

**Crime Is Other People:  
Punitive Consciousness and the Racial Politics of Law-and-Order**

by

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## **Dedication**

*To Luis,*

*to mom,*

*and to others who braved a world that does not welcome them.*

## Acknowledgements

I am not one to subscribe to the belief that a good dialogue across differences is all that is needed to solve society's problems. In fact, throughout the course of my fieldwork, I was periodically chilled by the profound indifference some of my interviewees—even some self-proclaimed progressives—expressed toward the suffering of people like me and like the people I care about. I also find it difficult to spout out platitudes about everyone being basically well-intentioned despite political differences, when some of the interviewees' politics can really only be summarized as a profound lack of care for anyone but themselves. Yet, it is precisely *because of* (and not in spite of) this, that I am eternally grateful to each and every one of the 65 Californians that I interviewed. I have a hard time imagining ever being so generous, so brave, and so honest with a complete stranger, especially in this political climate. For this, I thank you.

Donald Trump was elected three months after I uprooted my entire life in California and moved to Michigan—one of the key states that gave Trump his victory—to start my doctoral program. To say that it was scary to be a visibly-racialized visibly-queer immigrant during that time was an understatement. The care and support from Valerie Taing, Gabrielle Peterson, Katherine Wright, Jeffrey Lockhart, Luis Flores, Briana Starks, Mira Vale, Lanora Johnson, Jared Eno, and Leak Ly were not just intellectual or programmatic, but in many ways deeply existential. I also want to give thanks to Pablo Gastón, Fatma Müge Göçek, Elizabeth Armstrong, Karyn Lacy, Rachel Best, and Silvia Pedraza, whose kindness and generosity were critical to my growth and development not just as a scholar, but also as a person. I would also be

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## **Abstract**

Even as rates of crime and lawbreaking in the United States have declined continuously since the second half of the 20<sup>th</sup> century, political appeals to law-and-order remains a powerful mobilization strategy across the political spectrum. Furthermore, even though law-and-order politics arose in the 1970s as a “dog whistle” for politicians to stoke racial resentment without appearing explicitly racist, the racial subtext has become increasingly overt since 2016. This dissertation seeks to explain the enduring popularity of law-and-order politics through interviews with a multiracial group of 65 liberal and conservative grassroots activists. In particular, I seek to understand how these activists make sense of and engage with two high-profile law-and-order issues—undocumented migration and racialized police violence. I make two interrelated conceptual interventions to advance scholarly understandings of law-and-order politics.

First, I illustrate the need to move from punitive attitudes—often operationalized as the degree to which people prefer more severe punishments—to punitive consciousness, the collection of everyday interpretive schemas about lawbreaking and punishment. In doing so, I find that law-and-order discourses are rarely about actual crimes and lawbreaking behaviors, but a place where activists engage in constructing who the lawbreaking others are imagined to be and what the imagined lawbreaking other’s place is in the social world.

Second, I argue that law-and-order politics are centrally about how people imagine their social solidarity with the imagined lawbreaking other—that is, a site to construct sameness, differences, and belonging. I find that, rather than partisan ideology or race and other social

locations, the most useful way to understand where an electoral activist stand on law-and-order issues is through how they make sense of their social solidarity with the imagined lawbreaking other. For instance, regardless of partisan identification or attitudes toward the seriousness of migrant illegality, activists come to prefer pathway to citizenship for a limited subset of undocumented migrants because they were either able to envision their shared humanity with migrants or recognize their interdependence upon migrants; yet, they also wish to circumscribe relief because they believe that migrant's unauthorized presence either violated the entitlement of citizens or undermined social cohesion. Similarly, activists center their interdependence upon the police in making sense of racialized police violence, while believing that Black Lives Matter activists undermine the cohesion of society. This results in even liberal supporters of Black Lives Matter rebuking the call to Defund the Police.

This renewed understanding of law-and-order politics as contestation of social solidarity compels scholars to attend to a distinct register of lawbreaking and punishment: not one about public safety and harms to person and property, but the one in popular imagination about which people are belonging and deserving members of the society. This insight advances research on public opinion and the criminal justice system by underscoring support for punitive policy as distinct from the political discourses around law-and-order. This renewed understanding of solidarity further provides a more dynamic framework for research on group politics to consider the place of sameness and differences.

## Chapter 1 Introduction

Carol was a conservative white woman in her late 50s.<sup>1</sup> She was a grandmother whose most recent concerns included her grandchild being “exposed to LGBTQ issues” at school. Carol had just been elected to an officer position in her local Republican organization in a middle-income suburb about an hour inland from Los Angeles. “It’s part of our service to God and to others to serve our country,” Carol said about her activism, which at this point consisted of meeting with other Republican leaders in the area and planning fundraisers.

“What are some of the things that you hope to accomplish?” I asked Carol about her newly elected position.

“Turn California red,” Carol said with conviction. “Our crime is getting high, so we need to turn.... We need people in office that support law enforcement, not Black Lives Matter and not Antifa.”

Carol’s assertion that crime is on the rise and therefore Californians need to elect a conservative leader who will be tough on crime was emblematic of the focus on law-and-order that has dominated contemporary US politics. Yet, much like it has been for the past several decades, Carol’s assertion about crime also has no basis in reality. In California, as in most parts of the country, property crimes had been steadily declining, from about 2,600 incidents per 100,000 people in 2011 to only about a little over 1,900 in 2020. While violent crimes had

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<sup>1</sup> I refer to all interviewees with pseudonyms in order to maintain confidentiality. Nonetheless, in order to be fully transparent about my interviewees’ social locations and experiences to allow readers to draw their own conclusion about my analysis (Jerolmack and Murphy 2019), I am intentionally vague, but I do not alter, any identifying information.

fluctuated more, it still remained between 410 and 440 incidents per 100,000 people between 2011 and 2020. Furthermore, in Carol's municipality, property crime had nearly halved, from more than 1,400 incidents reported for the whole municipality in 2011 to about 750 in 2020. Violent crime did increase somewhat, from about 250 incidents in 2011 to about 375 in 2020, largely reflecting a spike in 2018 after long periods of downward trend (Federal Bureau of Investigation 2021).

So, what precisely was Carol talking about when she stated matter-of-factly that crime had been increasing? I asked Carol about how she had experienced this growing crime rate in her own community. "I think that my neighborhood is starting to look a little different," Carol replied. "More homes are being rented in my area, which used to be predominantly homeowners...and that's not a good scene...because, as you now, the likelihood of people renting a home are going to put the care, and maintenance, and money into the home [is lower compared to] if they owned it themselves."

At first blush, Carol's response may seem like a complete non sequitur. While failure to upkeep property may violate homeowner association rules, or even city ordinances, it does not fit into any definitions of crime used by the legal system or by scholars. Moreover, when politicians ominously insist that crime is rampant and we must instill law and order as a nation, as Carol was invoking when explaining why Californians need to elect Republicans, the image that comes to mind is typically not that of an unmaintained lawn.

Here, it is important to note that Carol's first instinct was to discuss how her neighborhood is starting to "look a little different" when answering my question about crime in her community. Readers attuned to the long history of residential segregation in the United States may recognize Carol's response as potentially a covert way to describe undesired changes

in the racial and class composition of the neighborhood's residents. Indeed, despite Carol's assertion, census data revealed that the proportion of housing units occupied by their owners in Carol's municipality remained virtually unchanged, going from 68.2% in 2010 to 67.1% in 2020. During the same period of time, however, the municipality declined from 33% to 24% non-Hispanic white, while the Latinx population grew from 48% to 58%, which may be among the things in the neighborhood that were starting to look different for Carol.

On the one hand, Carol's response is largely consistent with what existing scholarship would have predicted. Survey research has shown that both real and even perceived crime rates are inconsistent and weak predictors of an individual's support for more punitive policies; instead, the one thing that strongly and consistently predicts punitive attitudes is racial antipathy (Brown and Socia 2017; Chiricos et al 2014; King and Wheelock 2007; Unnever and Cullen 2010). One explanation is that, since the Civil Rights Movements of the 1960s, crime has become a key "dog whistle" (Haney López 2014; Mendelberg 2001) to appeal to white voters' racial anxiety without violating the political norms against explicit racial derogation. In other words, voters and politicians talk about crime even when crime is low because they want to—but can't—talk about race. With this understanding, one can interpret Carol's response as an expression of her anxiety over the changing racial composition of California and her neighborhood, couched in the language of crime.

On the other hand, however, what remains unanswered is "why crime?" Recall that, among all the possible issues that she could have discussed, it was Carol who had brought up—without my prompting—her concern with the fictional rise in crime rate in California. If it were the case, as the dog whistle approach would suggest, that Carol's concern about crime were merely a cover for her antipathy against her new (possibly Latinx) renter neighbors, it seems like

there would have been far more proximal stand-ins for race that Carol could've pointed to, such as immigration. Similarly, from an instrumental point of view, insisting that crime is rising, in order to elect officials who "support law enforcement, not Black Lives Matter and not Antifa," in hopes that they may do something about Latinx renters in her neighborhood, seems to be far too circuitous a solution to Carol's problems. As such, while it may be the case that law-and-order concerns is simply a cover for racial animus, it is still necessary to explain what is uniquely resonant about crime and punishment in this context.

Furthermore, while with the added context about the racial demographic shift in Carol's municipality one may interpret Carol's expression as motivated by the racial threat posed by the growing Latinx population, it is important to note that Carol herself never mentioned Latinx. To what extent are "criminal," "renters," and "Latinx" interchangeable codewords? After swapping the words "criminal" with "renter" or "renter" with "Latinx," Carol's concerns make far less sense. Even accepting dog whistle politics' premise that people turn to law-and-order politics to disguise their racial concern, Carol's articulation also makes clear that, as Carol express her concerns in non-racial terms, the nature and the referent of her concern also shift. As such, law-and-order is no longer a simple one-to-one substitution for racial animus. This also raises the question of how do people navigate the role of race in law-and-order politics?

I began my doctoral program in the Fall of 2016. Three months into the program, Donald Trump was elected the president of United States, to many people's surprise. Trump's iconoclast elections and administration challenged me as a budding social scientist about what I thought I knew about race and U.S politics and what I thought needed explaining. In particular, Trump's oft racially-explicit law-and-order appeals and policies illustrate the incompleteness of existing

scholarship on post-Civil Rights era politics of race in accounting for the continuing significance of rightwing politics.

Through this dissertation project, I spoke with a multiracial group of 65 liberal and conservative activists in two suburban counties in Southern California, to find out what they are actually thinking and talking about when they engage with law-and-order politics. In particular, I zoomed in upon two key law-and-order issues during the Trump administration: unauthorized migration and police violence. When Trump first announced his presidential run in 2015, Trump captured national attention when he declared that “when Mexico sends its people .... They’re bringing drugs. They’re bringing crime. They’re rapists.... I will build a great, great wall on our southern border (C-SPAN 2015).” Trump’s call to “Build the Wall” soon caught on among his supporters and became the centerpiece of Trump’s 2016 campaign, where he started as a longshot fringe candidate during the Republican primary and—to many’s surprise—ultimately won the presidency against the established Democratic candidate Hillary Clinton. In turn, bookending Trump’s one-term presidency, 2020 saw one of the largest protest mobilizations in U.S. history to date, when an estimated 15 to 26 million people took to the street following the police murder of the unarmed Black man George Floyd (Buchanan, Bui, and Patel 2020). This wave of protest reignited debates surrounding police violence against Black Americans and the proper place of police in society, with “Defund the Police” emerging as one of the demands most associated with the protest. This project draws upon original interviews with electoral activists—those who have an outsized influence on elections through their volunteer labor, donation, and official positions—to better understand the place of law-and-order in modern election.

Overall, I assert that, while law-and-order contentions are expressed through the language of crime and punishment, they are not primarily about crime and punishment. Through my



interviews with activists, I find that they are rarely debating the lawbreaking *act* and its appropriate remedies when engaged in law-and-order politics; instead, they are more often constructing who the lawbreaking *person* is and how this lawbreaker fits in the social world. This should compel scholars of crime and politics to move beyond the narrowly defined “punitive attitude”—often measured as an individual’s support for harsher punishment, either in general or towards particular violations—to the broader constellation of everyday meaning-makings surrounding what ought to happen when someone broke the law, or what I term “punitive consciousness.”

Attending to punitive consciousness, I find that these activists very infrequently consider themselves as the lawbreakers at the center of law-and-order discussions: even those who concede that they have broken the law in question take length to distance themselves from the “lawbreaking other” whose punishment is the subject of law-and-order debates. Yet, unlike what the longstanding literature on group politics might suggest, I find that thinking of the lawbreaker as an outgroup “other” does not necessarily foreclose the possibility of desiring less harsh punishment for the lawbreakers. Rather, it is the ways in which an individual imagines their social relations with the lawbreaking other that determine the harshness of punishment desired.

I suggest that classical social theorist Émile Durkheim’s formulation provides a useful heuristic in understanding how people imagine their social relations with the lawbreaking others. In *The Division of Labor in Society* (2014 [1933]), Durkheim distinguishes between two different types of social bonds that tie the society together: *mechanical solidarity* and *organic solidarity*. Mechanical solidarity describes social bonds forged out of sameness and shared values, whereas organic solidarity refers to the mutual interdependence founded upon differentiation and division of labor. In turn, Durkheim (2014 [1933]) posits that society often punish violations of

mechanical solidarity harshly in order to reassert the shared value, but often seek only to repair the damage when organic solidarity is broken. Yet, theorizing at turn-of-the-20<sup>th</sup>-century Paris, Durkheim necessarily roots his formulation in a particular version of social sameness and difference; had Durkheim been writing in, say, the Jim Crow South across the Atlantic, where social differences and division of labor were violently maintained by law, Durkheim may reach a different conclusion about solidarity and the law. Through this dissertation, I make the case that, although Durkheim was a key figure in insisting sociology to be a positivist science, Durkheim's two solidarities provides great analytical leverage when treated as an individual's interpretive schemas. In other words, the two solidarities may do a better job as a description of the different ways individuals subjectively string together their understandings about social differences, lawbreaking, and punishment, rather than a set of hypotheses about the objective relationships between the degree of societal differentiation and the predominant types of punishment.

Turning to focus upon the two law-and-order contestations, I find that even though liberal and conservative activists predictably held opposing views on undocumented migration and the Black Lives Matter movements, the two constructed their social solidarity towards undocumented migrants, the police, and the Black Lives Matter movements in similar ways, resulting in convergent policy preferences. While the majority of activists were able to either empathize with undocumented migrants or recognize their interdependence upon undocumented migrants, they also envisioned undocumented migrants as overstepping their entitlement and undermining social cohesion. As a result, although liberal and conservative activists had opposing views about the seriousness of unauthorized presence, they converge upon the preference for a pathway to citizenship, but only for a limited subset of migrants. Competing solidarities towards the police and the Black Lives Matter movements similarly structured how

liberals and conservatives make sense of the call to Defund the Police. While liberal activists were overwhelmingly supportive of the Black Lives Matter movements and the conservative activists were not, both stressed their interdependence upon the police. In contrast, both viewed the Black Lives Matter movements as undermining social cohesion in their activism. As a result, liberals and conservatives converge upon their distaste for defund the police.

Taken together, I make the case that law-and-order politics are centrally about constructions of social solidarity. Lawbreaking is evaluated less so on the basis of concrete harms to persons and property, but on the basis of whether the lawbreaker is a belonging member of society. Being a racialized other does not foreclose the possibility of belonging. My interviewees demonstrated tremendous capacity in constructing similarity with a lawbreaking other across social divides when they choose to. In turn, even when an other is imagined to be different, people can still imagine the lawbreaking other as a belonging member of society through interdependence. It is only when the lawbreaking other is imagined to undermine social cohesion or overstep their entitlement that people come to wish suffering and exclusion upon the lawbreaking other. Through attending to solidarity, this dissertation uncover how race, deservingness, and social cohesion come together in law-and-politics.

This dissertation will proceed as follow: in Chapter 2, I sketch the current stock of scholarly knowledge around law-and-order politics and highlight the gap in literature in explaining the place of lawbreaking and punishment in American racial politics. In turn, I outline how an interpretivist Durkheimian framework—with a special attention to race—provides new analytical leverage to understand law-and-order contestation. Next, in Chapter 3, I describe the methods through which I recruited my interviewees, collected interview data, and analyzed them. In Chapters 4, 5, and 6, I turn to examine how my interviewees understand and respond to law-

and-order politics. In Chapter 4, I first describe the place of lawbreaking in my interviewees' overarching political views and priorities. I show that, not only do law-and-order scarcely figure into people's political priorities without prompting, but also that law-and-order concerns are rarely about crime *per se*. I then turn to how my interviewees made sense of "Build the Wall" and the violation of immigration law in Chapter 5 and how they made sense of "Defund the Police" and police violence against Black Americans. Lastly, in Chapter 7, I draw out the theoretical and practical implications for recognizing law-and-order contestations as mainly a contestation around the social relationship towards the lawbreaking other.

## **Chapter 2 Understanding the Racial Politics of Law-and-Order: From Punitive Attitudes to Punitive Consciousness**

The breakdown of law and order should be an issue in this campaign for the highest office in the land... The war against crime is the only needed war.

--Barry Goldwater, Presidential Campaign Speech in San Francisco, 1964.

When Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems.... They're bringing drugs. They're bringing crime. They're rapists.

--Donald Trump, Presidential Announcement Speech, 2015.

While the focus on crime, lawbreaking, and punishment in an electoral campaign may strike today's audience as entirely unremarkable, it is important to recall the relative recency when law-and-order became a core concern in U.S. politics. In fact, as the first quote in the epigraph shows, when Barry Goldwater—often considered the first New Right presidential candidate—ran against Lyndon B. Johnson in 1964, Goldwater had to defend his choice to focus upon street crimes and law enforcement in his campaign. After all, as one of his critics points out, there was little within the federal government's power that Goldwater could do to fight his war against street crimes (Rovere 1964). Fifty years after Goldwater's declaration, however, not only has crime become a tried-and-true staple in the electoral campaigns of conservative (and often times even liberal) candidates, but crime has also been such an established and effective tope that it has been creatively transposed upon other issues, such as Trump had with immigration in the second quote.

One possible explanation that Goldwater's message may have resonated with voters then was that crime was in fact on the rise in the mid-60s (Garland 2001). Yet, by Trump's election in

2016, property and violent crimes had been steadily declining for more than 30 years (National Research Council 2014). Indeed, since the 1960s, public concern over crime is far better predicted by media and political initiatives around crimes, rather than crime rates itself (Beckett 1994; 2001). While scholars are mostly in agreement that people's opinions about crime and punishment are largely divorced from reality (Brown and Socia 2017; Unnever and Cullen 2010), what is left underexplained is *how* that is the case. For instance, the National Crime Victimization Survey reveals that, from 2008 to 2021, only between 2% to 3% of Americans reported having experienced victimization for violent crime each year, with the victimization rate for serious property crime being roughly the same (Kena and Morgan 2023; Thompson and Tapp 2023). Furthermore, election cycle after election cycle, journalists and researchers repeatedly debunk the myth of the skyrocketing crime rate (e.g. Brownstein 2022; Segura 2022). If most Americans are not experiencing crimes and information contradicting the crime wave narrative is readily available, it is necessary to explain how law-and-order appeals continue to resonate with voters.

In this chapter, I make the case that existing research accepts at face value that law-and-order contestations are *about* crime just because they are expressed in the language of crime. In doing so, the examined outcomes are often popular concern over crime and the support for various types and severity of punishments, also known as punitive attitudes. Yet, the lack of correspondence between the popular resonance of law-and-order politics and the empirical realities of crime suggests that law-and-order politics and punitive attitudes may be more fruitfully understood as two analytically distinct objects. In turn, borrowing from the sociolegal scholarship on legal consciousness, I argue that punitive consciousness, or everyday

understandings surrounding punishment, may provide better leverage to understand law-and-order contestations.

