence has limited our understanding of race, criminal justice, and the nature of the American state. We draw on work in American political development and racial politics to extend a racialized state failure framework for understanding the United States as a high-violence society. Life-threatening violence declined dramatically in the nineteenth century in countries where state building involved the integrated consolidation of centralized violence monopolization and universal male suffrage. Such efforts faltered in the US, however, and violence thrived. We argue that this racialized state failure is the result of two reinforcing features of American politics: anti-transformative racial orders and institutional fragmentation. Fragmentation has long provided opportunities for anti-transformative racial orders to limit national intervention in violence control and enfranchisement, even during critical junctures when institutions are less determinate, and actions by decision makers are more likely to generate change. We illustrate the disruption of state building by racial orders, which minimized the state's capacity to delegitimize violent self-help during two critical junctures in the US: Reconstruction and the crime wave of the mid- to late twentieth century. The resulting institutional configuration, which we refer to as forced localism, reinforces the jurisdictional authority of highly constrained state and local institutions in violence attenuation. The consequence is exceptionally high rates of serious violence and a harsh and exclusionary criminal justice system, with Black Americans exceptionally vulnerable to both.

Lethal violence is one of the starkest inequalities of American life. Homicide rates are substantially higher in the United States than in other high-income countries and African Americans are roughly six to eight times more likely to be murder victims than whites (Wiens 2022; Zimring and Hawkins 1991). At the peak of homicide victimization for African Americans in the early 1970s, the Black male homicide victimization rate was a full order of magnitude higher than it was for white men (72.9 compared to 7.2 per 100,000) (Fox and Zawitz 1999). The distinctiveness of life-threatening violence in the US and its deep racial disparities is akin to the more widely understood American exceptionalism in incarceration, yet there is surprisingly little research on the topic in political science.

This lack of attention to lethal violence and its political foundations has, first and foremost, limited our understanding of race and the American carceral state. The growing body of work on inequality and the criminal

legal system in political science largely treats policing as an authoritarian agent of control without corresponding attention to violent crime, a substantial driver of policing (Harris, Walker, and Eckhouse 2020; Weaver and Prowse 2020). In this paper, we develop and extend the racialized state failure framework for understanding high rates of life-threatening violence in the US (Miller 2015; Weaver and Prowse 2020). We focus here on a foundational facet of state failure: the failure to substantially eliminate the regular use of violent self-help to resolve conflict due to the incomplete consolidation and legitimation of national authority through full enfranchisement and the monopolization of force. Adding the modifier “racialized” captures the dramatically higher risk of violent death for Black Americans. While our focus is on reorienting the carceral state literature, we believe that studying the intersection of American political fragmentation and race has broader implications for understanding the American state.

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Drawing on work in American political development and racial politics, we propose that racialized state failure is the result of two long-standing, intersecting, and reinforcing features of the United States: institutional fragmentation and white supremacist/anti-transformative orders. By institutional fragmentation, we refer to understandings of the American state as having “multiple sites of power,” including horizontal separation of powers and bicameralism, and a highly decentralized form of federalism (King and Lieberman 2009, 573). This unusually fragmented structure creates many venues for highly organized political actors to block policy reform, producing a powerful status quo bias on policies that might disrupt economic, racial, or social orders (Hacker et al. 2022).

We build on the understanding of fragmentation as creating a “vulnerability to disruption” that results in the highly uneven and unreliable use of national power to further social and racial progress (King 2017, 357). In addition, we draw on racial institutional orders that have served as oppositional forces to lasting bans on racial subordination (King and Smith 2005). Racial orders are coalitions of actors that “seek to secure and exercise governing power” in ways that utilize racial concepts and commitments (2005, 75). Crucially, as in any coalition, members of a racial order may have many primary motivations, including economic, social, and organizational ones. What holds them together is a “broad agreement on the desirability of certain publicly authorized arrangements that predictably *distribute power, status, and resources along what are seen as racial lines*” (75, emphasis added).

In this paper, we explore how an essential feature of successful state building—low violence—has been sacrificed, as groups intent on furthering racial orders have used fragmentation to limit the consolidation of central authority.

Our framework begins from the premise, proposed by numerous scholars across several disciplines, that the durable national consolidation of the monopoly of force and of basic citizenship rights, which we refer to as *integrated consolidation*, led to serious reductions in violence in the nineteenth century in developed democracies worldwide (Black 2004; Monkkonen 2006; Roth 2009; Spierenburg 2006). Our aim here is not to provide empirical validation for this thesis or to adjudicate between mechanisms that might explain how consolidation leads to reductions in violence. Rather, we build on this previous work and propose that *both* dimensions of integrated consolidation—the monopolization of violence and the guarantee of enfranchisement—are essential for successful state building and reductions in all forms of lethal violence, including overt racialized acts of violence (often aimed at blocking political participation), as well as routine acts of homicide (typically intraracial).

Integrated consolidation could take several forms: monopolization and legitimation of the use of force with clear standards of behavior and channels of accountability; uncontested national authority over the sale, distribution, and use of lethal weapons; and recognition of the basic, universal equality of persons through effective national enforcement of equal access to the franchise. Absent this integrated consolidation, people more regularly resort to violence as a mechanism for ending a wide range of conflicts, including maintaining and challenging social hierarchies (i.e., violent suppression of the Black vote via lynchings and of anyone sympathetic to Black enfranchisement), but also everyday confrontations between friends, neighbors, and acquaintances (Black 2004; Roth 2009).

We propose that integrated consolidation has repeatedly failed to take hold in the United States because political fragmentation and racial orders have produced a durable dependence on parochial forms of violence attenuation, which are extremely difficult to dislodge. We first develop our theoretical framework and then offer several illustrative examples of how racial orders disrupted state building and minimized the national capacity to delegitimize violent self-help during two key eras of American politics: Reconstruction and the crime wave of the mid- to late twentieth century. We select these periods for two reasons. First, they represent clear critical junctures, which are relatively short periods of indeterminacy in which “the range of plausible choices open to powerful political actors expands substantially and the consequences of their decisions ... are potentially much more momentous” (Capoccia and Kelemen 2007). Second, they are periods when the relationship between national and regional authority was deeply contested on both enfranchisement and violence.

During Reconstruction, conflict over racial hierarchy formed the backdrop for deliberations over the extent and nature of power consolidation. The result stifled the legitimization of centralized authority on mass enfranchisement and a monopoly on the use of force. Thus, early Reconstruction compromises formed the blueprint for the exceptionally decentralized contemporary system of public safety and inclusive citizenship, which is extremely vulnerable to uneven policy creation and implementation. During the second period, the violent crime wave collided with an explosion of social movements that transformed American politics through the nationalization of a wide range of social issues and policies, including voting rights (Baumgartner and Jones 1993). But this period, too, had its limitations, rooted in efforts by anti-transformative orders to maintain local control of racial and economic orders.

While the Reconstruction period is characterized by the conflicting white supremacist and egalitarian orders, the twentieth-century variant is better understood as “anti-transformative” (King and Smith 2005). Such a label

clarifies that while there remain overtly white supremacist forces in American life, “they do not define it” (King and Smith 2005, 83). Anti-transformative orders may not be openly supportive of a politically racialized hierarchy, but a notable continuity is the explicit opposition to national intervention into conditions of persistent racial inequality, such as lethal violence, even if those conditions are widespread in their negative effects (HoSang and Lowndes 2019). As we illustrate below, unlike the Reconstruction era, anti-transformative racial orders at this critical juncture failed in their efforts to exploit fragmentation to maintain the status quo on voting rights. But they nonetheless succeeded in reinforcing localized implementation of violence attenuation. In doing so, they provided a racialized legitimating narrative for opposition to national consolidation of the fundamental right to citizenship and safety. In short, the critical juncture of Reconstruction failed on both dimensions of integrated consolidation. The second critical juncture largely overcame opposition to full enfranchisement but failed to monopolize violence.

We agree that “forceful federalism” is a necessary condition for racial progress (King 2017), but argue that the intersection of fragmentation and racial orders has also led to a durable *forced localism* on violence reduction. If forceful federalism is the occasional and fleeting opportunity to enforce racial equality, forced localism is the more common reality. Powerful interests actively use political fragmentation to maintain control over safety and citizenship in the localized political venues where racial and economic hierarchies have historically been most readily maintained. Though localism has deep roots across issues, interests, and parties in the US, we propose that anti-transformative racial orders have been at the center of resistance during key moments when national consolidation of violence attenuation was on the political agenda. In the final section, we illustrate how local delivery of public safety now enjoys widespread support across the political spectrum, although local governments remain ill-equipped to offer durable investments and institutions that reduce violent self-help—a common, consistent, national phenomenon.

Forced localism, in our conceptualization, has close parallels to boundary control, which Gibson (2012) describes as an effort to maintain subnational authoritarian structures within larger democratic states. Boundary control generally involves three strategies: the maintenance of parochial power, substantial influence of local actors on national policy making, and the monopolization of national–subnational linkages to the benefit of local economic and racial hierarchies. Each of these strategies has been regularly utilized in American politics and, as a result, parochial power in state and local form is foundational to American politics (Robertson 2017; Rubin and Feeley 2008). These dynamics have endured not only because of power-sharing negotiations that resulted in a reliance on parochial forms of authority in violence attenuation, but

also because of concerted efforts on the part of the beneficiaries of local power to deny national consolidation. The success of semiauthoritarian racial orders in influencing national politics for most of the country’s history is well documented (Bateman, Katznelson, and Lapinski 2018), as is the persistent use of the federal courts to restrict national policy-making authority (Robertson 2017). And, for decades, racial elites linked national policy making with local power brokers by insisting on state implementation of national policies, such as the GI Bill, Medicaid, and the Safe Streets Act. We use the term *forced localism* to describe boundary control in the US, to contrast the status quo on violence reduction with King’s (2017) periodic forceful federalism, and to draw attention to the uniquely decentralized localism of American constitutionalism. We use the Reconstruction era to highlight how forced localism was fortified in American political life with respect to public safety.

Our state failure framework challenges two alternative approaches to the carceral state. First, some argue that mass incarceration is evidence of *robust* state building rather than limited or failed state building (Gilmore 2007; Lerman and Weaver 2014). This critique of the US “weak state” argument sees mass incarceration and other forms of coercion and control as evidence of extensive state building and capacity. Indeed, we agree that mass incarceration has built a strong state infrastructure and political economy. But the intersection of political fragmentation and racial orders does not map neatly onto conceptualizations of weak or strong states. Rather, it allows for periods of national consolidation on some dimensions of state building, while simultaneously facilitating the incomplete establishment—or, at times, the erosion—of national authority on others. The fragmented state may produce muscular criminal legal institutions in response to violence, for example, but partial and constrained ones to limit the use of violence in the first place, such as restraints on the use and proliferation of firearms (see also Garland 2020). In our approach, life-threatening violent crime and the punitive state are interrelated conditions that reflect a limited form of state building.

We present historical examples of two pivotal moments in American state building and crime policy development to argue that, when we take serious violence into account, the modern carceral state is more productively understood as a reflection of the *inadequacies* of the nation-state. These inadequacies lie in its failure to generate the centralized infrastructure, standards, and investment necessary for maintaining collective security from violence, whether from members of the polity or from the state itself. This results in a limited ability to control violence at a national scale, likely exacerbates the conditions of state illegitimacy that lead to so much American violent self-help in the first place, and also strengthens incentives for carceral investment at the regional level (Zimring and Hawkins 1991).

A second alternative argument is that the roots of the carceral state lie directly in the maintenance of a racial hierarchy (Francis 2022; Schoenfeld 2018). We agree that race is central to understanding the brutal system of mass incarceration in the United States. But we think racial orders have produced two effects, not one. A core contribution of the racialized state failure framework is helping to explain the exceptionally high rates of life-threatening violence in the United States as well as its outlier status on imprisonment and state violence. This can include the overreliance on incarceration, as well as the violence facilitated by underequipped public safety infrastructures at the local level (Lewis and Usmani 2022), which in turn reinforces calls for more and harsher punishment (Enns 2016). By elucidating the central role of racial hierarchy in discussions about the size and scope of the federal government at these critical junctures, we underscore its extraordinary explanatory power in shaping violent crime and political responses to it. This distinguishes racial hierarchy from other identity markers, such as gender. In this formulation, the persistence of high levels of life-threatening violence is evidence of racialized state failure, which we consider a central contributor to mass incarceration.

We believe that the concept of racialized state failure offers a new analytic frame for understanding the relationship between race, class, and political institutions in American politics. We are hardly the first to call attention to the intersection of racial politics and institutional fragmentation in the United States, particularly at the federal level (e.g., Michener 2018; Mickey 2015; Riker 1964). But we think there is considerably more work to be done in understanding how anti-transformative orders have interacted with the unique form of American fragmentation as it relates to the fundamental obligation of the state to limit violent self-help.

The paper thus makes three crucial contributions to scholarship on American politics: a reckoning with high violence as a normal fact of social life in the United States and the deep racial disparities in victimization; an analysis of how political fragmentation in the US is shaped and utilized by anti-transformative racial orders to disrupt the use of national power for progress in the domain of violence; and a theoretical framework for understanding high levels of life-threatening violence and the carceral state that has relevance for scholarly understandings of the persistence of contemporary racial and economic inequalities.

### **Racialized State Failure and the Origins of High Violence in the United States**

High rates of life-threatening violence in the United States have long been an “official reality,” even before the crime wave that began in the 1960s (Hofstadter and Wallace [1970] 2012, 43). In the middle to late nineteenth century, murder rates dropped precipitously in Europe and Canada, but not in the United States, which has

consistently had levels of homicide that are three to eight times higher than those of other developed democracies (Miller 2016). While the annual ebb and flow of violence has any number of proximate causes, nation-building theories see aggregate trends in murder rates, temporally and cross-nationally, largely as a function of the state’s level of effectiveness, organization, and legitimacy. This, in turn, shapes how people, particularly men, see themselves in relation to others, influencing broad social norms and the willingness to use, or refrain from using, violence to resolve conflict.

Through the struggles for full male enfranchisement and the consolidation of fragmented power for monopolizing violence, strong and effective state building coalesced (albeit to varying degrees) in Canada, Australia, and much of Europe in the mid- to late nineteenth century. In Roth’s (2009) account, for example, the transformation of fragmented power systems into national ones allowed for the legitimation of coercive state power and the development of full male enfranchisement to quell violent conflict. This process led to steep drops in homicides as men reduced their use of violent self-help to resolve everyday disputes. In the US, however, state building of this nature was hampered by a wide range of economic, racial, religious, and social cleavages set against the backdrop of “weak government, localism, and the diffusion of power and authority” (Hofstadter and Wallace [1970] 2012, 193). During the mid- to late nineteenth century, the US federal government “faced formidable, disruptive challenges to its authority and failed to establish its legitimacy among a substantial minority of its citizens” (Roth 2009, 21). Today, the US stands out among Western democracies for its reliance on extremely decentralized local governments to preside over the allocation of public safety (Hacker et al. 2022).

The lack of integrated consolidation via the monopolization of violence and enforcement of universal enfranchisement resulted in the continued use of violence to resolve a wide range of social conflicts in the US. A great deal of this violence was repressive and aimed at enforcing social and racial hierarchies (Egerton 2014; Tolnay and Beck 1995). But notably, like today, another large proportion of violence was not between racial, ethnic, class, or religious groups but *within* them. The bulk of murders in the first half of the nineteenth century stemmed from everyday encounters by “ordinary citizens who killed friends, acquaintances, or strangers over insults or property” (Roth 2009, 44). During the Reconstruction era, however, when Black voting was on the rise, the rate of lynchings of Black Americans surged, surpassing the intragroup rate of violent victimization in many places (Tolnay and Beck 1995; Vandal 2000). It would later decline following the institutionalization of Jim Crow laws (Epperly et al. 2020), reflecting Southern states’ success in rejecting integrated consolidation to reinscribe the status quo of a racially hierarchical social order.

There is substantial disagreement over what constitutes state success or failure or even whether the term “state failure” has any conceptual utility. Whether a state is successful largely depends on what one expects the state to do. Rather than attempt to characterize an array of features that add up to success or failure, we believe a more useful starting point is what González and King (2004) refer to as “stateness”—that is, the willingness and capacity of the state to do the basic functions that constitute it as a state. This framework allows us to highlight a fundamental dimension of stateness: security from violence.

Table 1 illustrates three widely agreed-upon conditions that are indicative of failing states. As Rotberg (2004, 3) notes, no political good “is as critical as the supply of ... human security.” While many societies endure violence, what stateness requires is limiting the amount or intensity of the violence and its “enduring character” (5). At a basic level, then, stateness is exemplified by the political will to monopolize internal and external sources of violence, including the violence of the state itself. When this condition is met, members of the polity are, by and large, less likely to engage in violent self-help to resolve conflicts, and the state also “abstains from abuse” (Englehart 2009).

In short, we borrow from the state failure literature a core feature of failing states—exposure to life-threatening violence. To be clear, our argument centers on integrated consolidation of power that includes both the centralized monopolization of violence alongside the enforcement of enfranchisement. However, while enfranchisement has often captured the attention of scholars and activists for the pursuit of racial and economic equality, we highlight the often-neglected monopolization of violence as a crucial additional dimension of state building.

### *The Reconstruction Period and the Failure of National Consolidation*

Few periods of US history were as structurally indeterminate about where political authority would reside with respect to enfranchisement and violence attenuation as the two decades after the Civil War. The aftermath of the war provided a powerful opportunity to shed the extreme decentralization of political authority that characterized the original constitutional structure on fundamental state responsibilities: monopolization of violence and full male citizenship. Southern elites, however, had powerful incentives to oppose such integrated consolidation. Centralized interventions directly threatened the brutal racial hierarchies that had long served as the basis of economic and social life in the Southern states. Violence proliferated alongside institutions such as convict leasing, which Southern planters used as a means of maintaining Black indentured labor (Muller 2021). Active resistance by white Southerners to greater consolidation of national authority, specifically on questions of violence and citizenship, perpetuated these fragmented power systems.