Similarly, scholarship on American racial politics has long linked the adoption of harsher punishments with racial animus. Those taking the racial threat approach view white Americans as knowing participants who respond favorably to calls for harsher punishment, in order to mobilize the state to suppress the economic and cultural threats posed by subordinated groups (Chiricos et al 2014; King and Wheeler 2007). At the same time, dog-whistle politics approach draws attention to the imperative to appear non-racist in post-Civil Rights America and considers law-and-order appeals as mere cues to activate white voters nonconscious racist stereotypes linking criminality to Blackness (Mendelberg 2001). Here, I draw upon both approaches, but suggest that everyday voters are neither masterminds nor dupes; rather, expressing in the language of lawbreaking and punishment, they are earnestly engaging in the contestation surrounding *who belongs in the society* and *in what way*. In turn, the role of race in this contestation is far less straightforward than presumed. Durkheim's framework of different solidarities provides a starting place to disentangle the relationships between sameness, difference, solidarity, and punishment.

In this chapter, I first begin by defining law-and-order politics and situating its place within contemporary U.S. politics. I then review the most proximal existing research on law-and-order politics—studies on punitive attitudes—to highlight critical insights, as well as suggest the ways in which punitive attitude itself may not proximate law-and-order politics that closely. I further outline how the concept of punitive consciousness provides better leverage. I then turn to review existing literature on the racial politics of punishment and illustrate the ways in which contestations surrounding solidarity need to be more central in current theorization. I conclude

by proposing a modified Durkheimian framework to theorize the place of race in the political contestations around lawbreaking and punishments.

## **2.1 Law-and-Order Politics under the Punitive Turn**

In this dissertation, I use law-and-order politics to refer specifically to discourses about lawbreaking and its remedies in the contexts of electoral campaigns or surrounding policy initiatives. Typically, this looks like political assertions that street crimes are rampant and that harsher punishments are the only solution to it. This modern usage diverges from the origin of the term “law and order” in the late 18<sup>th</sup> century, when the concern had more so been around ensuring that the sovereign power had a monopoly over the capacity to maintain the (mostly hierarchical) social and political order (Cheesman 2022; Hinds 2006). Instead, this political concern over crime emerged during what many scholars describe as the “punitive turn” in many postindustrial nations—especially the U.S. and Britain—beginning the late 1960s.

Prior to the punitive turn, the “rehabilitative ideal”—or the belief that crimes are symptoms of larger social and psychological pathologies that can be corrected by rationally- and scientifically-administered treatments—dominated the mainstream, even if it was by no means monolithic or fully hegemonic (Garland 2001; Goodman, Page, and Phelps 2017). This “penal welfarism” (Garland 2001), part of the broader postwar optimism about the state’s capacity and responsibility to improve citizen wellbeing through rational planning, came under wholesale attack in the 1970s. Critics of the rehabilitative ideal were further aided by the fact that reported crime did increase during that time, largely due to those born during the postwar baby boom reaching the crime-prone young adulthood at the same time as when crime opportunities began to multiply, as both expensive portable consumer goods and two-earner households unattended



during the workday increased (Garland 2001). Rehabilitative approaches were soon declared as “nothing works,” even despite a dearth of knowledge about how rehabilitative programs were actually administered (Lin 2001). Retribution, deterrence, and incapacitation replaced rehabilitation as the main functions of the criminal justice system.

In the US context, a particular notable development under the punitive turn has been the merging of the political and the criminal justice fields (Campbell and Schoenfeld 2013). Even today, unelected local bureaucrats governed by unilateral organizational rules make the large part of the decisions surrounding the sanctioning of lawbreakers. Yet, beginning the 1960s, distrust against these unaccountable bureaucratic “elites” began to mount, both among conservatives and progressives (Garland 2001; Gottschalk 2006; Roberts et al 2003). This resulted not only in the growth of elected positions in the criminal justice system, but also an increasing intervention from the legislative and the executive branches, as well as directly from voter-initiated referenda, to restrict these bureaucrats’ discretion. This penal populism (Roberts et al 2003) has put in place longer and more determinate sentencing laws, contributing to the explosive growth of incarceration in the United States between 1970 and today, where the United States imprisons one in every four incarcerated people on Earth (National Research Council 2014). As such, while crime has sporadically entered politics throughout U.S. history (Gottschalk 2006), it was only beginning the latter half of the 20<sup>th</sup> century that it had become a permanent and structurally-embedded feature in American politics (Campbell and Schoenfeld 2013). In turn, while it is not inevitably so, the politicization of crime has thus far contributed to the adoption of harsher punishments.

Early scholarship on the punitive turn, largely in political or historical sociology, proffers several interrelated explanations about the growing political significance of lawbreaking and

punishment. These early works often take a macro and structural approach and situate the transformation as embedded within the larger societal changes of the 1970s. Garland (2001) points to the demographic, economic, and social transformations of late modernity as underlying the growth of both crimes and the widespread anxiety around crimes in the United States and Britain. In order to contradict the impression that the state was losing its ability to control crime—one of the most basic justifications of sovereign power in the Anglo political tradition—politicians rhetorically and in policy began to pursue more coercive approaches as a show of force. While examining largely the same set of phenomena as Garland (2001), Wacquant (2009) zooms in upon the social insecurity wrought by the neoliberal dismantling of the welfare state and the subsequent need for a more forceful governance of the working poor, especially those who are Black. Here, the neoliberal political appeal to individual responsibility in the marketplace resonated with the rejection of the rehabilitative ideal's belief in the social causes of crime. While Beckett (2000) also point to the increasing use of punishments, in place of welfare, to govern the Black underclass, Beckett (2000) focuses instead on the growing racial resentments among white Americans since the Civil Rights Movements. Beckett (2000) illustrates how conservative declarations of “War on Crime” and “War on Drugs” drew upon longstanding racial tropes about Black Americans as inherently violent, promiscuous, and lazy, in order to peel off the white working- and middle-class from the New Deal coalition.

Even though the three differ in their analytical focus, all importantly situate the punitive turn as part of the political response to the collapse of the postwar welfare-state. An important part of these accounts is the popular resonance of law-and-order politics: whether if the popular support was understood as the impetus for the political response, as Garland (2001) implies, or understood as manufactured by politicians, as illustrated by Beckett (2000). Yet, the nature of the

popular support remained underexplored. Given the macro focus of these accounts, everyday people are often no more than automatons, uncritically and unreflexively acting out late modern insecurity, neoliberal austerity, and racial resentment. Underlying are the presumptions that everyday people have no other available interpretation for these social changes than the ones supplied by the political elites and, in turn, that these interpretations necessarily entail only one political solution: harsher punishments. This approach fails to account for the ample alternative- and counter-frames against law-and-order politics throughout the punitive turn (Goodman, Page, and Phelps 2017) and makes it difficult to explain how popular resistance against law-and-order grew throughout the Obama administration.

Since these early punitive turn scholarship, everyday people fell farther out of the analytical frame for what Garland (2018) describes as the “second generation” of punitive turn scholarship. Instead, while these works largely presume the popular resonance of law-and-order politics as a background given, they take a meso-level and organizational approach and focus mostly on the concrete actions of situated actors—typically elected officials, criminal justice administrators, and criminologists—as a corrective to the “grand theory” approach of previous scholarship. This growing body of scholarship points to specific and path-contingent historic developments, such as the 1968 federal Law Enforcement Assistance Administration block grants, that contributed to the irreversible merger of the political and criminal justice fields (Campbell and Schoenfeld 2013) and the built-up of carceral capacities (Schoenfeld 2018), which resulted in the decidedly, but not inevitably, more punitive policies across United States’ decentralized criminal justice system.

For the purpose of this project, one particular crucial contribution of the second-generation scholarship highlights how previous scholarship tends to overstate the sweeping

nature of the punitive turn, instead pointing to the always coexisting and contradictory ideas about lawbreaking and punishments that animate the actions of reformers and criminal justice administrators. For instance, Lynch (2009) illustrates that, even during the heyday of the rehabilitative ideal, many Sunbelt states like Arizona never fully shed its longstanding embrace of harsh punishment, resulting in reforms and institution-building that were equivocal and ambiguous in terms of its penological commitment. Goodman, Page, and Phelps (2017) further examine episodes of penological paradigm-shifts throughout U.S. history and make the case for an “agonist” understanding of these changes: penological changes always occur through the ideological and material struggle between reformers with competing commitments; in turn, those who “lost” do not just disappear, but many often still effect changes through subverting the implementation, which results in all penological regimes being mixed and incomplete in actuality. Even though these works do not set out to explain popular attitudes and focus instead on reformers and administrators, the insight that individuals are always making meaning about lawbreaking and punishment drawing from an ideologically-mixed environment can be usefully extended to understanding how everyday people understood law-and-order politics.

The second-generation scholarship foregrounds the political choices made by those who are in power as the more direct causes of the punitive turn. This, however, entails that law-and-order politics necessarily recedes into the background. Yet, even though those in power did make the political and policy choices that led to the massive growth in imprisonment and other punishment, they would not have been able to do so without the mandate, or at least the cover, of popular support. Furthermore, this narrow focus fails to explain not only the numerous voter-initiated referenda, such as the three-strikes law, but also the many private and everyday actions—such as the growth of gated communities, private securities, and neighborhood watch

organizations (Caldeira 2000; Garland 2001; Maher 2003)—that also constituted the larger punitive turn.

## **2.2 Punitive Attitudes as a Proxy to Law-and-Order Politics**

As popular support for law-and-order politics increasingly fell out of the analytical frame for the punitive turn scholars, criminological research on punitive attitudes, typically quantitative analysis of survey data, has filled the gap. Punitive attitude describes the extent to which an individual support punishment. Scholars operationalize punitive attitudes in a variety of ways—ranging from more generalized questions, such as “in general, would you say that the sentences handed down by the courts are too severe, about right, or not severe enough,” to more specific questions, such as the extent to which the respondent supports particular policies, such as the death penalty or three-strikes law (Adriaenssen and Aertsen 2015).

Consistently, punitive attitudes research finds that the levels of crime rates—real or perceived—are not strong predictors of an individual’s punitive attitudes. This is not to say that the two are entirely uncorrelated; yet, crime rates are consistently outperformed in multivariate regressions by competing predictors. For instance, Tyler and Boeckmann (1997) find that concern about crime as a problem and distrust of the criminal justice system altogether fail to predict support for California’s punitive 1994 three-strike law and only weakly predict an individual’s general punitiveness. Instead, it was concern over the disintegration of family and social values that strongly predict both specific and general punitiveness. Similarly, Brown and Socia (2017) find that, while crime concern does strongly predict general punitive attitudes, it is entirely uncorrelated to support for the death penalty; however, they find animus towards the poor to be strongly predictive across all measures of punitive attitudes.

A particularly strong and consistent predictor of an individual's punitive attitudes is their level of racial animus. While Unnever and Cullen (2010) find the interaction term between crime concern and distrust of the court to be entirely uncorrelated with different measures of punitive attitudes—and, contrary to Tyler and Boeckmann (1997), only a weak correlation between concern over moral decline with support for death penalty—they find racial resentment to strongly predict punitiveness across all measures. In addition to animus towards the poor, Brown and Socia (2017) similarly find racial resentment to be strongly predictive across all measures of punitive attitudes. Alternatively, King and Wheelock (2007) find that homicide rate and crime concern to be entirely uncorrelated with punitiveness; rather, it is the perception that African Americans pose economic competition that predict punitive attitudes.

While these studies provide important starting points to understand the popular resonance of law-and-order politics, there are two important ways punitive attitudes do not approximate law-and-order politics. First, even though many punitive attitudes researchers do seek to provide insights into the punitive turn, this body of research did not set out to explain the punitive turn. This is the case, as people in all societies—even those that did not experience the punitive turn—have opinions about the right severity of punishments. In using punitive attitudes as a stand-in for law-and-order politics, researchers assume that simply because law-and-order politics is expressed in the language of crime and punishment, it is *about* people's attitudes toward crime and punishment. In turn, the relevant outcomes are popular support for various types of punishments. Yet, whereas law-and-order politics doubtlessly resulted in the adoption of harsher punishments, whether or not it is *about* crime and punishment is an empirical question. In fact, given how both the historic scholarship on the punitive turn and the quantitative works on punitive attitudes point to the intimate connections between punishment and the late modern

anxiety over social disintegration, neoliberal dismantling of the welfare state, and racial animus, it is almost certain that law-and-order politics at least contain registers that are not about punishment.

A second related concern is methodological. Being largely a body of quantitative research of opinion polls, research on punitive attitudes treats the competing predictors as distinct and separate constructs, when scholars of race may recognize the predictors as deeply interconnected. Take, for instance, Tyler and Boeckmann's (1997) measure of the decline of traditional social and family values. Concern over the "disintegration of traditional family" often encompasses a racialized concern over family units headed by poor or working class unwed Black women, most emblematically articulated by the Moynihan Report; this is particularly the case in the lead-up to the California "three-strikes" ballot initiative that Tyler and Boeckmann (1997) studied, when the figure of the "super predator"—a teenager, often imagined to be Black or otherwise "urban," who commits violence with no remorse due to permissive or neglectful parenting. Similarly, the attribution of criminal behavior to poor people's individual failings is consonant with the larger cultural narrative of personal responsibility in the United States. This narrative has, in turn, been indispensable to "laissez-faire racism" (Bobo, Kluegel, and Smith 1997) or more broadly "colorblind racism" (Bonilla-Silva 2018), where racial inequity is evaded by presuming and emphasizing racialized minorities, particularly those who are Black, as lazy or less capable. In short, the findings of these survey studies suggest the need to attend more holistically to the interconnection between these beliefs, race, and punishment.

### **2.3 From Punitive Attitudes to Punitive Consciousness**

Here, I suggest that the sociolegal scholarship on legal consciousness provides a model to better understand law-and-order politics. Rooted in the interpretive turn in social science, most emblemized by Sewell's (1992) concept of social structure as schema, legal consciousness scholarship asserts that there exists no such thing as "the law" in the material world. Rather, it is through people's everyday understandings of how they ought to act in relation to certain texts, objects, places, and people that law acquires its thing-like quality and exercises its power. As such, to understand how the law actually works in people's day-to-day life, one must attend to people's everyday understanding of the law. Ewick and Silbey (1998) further stress that, rather than conceiving of the law as an object separate and distinct from other parts of the social life, analyst should acknowledge that the law is in reality indistinguishably enmeshed with other spheres of social life, but made distinct only when people think of the law as distinct. Lastly, Ewick and Silbey (1998) identify that people have multiple and often-contradictory understandings of the law, which allows the law to retain its legitimacy through accommodating instances in which the operation of the law may fail to live up to its ideal.

Silbey (2005) suggests that legal consciousness lends itself to understand the place of crime in society, especially as the existence of law presumes its violation. This dissertation takes up Silbey's (2005) call to consider how legal consciousness may enhance understandings about crime and punishment through advancing the concept of punitive consciousness. Much like legal consciousness, punitive consciousness attends to the schemas everyday people use to understand what ought to happen to when laws are broken as a way to better understand the place of punishment in society. This meaning-making around lawbreaking and punishment is inseparable from other spheres of social life, such as how collectives define acceptable and unacceptable



behaviors, how collectives negotiate deservingness, or which social groups are positioned as more deviant than others. In turn, though there are clusters of understandings that go together, every individual can simultaneously hold multiple and contradictory understandings of punishment.

A particularly fruitful line of legal consciousness inquiry concerns how people understand their place in the world through their relationship to law. Bell (2017) illustrates how the procedural injustice low-income Black Americans experiences in their interactions with the police, in addition to vicariously experiencing the marginalization from others in their communities and being structurally excluded from decision-making around policing in their communities, result in low-income Black communities being estranged from the law. In turn, how people position themselves in relation to the law make certain kinds of politics more possible, while making other kinds of politics unthinkable. Abrego (2011) finds, for instance, due to the fact that undocumented youths largely experience their legal status in the school context, they are more likely than undocumented adults to think of their immigration status as an invisible stigma, rather than an insurmountable barrier, and are more likely to demand political changes. Similarly, Levitsky (2014) finds that the policy categories of deserving and undeserving citizens, as communicated by existing policies such as Medicaid and Medicare, makes certain kinds of new welfare policies thinkable, while others not.

As I will make the case through this dissertation, punitive consciousness concerns how individuals understand other people's place in the world. As people do not typically claim the spoiled identity (Goffman 1963) of lawbreakers, people often do not imagine themselves as the subject of punishment, even when they have broken the law in question. In turn, understanding a lawbreaking other's place in the social world in particular ways make certain kinds of politics

possible, while foreclosing the possibilities for other kinds of politics. Here, I propose that a fruitful way to consider how people conceptualize the place of social others is through a Durkheimian framework. Nonetheless, before I outline the Durkheimian framework, I will turn to describe first other existing frameworks for explaining the relationship between punishment and social others.

## **2.4 Race and Punishments: Competing Frameworks**

Many social others are governed through punishments; yet, as illustrated by the deep connections between punitive attitudes and racial animus, this has been especially true for racial others. From the imprisonment of indigenous people by Spanish missionaries, to the chain gang in the Jim Crow South, to the internment of Japanese American during WWII, incarceration and punishment have been among the main tools for subordinating racial others throughout U.S. history (Alexander 2010; Hernández 2017). This, however, is often complicated by the declining social acceptability of explicit racism (Bonilla-Silva 2018; Mendelberg 2001; Yeh forthcoming). Two theoretical perspectives explicate how race and punishment interact in a political environment where politicians and voters alike are mostly avoiding appearing racist: the racial threat approach and the dog-whistle approach.

Racial threat perspective posits that racial antipathy arises when those in the dominant racial group perceive that a subordinated racial group is encroaching upon resources that the dominant group considers to be proprietary (Blumer 1958). Using data across 27 European countries, Ousey and Unnever (2012) find that those living in countries with higher level of racial and ethnic diversity tend to harbor higher level of hostility against racial outgroups, which in turn corresponds with higher support for harsher punishment for criminals. Focusing on the

U.S., King and Wheelock (2007) further emphasize that, although recent influx of African American into the respondent's community does correlate with more punitive attitudes, it is the subjective perceptions of African Americans as economic threats that more strongly predict punitiveness. Likewise, Chiricos and colleagues (2014) also find that measures of change in exposure to Latinos and subjective perceptions of Latinos as cultural and economic threats predict support for stricter border control and more punitive internal apprehension for undocumented migrants. Pickett (2016) finds a similar effect of viewing Latinos as a political threat and support for expanding police power. In turn, Jacobs, Carmichael, and Kent (2005) find that states with a history of lynching and present-day Black racial threat have higher levels of death penalty use, but only when Republicans govern the state. Alternatively, King, Messner, and Baller (2009) find that racial threat predicts lower level of hate crime law enforcement at multiple levels of the criminal justice system, reflecting a malign neglect against racialized minority from criminal justice bureaucrat.

The often-unstated assumption of racial threat explanations of punishments is the mechanism through which it occurred: presumably, as white Americans feel threatened by the growing population or power of Latinx and Black Americans, they mobilized the political and criminal justice institutions to dole out harsher punishments, in order to suppress these threats. The increase in support for harsher punishments is a facially race-neutral cover to affect greater social control over Latinx and Black Americans. Yet, as Roberts and Statlans (2019) illustrates, the American public knows shockingly little about even the most basic facts about the criminal justice system, such as the distinction between civil and criminal laws or who carries the burden of proof. This is further embedded within a general lack of knowledge about the political system and a low level of political participation among the American people. It is, as such, an open

empirical question whether everyday people have the level of political savvy necessary to mastermind a push for more punitive policies to suppress racial threat.

Furthermore, the racial threat approach presumes that it is always obvious who belongs to the ingroup and who belongs to the outgroup. With the growth of immigration from Asia and Latin America, interracial unions, and multiracial identification, the American color line has been undergoing tremendous shifts (Lee and Bean 2004). Historical precedents have shown that many groups previously considered to be an outgroup, such as Irish or Jewish people, have become incorporated into the white ingroup (Ngai 2014). It is, as such, far from straight forward if white Americans consider, for instance, Asian Americans to be friends or foes in issues such as affirmative actions. Furthermore, as scholarship on intersectionality (Crenshaw 1989; 1991) foregrounds, race is not the only relevant axis of social difference. Therefore, it is not a given, for example, that white women should always find white men to be their ingroup, rather than women of other races.