We recognize that opposition to consolidating national authority on violence was not limited to white supremacists. The decentralized nature of American federalism had produced highly localized forms of violence control, and local elites were unlikely to give them up easily or willingly (Obert 2018; Spierenburg 2006). We focus on white supremacist resistance because of the powerful interconnectedness of violence reduction and full inclusion (access to the ballot), and the existential threat that national violence control posed to racial hierarchies in the South.

A few examples illustrate this point. In the years following the war, Republicans in Congress understood that the institutional landscape remained deeply fractured and that establishing coherent enforcement of national authority was crucial to maintaining the Union and suppressing secessionists’ efforts to regain power (Graber 2023). But violent opposition was endemic in the former Confederacy. In a report to Congress in 1866, the Reconstruction Committee gave an unvarnished view of the ongoing rebellion and violence in the South, much of it aimed at denying voting rights (Epperly et al. 2020; Tolnay and Beck 1995), and the direct threat this violence posed to national public order. Before these states could be entitled to representation in Congress, the report concluded, “adequate security for future peace and safety should be requested,” and such security could only be obtained by “such changes of the organic laws as shall determine the civil rights and privileges of the citizens in all parts of this Republic shall have representation on an equitable basis” (*New York Times* 1866, emphasis added). Radical Republicans recognized a clear relationship between national standards for protecting people from violence, access to the ballot, office holding, and overall public safety.

**Table 1**  
**Criteria for Failing States**

1. High levels of internal violence (Rose-Ackerman 2004; Rotberg 2004)
  - a. Individual predatory violence and organized criminal syndicates
  - b. Criminal gangs controlling streets
  - c. Ordinary police forces becoming paralyzed, cannot control crime
  - d. Anomic behaviors, high rates of urban crime
2. Breakdown in rule of law/institutions (Englehart 2009; Kasfir 2004)
  - a. Inability of polity to hold government actors accountable for security
  - b. Breakdown of state capacity to control the (violent) actions of its officials
3. Regular conflict between law enforcement and factional groups that prey on their own constituents and delegitimize the state (Schneckener 2007).

Republicans initially pursued national citizenship with the Military Reconstruction Acts, passed over President Andrew Johnson's veto, and aimed at forcing the former Confederate states to write new constitutions and guarantee Black voting rights and office holding (Foner 2019). As violence against Blacks, Union sympathizers, and Republicans in the South grew, however, Republicans pushed through the Fourteenth and Fifteenth Amendments to fundamentally alter the Constitution and consolidate national authority over enfranchisement, and violence aimed at disrupting it (Graber 2023). In Congress, they aggressively enforced the Reconstruction Amendments through anti-violence statutes such as the Enforcement Acts of 1870 and 1871 and the Ku Klux Klan Act of 1871 (see Brandwein 2011; Pope 2014). This led directly to new, multiracial state and local legislative bodies that were committed to basic civil rights and enforcement mechanisms against violence. This momentum was paralleled at the federal level by the establishment of the Department of Justice (DOJ) in 1870 at least in part to combat violent threats to consolidation, as evidenced by the appointment of noted civil rights defenders to attorney general and solicitor general (Kaczorowski 1995). In the early 1870s, the DOJ prosecuted thousands of cases against members of domestic terrorist groups such as the Ku Klux Klan, likely leading to significant decreases in violence during this period (Kaczorowski 1995; Williams 2004).

But the struggle for integrated consolidation was being fought at the intersection of white supremacist racial orders and the fragmented American state, with its high degree of state and local police power and autonomy. These groups fought an effective rearguard action to limit the scope of consolidated national authority by doubling down on the preservation of state sovereignty and local power. To maintain Black subjugation, white supremacists had to ensure ample control over citizenship and the types of violence that would be subject to national authority. When they could not block federal protections or prosecutions, they used the federal courts to reinforce limits on national power over violence attenuation. White supremacist orders were aided in this effort by the broad presumption—even among reformers—of residual, constitutional state police powers, as well as the fact that Republicans had the burden of constructing and maintaining new institutions to implement their aims (e.g., DOJ, Freedmen's Bureau) (Brandwein 2011; Kaczorowski 1995).

As a result, many post-Amendment laws—laws aimed directly at extending national power based on the new Constitution—were struck down by the Supreme Court, either in whole or in part, as violations of state authority or as enforceable only against state actors, not private individuals (e.g., *US v. Reese*, 1876, *Civil Rights Cases*, 1883). In *US v. Cruikshank* (1876), for example, the Supreme Court drew a distinction between the types of violence that Congress could seek to curtail under its new powers

and those that it could not. *Cruikshank* involved a massacre of dozens of Black men by a group of armed whites after a contested gubernatorial election in Colfax, Louisiana. The defendants were initially convicted in federal district court of violating the Enforcement Act of 1870, which prohibited conspiring to deprive someone of their constitutional rights—in this case, the right to peaceably assemble, vote, and bear arms.

But the circuit court overturned the convictions, and the Supreme Court affirmed, drawing on long-standing jurisdictional boundaries between federal and state power. The ruling acknowledged Congress's power to punish direct, race-based interference with voting rights, but argued that Congress could not “pass laws for the punishment of *ordinary* crimes ... against persons of the colored race or any other race. That belongs to state governments alone.” Ordinary crimes referred to those committed for reasons of “malice, revenge, hatred, or gain” (including partisan hatred), but “without any design to interfere with the rights of citizenship or equal protection of the law on a racial basis” (Brandwein 2011, 101, emphasis added).

Such distinctions had little meaning on the ground, however, where whites in many parts of the former Confederacy were regularly committing “ordinary murders” against Black people, white Republicans, Union sympathizers, and each other (Roth 2009; Vandal 2000).<sup>1</sup> In areas where Republican-led rule was less contested or where military occupation by the Union army remained, violence was more contained (Roth 2009, 352–53). But where former Confederates lost power and were unoccupied or where power was contested, whites killed “with abandon” (348). Rates of white-on-Black homicide were staggering, and whites also killed other whites at high rates. When this violence was coordinated and overtly aimed at Black disenfranchisement, it sometimes drew national attention and federal prosecution (Tolnay and Beck 1995). But these prosecutions masked the extent to which “ordinary” murders were also a function of racial orders and fragmented state building, and how they helped to ossify a white supremacist regime that depended on violent suppression of Black and Republican voting, office holding, and civil rights.

The legal distinction between “ordinary” crimes, which were generally part of a state's police powers, and those subject to federal jurisdiction was not new, and it reflected the state form that the original Constitution created and that persisted through the nineteenth century. The vast majority of government functions were conducted at the state and local level, and robust political parties and courts largely set the parameters of national policy (Skowronek 1982).<sup>2</sup> But set against the backdrop of the Civil War Amendments, the Reconstruction Acts, and persistent violence that the Republican Congress was trying to address, this relationship was ripe for reconsideration. Congress had long criminalized behavior that touched on

federal lands or fundamental federal institutions, such as post offices, postal workers, or financial institutions. It had been criminalizing murder since at least 1790, when it made killing on the high seas a federal crime, and subsequent bills made any state crime that occurred on federal property a federal offense (Miller 2008). The integrated consolidation of voting rights and security from violence was a clear aim of the Radical Republicans, which they regarded as essential to keeping the former Confederates from regaining power (Graber 2023). They were keenly aware of mere “parchment barriers” and carefully constructed the Civil War Amendments not as mere symbolic gestures but to allow for Southerners loyal to the Union—Black and white—to participate in elections without violence and intimidation (Graber 2023).

The point here is not to adjudicate the constitutional validity of this ruling or any other Reconstruction case. As Brandwein (2011) observes, several such cases involved judges sympathetic to Reconstruction, and their decisions were carefully crafted to create legitimacy for some congressional authority in these realms. But this simply reinforces our claim that, in the aftermath of the Civil War, the question of which level of government would do what was more indeterminate than in previous eras. Radical Republicans expressly pursued centralization of two fundamental features of state building: the right of electoral participation and protection from life-threatening violence. Southern elites then used the levers of fragmentation to disrupt such consolidation and ensure that “ordinary” violence—even when it was targeted at electoral participation—was beyond federal authority. This jurisdictional allocation would have profound consequences for efforts to achieve the integrated consolidation necessary for reductions in political and nonpolitical violence alike. The failure of one critical dimension of consolidation (violence control) compromised the actualization of the other (voting).

In the end, the fragmented structure of the nineteenth-century American state, particularly as it intersected with deep-seated hostility toward the formerly enslaved, was unable to produce integrated consolidation. Southern Democrats turned federal regulation of elections, including the prosecution of violent intimidation, into “the issue in American politics” (Valelly 2007, 147, emphasis in original), claiming in their 1892 Democratic platform that a Republican victory in the election would result in “despotic control over elections in all the States.” Republicans lost the election and, with it, the political will for national consolidation over violence and elections (Valelly 2007). The opportunity would not reappear for more than 60 years, revealing how the intersection of fragmentation and racial orders can erode the will of federal political actors to achieve racial progress. The challenge of developing nationally consolidated power lies precisely

in fragmentation’s opportunities for disruption. Where centralized political will cannot overcome racial orders, the result is “inconsistent and fluctuating levels of federal engagement to building material racial equality” (King 2017, 357).

Reconstruction thus ended with a rudimentary framework for national power on violence attenuation and, at the same time, the reinscribing of the political authority of state and local policing that paved the way for contemporary forced localism. By blocking national interventions aimed at breaking down racial and economic hierarchies, white supremacists left the overwhelming majority of lethal violence out of reach of federal authorities and reinforced the fragmented, nonconsolidated system of basic civil rights and law enforcement that facilitate violent self-help.

At precisely the moment when other democratizing nations were cohering into less violent polities through effective state building and centralization of public safety (Ansell and Lindvall 2020), the United States was doubling down on the fragmented, incoherent state structure that led to the violent deaths of seven hundred thousand Americans in the Civil War, decades of racial terror against African Americans, and the ongoing use of violent self-help in everyday conflicts. It is worth noting that in the years following the end of the Civil War, when white violence was endemic, rates of *intragroup* violence among Blacks were estimated at half those of whites (Roth 2009; Vandal 2000). This trend was soon reversed; by the 1930s, Blacks had the highest rate of interpersonal violent victimization (Roth 2009).

By that time, the regular lynching of Black Americans was a horrifying reminder of the failure of Reconstruction and formed the core motivation for the newly founded National Association for the Advancement of Colored People (NAACP) (Francis 2014). When Missouri Republican Leonidas C. Dyer’s bill to classify lynching as a federal crime and provide for direct federal enforcement against racial violence cleared the House in 1922, it was filibustered by Southern Democrats in the Senate and never passed. Costigan-Wagner, a similar bill in the 1930s, never made it to a floor vote in the Senate (Francis 2014). Both bills would have allowed for federal prosecution of state and local government officials who failed to protect a person in their custody from violence and for failing to prosecute those who engage in such violence. By the early twentieth century, however, Southern Democrats had developed formidable power in Congress and anti-lynching bills never found a way through the Senate. Though Southern delegates did not always vote as a bloc, they nearly always did so when threats to racial hierarchy were on the national agenda (Bateman, Katznelson, and Lapinski 2018).

## National Response to the Crime Wave of the 1960s–1990s

Our second illustration of the relationship between fragmentation, racial orders, and lethal violence is the response to the violent crime wave.<sup>3</sup> The start of the crime wave in the 1960s coincided with another critical juncture in which national political authority was being pushed to expand dramatically. Social movements pressed for rapid democratization and social change, including civil rights for racial and ethnic minorities, women, and immigrants; clean air, water, and environmental protection; access to healthcare; urban development; consumer product safety; reductions in crime, drugs, and so on (Baumgartner and Jones 1993). Though decisions made during this period had lasting consequences, specifically the Civil Rights Act (CRA), Voting Rights Act (VRA), Medicare/Medicaid, and so on, a core dimension of state building, the monopoly on violence, remained underdeveloped.

The violent crime wave was rapid and relentless. Between the mid-1960s and the early 1980s, the murder rate more than doubled, and robbery, aggravated assault, and rape more than tripled (LaFree [1998] 2018). Violence remained exceptionally high into the late 1990s. From 1993 to 1995, more Americans were murdered than died in the Vietnam War (LaFree [1998] 2018). Despite increasing demands for federal intervention in violence control, however, policies that successfully overcame anti-transformative institutional orders and extreme fragmentation were few and consisted largely of discreet policy benefits for state and local law enforcement, prosecutors, and single-issue groups—including new funding—that reinforced the fragmented status quo (Miller 2008). These policies would shape the character of the contemporary carceral state, reinforcing local control and reifying the anemic national capacity for integrated consolidation.

Here, we briefly illustrate how the intersection of anti-transformative orders and fragmentation limited integrated consolidation in this period. We provide several examples of how this critical juncture facilitated national consolidation of voting rights but did not disrupt the durability of local violence control (in fact, it reinforced it). We then offer three examples of the downstream consequences of forced localism in violence attenuation. First, the enduring presence of institutional fragmentation, including a gradual retreat from national consolidation through judicial enforcement of state and local control, significantly diminished the overall effectiveness of efforts to establish a national monopoly over the sale and possession of firearms across states. Second, despite the tremendous expansion of the authority and resources of lower jurisdictions, these were not accompanied by a corresponding, enforceable, universal code of conduct. The absence of universal standards leads to a lack of accountability for police officers, which in turn

undermines trust within communities that experience relatively high levels of misconduct and violence at the hands of law enforcement (Weaver and Prowse 2020). Third, the lack of a nationalized consolidation of violence reinforced inequalities in violent victimization across racial and geographic lines. Such insecurities undermine the capacity of individuals to engage in processes critical to the development of a citizen identity, such as voting (González 2017; Moffett-Bateau 2023), potentially undermining the gains in establishing state legitimacy via universal enfranchisement.

### *Institutional Limits on the Crime Wave Policy Response*

Like the Reconstruction period, we see the crime wave as characterized by the interaction between racial orders and institutional fragmentation, which combined to limit state building and to reduce the capacity for durable reductions in violence from all sources. At first glance, the period of massive national agenda setting and policy making in the postwar period looks like nation building. The momentum for change was strong, and postwar politics, alongside powerful social movements, created enormous pressure for national consolidation of political authority.

Indeed, the early years of the crime wave prompted a wide range of national policy proposals, many of which were focused on crime prevention strategies such as poverty reduction, improved housing, employment, education, gun control, and reductions in inequality. Miller's (2008) evidence from congressional hearings paints a picture of at least some congressional leaders focused on constituent demands for greater national intervention in crime reduction. Anti-transformative orders sought to constrain national ameliorative responses by equating civil rights actions with violent crime, negating the link between national policy and violence, and drawing on thinly veiled racialized characterizations of criminal activity. As Vesla Weaver (2007) observes, in the wake of urban uprisings in the early 1960s, many Southern Democrats in Congress revived old tropes about civil rights breeding crime and campaigned against the CRA on that basis. Even after the passage of both the CRA and the VRA, opponents of national intervention in racial repression continued and even escalated their racist rhetoric, actively pursuing strategies to undermine the national consolidation of violence reduction. In 1967, for example, Sen. Robert Byrd (D-WV) argued against national violence attenuation strategies, stating, "We can take the people out of the slums, but we cannot take the slums out of the people. Wherever some people go, the ratholes will follow. ... All the housing and all the welfare programs conceivable will not stop the riots or do away with the slum" (Weaver 2007, 248).

Nonetheless, the Johnson era witnessed some of the most significant social policy enactments since the New Deal, including the consolidation of national authority



over voting rights. Yet, while the VRA included robust enforcement of national standards, the major crime reduction legislation of the era, the Omnibus Crime Control and Safe Streets Act of 1968, largely reproduced the fragmented structure of violence attenuation. To be sure, the act substantially bolstered federal authority through new policies, spending, and federal agencies, such as the Office of Justice Programs and the Law Enforcement Assistance Act (LEAA). But the LEAA primarily funneled grants to state and local criminal justice agencies and Section 518(a) of the Safe Streets Act specifically prohibited federal “direction, supervision, or control over any police force or any other criminal justice agency of any State or any political subdivision thereof.”<sup>4</sup> The subsequent Gun Control Act of 1968 also failed to fully monopolize national authority over firearms. The act limited the interstate shipment of firearms and ammunition to legitimate manufacturers, dealers, and importers; barred sales to minors, drug users, and the “mentally incompetent”; provided for additional licensing and record-keeping requirements for gun dealers; banned the interstate shipment of pistols to private individuals; and increased age requirements and licensing fees. However, it did not include the national licensing requirements or national gun registry sought by President Lyndon Johnson, and the nature, degree, and scope of enforcement was largely left to states and localities (Spitzer 2020).

By the time Bill Clinton was elected president in 1992, pressure had been mounting for a greater federal response to the lengthy crime wave, now in its third decade (Enns 2016). The Violent Crime and Law Enforcement Act (P.L. 103-322, 1994) increased sentences for federal offenders, eliminated federal grants for higher education in prisons, created new death penalty crimes, and banned assault rifles for 10 years. But this carceral state building largely reinforced local political authority and offered very little by way of consolidated violence control, standards of accountability, or limits on the use of force. The act provided federal funding incentives for states to enforce mandatory minimum sentencing and billions of dollars for local law enforcement and prison construction. It also authorized the Community Oriented Policing Services (COPS) program, awarding large grants to localities for hiring police officers and supporting increased training in crime prevention and community policing techniques. Such initiatives increased local discretion but did little to centrally legitimate trust in state institutions, particularly in communities known to have strained relationships with law enforcement.