In contrast, while the dog-whistle politics perspective is not necessarily incompatible with the racial threat perspective, the dog-whistle approach conceptualizes voters as far less consciously aware of the racial implication of their punitive attitudes. Consistent with other political science approaches on race such as racial resentment and symbolic racism (Kinder and Sears 1981), dog-whistle politics centers the norm changes since the Civil Rights Movements, when explicit racism became not only socially unacceptable, but incompatible with one's perception of oneself as a good person (Mendelberg 2001). At the same time, however, race continues to be the central cleavage in American politics. As such, for politicians to signal their racial allegiances without appearing explicitly racist, they resort to facially nonracial appeals that nevertheless activate voters' nonconscious racial stereotypes (Haney 2014). In turn, when the

implicit racial message is made explicit, the appeal becomes far less resonant, as supporting it contradicts people's perception of themselves as non-racist (Mendelberg 2001). For this reason, Wetts and Willer (2019) find that it is racially resentful liberals, presumably those who are the most bound by prohibitions against explicit racism, that most respond to dog whistle appeals.

One of the most frequently cited dog-whistle appeals is the appeal around law-and-order, which builds upon longstanding stereotype about the inherent criminality of Black Americans. Mendelberg (2001) examines the infamous Willie Horton ad—the television advertisement by George H. W. Bush's presidential campaign that attacks his opponent Michael Dukakis for the murder committed by William Horton, a Black inmate who murdered a white couple while on furlough during Dukakis's term as governor. While the ad itself never mentioned Horton's race, it featured a mugshot of Horton. This became one of Bush's campaign centerpieces, but mostly through innuendo: during his acceptance of Republican nomination, for instance, Bush asserted that “there are millions of Americans who were brutalized by inflation. We arrested it, and we're not going to let it out on furlough.” Here, Bush utilized the tough-on-crime language not only to project an aggressive stance on the economy, but also subtly to communicate to voters which Americans he was fighting for and which ones are the problems. Mendelberg (2001) finds that, Bush began to pull decisively ahead of Dukakis when the Horton ads aired, but his support dropped when the third-party candidate Reverend Jesse Jackson pointed out the racial undertone of the ads. Under this perspective, the widespread resonance of Bush's law-and-order messaging was not due to concerns about crime and the criminal justice system; as such, the rising punitive attitudes may merely be an unintended byproduct of racial animus.

The Trump elections and administration, however, provide counterexamples of dog-whistle approach's hypotheses. Trump has often been unabashedly explicit about his racial

appeals, from calling Mexican migrants criminals and rapists, banning entry from Muslim-majority countries, to disparaging Black Lives Matter activists. Yet, rather than costing him politically, Trump's explicit appeals energized the turnout of his base (Yeh forthcoming). Here, the explicitness of his racial appeals and the punitive approaches to exclusion and subordination worked in tandem as part of his appeal. Trump's ascendancy raises questions about the extent to which voters are truly unaware of the racial undertone of law-and-order appeals.

Here, I argue that, much like punitive consciousness, an attention to everyday people's interpretive schemas and interpretive acts surrounding race (Jung 2015; Ray 2019) can enhance these two perspectives. As Young (2004) illustrates, understanding how everyday people make sense of the world provides critical insights into racial phenomenon, such as the joblessness of marginalized Black men. In turn, as Morning (2009) demonstrates, how people understand what race is and how it works structures how they interpret racial inequality and its appropriate remedies. Following Brubaker's (2009) conceptualization, I argue that the "groupness" of race is variable and therefore subject to contestation. As such, an integral part of a racial threat framework must include explaining the process of group construction. On the other hand, while the dog-whistle politics approach is attuned to the process of identifying an "us" and a "them," it failed to explain why law-and-order have been so fertile for racial contestations. I suggest that Durkheim's classical formulation about social solidarity provides the leverage to think about the conceptual links between race and punishment.

## **2.5 A Modified Durkheimian Framework**

In his famed text *The Division of Labor in Society*, Durkheim (2014 [1933]) seeks to theorize the sweeping change to society brought forth by industrialization. Durkheim posits that,

in more “primitive” societies, collectives are bound together by the sameness shared by its members, which he describes as mechanical solidarity, named after the mechanical bonds between molecules in forming a substance. Yet, individuals divide the work necessary for survival into specialized tasks, which has been accelerated by industrialization. As such, individuals are bonded to one another through their mutual interdependence like organs in a body, which Durkheim describes as organic solidarity.

As Durkheim was a leading proponent in advancing a positivist sociology, Durkheim grounds his theoretical in the empirical object of law. Durkheim asserts that “the number of these [solidarity] relationships is necessarily proportional to that of the legal rules that determine them. This is because social life, whenever it becomes lasting, inevitably tends to assume a definite form and become organized” (2014 [1933]: 52). In other words, Durkheim supposes that, as a particular type of social solidarity become a regular and frequent feature of the social life, laws inevitably have to emerge to govern these interactions. As such, one can ascertain the predominant type of solidarity in a society by the predominant type of law.

Durkheim argues that societies predominated by mechanical solidarity will have an abundance of penal laws. Mechanical solidarity emerges when individuals are near others who share their sentiments, which amplifies the sentiments and creates an illusion that this sentiment is something that is transcendent and external to the individuals. Durkheim refers to this shared sentiment as collective consciousness. As mechanical solidarity is held together only by the collective consciousness, any affront to it risks unraveling the entire collective; as such, offenders must suffer in order to reassert the collective consciousness that holds the collective together. In contrast, societies predominated by organic solidarity are characterized by restitutive laws. Since

each individual is indispensable in a mutually interdependent society, any violations of organic solidarity require only the repairing of damage, without punishing the violating individual.

Contemporary criminology often abbreviates Durkheim's formulation as the moral condemnation function of punishment. For instance, Garland (2001) cites Durkheim in describing the rising use of punishment for symbolic and expressive purpose during the punitive turn; Wozniak, Pickett, and Brown (2022: 1566) similarly characterizes Durkheim's theory as "punishment expresses society's outrage against the offender and reaffirms the moral standards that the offender violated." While these are not inaccurate summaries of Durkheim's work, these characterizations underemphasize how Durkheim views these shared values as constructed, rather than absolute. Durkheim (2014 [1933]: 58) argues that "there are a whole host of acts which have been, and still are, regarded as criminal, without in themselves being harmful to society. The act of touching an object that is taboo or an animal or man who is impure...how have any of these ever constituted a danger to society?" In other words, while contemporary shorthand for Durkheim may at times be construed as the need to communicate to the collective that some universally agreed-upon harm will not be tolerated, Durkheim's formulation is more simply that crime is a violation of sameness.

A troubling aspect of Durkheim's theory is the biological essentialism in his understanding of sameness and differences. In the chapter entitled "Another Proof of the Preceding Theory," Durkheim describes that, among more "primitive" people, as well as from remains found from ancient civilizations, the skull sizes are indistinguishable between men and women, whereas the skull sizes between French men and women of Durkheim's time. Durkheim points to this fact as proof that more "advanced" civilizations are characterized by higher levels of differentiations (2014 [1933]: 105-15). Here, Durkheim drew upon the pseudoscience of



eugenics that was at the height of its popularity and regurgitated the idea that sex differentiation increases as human evolves, which at once upholds racial, colonial, and gender hierarchies (McClintock 1995).

Here, the problem lies not only in the obvious imperial ethnocentrism that considers one's own people as the height of human evolution, but in the belief that the relevant sameness and differences in social solidarities is rooted in innate physiology. In fact, this contradicts Durkheim's own assertion that "there are in the consciousness of each one of us two consciousness: one that we share in common with our group...the other that...represents us alone in what is personal and distinctive about us" (2014 [1933]: 101). That is to say, within all of us, we can find social sameness and differences with one another. If this is the case, sameness and difference is not so much a matter of objective characteristics, but which characteristics people choose to interpretively emphasize. In turn, the kinds of solidarity one has with others is also a matter of interpretive choices. For instance, as a Taiwanese immigrant and a graduate student, I may choose to imagine being in mechanical solidarity with a Bengali immigrant janitor on the basis of us both being immigrants; I may choose to imagine being in organic solidarity with this janitor because I rely upon the work that they do; or I may even choose to withhold solidarity altogether because I don't see any similarity nor dependence with them.

In turn, as I will show in the remainder of this dissertation, how one imagines one's solidarity with an other structures one's punitive consciousness. Feelings of solidarity—both mechanical and organic—result in people having less punitive preference with the lawbreaking other. As punishments (and restitutions) are intended to repair the breaking of solidarity, it makes sense that no punishment is desired if the individual feels in solidarity with the imagine lawbreaker. At the same time, forgiveness on the basis of organic solidarity is more conditional.

On the other hand, while the lack of solidarity, or even the destruction of solidarity, results in a desire to punish. Here, I find that the destruction of mechanical solidarity to lead to most punitive preference, even when the imagined other in question did not break any law. Race provides resources for people to fashion interpretation of sameness and differences, but does not preclude the possibility of solidarity.

## **2.6 Conclusion**

In sum, I highlight that it is important to understand law-and-order politics—or political appeals to crime and punishment—as emerging out of the particular context of the punitive turn, where the political and the criminal justice fields began to merge. As law-and-order contestations was not primarily about crime and punishment, but simply a contestation expressed in the language of crime and punishment, existing research on punitive attitudes provides important, but not as proximal, understandings of the resonance of such appeals. Instead, borrowing from the legal consciousness literature, I argue that the interpretive approach to people’s everyday understandings of punishment, or punitive consciousness, provides better leverage. A critical part of people’s punitive consciousness involves the person people imagine to be in need of punishment, or the lawbreaking other. While the two existing perspectives on racial politics of punishment provide the starting place to understand how people think about punitive others, both fail to specify the mechanism through which it occurs. I make the case that how people imagine their solidarity with the lawbreaking other—at times drawing from the interpretive resources that race provides to articulate sameness and differences—structure punitiveness. In the three empirical chapters, I provide the evidence to support my theoretical interventions. In Chapter 4, I illustrate the incongruence between law-and-order politics and concern over crime, as well as

how people tend to imagine the lawbreaker in question as an other. Then, in Chapters 5 and 6, I use the case of unauthorized migration and police violence to illustrate how the Durkheimian framework provides leverage to understand people's beliefs and attitudes. In the immediately following chapter, however, I first outline the method through which I collected the evidence to make my case.

### **Chapter 3 Methodology**

Existing literature leaves two puzzles unsolved: first, if public concern over lawbreaking is only loosely correlated with empirical crime rate (Beckett 2000; Pickett 2019), what are people actually talking about when they are engaged in political contestations around law-and-order? Second, while racial animus is highly predictive of punitive preference, it also violates U.S. political norms (Yeh forthcoming) and most people's belief about themselves as non-racist (Mendelberg 2001) to express or even hold such animus. How, then, do people discuss race—or, more likely, avoid discussing race—in political contestations around law-and-order?

This dissertation asserts that attending to how people talk about lawbreaking and punishment—that is, their punitive consciousness—can shed much light on these two puzzles. Semi-structured qualitative interviews are the most suited to capture these articulations. In this chapter, I outline how I collected and analyzed these interviews. I first characterize my sampling frame and sampling procedure. I then detail my interview approach and consider the possible effects of remote interviewing, as well as my positionality as an interviewer. Lastly, I describe my abductive (Tavory and Timmermans 2014) analytical approach. The purpose of this chapter is not to provide a detailed account of my research journey, but to provide enough transparency so that readers can evaluate the soundness of the insights I have drawn from this data.

### 3.1 Sampling Frame and Strategy

In this dissertation project, I interviewed a multiracial sample of 65 liberal and conservative electoral activists in Southern California. Electoral activists describe a heterogeneous group of individuals, ranging from slightly more engaged voters who attend rallies and volunteer for a political candidate to those who hold public offices or other positions within party organizations (Carmines and Woods 2002). Existing social movement scholarship predominantly attends to cause activists—those who are motivated by particular political issues and pursue them largely through extra-institutional means. In recent years, however, scholars have increasingly excavated the critical ways through which grassroots activists have remade the political terrain through their engagement through party politics. Historian Lisa McGirr (2015) underscores that Barry Goldwater, then considered a longshot candidate that was far outside of the postwar welfare-state consensus in 1964, was able to receive the Republican Party presidential nomination over the favored moderate Nelson Rockefeller, largely through the effort of Sunbelt suburban voters going door-to-door and hosting coffee klatches and reading groups to collect signatures and turn out voters. In turn, while Goldwater lost to Lyndon B. Johnson by a landslide in 1964, the deep resonance of Goldwater’s call for law-and-order and the dismantling of welfare state became the foundation of every subsequent successful Republican candidate, including Nixon, Reagan, and Bush. Fast forward to the contemporary period, the Tea Party activists played a similar role in the remaking of the Republican Party beginning the Obama presidency (Skocpol and Williamson 2016). After Obama’s presidential win in 2008, conservative grassroots activists—discontented with what they perceive to be anemic and moderate leadership by the likes of Mitt Romney and John McCain—began organizing. Far more assertive than their predecessor 50 years ago, they not only shouted down their elected

representatives at townhalls, but these activists also began running their own candidates to replace the moderates. This resulted in a slew of far-right insurgent candidates winning offices from local to federal levels beginning the early 2010s. This voter turnout infrastructure and cadre of far-right office holders likely set the stage for Trump's success in 2016. Liberal activists lagged behind their conservative counterparts in effecting change through the party system. Since Trump's victory in 2016, however, a new wave of younger progressive activists have increasingly adopted the Tea Party strategy and entered party politics and electoral activism. This was especially reflected in the wave of progressive wins in 2018 in both congressional and local level, including many so-called progressive prosecutors. As such, this group of understudied activists hold inordinate power in moving party platforms (Carmines and Stimson 1990; Carmines and Woods 2002; Skocpol and Williamson 2016) and having greater access to policymakers than the average citizen, especially on the local level where much of criminal justice policies are made.

The second specification of my sampling frame is geographical. Given that much of the lived experiences surrounding crime, lawbreaking, and punishment, as well as much of the policymaking surrounding these issues, are highly local, geographic restriction improves the commensurability of the interviewees' experiences and opinions. This study focused upon two suburban counties in Southern California: Orange and San Bernardino. I chose suburban Southern California as it was among the key sites in the development of law-and-order politics in the late 20<sup>th</sup> century. In particular, historian Lisa McGirr describes Orange County, Los Angeles's affluent neighbor to the southeast, as the "nucleus" (2015:4) of the grassroots movements that resuscitated conservatism from the political margin in the 1960s and launched the New Right that continues to dominate politics today. Orange County was the key volunteer

and funding base for conservative politicians running on law-and-order messaging, such as Barry Goldwater's presidential primary in 1964 and Ronald Reagan's run for Governor of California in 1966 (McGirr 2015). Furthermore, it was the epicenter of many punitive policy innovations that spread across the nation, such as the 1994 anti-immigrant Proposition 187 and the "three-strikes" Proposition 184. While Orange County has continued to be strongly Republican, in 2016, Hillary Clinton became the first Democratic presidential candidate to win Orange County since the 1930s; in 2018, Democratic candidates won every congressional seats in Orange County; and in 2019, the number of voters registered with the Democratic Party surpassed Republicans for the first time. In other words, suburban Southern California, especially Orange County, has had a long and rich history of conservative and law-and-order politics that was in the process of being unsettled as I was entering the field.

Orange County is a highly unusual place. According to the U.S. Census Bureau estimate (2021), the median household income was \$100,485, nearly 1.5 times the national figure of \$69,021. It is also exceedingly well-educated, with 42% of adults holding at least a bachelor's degree compared to 33% nationally. Another highly unusual fact is that, although Orange County is still more white than the neighboring counties, it is only 38% non-Hispanic white in 2020, compared to about 60% nationally. The next largest racial ethnic groups are Latinx at 34% and Asian and Asian American at 23%, making Orange County among one of the U.S. counties with the largest Asian-descent population. Nearly 30% of those living in Orange County are also foreign-born. In contrast, only 2% of those living in Orange County are Black, compared to the national figure of 13%.

To ensure that my findings did not result from the socioeconomic particularities of Orange County, I also include the adjacent San Bernardino County in my sample frame.

Nicknamed the “Inland Empire,” San Bernardino County is known for being the warehouse and logistics hub for goods entering the Port of Los Angeles, one of the busiest container ports in the country. Containing a mix of working-class communities and older middle- and upper middle-class commuter suburbs, San Bernardino County has a median household income of \$70,287 and only 21% of adults have a bachelor’s degree (U.S. Census Bureau 2021). Nonetheless, the racial composition of San Bernardino is even more characteristic of Southern California and more dissimilar from the rest of the nation. San Bernardino County is majority Latinx at 56%, with non-Hispanic white at 25% and Black and Asian each accounting for another 9%. Those who are foreign-born accounts for 20% of San Bernardino’s population.

The sociodemographic peculiarity of Southern California certainly limits the generalizability of my findings. On the one hand, the overrepresentation and the long history of Latinx, Asian American, and foreign-born population compared to the rest of the country may result in more welcoming attitude towards immigrants, documented and undocumented. On the other hand, the lower than national percentage of Black population in the region may result in an underestimation of anti-Blackness in law-and-order discourses. In addition, as crime is spatially unequally distributed by income, the affluence of Orange County entails that actual criminal incidents will be less prominent in people’s daily concerns. Here, again, I emphasize that I am unable to estimate the relative distribution of views and beliefs through this project. Nonetheless, I do acknowledge that the multiracial nature of Southern California may contribute to far greater ambiguities in racial boundaries. The extent to which punitive consciousness, as well as solidarities, fail to map neatly onto race may be more exaggerated in this context, which should be verified in future studies.



Three sociodemographic variables consistently predict one's punitive attitudes: partisan identification, race, and gender (Brown and Socia 2017; Thompson and Bobo 2011; Unnever and Cullen 2010). In order to maximize variations in my interviewees' responses, I attend to these three characteristics in my sampling procedure. As sociologist Emine Elcioglu (2020) illustrates in her ethnography of immigration activists at the Arizona-Sonora border, activists' actions and articulations often make sense only in relation to the actions and articulations of their opponents; as such, I include both liberals and conservatives in my sample. Given that law-and-order politics in 2020 was strongly associated with Donald Trump and the Republican Party, I operationalize liberals and conservatives as members of organizations affiliated with the Democratic Party and those affiliated with the Republican Party, respectively.

In practice, I recruited my interviewees from electoral activist organizations based in Orange and San Bernardino Counties. This includes 52 local chapters of Democratic Clubs and 54 local Republican Assemblies and Republican Women Federated. I reached out to these organizations directly, asking if they would forward my interview requests to their membership. Both due to the fact that the response rate was relatively low (only 13 organizations responded) and the predominance of older liberal white women in my sample, I augmented my sample in two ways. First, I reach out to 68 organizations affiliated with Indivisible, a loose network of organizations that emerged to "resist the Trump agenda" by electoral means (Indivisible n.d.), which I categorize as liberal. To match this move on the conservative side, I also contacted two remaining Tea Party organizations that I can locate. Second, I individually contacted 223 listed officers of these electoral organizations, candidates and elected officers of the county Democratic and Republican parties, and delegates to the national conventions; here, although I reached out to everyone who I could find contact information, I prioritized reaching out to those

who are conservative and those whose names or photos suggest that they may be men or non-white in order to increase sample variations in partisan identification, race, and gender. In my message reaching out to these organizations and individuals, I describe myself as a student who is interviewing people who are active in their local electoral organizations about their experiences and their views, without mentioning my interest in law-and-order issues to avoid attracting only those with strong views.