The only mechanism of accountability was established through the Special Litigation Section (SLS) of the Civil Rights Division. Hailed as the “most important legal initiative of the past twenty years in the sphere of police regulation,” the section conducted formal investigations of law enforcement agencies (Stuntz 2006, 798). Still, it provided little in the way of the implementation of a

national standard of police conduct or homicide clearance rates. Between 1997 and 2018, the SLS conducted only 69 formal investigations of local law enforcement agencies and reached a judicially enforced settlement with only 40 (Stuntz 2006). Despite the consistent racial gap in public trust in the police and allegations of abuses of power, a national standard for police conduct has yet to be established.

Also during this period, a coalition of racial and economic conservatives had begun mounting legal challenges to an array of federal laws, including gun regulations, to revive constitutional limits on congressional authority (Decker 2016; Teles 2008). They found success in 1995 with a legal challenge to the Gun-Free School Zones Act, which a divided Supreme Court determined exceeded Congress’s powers under the Commerce Clause (*US v. Lopez* 514 US 549, 1995). It was the first case in 60 years to strike down an act of Congress based on the Commerce Clause (Lessig 1995). While the dissenting opinion reiterated Congress’s findings that gun violence in and around schools has a deep effect on educational and, thus, economic opportunity, the majority barely discussed violence at all. Instead, it worried that such arguments would allow Congress to “regulate not only all violent crime but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce.”

Two years later, in *Printz v. US* (521 US 898, 1997), the Supreme Court invalidated a section of the Brady Handgun Violence Prevention Act that required local chief law enforcement officers to temporarily perform background checks on prospective handgun purchasers until a federal system for such purposes could be implemented. Building on its anti-commandeering doctrine decision five years earlier (*New York v. US* 505 US 144, 1992), the Supreme Court determined that allowing federal authorities to force state and local governments to implement its programs would violate the residual and inviolable sovereignty of the states (Jackson 1998). In 2000, the court struck down the civil remedy within the Violence Against Women Act based on the distinction between “national and local authority” (*US v. Morrison* 529 US 598, 2000). If Congress can regulate gender-motivated violence under the Commerce Clause, the court reasoned, “it would be able to regulate murder or any other type of violence since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part.”

Among the amicus briefs in support of the plaintiffs in *Lopez*, *Printz*, and *Morrison* was the Pacific Legal Foundation, founded in 1973 as part of a wave of organizations aimed at resisting new government regulations and rolling back the regulatory state that had emerged over the previous 40 years (Decker 2016). These briefs echo the arguments about constraints on Congress’s enumerated

powers and the constitutional authority of the states over criminal law from the previous century. Subsequent challenges to gun regulations at both the federal and state levels have included similar groups, including the conservative American Legislative Exchange Council, Goldwater Institute, Mountain States Legal Foundation, and the Cato Institute. Some of these same groups also filed briefs for litigants seeking to limit or end remedial racial policies in cases such as *Shelby County v. Holder* (570 US 529, 2013), the successful challenge to the VRA, and *Parents Involved in Community Schools v. Seattle School District 1* (551 US 701, 2007), which overturned the Seattle School district's high school plan to retain racial diversity in its schools.<sup>5</sup> These groups' commitment to a "negative" racial agenda (King and Smith 2005, 83)—that is, to opposing measures that are explicitly designed to reduce racial inequalities, as well as their resistance to greater national authority over gun violence—is a powerful illustration of anti-transformative racial orders. Such coalitions can include groups whose concerns are primarily economic, but which are engaged in political activity that will either preserve or restore power along racial lines (King and Smith 2005).

We recognize the lively debates about the relative merits of federal versus state/local control over a wide range of issues in American politics, including law enforcement and elections (see Landau, Wiseman, and Wiseman [2020] for a useful overview). Our point here is not to argue for complete national jurisdiction, nor to claim that anti-transformative orders were the only forces at work. Rather, we highlight how anti-transformative orders continued to disrupt even relatively modest efforts to create more systematic, cohesive national standards for violence attenuation.

The VRA of 1965 consolidated national authority in a clear and meaningful way, with powerful enforcement mechanisms. And Congress did pass substantial federal legislation aimed at violence control during the crime wave. Yet, unlike with voting rights, national action to address violence actually reinscribed much of the same fragmentation and local control that was never eliminated during the Reconstruction era when former Confederate states insisted that they were the primary purveyors of public safety and basic rights. Given the long-standing linkage between the struggle for both full enfranchisement and security from violence, why does integrated consolidation not occur during this era?

We offer several possible explanations, though further research is needed. First, it is difficult to overstate the status quo bias of extreme decentralization in many policy areas in the US, such as housing, health care, and education, in addition to public safety. As King (2017) describes, moments of "forceful federalism" are not open-ended opportunities for national consolidation. They require coordinated and targeted efforts by multiple organizations and institutions focused on particular forms of

nationalization. Even what appears as national policy consolidation during this time actually reinscribed some fragmentation and local control. Medicaid, for example, left many decisions, such as the scope of the program, eligibility requirements, and compensation rates, to the states (Michener 2018). And for all its consolidation, the VRA still left crucial decisions, such as polling times and locations, to state and local governments that were not subjected to the extra provisions of Section 4 (and its erosion in *Shelby County v. Holder* reveals the fragility of national authority). This is why we highlight periods of enormous state transformation where fragmented arrangements are deeply contested and less determinate, opening up opportunities for consolidation. As we illustrated earlier, however, even in extreme indeterminate moments, such as Reconstruction and the transformation of the American state during the 1960s and 70s, overcoming fragmentation is difficult.

Second, and relatedly, the priorities of the mid-twentieth-century civil rights movement were focused on dismantling legal barriers to racial equality and did not always link those struggles to reductions in violence (inter- or intraracial violence). This itself is puzzling, given the clear link between full citizenship and protection from violence on display during Reconstruction, as well as the explicit focus on racial violence and anti-lynching legislation by the NAACP in the 1920s. Megan Ming Francis (2019) offers a compelling explanation in "movement capture," which details how the largest donor to the NAACP, the Garland Fund, steered activists *away* from a focus on federal intervention in racial violence and toward legal strategies to promote racial equity in education. As a result, Francis (2019, 279) notes, "the focus on protection of black lives was lost." We build on these findings and those of others (Weaver 2007) by suggesting that civil rights opponents' strategic use of the violent crime wave to attack national consolidation on civil rights made such linkages even more difficult during this later period.

Finally, fragmentation also facilitates asymmetric influence of group interests (Hacker et al. 2022). Highly organized groups with material demands maneuver across the vertical dimensions of American federalism more easily than those with broader interests and more diffuse concerns. As Miller (2008) finds, by the late twentieth century criminal justice agencies, including state and local law enforcement and prosecutors, were the plurality of witnesses at congressional hearings on crime. The modal demand from these groups was for more resources, and their presence at congressional hearings increased over the course of the crime wave. The incentives for national lawmakers to centralize standards for the reduction of violence was thus curtailed by both resistance on the part of anti-transformative racial orders and the demands of state and local criminal

justice agencies to strengthen their organizations through federal resources.

### Consequences of Forced Localism

The combination of enormous decision-making power at the local level, massive federal funding (primarily for state and local criminal legal systems), and little by way of consolidated authority, standards, or accountability created a predictable set of results. Under forced localism, any federal intervention must be realized by local actors in accordance with their own preferences, histories, incentives, and economic constraints, leading to tremendous differences in how crime policy is enacted and enforced across US localities (Pfaff 2017). Again, we do not argue that all power allocated to local jurisdictions is fundamentally flawed. Nor do we aim to enter debates regarding the optimal size of democratic institutions. Instead, we call attention to the downstream effects of violence attenuation that is created at the intersection of anti-transformative orders and institutional fragmentation, leaving a core nation-state function to local jurisdictions. Naturally, such variation in the construction of local public safety infrastructures has led to varying levels of success in the local capacity to attenuate violence generally.

Homicide did drop significantly in the late 1990s in the United States. Some argue that this was driven by localities that disproportionately benefited from the development of the knowledge economy, causing notable population shifts back into local governments previously devastated by the collapse of Fordism (Lacey and Soskice 2015). In this analysis, increases in real hourly earnings of unskilled male workers may have reduced some violence (Lacey and Soskice 2015). Central to this argument is that the local governments best positioned to benefit from macrolevel technological change would experience the largest decreases in violence. When placed against the backdrop of the increasingly limited place-based funding that localities were receiving from the federal government starting in the 1980s (Weir and King 2021), the legacies of institutional fragmentation become even more pronounced. In lieu of the more centralized financial equalization efforts of other nations with federalist political institutions, local governments in the American context compete for the business of emerging industries capable of ensuring their growth and financial security. In contrast, those less equipped are at a considerable disadvantage in providing high-quality public services and goods (Ogorzalek 2021), including public safety. As a result, the capacity of localities to build public infrastructures capable of durably and effectively attenuating violence is tremendously limited and extremely variable. The problem has parallels in the highly decentralized education system of the US, which hinders the national capacity to respond to dramatic shifts in the global economy and to the rise of the knowledge economy (Iversen and Soskice 2020).