Table 3.1 Interviewee Sample, by partisan identification, gender, and race

		<b>AAPI</b>	<b>Black</b>	<b>Latinx</b>	<b>White</b>	<b>2 or More</b>
<b>Conservative</b> (23)	<b>Men</b> (13)	4	1	3	4	1
	<b>Women</b> (10)	2	0	4	3	1
<b>Liberal</b> (42)	<b>Men</b> (11)	1	2	3	5	0
	<b>Women</b> (31)	2	2	3	22	2

I ended up with a sample of 65 electoral activists. Table 3.1 describes the sample composition by partisan identification, gender, and race. Overall, roughly one-third of my interviewees were conservative and two-thirds were liberal. My conservative interviewees were roughly evenly split between men and women; one-third of the conservatives were white and two-thirds were non-white, which is divergent from both typical understandings of conservatives and the national figure. For my liberal interviewees, half were white women, one-fourth were women of color, and another one-fourth were men, roughly evenly split between white and non-white. Despite my effort to diversify the sample, white liberal women continue to be overrepresented in my sample: indeed, my sample can also be broken down as one-third white liberal women, one-third other liberals, and one-third conservatives. Due to the intersection of gender socialization and racial advantages, this overrepresentation may have contributed to a

greater salience of circumscribed empathy as among the key processes of how people made sense of law-and-order issues.

An important feature of my sample is that my interviewees skew older. While my youngest interviewee was a college student who just turned 20, the median age of my interviewees was 56. About one-third of my interviewees were below the age of 45, about one-third between 46 and 64, and another one-third 65 and older. This is also reflected in the fact that about one-third of the sample were retired; combined with those who were students, homemakers, and unemployed, about 40% of my interviewees were out of the labor market. Many respondents confirmed that this corresponded with the membership of the organization, as those with more flexible “biographical availability” (McAdam 1986) are more able to participate in unpaid activism. For instance, Kim, a liberal white teacher in her late 50s, explicitly articulated that she was waiting for retirement to “get real active.” This age distribution may contribute to the convergences in policy preferences across partisanship, as my younger respondents expressed some of the most progressive and most conservative positions.

Lastly, as electoral activist describes a group with heterogeneous political engagement, it is important to outline their level of engagement. 14 of the 65 were either current elected official, former elected official, or had run for office unsuccessfully; positions included city council, mayor, school board, county official, and U.S. House of Representative. Another six were current and former community organizers and political staffers. The remaining two-thirds of interviewees are engaged mostly as unpaid volunteers. Some—like Amy, a liberal Southeast Asian freelancer in her mid-50s—founded their local Democratic or Republican clubs and were deeply involved in the county party organizations. Others, like Virginia, a liberal white retired principal in her late 70s, came only to the monthly meetings, often to socialize as much as to

participate in activism. Here, one concern may be that, by interviewing these elected officials, professional staffers, and activists, I may be capturing each party's official positions, rather than these individuals' personal views. My sense as the interviewer is that, given my emphasis on interviewees' personal experiences and "feelings" about issues, as well as the promise to mask their identities, even the elected officials were speaking to me in their personal capacity rather than as a representative of their party or their office; as such, most were very candid and forthcoming with their personal views.

In sum, given the central role of grassroots activists played in reshaping law-and-order politics, I focused my interview with electoral activists. In practice, I recruited my respondents from local Democratic and Republican organizations in two suburban Southern California counties. The choice to recruit from the two major parties, as well as the age range of those who ended up in my sample, may contribute to the convergence in policy preferences among my respondents. As such, I caution against extrapolating my findings of convergences as numerically representative of the nation's view at large, even though they do correspond with the bipartisan consensus around these issues identified by survey studies (e.g. Hainmueller and Hopkins 2014; Parker and Hurst 2021). Instead, this study seeks to elucidate the mechanisms of *how* activists converge on their preferences despite often having opposing ideological commitments.

### **3.2 World Stopped, Carry on: Interviewing During the Pandemic**

I conducted interviews for this project between mid-November 2020 and early November 2021. The interviews ranged from 45 to 168 minutes, with the median interview being 110 minutes. As the interview fieldwork occurred during the early heights of the COVID-19

pandemic, all interviews were conducted by me over web conference software or phone. All except two were recorded and human-transcribed.

The interviews were semi-structured: although I had a questionnaire (Appendix A) of mostly open-ended questions, I prioritized following the conversational thread with probes and follow-up questions to get my interviewees to elaborate upon their views. To be consistent with how I had advertised the study to my interviewees, I began my interview by focusing upon their activism experiences and their general political views. This also allowed me to establish rapport, to get the interviewees used to answering with elaborated narratives about their views, and for me to contextualize their views on law-and-order issues within their life and broader political commitments. I then asked the interviewees to recount their thoughts and involvements during the 2016 and 2020 presidential elections, using their discussions of the 2016 election to segue into discussions of “Build the Wall” and undocumented migration, as well as using their discussion of the 2020 elections to segue into questions surrounding Black Lives Matter and policing. For law-and-order issues, I tended to begin by soliciting overarching thoughts without prompting my interviewees to discuss any particular aspects, then follow up with specific facet of the issue I would like them to discuss. As an example, I would first ask my respondents to recount their general reactions going through the 2016 presidential election, then I would follow up with their reaction to “Build the Wall” and undocumented migration as an issue, then I would ask them for their preferred policy solution, and lastly I would end with probing for specific policies like deportation or employer sanction. This allowed me to capture how my interviewees would approach the issue with minimal intervention and understand the relative salience of various aspect of the issue for my interviewees, while still capturing my interviewees’ reaction to a standardized set of policies.

I defended the prospectus for this dissertation project in August 2020 and University of Michigan's Institutional Review Board (IRB) authorized my exemption in October 2020. This coincided with what was commonly understood as the beginning of the first national "surge" in COVID-19 cases between September 2020 and February 2021. This was seven months since California declared a COVID state-of-emergency and many nonessential workers transitioned to working from home. This was also about five months before COVID-19 vaccines became available to the general public. This necessitated all interviews to be conducted over the web conference platform Zoom. Fortunately, as this was nearly half a year into the stay-at-home order, even my older interviewees had little trouble with web conference technology, especially since most organizations I recruited from were also using Zoom to continue holding meetings. Furthermore, perhaps due to the age range of my interviewees or perhaps it was prior to people becoming fatigued with Zoom meeting, all but a handful of interviewees kept their camera on throughout the interview, allowing me to observe appearances, dress, facial expressions, body language, and a small part of the interior of their home.

While in-person interviews have often been, if not the gold standard, at least the default in interview studies, remote interviews have some distinct advantages. In my case, even though I had relocated to Los Angeles for the fieldwork, some interviewees lived as far as a two-hour drive away. Conducting all interviews virtually afforded me greater ease to reach those who lived farther away from metropolitan centers. Furthermore, while it is difficult to systematically compare across different projects, my anecdotal sense is that—perhaps due to the disembodied nature of Zoom interviews—my presence was less intrusive in the remote interview process compared to my previous experiences with in-person interview. Interviewees less frequently asked questions about me and less frequently addressed me directly in their responses.

Furthermore, I typically muted my microphone while my interviewees were talking, which reduced the extent to which my non-conscious vocalizations may bias the interviewees' subsequent responses. Nonetheless, the fact that I did not drive to the gated communities that my interviewees lived, meet their spouses and children in passing, observe how they interacted with the wait staff at their neighborhood coffee shop, or watched how they occupied space, doubtlessly gave me a more incomplete picture of who my interviewees were. As a result, my analysis and findings are mostly limited to what my interviewees have said and less on who they are as people and their social locations.

While remote interviews may have lessened my presence in my interactions with my interviewees, without a doubt my various social identities also influenced these interactions and structured the types of articulation I was able to capture. Given that I reached out to interviewees in their capacity as electoral activists, the most immediately relevant identity for them was my partisan affiliation and, relatedly, my affiliation with a university. Many organizations I contacted, both liberal and conservative, were deeply suspicious of my intention and often asked if I could have the university confirm my affiliation and intention. Given academia's reputation as left-leaning, this was especially the case with Republican organizations: no Republican organization agreed to forward my interview request to their membership, even when the individual I contacted agreed to an interview personally. Many conservative respondents, like Gerry, a Latino retired police in his early 70s, outright told me, "I have a problem with a lot of your professors, which I think are extremely liberal." Before agreeing to start the interview, Diane, a conservative white former city councilmember in her early 60s, half-jokingly asked me to promise not to upload the recording of the interview as an attack ad.

I circumvented some of the conservative suspicion directed towards academia by emphasizing my status as a student, which—as reflected in Gerry’s comment—seemed to somewhat successfully dissociated me from the perceived liberal position of universities. Only twice did my interviewees (one liberal and one conservative) directly ask me about my partisan affiliation, which I answered transparently: “this project is not affiliated with any political party. I only seek to better understand the experiences and views of people who are active in elections. I am not personally registered with any political party, but I voted for Joe Biden in 2020.” As with most interview studies of contentious political issues, the opinion that people verbalized to a stranger in an interview is likely to be more moderated and phrased in ways that are more socially acceptable. As such, the animus against undocumented migrants or against Black Lives Matter that I captured is likely to be an underestimation, especially amongst liberals.

Given the centrality of race in law-and-order politics, the race of the interviewer also requires some reflection. Much like what Lin (2000) finds in her study of prisoners and prison guards, I find my Asian American identity—which was apparent to my interviewees by my last name and my appearance if the interviewee had their camera on—to be something of a blank slate, allowing people to project their own politics onto me. Asian Americans are politically and socioeconomically heterogeneous (Wong and Shah 2021). Longtime stereotype, loosely based on East and Southeast Asian refugees during the Cold War, holds Asians who made it to the U.S. to be staunchly anti-communist and therefore conservative and Republican. Nonetheless, 72% of Asian Americans voted for Hillary Clinton in 2016 (Wong and Shah 2021). In Orange County, Asian American politicians are well-represented for both parties: in fact, in the 2022 primary for the congressional seat in northern Orange County, all four candidates were of Asian descent:



consisting of Democrat Jay Chen, Republicans Michelle Steel and Long Pham, and former-Republican Hilaire Shioura. In other words, in Southern California, especially in Orange County, the connection between Asian American and partisan identification is far from straightforward. As such, while I can't for certain say that both liberal and conservative interviewees were talking to me as an in-group member, I did not get the impression that people were less forthcoming about their political views with me.

Given the centrality of how people think and talk about race to this dissertation project, a more complex question is how my respondents locate me in the social world, beyond the political spectrum. It is clear that many interviewees—especially those who were nonwhite—responded to me with an explicit recognition of my Asian Americanness; yet, they tend to project their own racial allegiance onto me. For instance, Ruby, a conservative Southeast Asian retired realtor in her mid-60s, asserted: “I’m a [Southeast Asian]. You’re Asian. We have like the top, most successful ethnicity in the country. If there was intrinsic racism, we would not be as successful as we are.” Here, Ruby included me as her racial ingroup in order to invoke the “model minority myth” and deny the salience of racism in American society (Kim 1999). When Gene, a conservative Black minister in his mid-50s, expressed his distaste for the supposed-teaching of critical race theory (CRT) in K-12, Gene recalled that when he was growing up, there were two white families on his street. “They wouldn’t let Blacks go in their backyard, but maybe some Mexicans may be able to go back there. But I don’t think—Blacks and Asians couldn’t go in their backyard,” Gene described, before concluding that “so, like I said, I experienced [racism], but God, He did not allow me to be foolish or react.” Here, Gene stopped mid-thought to include Asian Americans in his recollection of victims of racism, which was likely prompted by my presence. Like Ruby, Gene included Asian Americans in his ingroup; yet, in contrast to

Ruby, Gene imagined Asian Americans to be similarly racially discriminated. It is possible that interviewees included me in their ingroup and invoked shared experiences to facilitate conversation flow and social connection; yet, Asian American's ambiguous position in relation to the color line does make this inclusion more possible. This ambivalence, however, creates a unique difficulty in contextualizing who the interviewees think they are speaking to and estimating which direction social desirability may bias the responses. Given the particular social context of Southern California and the multiracial and bipartisan nature of my sample, it is further difficult to imagine the counterfactual—that is, interviewees were responding to me differently due to my Asian Americanness, *as compared to what?* In some ways, how do people talk about race with Asian Americans is an empirical question in its own right that this project is not equipped to answer. As such, I will make note of my presence as an Asian American interviewer when I can discern relevance, but readers should interpret the findings with this fact in mind.

In sum, the findings for this dissertation derive from semi-structured remote interviews conducted by me. The semi-structured approach, especially going from general to specific, allows me to first capture how my interviewees may approach an issue with minimal parameter and then capture their views on specific aspects of the issue. The fully remote nature of my interviews may have allowed me to minimize my presence as an interviewer, although it may have also contributed to my analysis being less grounded to who my interviewees were as people. My positionality as an Asian American, an academic, and a young person shaped how my interviewees interacted with me in some ways that are obvious and in other ways that may have eluded me as a participant of the interaction. Following the recommendation by Jerolmack and Murphy (2019), I preserve as much information about the social locations of me and the

interviewees as possible in my presentation, in order to invite readers to critically interpret how the articulations may have been influenced by the positionality of me and the interviewees.

### **3.3 Reluctant Durkheimian: Abductive Analysis and Theorization**

This study takes an iterative and abductive approach to analyze the collected interview data. Sociologists Iddo Tavory and Stefan Timmermans (2014) identify two shortcomings of the standard inductive grounded theory approach to analyzing qualitative data. First, if an analyst is fully committed to practicing inductive approach as it is often described—that is, letting findings emerge only out of data without externally imposing any theoretical framework—they risk producing only an elaborated set of descriptions with little social scientific value. Yet, secondly and perhaps more importantly, Tavory and Timmermans (2014) also highlight that, as meaning is never inherent within a symbol and is always produced by its interpreter, it is also likely impossible for an analyst to approach a set of qualitative data without any external framework. An abductive approach, as such, asks analysts to iteratively move between inductively understanding what the interviewees are saying and deductively testing the “fit” of different theoretical models, until one finds what best describes the phenomenon at hand. This, in turns, demands greater transparency as to how the analyst settled on a particular interpretation of the data.

In practice, within 24 hours of each interview, I produced a memo that recounted the interview, documenting observations of non-verbal parts of the interview and notable articulations. It was through writing these memos that I continuously recalibrated the study. In fact, this project began with an exclusive focus on “Build the Wall” and undocumented migration, but soon expanded to incorporate “Defund the Police,” the Trump impeachments, and

the January 6<sup>th</sup> attack as the fieldwork unfolded alongside the 2020 election. As my interviewees continued to bring up these topics without my prompting, I came to recognize “Build the Wall” as a case of law-and-order politics and broadened the project’s empirical and theoretical scope.

Two sets of articulations sensitized me in the early parts of my fieldwork. First, in my very first interview, Dan, a white liberal technical writer in his early 70s, expressed that he finds no problem with undocumented migrants as long as they can be “quietly productive,” which I noted in my memo. This articulation oriented me away from thinking about the act of lawbreaking and towards how people evaluate the lawbreakers. Second, as I conducted my fieldwork merely months after the nationwide protests following the murder of George Floyd, demands to defund the police was hotly debated in races up and down the ballot. I was struck by the great lengths my liberal interviewees took to emphasize that they supported the movement but objected to the “slogan” of “Defund the Police.” As I was invited to speak first at a virtual conference on abolition and then on a panel on police reform, I performed a quick and preliminary analysis of my liberal interviewees responses to “Defund the Police” and noted the frequency in which these liberals made relevant the perspectives of police officers and the perspectives of their conservative opponents, while failing to mention the affected community in their responses. This observation highlighted for me that, while law-and-order contestations are about evaluating the lawbreaking others, there are multiple ways people can relate to others.

I kept these insights in mind as I transitioned into data analysis in 2022. I followed what sociologists Nicole Deterding and Mary Waters (2021) describe as the “flexible coding” approach to in-depth interviews, where one first begins by indexing the interviews into topical buckets before applying any analytical codes. This approach is particularly suitable for interview studies with relatively large samples and studies that loosely follow a variable-based structure.

As my interview questionnaire consisted of several distinct topics and, within each topic, several standardized questions of interest, my dataset lends itself to this structure. I first read through the entirety of the interview transcripts and indexed the interview data into twelve topical codes, with nine loosely following the organization of the interview guide (such as “activism experience,” “news engagement,” “2016 election,” “immigration”) and three thematic codes that tracked certain articulations regardless of where in the interview they showed up (“law and punishment,” “political opponent discussion,” and “race discussion”). Under top level topical codes, I further indexed the data by subtopics: for instance, under the larger “immigration” code, I further sorted the articulations into “Build the Wall,” “immigration connections,” and “policy preferences.” I iteratively read through all data sorted into the same sub-topical codes, indexed it into finer level of sub-sub-topic, and checked across all interviewees for relevant articulations until I arrive at a set of relatively narrowly-scoped responses from each interviewee that are about the same topic. As an example, I moved from all discussions of “immigration,” to isolating the discussions that pertain to the interviewee’s “policy preference” around immigration, to more narrowly focusing only on discussions about what ought to happen to undocumented migrants living in the United States (“policy solutions”), to specifically looking only at discussions of “deportation.” This is simultaneously a deductive exercise—drawing from the structure of the interview guide and my existing knowledge about relevant topics—and an inductive exercise, creating and dropping topical codes based upon my interviewees’ responses. Here, I acknowledge that Deterding and Waters’s (2021) approach encourages analyst to compare more narrowly-defined attributes across interviewees, in ways that are analogous to a more variable-based approach, which contributes to me being less attuned to the within-person nuances.

Then, I turned to open and axial coding to make sense of the data. For instance, under the topical code of “immigrant legality,” which contained all articulations of the extent to which whether a migrant is “legal” matters to the interviewee, 48 open codes emerged, ranging from discussions about “asylum seekers” to “racial disparities” to “national security.” Even when they were grouped into larger axial codes, such as grouping codes about “asylum seeker,” “difficulty of immigration process,” and “humanitarian concerns” under the larger code of “empathy,” the analysis continued to be unwieldy. In some way, this reflects how, when imposing only minimal parameters when asking the question, liberals and conservatives are understanding the same issue through very different sets of ideas and frames. It was at this point that I began to test out different theoretical frameworks to see which one provides the most utility in making sense of the data in its entirety.

Some early contenders for the theoretical framework were racial threat theory (Blumer 1958; Chiricos et al 2014; King and Wheelock 2007; Unnever and Cullen 2010) and “feeling rules” (Hochschild 1979). Scholars have long identified the ways in which racial animus and racial threat reliably predict punitive attitudes, often above and beyond any other predictors (Unnever and Cullen 2010). Yet, consistent with what scholars of contemporary racism (Bonilla-Silva 2018; Bobo, Kluegel, and Smith 1997; Kinder and Sears 1981) observe, everyday people have become very adept in avoiding discussing the significance of race. Even when my question explicitly referred to race, interviewees often evaded discussing race altogether, which makes it difficult to apply the racial threat model.

Alternatively, my recognition that interviewees often took the perspectives of police officers but not the affected communities when making sense of “Defund the Police” suggests to me the existence of feelings rules (Hochschild 1979), or socially-constructed regulations around

how one ought to feel, around empathy. In turn, empathetic perspective-taking is highly consequential in how people approach politics, especially those around punishment (Lynch and Haney 2011; Unnever and Cullens 2009). Yet, the framework of empathy rules left me unable to explain Dan's assertion of "quietly productive" undocumented immigrants and all the ways in which people prefer less punitive policies towards lawbreaker that they don't identify with.

When I began to label people's articulation about their relationship with the lawbreaking other using Durkheim's concept of mechanical and organic solidarity, however, things began to fall in place. Durkheim's theory very much put the questions of sameness and difference in the foreground, allowing me to consider the questions of race while accommodating articulations that does not neatly fit into the ingroup / outgroup distinction imposed by racial threat theory. The two solidarities identified by Durkheim further allows me to acknowledge that one need not empathize with a lawbreaking other or be in the same ingroup as the lawbreaker to feel socially bonded to the lawbreaker. In addition, Durkheim's theory provides testable propositions about the relationship between conceptions of others and one's punitive attitude, which contributes to an explanation of how law-and-order politics works. Acknowledging the baggage that comes with a Durkheimian approach, especially in studies related to crime (Greenhouse 2011), I find Durkheim's concept, with some interpretivist adaptations, provides the most analytical leverage to make sense of the interview data I have collected. Here, I first operationalized mechanical and organic solidarity using the discussion around migrant illegality and policy preferences toward undocumented migration. Then, I validated the generalizability by applying the framework to data surrounding "Defund the Police."

In sum, I took an abductive approach to find the theoretical "best fit" for my empirical data. This required iteratively moving between inductively recalibrating my fieldwork,

deductively narrowing my analytical focus, inductively understanding what my interviewees are saying, and deductively testing which analytical framework best capture what is occurring in my data. These iterative movements entailed many choices that I consciously and non-consciously made about my analysis. It is necessarily the case that there are swaths of data, such as those around activism experience, left entirely unanalyzed, as well as theoretical possibilities left unexplored, all of which would've resulted in different conclusions being drawn. This means that I did not, and cannot, set out to invalidate alternative explanations, but simply to illustrate how Durkheimian framework provides analytical leverage.



## Chapter 4 Law-and-Order Politics, In Context

John was a Southeast Asian American man in his mid 40s and a business owner and consultant. In addition to being an avid fundraiser for local Republican candidates, John founded multiple charitable organizations and served as an appointed commissioner. As the son of refugees, John said with pride: “I’m not big for handouts. I’ve worked for everything.... My family...came here as refugees with literally the clothes off their backs.... I witnessed my mother, my grandmother, and my family helped [other refugees] settle.... I’ve always done that. I’ve always stepped back and helped people.” John further stressed that he has friends on “both sides of the [political] spectrum, but the side that aligns with [his] values more is the Republican side.”

I asked him to elaborate what some of these values are. John began his list with being pro-small business and being against government handouts. John added to his list of values: “I have a respect for law enforcement, law and order.... I was raised in the projects at one point, and a lot of people don’t like the police, obviously, but most of them are criminals.”

I asked John what are some issues that most concern him today. John responded “the lawlessness is a major issue.... I mean, just yesterday or over the weekend, we had a child in Northern California who was driving with his family and a stray bullet hit him in the head.... I mean, there’s a lack of accountability and there’s no fear anymore with criminals out there. And, if we continue on this path...we’re going to look like a third world country.”

“Do you have any theory as to why...accountability is deteriorating?” I asked John.

“I think that we’re making it too easy in society for people to not do anything. I mean, for example, in California, most restaurant owners that I know can’t find people to hire because nobody wants to work, because...they can make more staying home off the government.”

John is among the only two interviewees that I spoke to who expressed that law-and-order issues were among their primary concerns. Had I conducted a survey study, John most likely would have written down law-and-order in an open-ended question about the “most important problem” facing the country and ranked crime highly on close-ended questions about the importance of various political issues. John would have been an example of popular concern over crime, which would not have been an inaccurate characterization of his politics. Yet, John’s full response demonstrates how crime can also stand in for an array of other “deep stories” (Hochschild 2016). While John’s concerns did include those surrounding crime and the personal safety of him and his family—as exemplified by the story about the boy killed by the stray bullet—John’s concern about crime is also an expression of his neoliberal values: if he, as a son of refugees, can be economically successful through hard work, then it is a moral failing—in other words, “criminal”—to not work and instead rely upon welfare.

In this chapter, I examine how my interviewees engage with law-and-order politics in general. Consistent with survey research, I find that, without prompting, law-and-order are seldomly the most dominant concern, among both liberals and conservatives. Even when people do express concern over crime, their concerns over crime are scarcely only about acts that are actually breaking criminal laws. In turn, I find that, when people are making sense of lawbreaking behaviors and punishment, they typically do not imagine themselves as the potential lawbreaker, even when they themselves have engaged in similar behaviors.

#### 4.1 Law-and-Order Politics, As Practiced

One of the most influential works on law-and-order politics is that of Katherine Beckett's (2000) *Making Crime Pay*. Noting the skyrocketing political concern around street crimes from 1964 to 1974 and around drugs from 1985 to 1992, Beckett (1994; 2000) examines the competing explanations of these concerns. Contrary to the democracy-at-work hypothesis that posits that the rising concern is everyday people making the problems of their communities politically known, Beckett (1994; 2000) finds that the proportions of people answering crime or drugs to the poll question "what's the most important problem facing the nation?" (MIP) were entirely uncorrelated with the rate of violent crime or the rate of drug use. Rather, the extent of concern for the two issues are not only strongly predicted by the level of state and media initiatives around crime and drug, but the concerns temporally follow, rather than precede the initiatives. Beckett argues that this reflects that law-and-order concerns result from elite constructions.

In reviewing the literature on public opinion and criminal justice policies, however, Pickett (2019) reached a starkly different conclusion: for the most part, politicians are rationally responding to a public that is, as a whole, accurately assessing the seriousness of crime. Pointing to political science scholarship on opinion polls, Pickett (2019) makes the case that the wording of the MIP questions utilized by Beckett (1994; 2000) essentially inquires the respondent to identify what are the issues that are treated as the most important by the media. As such, the responses would, by definition, fluctuate alongside political and media attention. Instead, for instance, when using an aggregate measure of support for various punitive policies, Ramirez (2013) finds that, while the public's punitive sentiment is strongly predicted by presidential

campaign frames, views on welfare policies, and views on racial integration, it is also the case that punitive sentiment tracks the rise and fall of crime rate in the United States.

I suggest that the scholarly disagreement on the relationship between crime and public concern is rooted in the different ways that scholars define the objects of analysis. Beckett’s (1994; 2000) ultimate concern is to explain the rising political salience of crime, or law-and-order politics, whereas a large portion of punitive attitude research focuses on everyday people’s evaluation of criminal justice policies. While the two are likely to be inextricably linked, whether or not the two are interchangeable is an open and empirical question, which is answerable by asking everyday people what they mean when they express concern over crime. In turn, understanding the nature of popular reception of law-and-order politics helps arbitrate whether the punitive turn is truly “democracy at work.”

This dissertation project begins to uncover whether or not the political salience of crime and punishment among the public is indeed *about* what everyday people believe about crime and our criminal justice system. I do so by attending to how everyday people actually engage with law-and-order politics as part of their larger political involvement, that is, as one among many competing priorities, consonant issues, and associated with particular candidates. Here, I do not intend to suggest that people are somehow disingenuous or duped, but rather that crime can have multiple registers, often all at once. In turn, I suggest that attending to people’s punitive consciousness, or everyday understandings of lawbreaking, can better explain the resonance of law-and-order.

Table 4.1 List of Interviewees’ Issues of Most Concern, by Conservative and Liberal, Listed First by Numbers of Interviewees Then Alphabetically

Conservatives		Liberal	
<u>Issue of Most Concern</u>	#	<u>Issue of Most Concern</u>	#

Education	4	Democracy, Polarization, & Voting	8
Faith	3	Climate Change & the Environment	7
Government Overreach	3	COVID and Healthcare	5
Taxes & the Economy	3	Gender & Reproductive Rights	4
Housing & Homelessness	2	Housing & Homelessness	4
Immigration	2	Racial Justice	3
Law and Order	2	Education	1
Parks	1	Immigration	1
		Inequality	1
		Taxes and the Economy	1

Table 4 shows the responses when I asked my interviewees what issues most concern them today. Sensitive to Pickett’s (2019) critique about the MIP question, I deliberately cued the interviewees to tell me what most concerns them, rather than for them to conjecture what may be “objectively” the most important problem facing the nation. Nonetheless, I also included the word “today” to prompt the interviewees to reflect upon current events. I typically ask this question early in the interview, before more specific questions about law-and-order issues. Two conservative and seven liberal respondents were not directly asked the question and therefore excluded from the analysis. I inductively coded the interviewees’ responses to the question and then grouped them into larger categories for ease of analysis and presentation.

No liberal interviewees expressed any concern surrounding crime or law-and-order. Given that the interviews largely occurred within a year after the 2020 general election, when Donald Trump contested the integrity and result of the elections and encouraged his supporters to storm the U.S. Capitol on January 6<sup>th</sup>, it was little surprise that the most popular concern among my liberal respondents concerns the state of U.S democracy. For instance, Jessica was a white

college administrator in her early 40s, who founded her local Indivisible chapter after going to the 2016 Women's March and was also active in her local racial justice organization. When I asked Jessica what most concerns her today, during our interview days before Biden's 2021 inauguration, Jessica responded: "Today, very narrowly today, [my biggest concern is] getting to Wednesday [January 20<sup>th</sup>] safely...without any more horribleness." Closely following concerns over the state of democracy for liberals was concerns over climate change. Leah, a white homemaker in her late 50s who became politically active because she felt that she had let her teenage daughter down for not doing enough to help Hillary Clinton win the presidency, responded plainly that her biggest concern is "probably the climate because that's existential for the whole world." The next cluster of concerns included access to healthcare and the COVID-19 pandemic, women's rights and abortion access, homelessness and California's escalating housing prices, and racial justice, which were all raised by at least a couple of liberal interviewees. Lastly, one interviewee each expressed concern about education, immigration, inequality, and the economy.

As conservatism has been so associated with more punitive views (Silver and Pickett 2015) that most studies routinely include conservatism as a sociodemographic control variable in quantitative studies of individual punitive attitude (Brown and Socia 2017; Chiricos et al 2014; King and Wheelock 2007; Pickett 2016; Thompson and Bobo 2011; Tyler and Boeckmann 1997; Unnever and Cullens 2010; Wozniak, Pickett, and Brown 2022), it is unsurprising that more conservatives than liberals named law-and-order as an issue that most concern them. Yet, whereas one or two issues stood out above the rest for liberals, the spread was more even among the conservative interviewees. Four conservatives, like Carol from Chapter 1, expressed concern over education, such as sex ed or the supposed teaching of critical race theory. Three were like

Gerry, a Latino retired police chief and city councilmember in his early 70s, who was concerned that “we are no longer a country of faith.” These seven social conservatives who were most concerned about cultural issues were roughly matched by the eight fiscal conservatives who were concerned about government regulations, taxes and the economy, and the soaring housing prices. These economic concerns ranged from the technocratic business concerns to moralistic concerns against welfare spending. Edison, a white accountant and an elected comptroller in his early 50s, was concerned about “inflation,” citing that there’s “really bad public policy happening.” On the other hand, Audrey, a white and Latina clerical worker at a police department in her early 50s, pondered and said “I supposed it’s the budget.... I think the tax rate is going to be so high and I think that they’re trying to get a lot of people on government assistance.”

Only two conservative interviewees expressed any concern related to crime. One was John, who I presented at the opening of this chapter. The other was Gabriela, a Latina insurance broker in her late 40s. Gabriela recounted first becoming involved when she had been laid off from her job. Gabriela started spending much more time on Facebook groups about municipal issues, became concerned about “things that [she] noticed started happening within [her] city,” and began reaching out to her city councilmembers to the point that one appointed her commissioner. I asked Gabriela what were some of the things that made her initially concerned.

Gabriela: There was a lot of—well, there is still but—homelessness, transients, and things like that here in the city.... It was like a full on village of transients and people living in tents and makeshift homes and things like that.

JY: And so what about those transient villages concerned you?

Gabriela: Just safety and there was a lot of criminal activities.... Transients were being found dead, burned alive.... Or they found a tunnel, an underground tunnel, of tons of bicycles, hundreds and hundreds of stolen bicycles.... There was a needle exchange program that’s happening. So drug users that live on the street.

JY: Did you know why all of these transient villages just started popping up around [when Gabriela saw them on social media]?

Gabriela: I think, there were several different bills where basically a lot of the...crimes were not really enforceable by law anymore.... A lot of, I think, criminals—that's what allowed a lot of the community to grow—the homeless and transient and drug users community, I think because they were not in jail. So if they were committing crimes or whatever it was that they're doing, they're not enforceable anymore if it's under \$1,000.

JY: Has there ever been any kind of personal interaction with the transient that made you concerned about your safety?

Gabriela: Yeah.... You can't even go to the grocery store, go get gas, just do something without getting solicited for money or just encountering them.... Last year during COVID, they released thousands of them and the jail's just walking distance from our house, a mile or two.... The crime rate, last year...just property theft increased by 50%.

JY: So if it were up to you, what would you like to see being done about this issue?

Gabriela: Personally, I think there should be law and order. I think the city council could hold people accountable and enforce laws.

Gabriela's response complicates the scholarly debate about whether everyday people are *really* worried about crime, or if it is a disingenuous cover or result of elite manipulation. Unlike Carol's issue with her renter neighbors or John's vague concern about people not working, Gabriela clearly identified concrete crimes in her community as part of her concern, such as theft and drug possession. Gabriela even recounted ways that lawbreaking actually affected her personally: public loitering and panhandling are indeed city ordinance infractions where Gabriela lives; criminal justice policy decisions, such as public health releases during the COVID pandemic, also concretely affected her quality of life. Subsequently, Gabriela diagnosed the problem as one caused by lax law enforcement and prescribed law-and-order as the solution. When politicians insist that the public is fed up with crime and is demanding harsher crime control, Gabriela would be the clear archetype.



At the same time, however, it is still an open question the extent to which Gabriela's concern is rooted in reality. Despite Gabriela citing crime statistic matter-of-factly, property crime had not increase. At Gabriela's municipality, property crimes remained largely flat between 2015 to 2020; violent crime had even decreased by nearly 15% between 2017 to 2020 (Federal Bureau of Investigation 2021). In turn, it is unclear the extent to which the anecdotal evidence that Gabriela raised to support crime concern—sensationalized social media videos about happenings in homeless encampments and conjectural impressions of the prevalence of people who use drugs—reflect the reality of crime in her city. Lastly, it is critical to recall that drug use and public loitering are themselves victimless behaviors that were criminalized as a direct result of half a century of law-and-order politics (Cheesman 2021; Garland 2001).

Yet, Gabriela's concern over crime also works in a different register. Unlike Carol, who lived in a middle-income suburb, and John, who was a highly-paid business consultant, Gabriela was far more precarious economically: not only had she lost her job when she first became politically active, she lived in a city and a neighborhood that was far less buffered from nuisances such as jails, needle exchanges, and homeless encampments. In certain respect, when Gabriela first got involved, Gabriela may be uncomfortably close to becoming in the same position as those living in the "transient village," necessitating Gabriela to assert moral boundaries to distinguish herself from those who are homeless. Recall when asked to diagnose the growth of the encampment, Gabriela proffered that criminal laws are not enforced anymore for "crimes...under \$1,000." Gabriela was likely referring to Proposition 47, directly passed by Californian voters, that reclassified theft under \$950 from felony to misdemeanor. During the campaign for Proposition 47, critics allege that, as \$950 is a much more significant amount of money for those who are lower income, the effect will be disproportionately felt by those who are

not rich; when the proposition became law, a possible perception is that the collective has found those who have stolen \$950 to be more deserving of state mercy than those with low income. Gabriela's concern, as such, can also be understood as an expression of economic anxiety and contestation around relative deservingness.

In sum, when examined within the context of how everyday people engage with politics, with the array of competing priorities and consonant issues, law-and-order is rarely a dominant concern; furthermore, when people do raise concerns over law-and-order, it is rarely primarily about crime, or at least it can be understood in multiple registers. Between conception of crime concern as political manipulation and insistence that everyday people are accurately perceiving crime, I suggest that it is perhaps more useful to consider law-and-order as a cache of interpretive resources that everyday people use to express an array of political concerns, including crime itself. This necessitates zooming out from narrowly focusing on concern over crime and support for various punitive policies to consider more broadly how people think about lawbreaking and punishment, or punitive consciousness. Gabriela's assertions about the relative deservingness between her and those living in the "transient village" foreground an important feature of punitive consciousness, that law-and-order politics is often about making sense of who others in the society are. In the next section, I turn to explore how law-and-order contestations are often contestations about the other.

## **4.2 Crime Is Other People**

A bedrock of Anglo legal tradition is that punishments are assessed on the basis of the violating *act* rather than the violating *person*: for instance, the principle of proportionality holds that punishment should be proportionate to the seriousness of the violation, with no regard to

who the lawbreaker is. Yet, an emergent body of literature, beginning in psychological studies of moral evaluation, illustrates that everyday people tend to make person-centered, rather than act-centered, judgements when evaluating transgressions (Uhlmann, Pizarro, and Diermeier 2015). Uhlmann and Zhu (2014), for instance, find in survey experiments that people tend to find harmless acts that nevertheless reflect the lack of moral character of the transgressor, such as masturbating into a dead chicken, to be more wrong than actual harmful acts, such as stealing a chicken. As applied to criminology, Wozniak, Pickett, and Brown (2022) find that people tend to desire harsher punishments for a lower-level offense like theft if the offender is characterized as lazy, as compared to a higher-level offense like robbery, but the offender is characterized as hardworking.

The fact that people evaluate punishment based upon person rather than act should strike those who are familiar with the American criminal justice system as unsurprising. After all, racial disparities in sentencing abound at every level of the decision-making process (Alexander 2010; Spohn 2015). Particular to lay people, Lynch and Haney (2011) find in simulated jury deliberation that, even when the facts of the case are identical, 10 to 15% more white male jurors will give the Black defendant the death sentence than the white defendant. Lynch and Haney (2011) further find that a large part of this disparity is accounted for by the fact that the white male jurors weigh the white offender's life circumstances as mitigating evidence, while they refrained to do so for the Black offender, which Lynch and Haney (2011) describe as the "empathic divide."

The Durkheimian approach puts these literatures in the same frame. Durkheim (2014 [1933]) is unequivocal that acts are punished under penal law, not because the acts are inherently wrong or harmful, but because they undermine the shared value that underlies mechanical

solidarity. As what is ultimately at stake is the solidarity that holds the members of the society together, the acts are merely an indication that the *person* who committed them is unacceptably dissimilar and needed to be made similar or excluded from society via punishment. This explains why acts that are harmless, but incomprehensible, feel more immoral than acts that, even if they do cause harm, are at least attributable to commonly-accepted motivations. In turn, those who exhibit traits that are consistent with shared values, such as being hardworking, are less in need of punishment than those who do not exhibit commonly-valued traits, even when the hard-worker did something more harmful. Race marks the offender in question as inherently different and becomes a barrier for people to empathize, or to see their shared humanity, resulting in desires for harsher punishment.

Recall, for instance, John's expressions of his political concerns. While John labeled his concern as surrounding the "lawlessness" caused by "a lack of accountability...with criminals out there," the actual content of his concern is that "nobody wants to work." It is important to note here that, not only is not working not a crime, but further that John took issue not with anything that people did (not working, for instance), but with how people feel (not *wanting* to work). This is a clear example that law-and-order discourse may often revolve around what kind of people the lawbreaker is, rather than what the lawbreaker did. Similarly, Gabriela expressed her concern with "criminals" and "the homeless and transient and drug users community" mostly as people, rather than being concerned about specific things that these people did. This is especially clear when asked how these people affected her life: it was not anything that they did, other than existing and interacting with Gabriela ("you can't even go to the grocery store...without getting solicited for money or just encountering them"). It was certain qualities of

these people *as people*—such as poverty—rather than anything that they did, that made them unacceptably different, or in other words, criminal.

As the Durkheimian framework views criminality as violations of mechanical solidarity—that is, being so contrary to the shared values that the violator must suffer and be cast out from the social body—by definition, one would not consider oneself as a potential violator. Stated in the terms of group boundary framework (Lamont and Molnár 2002), it is uncommon for one to think of oneself as belonging to a stigmatized group and, even when one does belong to a stigmatized group, many engage in boundary work to distinguish themselves from others of their group (Levitsky 2014). This contrasts with an act-centered evaluation of crime, where there can be some possibility that one can see oneself committing the criminalized act. In other words, crime is not just people, but crime is *other* people.