In the contemporary period, then, high levels of violence are characterized by disparate geographic concentration (Sharkey and Marsteller 2022), resulting in an extremely uneven risk of victimization. Studies spanning the social sciences have shown that living in violent communities may reduce individual incentives to pursue activities critical to upward mobility, social cohesion, and physical health (Heissel et al. 2018; Sharkey, Torrats-Espinosa, and Takyar 2017). But there is also reason to believe that the high risk of violent victimization may affect the likelihood of individuals to participate in the franchise (Moffett-Bateau 2023).

While the democratic consequences of unattenuated violence are understudied in the US, comparative politics scholars have examined this possibility. Caldeira (2000), for example, highlights how fear of crime and violence in São Paulo, Brazil, perpetrated by the state and citizenry alike, may remain in the psyche of the electorate, potentially counteracting perceptions of the state as legitimate. González (2017) refers to this limitation to democratic self-realization as a “constrained” citizenship. Within the context of nations characterized by unequal state capacity, behavioral processes necessary for participation in civic life become unequal themselves. While the context of these writings is the Global South, such research provides valuable insights into the democratic ramifications of America’s struggle with violence. When individuals cannot depend on their political institutions to protect their own physical security, they may have little reason to respect their authority on other dimensions and little capacity to self-actualize as a member of the polity, reinforcing the cycle of violence.

While there is good evidence that some local violence reduction strategies can be effective in the short term (Sharkey 2018), such approaches are unlikely to lower the floor of homicides overall in the US or bring it into any kind of rough parity with other comparable democracies. Forced localism in violence reduction limits the capacity of the US to successfully execute the nation-building interventions that have contributed to violence reduction elsewhere. It constrains the national consolidation and legitimacy of violence monopolization and allows for enormous variation in the commitment to and success of violence reduction efforts, with considerable political consequences. Local administrations change, resources dry up, new mayors and police chiefs emerge, and a wide range of incentives lead to policy variation or erosion. Moreover, local governments have no capacity to affect the macroeconomy, gun availability, or national standards of enfranchisement and inclusion. Instead, they face several moral hazards—in particular, the “correctional free lunch” (Zimring and Hawkins 1991), which makes increasing incarceration an attractive crime reduction option. And, as is painfully obvious, open borders allow people and weapons to move freely across states and localities, diluting

what little control municipalities have even further and reinforcing limited trust and legitimacy of national institutions. Overcoming racialized state failure is a long-term project, but even a substantial move away from forced localism—through enforceable national policing standards, equalization of resources across localities (particularly those hardest hit by violence), and national incentives for consistent, effective violence reduction programs—has the potential to move the United States toward more equity with its safer peers.

### Conclusion

Everybody knows there is no fineness or accuracy in suppression; if you hold down one thing, you hold down the adjoining.

—Bellow (1953, 3), cited in Mickey (2015, 33)

On the range of public goods that scholars address with respect to improving life outcomes and reducing inequality in American politics, we think lethal violence should be a major priority. The lack of equalizing mechanisms for confronting violence as a national problem is a first-order state-building problem and one that deserves considerably more scholarly attention.

Our approach built on the racialized state failure framework that sees high levels of violence in the US as the result of the failure of American state building, which itself is a function of the intersection of anti-transformative racial orders and institutional fragmentation. We highlighted the Reconstruction period and the crime wave of the mid- to late twentieth century to illustrate how racial orders stifled the consolidation of national power, reinforced the fractured political landscape, and hobbled violence attenuation. As other Western nations were consolidating national authority and reducing violent self-help as a result, racial orders in the US were using the fragmented political landscape to inhibit it.

The decentralized nature of violence reduction is now so entrenched that even President Barack Obama's 2015 White House Task Force on 21st Century Policing largely relegated its recommendations for the federal government to a supporting role. Most recommendations are aimed at bolstering, promoting, developing, collecting, and devising tools for local and state law enforcement. This telling paragraph illustrates just how entrenched the localized character of policing and crime prevention is:

Though legislation and funding from the Federal Government is necessary in some cases, most of the policies, programs, and practices recommended by the task force can and should be implemented at the local level. It is understood, however, that there are no "one size fits all" solutions and that implementation will vary according to agency size, location, resources, and other factors. (White House Task Force on 21st Century Policing 2015, 65)

The enduring assertion that "no one size fits all" belies the common origins of lethal violence across the American

geopolitical landscape and exemplifies the success of anti-transformative orders in pushing decision making and problem solving to the levels of government with the least capacity to attenuate violence, and the greatest likelihood of amplifying the interests of the racial and economic status quo.

We have applied our framework to the failure of the United States on a basic element of stateness: security from violence. But failure is not inevitable.

### Notes

- 1 Roth's (2010) supplemental homicide data shows regional variation in levels of inter- and intraracial homicide during Reconstruction. In Louisiana, for example, between 1866 and 1877, whites killed blacks at shocking rates, much higher than the rates of intraracial murder (Roth 2010, table 31). In Virginia from 1864 and 1880, data are not available for white murders of other whites, but white murders of blacks were a fraction of what they were in Louisiana and somewhat lower than black murders of other black persons (Roth 2010, table 22).
- 2 It is worth noting that the Reconstruction period saw the enactment of numerous restrictive gun laws at the state and local level, including in parts of the South, which were widely regarded as consistent with the Second Amendment (Cornell 2022). The first federal gun legislation—the National Firearms Act, enacted in 1934—was upheld against a Second Amendment challenge in *US v. Miller* (307 US 174, 1939).
- 3 Though the Progressive era brought transformative changes to the scope of the American political system (Skowronek 1982), this did not include significant progress in achieving integrated consolidation. We acknowledge the establishment of the FBI between the two eras we discuss (1935). However, we consider this agency to be outside the scope of our argument as its focus has historically been on organized crime, domestic and international terrorism, public corruption, civil rights violations, cybercrime, white collar crimes, and other major crimes with a national focus, not ordinary murders. The same is true for the establishment of the Department of Homeland Security in 2002.
- 4 Omnibus Crime Control and Safe Streets Act of 1968, Public Law US 90-315, 82 Stat. 197, Title I, Part E, Section 518(a).
- 5 *Shelby County v. Holder* (570 US 529, 2013): Amicus Curiae Brief of Mountain States Legal Foundation in Support of Petitioner, December 28, 2013; Brief Amicus Curiae of Pacific Legal Foundation, Center for Equal Opportunity, and American Civil Rights Foundation in Support of Petitioner, January 2, 2013; Brief of Amicus Curiae Cato Institute in Support of Petitioner, January 2, 2013. *Parents Involved in Community*

*Schools v. Seattle School District 1* (551 US 701, 2007): Amicus Curiae Brief on the Merits in Support of Petitioner, Mountain States Legal Foundation, March 21, 2006; Brief Amicus Curiae of Pacific Legal Foundation, American Civil Rights Institute, Center for Equal Opportunity, American Civil Rights Union, and National Association of Neighborhood Schools, August 18, 2006.