For instance, later in the interview, I asked Gabriela what she thought about Trump’s call to Build the Wall. “I liked it. I actually went to go see the wall and I thought it was great,” Gabriela said without hesitating. “I’ll just disclose to you: we came over illegally. My parents snuck us in when I was three years old and we came over illegally. And, not that I don’t appreciate it, but I understand now as an adult why we have those laws in place and why it’s important to have those laws in place... At some point, you have to enforce laws and I just feel that that’s all he was doing.”

I followed up: “With some of Donald Trump’s position on deportation, people like yourself...or your family who are undocumented might be deported. What are some of your thoughts about that?”

“If people have been here and are working and an active part of society and contributing to society, if they’re not just on the streets and living a life of crime, I think they should be given

an opportunity.... But if people are just going to live a life of crime or criminals...some of my family members lost their citizenship. They got deported because they were in jail.”

Trump’s 2016 call to crack down on illegal migration, insisting that many migrants are “criminals” and “rapists,” is a transposition of the tried-and-true law-and-order strategy onto immigration. Gabriela unequivocally embraced this law-and-order appeal. This may strike people as odd and against her self-interest as someone who was formerly undocumented and who had many loved ones who were undocumented. Yet, Gabriela understood the call the way that Trump intended it: it was about *who* the migrants are (“criminals” and “rapists”), rather than the act of unauthorized presence. If it were about the act of unauthorized presence, it would have mattered little whether the migrants are “active” and “contributing” members of society. Gabriela took this opportunity to imply that she herself was a necessary and upright member of the society and distinguished herself not only from the migrants derogated by Trump, but even from members of her own family. In other words, even when Gabriela had broken the law herself, she believed that the law-and-order discourse is about someone who is unlike her.

This tendency to think of the lawbreakers in question as not like oneself, even if the person had violated the very law in question, cuts across political divide. Janet was a liberal white retired civil engineer in her late 70s who lived in an affluent retired community. Janet’s first husband was mixed-race and expressed discomfort living in “all-white environments.” In fact, Janet first became politically active when she received “atrocious emails” from her church group that insinuated that Obama is Muslim and not born in the US; this pushed her to volunteer for Obama’s 2008 presidential campaign and even served as the campaign team leader for the city she lived in at the time. When I asked Janet what she thought of Trump’s call to Build the Wall, Janet quipped: “stupidest thing I ever heard. Come on, why waste all the money on that

when you could be doing other things?... I've never thought we were going to ever stop migration of Latinos.”

“I had an illegal nanny with the kids,” Janet further confessed. “Honestly, everybody in California does. My daughter had an illegal nanny.... We all have illegal nannies in California, that's just a given.... Everybody did. My neighborhood, everybody did.”

Later in the interview, I asked Janet a routine question about her thoughts on the Immigration Reform and Control Act of 1986, which, among other things, made employers criminally liable for a pattern of knowingly hiring someone who does not have a work permit.

“Yes, the employer should not hire illegals,” Janet replied. “I did a lot with construction [as a civil engineer]. On the weekends, they'd bring in these illegals. No training. We'd have deaths, permanently disabled. Yeah, no. People have to be protected and we're not protecting people who are illegal.... They're always taken advantage.... You don't dare say the trench doesn't look safe, because they'll just kick you out of the country. I mean, it's dangerous. It's for the danger reason. And I'm sure these meatpacking plants take advantage of them terribly. So yeah, I mean, if somebody's got a sewing sweatshop, yeah.”

Janet voluntarily identified herself as an employer of undocumented migrant workers. When asked about whether if she believe employers of undocumented migrant workers should face sanctions, however, Janet fully agreed that they should. This may strike observers as counterintuitive until they recognize that, like Gabriela, both did not even consider themselves as included among the lawbreakers who were the subjects of the discussion. Janet's imagined employers included meatpacking plants and sewing sweatshop, who took advantage of the worker's undocumented status with dangerous work conditions and should unequivocally be sanctioned. Even when it was within her industry, Janet distinguished herself from those who did

the hiring (“I did a lot *with* construction,” rather than I worked in construction; “*they’d* bring in these illegals,” rather than we’d bring in these illegals). In turn, when Janet discussed her experience as an employer of undocumented domestic workers, Janet not only did not consider it to be lawbreaker, but she further emphasized that “everyone” she knew did it. Granted, the scale at which Janet hired undocumented workers may be far smaller than a meatpacking plant. Furthermore, stressing the prevalence at which everyone is engaging in the behavior also underscores the impracticality in punishment. Yet, one of the reasons that Janet did not consider herself as among the employers in question is because criminality only refers to those who violated shared values, in this case, not exploiting workers. In contrast, when everyone that Janet considered as part of the social body is engaged in certain behaviors, it is, by definition, not criminal.

In sum, while the foundation of the U.S. legal system is built upon punishing the act, not the person, when engaging with law-and-order political contestations, people are often focused upon who the lawbreakers are. Furthermore, since—as the Durkheimian framework would posit—criminal punishment is targeted against those who are undermining the homogeneity underlying society’s mechanical solidarity, those who are the subjects of law-and-order debate are by definition an other. If people rarely think of punishment as something that would apply to themselves and others like themselves, a possible implication is that self-interest would not be activated to moderate the harshness of the punishment. Furthermore, as existing scholarship on outgroup may suggest, punishment may further become a tool to suppress social others. Here, however, I suggest that, just because the imagined lawbreaker is an other doesn’t foreclose the possibility for people to form solidarity with the imagined lawbreaker. Indeed, humans imagine solidarity with people who are not in their ingroup all the time (Polletta 2020). In the next two



chapters, I turn to examine how my interviewees make sense of two real-world law-and-order contestations during the Trump administration: those surrounding undocumented migration and “Build the Wall” and those surrounding racialized police violence and “Defund the Police.” I show that, not only can people form solidarity with the imagined lawbreakers, but they can do so even when they don’t perceive the lawbreaker to be similar to them, as long as they are able to form organic solidarity with them.

## Chapter 5 Meanings of Migrant Illegality: Divergent Views, Convergent Preferences

Carmen was a conservative Latina in her late 40s. She had previously been a local elected official and was working at a political thinktank when I interviewed her. Carmen recounted how she first decided to run for office because she believed that “undocumented students...didn’t have a voice” and that the Democratic incumbent was “taunting” undocumented students with promises of immigration reform. She further characterized her politics as standing up for charter school students against the “shenanigans” of teacher’s union. I asked Carmen how she first started to care about undocumented students and Carmen responded:

I was undocumented at one time.... I would see a lot of these kids, it’s so sad, it broke my heart because...they didn’t have a choice to come here. Because that’s what happened to me. My mom brought us when we were younger.... I think it’s very sad...to see that these kids have so much potential to offer to our community...they would contribute positively to our community. And why not give them that opportunity? ... Yeah, you want to screen and kick out those that are not maybe—the ones that are really harming our country, those who are not abiding by our laws and all that. But the kids who just want to go to school and make a better future for them and for their family, contribute to our economy, and that’s who you want, someone who’s successful that can contribute to your economy so that our country can continue to prosper.

Carmen’s response illustrates the complexity of how people make sense of undocumented migration. Carmen constructed both mechanical and organic solidarities in relation to those who have broken immigration law. Carmen underscored her mechanical solidarity and argued that, since she sees her own experiences reflected in the plight of undocumented students, unauthorized presence should be pitied rather than punished. Carmen also stressed the organic solidarity where the society benefits from the unique contributions of talented undocumented youth. At the same time, however, Carmen’s solidarities toward

undocumented youths excluded those who “are really harming our country,” that is, undermining the mechanical solidarity that holds the country together. This resulted in Carmen’s ultimate preference for giving the “opportunity” of citizenship, but only to a limited few.

In this chapter, I explore how liberals and conservatives make sense of the law-and-order contestation around undocumented migration. Even though legality has increasingly become a dominant frame in understanding immigration (Ackerman 2014; Flores and Schachter 2018; Schachter 2016), few explored how attitudes around lawbreaking structure people’s view surrounding undocumented migration. I find that, unsurprisingly, liberals and conservatives have opposing views around the seriousness of undocumented migrants having broken immigration law. Yet, the two converged on their policy preferences for a pathway to citizenship for a limited subset of undocumented migrants. I argue that one explanation for the convergence rest in the fact that both liberals and conservatives imagined their solidarity with undocumented migrants in similar ways, as well as believed that undocumented migrants violated social bonds in similar ways.

## **5.1 Legality and Attitudes toward Migrants**

While it may seem obvious, it is important to begin any discussion of undocumented migration with the acknowledgement that “illegal” migration is only possible when there are legal restrictions to migration. For nearly a century, there was no federal regulation over migration and the patchwork of state level restrictions focused upon managing the entry of Africans who were not enslaved, as well as those who were disabled, ill, or poor (Law 2014). It was until 1882 when the first national legislation restricting the migration of Chinese nationals where it first became possible for one to violate immigration law. The 1924 Johnson-Reed Act

further expanded the exclusion zone to cover all of Southeast Asia and the Indian subcontinent, as well as quotas that drastically curtailed the inflow from Southern and Eastern European countries (Ngai 2014). While the repatriation of those who were denied entry had been occurring since the Chinese Exclusion Act (D. Hernandez 2008; K. Hernandez 2017; Tichenor 2002), the Johnson-Reed Act was also the first to build out federal bureaucratic infrastructure for identifying and deporting unauthorized migrants already residing in the interior of the country (Ackerman 2014). Nonetheless, Ackerman (2014) illustrates through an analysis of newspaper coverage between 1924 and 2008 that it was only until the 1970s when “illegal” migrants became a public concern. This coincided with the end of the Bracero guestworker program in 1964 and the passage of Hart-Cellar Act—which capped migration from the Western Hemisphere for the first time—in 1965 (Calavita 1992). This created a large population of Mexico-born workers who had been coming to the United States as guestworkers, or at least would have otherwise been able to come work in the United States just a couple years prior, who became “illegal” after 1965. Although amnesty under the 1986 Immigration Reform and Control Act (IRCA) provided some relief, IRCA also enhanced and militarized immigration enforcement, a trend that has continued to escalate in subsequent immigration legislations. This was especially the case under the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), where deportable offenses for all noncitizens—authorized and unauthorized—were expanded (Beckett and Evans 2015).

From its origin in restricting the entry of Africans who were not enslaved, to the Chinese Exclusion Act, to the rising concern of “illegal” migrants after the end of the Mexican guest worker program, it is not hard to see migrant legality as merely a facially race-neutral way to refer to exclusion on the basis of race and national origin (Calavita 2007), much in the same way

that, after centuries of economic exploitation and exclusion, supporting the “free market” becomes a coded way to deny racial justice to Black Americans (Bobo, Kluegel, and Smith 1997). Yet, it is also important to recognize that, once migrant legality discursively took the place of race, legality took on new social meanings independent of race. It is worthwhile recalling that the immigrant-led farmworker unions and other Mexican American ethnic organizations were instrumental in the uptake of the term “illegal aliens,” used in part to symbolically distance themselves from the stigmatized category (Ackerman 2014). In turn, recent survey experiments find that national origins is largely unpredictable of whether a white American would perceive a hypothetical migrant as undocumented (Flores and Schachter 2018). At the same time, white Americans are likely to perceive undocumented migrants of any race as more dissimilar to themselves and would socially distance themselves from undocumented migrants (Schachter 2016). These findings illustrate the need to incorporate legality as a distinct and influential frame through which people make sense of immigration.

In addition to legality, existing literature points to two key variables that predict individual attitudes toward immigrants and immigration: sociotropic concerns about the economy and cultural threats. In reviewing existing research, Hainmueller and Hopkins (2014) identify that attitudes toward immigration poorly correspond to individual economic interests: Hainmueller and Hiscox (2010), for instance, find that US-born individuals are no more likely to oppose increased migration of those who would be in direct labor market competition with themselves. Against the alternative hypothesis that US-born individuals may be motivated by fear of possible increase in fiscal burden associated with immigration, Hainmueller and Hiscox (2010) further find that those with high tax burden are no more likely to oppose immigration of low-skill migrants who may need to utilize social safety net. Rather, Citrin and colleagues (1997)

highlight that it is concern over the national economy at large, instead of personal economic circumstances, that predicts a preference toward curtailing immigration. Paralleling concerns over migrants' economic impact toward society at large are concerns about the cultural threats represented by the migrants. Card and colleagues (2012) find that concerns over migrants altering the social and cultural composition on the nation are nearly five times more predictive of anti-immigrant sentiments as economic concerns.

Here, I suggest that the Durkheimian framework allows analysts to consider questions of legality, economic concerns, and cultural threat in the same frame. As Schachter (2016) and Flores and Schachter (2018) illustrate, the social dimensions of migrant illegality are rarely about unauthorized presence, but rather about whether individuals imagine undocumented migrants to be a part of the social body. Here, I argue that, if undocumented migrants were to be imagined as a member of the social world, individuals can underscore either their similarity with undocumented migrants or their interdependence upon migrants. In turn, people can understand the violations of unauthorized presence as either a breakdown of collectively held value—often shorthand as criminality—or an infringement upon property entitlement of citizens and authorized migrants. This, in turn, offers insight into several of the puzzles in the existing literature on migrant attitudes. For instance, the connections between inclusion, types of social bonds, and lawbreaking allows analyst to place attitudes toward authorized and unauthorized migrants in the same conceptual frame, while still being able to theorize the potential distinction of legality. Similarly, this approach allows for theorization of the sociotropic concerns over migrant's effect on the economy, unconnected to individual economic concerns. The Durkheimian approach foregrounds sociotropic concerns over the economy, less so as rational material calculation, but as contestations over the bounds of the collective and the rights and

obligations of individuals within it. Lastly, I make the case that this approach allows analyst to consider the relation between attitudes toward undocumented migrants and race. I argue that people may often approach undocumented status through racialized logics—that is, through attributing social meanings, such as inclusion, to phenotype or ancestry—in ways that only at times coincide with existing racial categories in use in the United States. Through considering how undocumented status links place in the social world with ancestry, drawing from meanings associated with existing racial categories, I highlight how race relates to attitudes toward undocumented status even when no explicit racial references were made.

For this chapter, I focus my analysis on my interviewees' responses to two particular questions: "some people make the distinction between immigrants who come here legally versus those who didn't. How important is this distinction for you?" and "what should our government do with those who are already here?" I deductively coded the responses to the first question into four categories: "Yes, it is important," "No, it is not important," as well as "Yes, but" and "No, but." For the second question, while 13 respondents also mentioned more upstream policies to prevent unauthorized presence in the first place such as more aid to migrant-sending country, policy solution for undocumented migrants already living in the United States ultimately can only be somewhere on the spectrum between "everyone must be deported" and "everyone should be able to stay and become citizen." For clarity of presentation, I collapsed the responses into three categories: "deportation or relief from deportation with no citizenship," "limited pathway to citizenship," and "full amnesty."

In contrast, I coded inductively the ways in which people proffered the reasons why they believe legality mattered and why they preferred one policy over another. In the process of deductively coding for direct responses, I also inductively coded for notable features in how

people explain their attitudes and reason their preferred policy. This resulted in more 60 codes, ranging from policy concerns such as “anchor baby” to philosophical principles like “universality versus discretion.” From here, I identified several of the most prominent clusters of codes, such as the 115 mentions relating to asylum, humanitarianism, empathy, experiences with migrants and migration or the 59 mentions relating to economic migration, economic cost and benefit of migration, and the propertied interests of American public and authorized migrants. After several iterative and abductive (Tavory and Timmerman 2014) tries to find the theoretical “best fit,” I found Durkheim’s articulation of mechanical and organic solidarity to most comprehensively capture the variations in my data. I then deductively recoded all responses using the mechanical and organic solidarity codes.

## 5.2 Divergent Views, Convergent Preferences

Table 5.1 Liberal and Conservative Interviewees’ Views on the Importance of Migrant Illegality Cross Tabulated with Their Policy Preferences toward Undocumented Migrants

	<b>Deportation or Temporary Relief</b>	<b>Restricted Pathway</b>	<b>Full Amnesty</b>	<b>TOTAL</b>
<b>Liberals</b>				
Important	0	3	2	5
Not Important	0	24	11	35
<b>Subtotal</b>	0	27	13	40
<b>Conservatives</b>				
Important	7	12	0	19
No Important	0	2	0	2
<b>Subtotal</b>	7	14	0	21
<b>Total</b>	7	41	13	61

Table 5.1 describes whether liberal and conservative respondents find the legality of a migrant to be important and what their preferences are for policy towards undocumented migrants. As may be expected, 35 out of 40 liberal respondents do not find the legality of a migrant to be important. Many, like Virginia, a white retired principal in her late 70s, outright



answered “not at all, because everybody’s human experience from where they’re coming from is what you have to look at.” Others, like Alyssa, a social worker in her late 40s who identified as white and Asian, addressed the people in their life who made such distinction: “this is a conversation that I have had with my sister-in-law and her family. They really just felt like there’re limited resources.... It’s kind of that thinking that is hard for me to understand.... It’s like, what are you all afraid of? They’re people. They are people!” Karina, a Latina community organizer in her early 20s, further stated, “I don’t know how to say it. The most safe way to combat immigration and just not deem yourself as an immediate racist would be saying things like that.”

Perhaps equally unsurprising is the fact that 19 out of 21 of my conservative respondents asserted that it does matter that undocumented migrants broke the law. Many, like Audrey, a clerical worker at a police department in her early 50s who identified as white and Latina, immediately asserted that “I am all for legal immigration. I think if people want to come and they go through the proper channel, where they establish that they are employable.... I’m all for that. This is a melting pot country. Absolutely I’m for immigration, as long as it’s legal.” Patty, a Pacific Islander attorney in her early 50s, similarly stressed her support for legal migration, but drew from her own experience: “personally for me, it’s very important because my family, we legally immigrated to the United States and we waited 12 years to come to America.” Others, like Koa, a Native Hawai’ian college student in his early 20s, expressed that any lawbreaking is unacceptable and insisted that “if you violated the law, you have to be held to it, good, bad, right wrong, just or not.... The law cannot stammer.”

Here, the intended point is not to illustrate the relative popularity of any viewpoint. As the sample consisted largely of party activists, it is possible that their political opinions are more

extreme and firmly held than the average voter. Rather, I took the length to quote my respondents to highlight that my liberal and conservative respondents are quite unequivocal in their positions and have elaborated reasonings for their positions. This makes it all the more surprising that two-thirds of both liberals and conservatives agree that a subset of undocumented migrants should have a pathway to citizenship. For instance, John, a conservative Southeast Asian businessman in his mid-40s, emphasized that legality is “very important” to him, as his 70-year old grandmother “came over legally [and]...took up the steps to become a citizen”; yet, when I followed up with John about what he would like to see done with undocumented migrants, John replied immediately “You know what? We need to get them becoming citizens. That’s one thing. And if they’re here illegally causing crime, they need to be gone.” On the other hand, Danielle, a liberal white retired attorney in her late 60s, responded that the distinction of legality is “not important, because people come here—I mean, for people to come here, a lot of them are desperate people”; however, when asked her preferred policy toward undocumented migrants, her response was nearly identical to John’s: “there should be a path to citizenship for people who are here for whatever reason, and are good people, who are working, who are not breaking the law. They should be able to become citizens.”

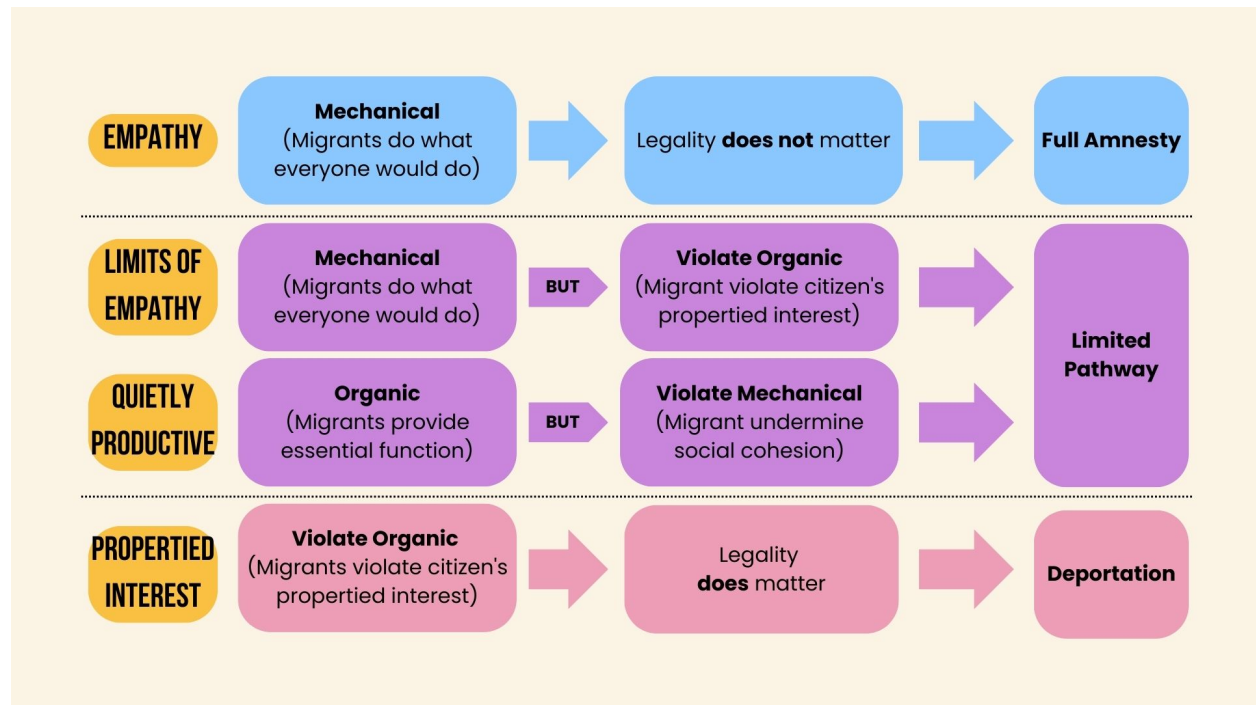
Granted, there are reasons to see this convergence as inevitable. On the one hand, as the United State is a sovereign nation fully entitled to exclude noncitizens for any reason, insisting that “criminals” should not have access to citizenship may not be an entirely unreasonable proposition. Nonetheless, Stumpf (2006)—in coining the widely-used term “crimmigration”—highlights that this proposition shares the same underlying logic as the mass disenfranchisement under the racialized mass incarceration that began in the latter half of the 20<sup>th</sup> century. Empirical studies further find that, as “criminal” is a tremendously capacious category, the number of

deportable noncitizens, both authorized and unauthorized, expanded significantly since the 1996 IIRIRA (Beckett and Evans 2015). A handful of liberal respondents actively resisted the crimmigration logic and advocated for unconditional amnesty. An example is Jasmine, a Southeast Asian therapist in her mid-40s, who asserted that “I think the pandemic teaches us...you don’t just vaccinate American citizens.... For whatever reason they got in here, they’re here. They are part of our problem and they are our solution.”

On the flip side, one may argue that conservatives may find the deportation of millions to be simply impractical, if not impossible, and therefore conceded to a limited pathway to citizenship. Here, however, I do find some distinction between those who advocated for pathway to citizenship, rather than relief from deportation. Ruby, a Filipina retired realtor in her mid-60s, emphasized that she would like to “give them a chance to stay here, but no citizenship” because “citizenship is something that is a privilege. It’s an honor to get and you got to work hard for that.” Furthermore, some even acknowledged deportation’s impracticality or harshness, but still believe that it is the only solution. For instance, Koa, a native Hawai’ian college student in his 20s, defended his belief that even undocumented migrants who were brought here as children should all be deported: “it’s unfortunate, but, if anything, if we withhold deporting those people and incentivizes more of them to come over...that just makes it worse.”

### 5.3 Constructing Solidarities: Linking Lawbreaking to Remedies

Figure 5.1 Four frames linking views on migrant legality to policy preferences toward undocumented migrants



As I argue, one of the key ways to understand how people make sense of contestations around lawbreaking is through attending to their punitive consciousness, or their everyday understanding of lawbreaking. In particular, I find that how people conceptualize their solidarities with undocumented migrants explains for how they conceive of the salience of migrant illegality and the appropriate remedies. As illustrated by Figure 5.1, four frames are dominant in how people make sense of undocumented migration: *empathy*, *propertied interest of citizenship*, *limits of empathy*, and *quietly productive*.

#### 5.3.1 Empathy: Lawbreaking Matters Little Because I Would've Done the Same

Many legal scholars posit that empathy—or the capacity to vicariously experience the motivations and circumstances of others—lead to less punitive preferences (Lynch and Haney

2011). This makes sense in a Durkheimian framework since, if one can perceive a behavior as sensible, it is less likely that one will perceive it as a violation of shared value, or mechanical solidarity. In other words, if one believes that any person within the collective might sensibly behave in a certain way, then the behavior does not constitute a violation and need not be outlawed in the first place.

Table 5.2 Count of Interviewees by Immigrant Connection

<b>Immigrant Connection</b>	<b>#</b>
Self	10
Immediate Family	17
Spouses and In-Laws	7
Friends and Acquaintances	24
No Immigrant Connection	24
Undocumented	14

To be sure, as the study took place in Southern California, only one-third of the interviewees did not discuss their connection to an immigrant in their personal life; in fact, 14 out of 65 interviewees (21.5%) even explicitly identified that they knew someone who was undocumented. Carmen, who I discussed at the opening of this chapter, drew from her own experience as someone who was once undocumented to make sense of migrant illegality. Despite her conservative views on many other issues, Carmen wanted to serve undocumented students because she saw similarities between her experiences and theirs. It is not only that Carmen considered herself to be in the same social group as the undocumented students, or that Carmen understood the circumstances that led these students to be undocumented, but more importantly that, because Carmen personally shared these experiences with undocumented students, these actions no longer constituted a violation of shared values. Even those who were authorized migrants also often draw upon their own experiences. For instance, Miguel is a Latino conservative elected official in his early 60s. When asked about his top issues, Miguel

responded, “listen, I’m an immigrant. I came on the Third Freedom Flight...so I was a refugee when I was a little boy.... I’m all for legal immigration, but knowing what I know, I would do everything to make sure to bring my family here.” Even though Miguel acknowledged the legal distinctions between authorized and unauthorized migrants, Miguel stressed that, because he would have done the same without legal authorization, lawbreaking can be excused in this instance.

Others pointed to family or acquaintances who are migrants to establish mechanical solidarity. For instance, Tom, a white liberal attorney in his mid-50s, expressed that “people who flee abject poverty for the awesome dream that they can have a better life in America. To me, that’s so beautiful. My grandfather had that dream as a child. How could you hate somebody just because they want a better life?” Here, Tom formed solidarity with undocumented migrants by drawing upon his family history and underscored the shared motivations. Similarly, Ruben, a conservative Latino graduate student and a former political staffer, told a story of his friend from college, who was “on vacation when Saddam Hussein invaded Kuwait. He became, in all sense and purposes, homeless.... Those are individuals that believed in the American dream and they weren’t born here, but they want to make their home here.” Drawing from family and acquaintance’s experience with migration, both Tom and Ruben ultimately underscored values of striving for a better life that they shared with migrants and thereby asserted that unauthorized migration does not constitute a violation.

Yet, contrary to the intuition of outgroup threat theories, people need not find themselves connected to any migrants to empathize with them. Rick was a liberal Latino former political staffer in his early 80s. When I asked him about the distinction between authorized and unauthorized migration, Rick responded simply that the migrants “are not illegal. We’re all

children of God.” Similarly, when I asked Crystal, a liberal white retired communication worker in her mid-70s, Crystal answered, “whether we like it or not, [these migrants] need to be heard.... They’re human beings. They bleed like you and I.” Here, both Rick and Crystal pointed to the shared humanity between themselves and undocumented migrants to emphasize the ways in which migrants’ behavior should not be punished by law.

Lastly, many interviewees explicitly labelled their mechanical solidarity with migrants as empathy and compassion. Many imagined what they would do in migrant’s situations. For instance, Carrie, a liberal retired health care analyst in her early 60s, emphasized that the distinction of legality “is not important to me because I know some of them are fleeing for their lives. What would I do in that situation?” Similarly, Edison, a conservative white accountant in his early 50s, also expressed that “I get why they do it and...if I was in their place, I’d do the same damn thing.” Both took the perspective of the undocumented migrants and highlighted their similarities with the migrants by insisting that they would’ve done the same, which makes the behavior no longer a violation. Alicia, a liberal Latina caretaker in her early 30s, expressed that “I have compassion for immigrants...and it definitely depend on a case-by-case basis.” Similarly, Ted, a conservative white realtor and elected official in his mid-40s, insisted that “I have nothing but love and compassion for people trying to find a better place to live. I don’t fault that.” Although Alicia and Ted did not talk through putting themselves in migrant’s position, they shorthanded the sentiment as compassion, which encapsulates the preference for mercy based upon the fact that these migrants’ motives are understandable.

Interviewees constructing mechanical solidarities with undocumented migrant perceive that migrants are simply doing what everyone in their position would do and therefore undocumented migration does not constitute a violation; as a result, they tend to prefer full

amnesty for all undocumented migrant, with no restriction or penalty. For instance, Lilian, a self-employed liberal white woman in her early 50s, asserted

So we have undocumented people who are here because they have family here, because they're working here, they've made their life here. I believe that they should be given a solid pathway to citizenship. Ok, there are people who ran here because they're criminals...and what we tend to do is we tend to deport them. And what happens when we deport them? They have already made their circles...just like you have your network, I have my network..... We should just put them in prison here.

Without prompting, Lilian directly confronted the often-raised issue of migrants who are “criminals,” that is, those who broke criminal laws in addition to being in the U.S without authorization. Here, Lilian approached migrants assuming similarities between the migrants and herself and concluded that, while crimes should be punished, it should not preclude migrants from being able to stay in the United States. To remove migrants, even those who committed crimes, from their “family,” “life,” and “network” in the U.S., is far too draconian, Lilian reasoned, if we view migrants as people like you and I. Similarly, Jasmine, a liberal Southeast Asian therapist in her mid-40s, articulated that “whether you want to give them ID or not, they're already American.... They're American's pride and American's problem.... At the end of the day, they are grandfathered in. They are us.” Here, Jasmine also underscored the mechanical solidarity when she expressed “they are us” and insisted that the so-called “bad immigrants” are still Americans, who should be allowed to stay.

### ***5.3.2 Propertied Interest of Citizenship: Unauthorized Migrants Must Be Returned***

Diametrically opposed to those using the empathy frame are those using the propertied interest frame, who understand immigration law as inviolable because law protects the organic solidarity that holds society together. s Durkheim describes, as interdependent relationships



require all parties to perform their specified roles, organic solidarity breaks down when parties fail to fulfill their obligations or exceed their privileges. In the case of migration, many portrayed unauthorized presence as infringing upon the *propertied interest* reserved for US citizens and authorized migrants. Cameron, a liberal white man in his early 20s who works in a nonprofit, offered an analogy for why people may be against amnesty: “I had to take the writing portion of the SAT to get my college acceptance...and the writing portion is the most subjective. It’s the most bullshit, right? And then it was like the year after I got accepted to [college] they got rid of that requirement...and I was like, yeah, what the fuck? You guys got it easy now.” Gene, a conservative Black minister in his mid-50s, similarly described,

in high school, me and my neighbor...we didn’t have the money to get into Disneyland, so we just said one day “oh, let’s see if we could sneak into Disneyland.” The last day we noticed, uh-oh, we noticed people watching, we couldn’t sneak in that last day, right? But my question is this, if we would’ve snuck in and got caught, are we wrong for sneaking in, or are they right or wrong for catching us?

Here, both Cameron and Gene used analogies to describe how law proscribes the privileges and obligations of citizens. In their imagination, citizens and legal migrants have not only the rights to be present in the United States, but further the rights to exclude others, just as one would with property ownership. As such, unauthorized migrants infringed upon their property rights by being present without authorization. Nonetheless, where these analogies break down is both Cameron and Gene’s insistence that their exclusive ownership is justified because of the obligations they have fulfilled. Whereas Disneyland patrons paid admissions and college applicants fulfilled certain requirements, US-born citizens simply won the birthright lottery.

This sense of usurpation is present also among migrants. Patty, a conservative Pacific Islander attorney in her early 50s, responded that, for her, the distinction of migrant legality is

very important because my family, we legally immigrated to the United States and we waited 12 years to come to America. And when you go to the legal immigration route,

you have to show proof of...financial capabilities.... So when you see immigration of people without documentation coming here, essentially cutting the line, and when they do come they're on public assistance, it kind of have this sense of unfairness, because we did not come here to be a burden to American society.

Gabriela, a conservative Latina insurance broker in her late 40s, who was formerly undocumented, expressed a similar sentiment and stated,

if people have been here and are working and an active part of society and contributing to society...they should be given an opportunity.... If they are just living on welfare...why do we want people like that here? Why did they leave their country just to come here and live off the system here, where taxpayers that are working hard every day have to support them for the rest of their life?

Unlike Cameron, Gene, and other US-born citizens, authorized migrants did have obligations to fulfill before being able to enjoy the privileges of residing in the US. Yet, it is critical to note Patty's conceptual jump from fulfilling the legal requirements for immigrating to the US to fulfilling the social requirements of financial self-sufficiency or even financial contribution to the collective. In other words, the perception of unfairness comes not from unauthorized migrants not going through the legal process *per se*, but that the legal process is imagined to guarantee that those who are entering the collective are agreeing to contribute to the interdependent relationship. This becomes even sharper within Gabriela's articulation: even though her family and herself were formerly undocumented, the distinction between her and unauthorized migrants who shouldn't be here lies not in the legal status itself, but in whether people are taking without contributing.

Consistent with quantitative studies on attitudes toward migrants, few respondents expressed concerns about migrants as economic threats to them as individuals; rather, economic concerns are typically at the societal level. For instance, Joanna, a white entrepreneur who declined to share her age, asserted that "you and I? We're citizens here. We come first. It's seniority, nothing personal.... You want to stay, fine...you need to pay. They're making money

here and sending it back to their country. And the American citizens are not benefitting from it. And they're benefitting from it through fraudulent means." Here, although economic competition concerns are raised, the problem is not the labor competition itself, as Joanna was fine with people staying. Rather, the problem is whether the money is going to someone who was imagined to be a part of the collective. This qualitative evidence offers some clues to existing literature on the relation between attitudes toward immigration and sociotropic concerns over the economy by highlighting that belonging is at the crux of these attitudes and concerns.

Those who view migrants as violating organic solidarity tend to prefer deportation or relief without citizenship. For instance, Koa, a conservative Native Hawai'ian college student in his early 20s, argued that he did not think migrant legality was an important distinction and agreed that he would like to see *all* migration decreased. "Reducing [legal migration] would be a good start if just because we want to increase wages again in America. Yeah, I don't view it like there's a particular racial or demographic aspect to it because I think people assimilate pretty well in America. In fact, they do, I mean, it's an objective fact." Here, Koa explicitly expressed that he had no concern over migration undermining mechanical solidarity, or the sameness that binds Americans together; rather, Koa wanted laws to restrict migration to safeguard the property interest of higher wages reserved for American citizens. Subsequently, when asked what the government should do with unauthorized migrants who are already here, Koa responded simply "deport them"; furthermore, Koa responded that those who were brought to the United States as minors also need to be deported because "if we withhold deporting those people and incentivizes more of them to come over...that just makes it worse."

Similarly, Ruby, a conservative Filipina retired realtor in her mid-60s, insisted about unauthorized migration that "I don't call it immigration, I call it invasion of the illegals just

coming through the border by hook or by crook.... It's going to affect my taxes when the more people that are coming in here draining our resources. What's the use of working hard to better your life when the government's just going to take more and more of your money in taxes to support these people." Similar to Koa, Ruby's primary concern about undocumented migration is that undocumented migrants are infringing upon the entitlement reserved for American citizens. In turn, while Ruby did not believe everyone should be deported, she was unequivocal that "there should be no amnesty or citizenship given to people that came here illegally and that includes DACA. You can become a permanent resident. You just can't be a citizen." Although Ruby does see deportation, especially of those who grew up in the United States, as unnecessary, Ruby clearly articulated that the breaking of immigration law can only be restored by permanently prohibiting unauthorized migrants from accessing the rights and privileges of US citizenship.

### ***5.3.3 Quietly Productive: Organic Solidarity, But No Mechanical Solidarity***

Nonetheless, the overwhelming majority of people, both liberal and conservative, expressed some solidarity with undocumented migrants while also believing that undocumented migrants violated other solidarity. This resulted in their convergence in the desire for a pathway to citizenship, but only for a selected subset of migrants. One combination of solidarity and dissolidarity is simultaneously recognizing a migrant's place in the division of labor, while worrying about migrant's potential to undermine the mechanical solidarity that binds the United States together.

Many, such as Dan, constructed their organic solidarity with undocumented migrants to reason that migrant lawbreaking is unimportant. Dan, a white man in his early 70s, was the

president of a local Democratic club and a retired writer. Dan stressed the US's economic dependence upon undocumented migrants and asserted that migrants "may do a lot of the work that people don't want—that hard, physical work, especially agricultural work." Yet, when I asked Dan about what the government should do with undocumented migrants living in the United States, Dan spoke hesitantly: "if they break laws, they should be deported. But if they can be quietly productive, they could have temporary visas. Maybe if you have the temporary visa for some period of time and no problem, then there could be some other path to citizenship." Key to Dan's articulation is that migrants serve a function in the US economy that only they are able to fulfill; as such, due to our dependence on migrant labor, their unauthorized presence should not be understood as a violation.

Many pointed to migrants in their lives, not to underscore affective affinity with migrants, but to emphasize the unique contributions of migrants. For instance, Janet, a liberal white retired civil engineer in her late 70s, exclaimed "we all have illegal nannies in California. That's just a given. And so you couldn't afford to pay for a legal nanny, and so you either didn't have one, or...you just put an ad in [the Spanish newspaper] and everyone did.... Our nanny was from El Salvador." Mark, a liberal white attorney in his late 30s, similarly expressed "one of my best friends is married to a Finnish man. He's a scientist in Massachusetts.... He's brilliant. He's doing good work. He's the kind of immigrant we talked about wanting in this country.... His green card renewal paperwork...is so complicated and difficult.... It needs to be a lot easier. You shouldn't become undocumented because the paperwork was too hard." Both Janet and Mark referred to migrants by occupations, emphasizing migrant's societal role under the division of labor. Janet further underscored how widely integrated and indispensable migrant labor is. As migrants perform essential functions within the social body, not only is their presence not a

violation, but—as reflected in Mark’s articulation—the law should further facilitate migrant authorization.

Others referred to migrant’s essential function in the social world more abstractly. Marco, a liberal Latino urban planner in his mid-30s, described the US’s current immigration policies, especially policies toward undocumented youths, as “strategic shortcoming.” Marco argued “especially for Republicans, that fear of a rising China...well, I’d like to have 400 million Americans—like any other additional Americans that we can get, I think will make us more competitive in the long run.... One of our greatest strengths is that we have been able to attract individuals and turn them into Americans.” Similarly, Carmen, the conservative formerly-undocumented elected official described in the previous section, also lamented that “it’s very sad...to see that these kids have so much potential to offer to our community.... Why not give them that opportunity?” Similar to Mark’s articulation, these pro-immigrant comments rest upon the idea that migrants possess talents and abilities that the US don’t currently have, or don’t have enough of, and their differences enhance the wellbeing of the collective.