## References

- Ansell, Ben W., and Johannes Lindvall. 2020. *Inward Conquest: The Political Origins of Modern Public Services*. Cambridge: Cambridge University Press. DOI: [10.1017/9781108178440](https://doi.org/10.1017/9781108178440).
- Baumgartner, Frank R., and Bryan D. Jones. 1993. *Agendas and Instability in American Politics*. Chicago: University of Chicago Press.
- Bateman, David A., Ira Katznelson, and John S. Lapinski. 2018. *Southern Nation: Congress and White Supremacy after Reconstruction*. Princeton, NJ: Princeton University Press. DOI: [10.23943/princeton/9780691126494.001.0001](https://doi.org/10.23943/princeton/9780691126494.001.0001).
- Bellow, Saul. 1953. *The Adventures of Augie March*. New York: Viking Press.
- Black, Donald. 2004. "Violent Structures." In *Violence: From Theory to Research*, eds. Margaret A. Zahn, Henry H. Brownstein, and Shelly L. Jackson, 145–58. New York: Routledge.
- Brandwein, Pamela. 2011. *Rethinking the Judicial Settlement of Reconstruction*. Cambridge: Cambridge University Press. DOI: [10.1017/cbo9780511781650](https://doi.org/10.1017/cbo9780511781650).
- Caldeira, Teresa P. R. 2000. *City of Walls: Crime, Segregation, and Citizenship in São Paulo*. Berkeley: University of California Press. DOI: [10.1525/9780520341593](https://doi.org/10.1525/9780520341593).
- Capoccia, Giovanni, and R. Daniel Kelemen. 2007. "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism." *World Politics* 59 (3): 341–69. DOI: [10.1017/s0043887100020852](https://doi.org/10.1017/s0043887100020852).
- Cornell, Saul. 2022. "History and Tradition or Fantasy and Fiction: Which Version of the Past Will the Supreme Court Choose in NYSRPA v. Bruen?" *Hastings Constitutional Law Quarterly* 49: 145.
- Decker, Jefferson. 2016. *The Other Rights Revolution: Conservative Lawyers and the Remaking of American Government*. New York: Oxford University Press. DOI: [10.1093/acprof:oso/9780190467302.001.0001](https://doi.org/10.1093/acprof:oso/9780190467302.001.0001).
- Egerton, Douglas R. 2014. *The Wars of Reconstruction: The Brief, Violent History of America's Most Progressive Era*. New York: Bloomsbury Publishing USA.
- Englehart, Neil A. 2009. "State Capacity, State Failure, and Human Rights." *Journal of Peace Research* 46 (2): 163–80. DOI: [10.1177/0022343308100713](https://doi.org/10.1177/0022343308100713).
- Enns, Peter K. 2016. *Incarceration Nation: How the United States Became the Most Punitive Democracy in the World*. Cambridge: Cambridge University Press. DOI: [10.1017/cbo9781316471029](https://doi.org/10.1017/cbo9781316471029).
- Epperly, Brad, Christopher Witko, Ryan Strickler, and Paul White. 2020. "Rule by Violence, Rule by Law: Lynching, Jim Crow, and the Continuing Evolution of Voter Suppression in the U.S." *Perspectives on Politics* 18 (3): 756–69. DOI: [10.1017/s1537592718003584](https://doi.org/10.1017/s1537592718003584).
- Foner, Eric. 2019. *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*. New York: W. W. Norton.
- Fox, James Alan, and Marianne W. Zawitz. 1999. "Homicide Trends in the United States." Washington, DC: US Bureau of Justice Statistics. <https://bjs.ojp.gov/content/pub/pdf/htius.pdf>.
- Francis, Megan Ming. 2014. *Civil Rights and the Making of the Modern American State*. Cambridge: Cambridge University Press. DOI: [10.1017/cbo9781139583749](https://doi.org/10.1017/cbo9781139583749).
- . 2019. "The Price of Civil Rights: Black Lives, White Funding, and Movement Capture." *Law & Society Review* 53 (1): 275–309. DOI: [10.1111/lasr.12384](https://doi.org/10.1111/lasr.12384).
- . 2022. "Can Black Lives Matter within U.S. Democracy?" *The ANNALS of the American Academy of Political and Social Science* 699 (1): 186–99. DOI: [10.1177/00027162221078340](https://doi.org/10.1177/00027162221078340).
- Garland, David. 2020. "Penal Controls and Social Controls: Toward a Theory of American Penal Exceptionalism." *Punishment & Society* 22 (3): 321–52. DOI: [10.1177/1462474519881992](https://doi.org/10.1177/1462474519881992).
- Gibson, Edward L. 2012. *Boundary Control: Subnational Authoritarianism in Federal Democracies*. Cambridge: Cambridge University Press. DOI: [10.1017/cbo9781139017992](https://doi.org/10.1017/cbo9781139017992).
- Gilmore, Ruth Wilson. 2007. *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Berkeley: University of California Press. DOI: [10.1525/9780520938038](https://doi.org/10.1525/9780520938038).
- González, Francisco E., and Desmond King. 2004. "The State and Democratization: The United States in Comparative Perspective." *British Journal of Political Science* 34 (2): 193–210. DOI: [10.1017/s0007123404000018](https://doi.org/10.1017/s0007123404000018).
- González, Yanilda María. 2017. "What Citizens Can See of the State': Police and the Construction of Democratic Citizenship in Latin America." *Theoretical Criminology* 21 (4): 494–511. DOI: [10.1177/1362480617724826](https://doi.org/10.1177/1362480617724826).
- Graber, Mark A. 2023. *Punish Treason, Reward Loyalty: The Forgotten Goals of Constitutional Reform after the Civil War*. Lawrence: University Press of Kansas. DOI: [10.1353/book.119461](https://doi.org/10.1353/book.119461).

- Hacker, Jacob S., Alexander Hertel-Fernandez, Paul Pierson, and Kathleen Thelen. 2022. "The American Political Economy: Markets, Power, and the Meta-Politics of US Economic Governance." *Annual Review of Political Science* 25: 197–217. DOI: [10.1146/annurev-polisci-051120-013916](https://doi.org/10.1146/annurev-polisci-051120-013916).
- Harris, Allison P., Hannah L. Walker, and Laurel Eckhouse. 2020. "No Justice, No Peace: Political Science Perspectives on the American Carceral State." *Journal of Race, Ethnicity, and Politics* 5 (3): 427–49. DOI: [10.1017/rep.2020.21](https://doi.org/10.1017/rep.2020.21).
- Heissel, Jennifer A., Patrick T. Sharkey, Gerard Torrats-Espinosa, Kathryn Grant, and Emma K. Adam. 2018. "Violence and Vigilance: The Acute Effects of Community Violent Crime on Sleep and Cortisol." *Child Development* 89 (4): e323–31. DOI: [10.1111/cdev.12889](https://doi.org/10.1111/cdev.12889).
- Hofstadter, Richard, and Michael Wallace, eds. (1970) 2012. *American Violence*. New York: Knopf.
- HoSang, Daniel Martinez, and Joseph E. Lowndes. 2019. *Producers, Parasites, Patriots: Race and the New Right-Wing Politics of Precarity*. Minneapolis: University of Minnesota Press. DOI: [10.5749/j.ctvdjrrcq](https://doi.org/10.5749/j.ctvdjrrcq).
- Iversen, Torben, and David Soskice. 2020. *Democracy and Prosperity: Reinventing Capitalism through a Turbulent Century*. Princeton, NJ: Princeton University Press. DOI: [10.23943/princeton/9780691182735.001.0001](https://doi.org/10.23943/princeton/9780691182735.001.0001).
- Jackson, Vicki C. 1998. "Federalism and the Uses of Limits of Law: Printz or Principle?" *Harvard Law Review* 111 (8): 2180–2259. DOI: [10.2307/1342457](https://doi.org/10.2307/1342457).
- Kaczorowski, Robert J. 1995. "Federal Enforcement of Civil Rights during the First Reconstruction." *Fordham Urban Law Journal* 23 (1): 155–85. <https://ir.lawnet.fordham.edu/ulj/vol23/iss1/4>.
- Kasfir, Nelson. 2004. "Domestic Anarchy, Security Dilemmas, and Violent Predation: Causes of Failure." In *When States Fail: Causes and Consequences*, ed. Robert I. Rotberg, 53–76. Princeton, NJ: Princeton University Press. DOI: [10.1515/9781400835799-004](https://doi.org/10.1515/9781400835799-004).
- King, Desmond. 2017. "Forceful Federalism against American Racial Inequality." *Government and Opposition* 52 (2): 356–82. DOI: [10.1017/gov.2016.52](https://doi.org/10.1017/gov.2016.52).
- King, Desmond, and Robert C. Lieberman. 2009. "Ironies of State Building: A Comparative Perspective on the American State." *World Politics* 61 (3): 547–88. DOI: [10.1017/s0043887109000185](https://doi.org/10.1017/s0043887109000185).
- King, Desmond S., and Rogers M. Smith. 2005. "Racial Orders in American Political Development." *American Political Science Review* 99 (1): 75–92. DOI: [10.1017/s0003055405051506](https://doi.org/10.1017/s0003055405051506).
- Lacey, Nicola, and David Soskice. 2015. "Crime, Punishment and Segregation in the United States: The Paradox of Local Democracy." *Punishment & Society* 17 (4): 454–81. DOI: [10.1177/1462474515604042](https://doi.org/10.1177/1462474515604042).
- LaFree, Gary. (1998) 2018. *Losing Legitimacy: Street Crime and the Decline of Social Institutions in America*. New York: Routledge. DOI: [10.4324/9780429499135](https://doi.org/10.4324/9780429499135).
- Landau, David, Hannah J. Wiseman, and Samuel R. Wiseman. 2020. "Federalism for the Worst Case." *Iowa Law Review* 105 (3): 1187–1255. <https://ilr.law.uiowa.edu/print/volume-105-issue-3/federalism-for-the-worst-case>.
- Lerman, Amy E., and Vesla M. Weaver. 2014. "The Carceral State and American Political Development." In *The Oxford Handbook of American Political Development*, eds. Richard Valelly, Suzanne Mettler, and Robert Lieberman, 642–61. Oxford: Oxford University Press. DOI: [10.1093/oxfordhb/9780199697915.013.006](https://doi.org/10.1093/oxfordhb/9780199697915.013.006).
- Lessig, Lawrence. 1995. "Translating Federalism: United States v. Lopez." *The Supreme Court Review* 1995: 125–215. DOI: [10.1086/scr.1995.3109612](https://doi.org/10.1086/scr.1995.3109612).
- Lewis, Christopher, and Adaner Usmani. 2022. "The Injustice of Under-Policing in America." *American Journal of Law and Equality* 2: 85–106. DOI: [10.1162/ajle\\_a\\_00030](https://doi.org/10.1162/ajle_a_00030).
- Michener, Jamila. 2018. *Fragmented Democracy: Medicaid, Federalism, and Unequal Politics*. Cambridge: Cambridge University Press. DOI: [10.1017/9781108224987](https://doi.org/10.1017/9781108224987).
- Mickey, Robert. 2015. *Paths out of Dixie: The Democratization of Authoritarian Enclaves in America's Deep South, 1944–1972*. Princeton, NJ: Princeton University Press. DOI: [10.23943/princeton/9780691133386.001.0001](https://doi.org/10.23943/princeton/9780691133386.001.0001).
- Miller, Lisa L. 2008. *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control*. Oxford: Oxford University Press. DOI: [10.1093/acprof:oso/9780195331684.001.0001](https://doi.org/10.1093/acprof:oso/9780195331684.001.0001).
- . 2015. "What's Violence Got to Do with It? Inequality, Punishment, and State Failure in US Politics." *Punishment & Society* 17 (2): 184–210. DOI: [10.1177/1462474515577153](https://doi.org/10.1177/1462474515577153).
- . 2016. *The Myth of Mob Rule: Violent Crime and Democratic Politics*. Oxford: Oxford University Press.
- Moffett-Bateau, Alex J. 2023. "I Can't Vote if I Don't Leave My Apartment": The Problem of Neighborhood Violence and Its Impact on the Political Behavior of Black American Women Living below the Poverty Line." *Urban Affairs Review* 60 (1): 73–117. DOI: [10.1177/10780874231162930](https://doi.org/10.1177/10780874231162930).
- Monkkonen, Eric. 2006. "Homicide: Explaining America's Exceptionalism." *The American Historical Review* 111 (1): 76–94. DOI: [10.1086/ahr.111.1.76](https://doi.org/10.1086/ahr.111.1.76).
- Muller, Christopher. 2021. "Exclusion and Exploitation: The Incarceration of Black Americans from Slavery to the Present." *Science* 374 (6565): 282–86. DOI: [10.1126/science.abj7781](https://doi.org/10.1126/science.abj7781).

- New York Times*. 1866. "The Reconstruction Resolutions Pass the Senate [...]." *New York Times*, June 9. <https://www.nytimes.com/1866/06/09/archives/washington-news-the-reconstruction-resolutions-pass-the-senate-copy.html>.
- Obert, Jonathan. 2018. *The Six-Shooter State: Public and Private Violence in American Politics*. Cambridge: Cambridge University Press. DOI: [10.1017/9781108557740](https://doi.org/10.1017/9781108557740).
- Ogorzalek, Thomas K. 2021. "The City Re-Centered? Local Inequality Mitigation in the 21st Century." In *The American Political Economy: Politics, Markets, and Power*, eds. Jacob S. Hacker, Alexander Hertel-Fernandez, Paul Pierson, and Kathleen Thelen, 181–208. Cambridge: Cambridge University Press. DOI: [10.1017/9781009029841.007](https://doi.org/10.1017/9781009029841.007).
- Pfaff, John. 2017. *Locked In: The True Causes of Mass Incarceration—and How to Achieve Real Reform*. New York: Basic Books.
- Pope, Michael Frank. 2014. "Spectacle Violence, Notable Virtues: Reading the Lukan Passion in a First-Century Literary Environment." PhD diss. University of Chicago.
- Riker, William H. 1964. *Federalism: Origin, Operation, Significance*. Boston: Little, Brown.
- Robertson, David Brian. 2017. *Federalism and the Making of America*, 2nd edition. New York: Routledge. DOI: [10.4324/9781315394503](https://doi.org/10.4324/9781315394503).
- Rose-Ackerman, Susan. 2004. "Establishing the Rule of Law." In *When States Fail: Causes and Consequences*, ed. Robert I. Rotberg, 182–221. Princeton, NJ: Princeton University Press. DOI: [10.1515/9781400835799-011](https://doi.org/10.1515/9781400835799-011).
- Rotberg, Robert I. 2004. "The Failure and Collapse of Nation States: Breakdown, Prevention, and Repair." In *When States Fail: Causes and Consequences*, ed. Robert I. Rotberg, 1–50. Princeton, NJ: Princeton University Press. DOI: [10.1515/9781400835799-003](https://doi.org/10.1515/9781400835799-003).
- Roth, Randolph. 2009. *American Homicide*. Cambridge, MA: Harvard University Press. DOI: [10.2307/j.ctvjghvxh](https://doi.org/10.2307/j.ctvjghvxh).
- . 2010. "American Homicide Supplemental Volume (AHSV)." Supplement to *American Homicide*, by Randolph Roth. Columbus: Ohio State University Criminal Justice Research Center. <https://cjrc.osu.edu/sites/cjrc.osu.edu/files/AHSV-American-Homicides-5-2010.pdf>.
- Rubin, Edward L., and Malcolm M. Feeley. 2008. "Federalism and Interpretation." *Publius: The Journal of Federalism* 38 (2): 167–91. DOI: [10.1093/publius/pjn004](https://doi.org/10.1093/publius/pjn004).
- Schoenfeld, Heather. 2018. *Building the Prison State: Race and the Politics of Mass Incarceration*. Chicago: University of Chicago Press. DOI: [10.7208/chicago/9780226521152.001.0001](https://doi.org/10.7208/chicago/9780226521152.001.0001).
- Schneckener, Ulrich. 2007. "Fragile Statehood, Armed Non-State Actors, and Security Governance." In *Private Actors and Security Governance*, eds. Alan Bryden and Marina Caparini, 23–40. Berlin: LIT Verlag.
- Sharkey, Patrick. 2018. *Uneasy Peace: The Great Crime Decline, the Renewal of City Life, and the Next War on Violence*. New York: W. W. Norton.
- Sharkey, Patrick, and Alisabeth Marsteller. 2022. "Neighborhood Inequality and Violence in Chicago, 1965–2020." *University of Chicago Law Review* 89 (2): 349–81. <https://chicagounbound.uchicago.edu/uclrev/vol89/iss2/3>.
- Sharkey, Patrick, Gerard Torrats-Espinosa, and Delaram Takyar. 2017. "Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime." *American Sociological Review* 82 (6): 1214–40. DOI: [10.1177/0003122417736289](https://doi.org/10.1177/0003122417736289).
- Skowronek, Stephen. 1982. *Building the New American State: The Expansion of National Administrative Capacities, 1877–1920*. New York: Cambridge University Press. DOI: [10.1017/cbo9780511665080](https://doi.org/10.1017/cbo9780511665080).
- Spierenburg, Pieter. 2006. "Democracy Came Too Early: A Tentative Explanation for the Problem of American Homicide." *The American Historical Review* 111 (1): 104–14. DOI: [10.1086/ahr.111.1.104](https://doi.org/10.1086/ahr.111.1.104).
- Spitzer, Robert J. 2020. *The Politics of Gun Control*, 8th edition. New York: Routledge. DOI: [10.4324/9781003049371](https://doi.org/10.4324/9781003049371).
- Stuntz, William J. 2006. "The Political Constitution of Criminal Justice." *Harvard Law Review* 119 (3): 780–851. <https://www.jstor.org/stable/4093592>.
- Teles, Steven M. 2008. *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton, NJ: Princeton University Press. DOI: [10.1515/9781400829699](https://doi.org/10.1515/9781400829699).
- Tolnay, Stewart Emory, and Elwood M. Beck. 1995. *A Festival of Violence: An Analysis of Southern Lynchings, 1882–1930*. Champaign: University of Illinois Press.
- Valelly, Richard M. 2007. "Partisan Entrepreneurship and Policy Windows: George Frisbie Hoar and the 1890 Federal Elections Bill." In *Formative Acts: American Politics in the Making*, eds. Stephen Skowronek and Matthew Glassman, 126–49. Philadelphia: University of Pennsylvania Press.
- Vandal, Gilles. 2000. *Rethinking Southern Violence: Homicides in Post-Civil War Louisiana, 1866–1884*. Columbus: Ohio State University Press.
- Weaver, Vesla M. 2007. "Frontlash: Race and the Development of Punitive Crime Policy." *Studies in American Political Development* 21 (2): 230–65. DOI: [10.1017/s0898588x07000211](https://doi.org/10.1017/s0898588x07000211).
- Weaver, Vesla M., and Gwen Prowse. 2020. "Racial Authoritarianism in US Democracy." *Science* 369 (6508): 1176–78. DOI: [10.1126/science.abd7669](https://doi.org/10.1126/science.abd7669).

- Weir, Margaret, and Desmond King. 2021. "Redistribution and the Politics of Spatial Inequality in America." In *Who Gets What? The New Politics of Insecurity*, eds. Frances McCall Rosenbluth and Margaret Weir, 188–210. Cambridge: Cambridge University Press. DOI: [10.1017/9781108879170.008](https://doi.org/10.1017/9781108879170.008).
- White House Task Force on 21st Century Policing. 2015. "Final Report of the President's Task Force on 21st Century Policing." Washington, DC: Department of Justice. [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).
- Wiens, Terra. 2022. "Black Homicide Victimization in the United States: An Analysis of 2022 Homicide Data." Technical report, July 9. Washington, DC: Violence Policy Center. <https://vpc.org/black-homicide-victimization-in-the-united-states>. Retrieved May 24, 2022.
- Williams, Lou Falkner. 2004. *The Great South Carolina Ku Klux Klan Trials, 1871–1872*. Athens: University of Georgia Press.
- Zimring, Franklin E., and Gordon J. Hawkins. 1991. *The Scale of Imprisonment*. Chicago: University of Chicago Press.