At the same time, however, core to Dan’s articulation is that migrants must be not just productive, but “quietly productive.” Here, although Dan explicitly identified that undocumented migrants who “break laws” beyond unauthorized presence should be deported, Dan’s contrast of lawbreaking with “quietly productive” reveals that Dan’s concern is much more centered around migrant’s disruption of the social order rather than around personal safety. This desire to punish and expel those who undermine the shared collective consciousness through being unknown or dissimilar—that is, violated mechanical solidarity—is often shorthanded as criminality by my interviewees. For instance, Audrey, a conservative clerical worker at a police department in her early 50s who identified as “white and Hispanic,” emphasized that “I’m for immigration, as long

as it's legal, but this where they're letting in hundreds of thousands of people that they don't know where they're from and they don't know what they've done. We don't know if they're criminals, if they got diseases." Audrey's comments underscored that, it is not so much a fear of being victimized by criminal behavior *per se*, but a fear of not knowing who is entering, that characterized the distinction of undocumented status for Audrey. This fear of the unknown was similarly expressed by Denise, a liberal white chiropractor in her late 60s, when cautiously reasoned, "I know the Republican Party said they're all criminals and that's just not true, but we do have to watch who we let in. I think we need to vet them." Here, although Denise emphasized that she did not believe that all undocumented migrants are criminals, "not knowing who they are" again is the defining characteristic of undocumented migrants' transgression against the collective. While it is perfectly reasonable to want to know who is entering the country, it is also important to note that this similar fear of the unknown is not expressed against those who happened to win the birthright lottery and were born as US citizens, even though one might know just as little about another US-born citizen as they do an undocumented citizen.

Many also used criminality to mark undocumented migrants as different. For instance, Terrance, a conservative municipal worker in his mid 20s who identified as white and South Asian, expressed that "when you think of a German, the image that will pop into your head is of a white person...and I think the beauty of America is that anybody can be an American. All you have to do is come here, work hard, and contribute, and want to take the country to the more perfect union that is described in the constitution." Yet, despite this sentiment, when asked about whether he finds distinction between authorized and unauthorized migrants, Terrance responded "I think there is a distinction for me.... Obviously, you need to check for people, because I don't want another country to say 'Ok, instead of sending this rapist to prison, America will let anyone

in, so send them to America.” Similarly, I asked Katalina, a conservative Mexican American real estate broker in her late 30s, about her perception of Trump’s 2016 comments about Mexican migrants. Katalina responded “he wasn’t calling Mexican bad...and actually, I agree with what he said.... The people that have gangs with machetes, he was talking about those people. And he said, those people were bad, and we agree with him. We don’t want those people here either.... They are illegal, they should be deported.”

As racialized people with connections with migration, both Terrance and Katalina turned to criminality as a way to draw differences between themselves and the derogated undocumented migrants. While Terrance emphasized a capacious and civic understanding of the shared characteristics that define Americans, he put forth the highly improbable scenario where a country would decide to “send” a rapist to the United States. Rather than taking Terrance’s concern at face value, Durkheim’s suggestion that behaviors are not in and of itself “criminal,” but criminal because it violated collective consciousness, highlight that criminality can often be used as a shorthand to describe the concerns surrounding how an outsider may upset the mechanical solidarity that binds the collective. As such, Terrance’s articulation around rapists can be interpreted, not as fear of sexual violence, but as fear of introducing an outsider who will break the collective. Similarly, Katalina wanted to ensure that she was not considered part of the collective that was insulted by the presidential candidate of her choice; as such, Katalina drew upon tropes of criminality—such as gangs and machete—to distance herself from Mexican migrants and to put herself among the “we” that don’t want them.

Taken together, advocating for a limited pathway to citizenship makes sense for those who recognize their interdependence upon undocumented migrants, but requires mechanisms to exclude those who may be dangerously dissimilar. Crystal’s response illustrates how the three



come together. When asked about undocumented migrants, Crystal, a liberal white retired communication worker in her mid-70s, exclaimed “They’re going to school. They become our police officers. They fought in our military. What on earth? They’re not in trouble in jail.... I think they should stay. They should get citizenship.” Yet, following up on her mention about being in jail, I asked Crystal if those with criminal records should be able to get citizenship.

“No,” Crystal responded,

I do not think convicted murderers, serial killers—I don’t know, I don’t think anybody that is a person that does bad things like that, they don’t deserve to be here.... There was a rumor about Fidel Castro, when [he] set all the inmates in the insane asylum and in jail, they sent them in boats to America.... No, I certainly don’t want bad criminals. They should be deported.

Crystal first identified migrant’s specialized contribution as “police officers” and fighting in the “military” to establish her organic solidarity with undocumented migrants and to proffer the reason why the law should change in the face of these interdependence. Yet, Crystal expressed her reservation against full amnesty by referencing migrant criminality. Here, however, it is not necessarily her personal safety that is in question, as Crystal focused on the “person that does bad things” who doesn’t “deserve to be here” rather than the specific acts. This is particularly clear from the rapid elision progressing from a concern over “convicted murderers” and “serial killers,” to a “rumor” that “inmates in the insane asylum” are “sent” to America. This long-established trope of viewing those who are mentally-ill as dangerous rests precisely on the foundation that those who are dissimilar to from us, especially those whose motivations we are unable to relate to, is inherently criminal. As such, the preference for limited pathway allows for one to preserve the interdependence upon migrants, while retaining flexibility to exclude those who are dissimilar.

This line of reasoning is shared by conservatives. Elena, who is a conservative Latina former elected official in her early 50s, outlined, “You got a group of DACA students. They work, they pay their taxes...being an exceptional student and giving back, we should make path to be in front of the line or the side line.... But if you are one of the DACA and you’ve been hanging out with some seedy fellows or gals...No! Bad actions cause consequences. Unfortunately, it cost you from staying in a country that is free and has a constitution.” Elena similarly pointed to undocumented youth’s contribution in the societal division of labor as the reason that they should be in the “front of the line” for becoming a citizen. At the same time, those who are “hanging out with some seedy fellows or gals” should be punished by deportation. Here, again, “hanging out with seedy fellows or gals” is in itself not a criminal behavior and poses no real threat to people’s safety. Instead, the underlying understanding is that migrants who are in the company of seedy people are presumed to share values with them, which precludes them from being in mechanical solidarity with Elena.

#### ***5.3.4 Limits of Empathy: Mechanical Solidarity, But No Organic Solidarity***

Lastly, the fourth possible frame that people used to make sense of undocumented migration is by explicitly referring to the limits of empathy. In other words, people who utilize this frame express mechanical solidarity to migrants, but explicitly concede that their empathy are counterbalanced by their concern about the burden migrants might impose upon the collective. For instance, Brad, a conservative East Asian veteran in his late 40s, first emphasized that “I’m very sympathetic to a lot of folks, especially DREAMers, because a lot of folks grew up with me today are possibly DREAMers. They are American and some more American than me.” But then, Brad continued to assert that

we have veterans sleeping on the street. We have people lost their jobs and homes who need to be taken care of. We have our own share of problem.... We as a country and a country of law, we have certain things we need to follow to take care of our own citizens, especially those who contribute to the society.... Sounds very cold or uncaring, [but] we just have the priority here and we need to set our priorities straight.

Brad's articulation that the possibly-undocumented youths that he grew up with as "American and some more American" than he is reflected his mechanical solidarity not just because he has social ties with those who are undocumented, but further because he constructed undocumented migrants as consistent with the collective identity of American. At the same time, however, Brad vocalized competing solidarities towards "veterans" and "our own citizen." When his solidarity toward undocumented migrants and his solidarity towards "our own" come into conflict, Brad ultimately constructed our own citizen as "those who contribute to the society," which makes them more entitled to our collective resources than undocumented migrants.

This line of reasoning is shared by liberals as well. For instance, Janet, a liberal white retired civil engineer in her late 70s, expressed "I totally understand. The stories they have are horrendous.... There just aren't enough lawyers to fill out the paperwork.... I just think it has to be done, and we have to do our best to control it." At the same time, however, Janet also stressed that, "you have to take no more than you can deal with. And we have the homeless crisis in California...and it's just going to continue to be a crisis forever I think, because even my own grandchildren can't afford to get an apartment." Here, Janet's emphasis that she "understand[s]..the stories they have are horrendous" reflects an empathy towards migrants, which is undergirded by a mechanical solidarity based upon their shared humanity. At the same time, however, Janet expressed the countervailing concern that accepting undocumented migrants may impinge upon what citizens, such as her "own grandchildren," are entitled to, such as affordable housing. As a result, Janet arrived at a position of "fully supported DACA," but for

undocumented adults, Janet believed that they understood that deportation is just “the cost of doing business.” Many, if not all, undocumented migrants have struggles that others can identify with; yet, if one believes that undocumented migrants are not indispensable in the division of labor and are taking more than they are entitled (if they are entitled to anything), then one must also draw a line as to how much empathy we can afford to have as a society. A pathway to citizenship only for a limited subset of migrants allows the flexibility to express mechanical solidarity to the more sympathetic undocumented youths and other “good immigrants,” while withholding solidarity to migrants when it comes into conflict with the entitlements of “our own.”

#### **5.4 Conclusion**

In this chapter, I take seriously the increasing centrality of legality in liberal and conservative contestation around migration and ask how do liberals and conservatives understand migrant illegality and what do liberals and conservatives believe to be the appropriate response towards migrant illegality. In other words, I explored the liberals’ and conservatives’ punitive consciousness surrounding the breaking of immigration law. I find that, while liberals and conservatives are diametrically opposed in their views about the seriousness of migrant illegality, the two converged upon their preference for a pathway to citizenship for a limited subset of undocumented migrants. I further find that how people construct their solidarity towards undocumented migrants explain for their views and their policy preferences. The four main frames are empathy, limits of empathy, quietly productive, and propertied interest of citizenship. The four frames correspond to different combinations of mechanical and organic

solidarity one constructed in relation to undocumented migrants, which logically entailed certain views on migrant illegality and preferences for remedy.

Here, perhaps the most surprising finding is that those who constructed undocumented migration as a violation of organic solidarity tend to be the ones that expressed a preference for deportation. This is contrary to Durkheim's hypothesis that violations of organic solidarity are typically punished less harshly than violations of mechanical solidarity. Here, I suggest an update to Durkheim's formulation. Whereas Durkheim emphasizes the cooperative functions of the division of labor, his formulation downplays the unequal power between those in different social functions and the exploitation that stems from it. Among parties that are equal and have sufficient resources, restitution may be a relatively harmless corrective to a transgression; however, for subordinated groups whose mere existence is viewed as undeserved and wanting any resource to survive is viewed as an overstep of their entitlement, restitution is necessarily punitive. In the context of undocumented migration, for instance, it is indeed a subject of debate whether deportation is simple administrative restitution or a punishment. Much of U.S. immigration jurisprudence—such as the fact that people are not afforded a public defender in deportation proceeding, or the fact that migrants may be held in detention indefinitely without trial—rests on the belief that immigration is not a criminal matter and the outcomes of the proceedings are not punishments (Hernandez 2008; Motomura 1990). In the popular imagination, people more likely perceive undocumented migrants as having been in the U.S. for only one year or less (Flores and Schachter 2018), despite 58% of undocumented migrants have lived in the U.S. for more than 10 years. This may also contribute to the perception that deportation is a simple restitution, rather than exiling someone from their home of more than 10

years, which can be thought of as an intentional infliction of suffering—or, in other words, a punishment.

The solidarity framework reorients the intertwined questions of migrant legality, sociotropic concern over the economy, and cultural threat into a larger question about belonging. Even in everyday understandings, people intuitively understand that law is socially constructed and its legitimacy rests on the social function it performs. If the lawbreaking other is considered just like everybody else, or a contributing member of the society, then their actions are almost by definition not transgressions and therefore need not be sanctioned by law. Thus, any evaluation of the *act* of unauthorized presence ultimately is an evaluation of the belongingness of the undocumented *person*. In turn, sociotropic concern about the economy—rather than any self-interest calculation about labor market competition or tax burden—best predict anti-migrant attitudes because what is at stake is not the real cost and benefit of migration, but whether the migrants are imagined as a contributing and deserving member within the division of labor. Lastly, as everyone is simultaneously similar and different from one another, it is not foreclosed for people to form mechanical solidarity with an Other. In fact, many of my interviewees are able to construct mechanical solidarity with migrants on the broadest level of shared humanity and argue for more merciful treatments. This raises the need to conceive of cultural threats in ways that are less static, but through interpretive acts.

In practical terms, liberal and conservative convergence upon a limited pathway to citizenship for undocumented migrants raises both opportunity and challenge. As has been noted by scholars, everyday Americans have a striking amount of consensus on the matter of immigration (Hainmueller and Hopkins 2015). Indeed, Pew poll finds that, up until 2020, nearly 60% of all conservatives and more than 80% of liberals support some form of pathway to

citizenship (Nadeem 2021). This reflects that many view undocumented migrants living in the U.S. to already be a part of the society and it is the law that needed to change. Yet, liberals and conservatives also converge upon the preference to offer pathway to citizenship only to a subset of undocumented migrants. For instance, DACA recipients—undocumented youths who grew up in the U.S., have no criminal record, and are either going to school, working, or serving in the military—are easy target of both mechanical and organic solidarity. Yet, it is critical to think through who truly need to be excluded. Criminality has been frequently offered as grounds for exclusion, even though most social science evidence find that areas with high portion of undocumented migrants typically have lower crime rate (Ousey and Kubrin 2018). As has been demonstrated throughout this dissertation, what is often expressed as concern over crime is often also a contestation over who the imagine lawbreaking other is. In the case of undocumented migration, it is often surrounding the unknown migrants who undermines social cohesion and the undeserving migrants who usurp the resources of the citizen. To make explicit who people are talking about when they talk about the “criminals” they want to exclude allows for a more rational and clear-eyed discussion.

It is possible to argue that immigration lawbreaking inherently implicates questions of belonging and lends itself to a solidarity framework. As such, in the next chapter, I turn to examine how the Durkheimian framework can help make sense of another recent law-and-order contestation, that surrounding police violence against Black American.

## Chapter 6 Competing Solidarities: Defund the Police in Liberal and Conservative Imaginations

“Probably one of the most painful aspects of what I dealt with,” Bobbi told me about her child’s untimely death, in between blotting away her tears, was that the child’s death “was written up [by the police] in a way to absolutely deflect accountability from everyone but my [child].”

Bobbi was a liberal White woman and a former elected official in her early sixties. Her child, then an underage undergraduate student, had gone out for a night of drinking and was found having fallen to their death the next morning. No one knows exactly what had happened. The police wrote in the report that Bobbi’s child fell as they were running away from a taxicab driver for not having paid the fare—despite, as Bobbi emphasized, the police having zero evidence to support this story, including the fact that no taxi driver had come forward to corroborate. Bobbi recounted that the sheriff further shared with her that he had specifically “warned his officers not to chase students towards” where Bobbi’s child fell. Bobbi continued:

Which is, I think, exactly what happened. It was a party night.... They had increased police presence. [My child] was probably walking back...clearly drunk. [The police] probably chased [my child] and [my child] decided [they were] going to jump.... Unfortunately...what [my child] thought was a solid landing had nothing to support [them]. Honestly, if you read the report and you have that storyline in your mind, it makes sense. Nothing else that [the police] said makes sense.

To be sure, Bobbi was clear that this was only her conjecture and that these were “questions that [she] will never have the answers to.” Furthermore, Bobbi was unequivocal that, no matter what



had actually transpired, “it doesn’t change the reality that [my child] chose to jump.... [They] did something that could’ve worked out okay, but it didn’t.”

Without my prompting, Bobbi further drew parallel between her child’s death with the high-profile 2020 police killing of the unarmed Minnesota Black man George Floyd. Bobbi elaborated that “when George Floyd’s death happened, and they were talking about how the report was written in a way...where they just failed to mention that they put [Floyd] in a chokehold for 20 minutes.... For me, in [my own] situation with the public safety department, I absolutely, I absolutely, felt like people were being deceptive.” Following this thread, I asked Bobbi about if and how her views about police may have changed due to her experience with the police after her child’s death. Here, however, Bobbi became more hesitant:

This, kind of, complete, sort of, burn the house down, defund the police whatever—I know there are good police out there.... Are there people who are unethical? Absolutely.... Are the bad people the ones who suffer...? No, because they just tee up another bad person.... [But] whereas, I probably would’ve defaulted to always believing police were in the right, generally, now I have a reason to look at things in a different way and to question what the motivations are behind things that are being done.

Wanting to further draw out her half-articulated objection towards the call to “Defund the Police,” one of the demands that had taken off in the 2020 protests following Floyd’s killing, I asked Bobbi what she would say to people who are advocating for defunding the police. Bobbi took a long pause and continued:

Well, on a broader basis, I wish there was more coalition building going on right now, rather than silos.... It’s hard when you feel like some of the messaging is, “Look, we don’t need White people helping Black people. We’ll take it from here.” Because I don’t think we address the problem by marginalizing and stratifying.... I think my standing with people who are fighting for this is an asset and not a liability.... I don’t believe in collective guilt.

In June 2020, following the police murder of unarmed Black man George Floyd, between 15 to 26 million Americans took to the streets in over 2,000 cities, making it the largest protest

event in the history of the United States to date (Buchanan, Bui, and Patel 2020). More than a majority of all American adults supported the Black Lives Matter movements even a full year after the protests (Horowitz 2021). Yet, support for “Defund the Police,” one of the policy demands most associated with this wave of mobilization, remained anemic: even in June 2020, only 25% of all American adults believed that police funding in their city should be decreased; by September 2021, only 15% supported decreasing police funding and nearly 50% in fact supported *increasing* police funding (Parker and Hurst 2021). Most strikingly, even though a staggering 85% of those who identify as Democratic or lean Democratic supported the Black Lives Matter movements, only 25% supported decreasing police funding (Horowitz 2021; Parker and Hurst 2021). What explains for this disconnect?

Many people, like Bobbi, drew from their own interaction with the police to make sense of both the movement and its demand. Yet, it also becomes immediately apparent that, even though it is the police’s transgression that is in question, what often also become relevant consideration is how people relate to the Black Lives Matter movements and those affected by police violence. While one may expect that those who similarly experienced victimization at the hands of the police—like Bobbi—will find natural solidarity with the movement, it is far less straightforward. Even though Bobbi did acquire a new skepticism toward the police, she was hesitant to put her support behind the call to “defund the police,” not out of any substantive objection, but out of the belief that it is divisive.

In this chapter, I argue that how people construct their relationships with the police, as well as with the imagined affected community and activists, structure people’s position on defunding the police. In particular, I find that, while most conservatives are unequivocal about their opposition to defund the police, most liberals took care to emphasize that they indeed

support “the idea” of defund the police, but not “the slogan.” The divergent ways conservatives and liberals express their positions, however, belie the deep organic solidarity both expressed towards the police. This results in at most a measured support for reallocating funding away from armed officers towards social workers and mental health professionals among liberals and some conservatives. In contrast, people less frequently consider the activists and the affected communities—at times racialized as Black, but more often not—when they make sense of the demand to defund the police; when they do, not only do they struggle to establish any solidarity with the activists and affected communities, but they further often emphasize how the activists and affected communities are undermining the mechanical solidarity holding the American society together. This is reflected in many liberals’ discomfort with the perceived stridence of the slogan of Defund the Police. Important to note is that people almost never draw upon either their own experience with crime victimization or their experience with the police to make those determination, casting doubts on the effectiveness of the often knee-jerk responses from reformers to emphasize public safety or better delivery of policing services.

## 6.1 Support for Defund the Police

Table 6.1 Interviewees’ Position on Defund the Police, by Partisan Alignment

	<b>Support</b>	<b>Support “idea,” but not “slogan”</b>	<b>Oppose</b>	<b>Total</b>
<b>Conservatives</b>	<b>3</b> (13.64%)	<b>3</b> (13.64%)	<b>16</b> (72.73%)	<b>22</b> (100%)
<b>Liberals</b>	<b>6</b> (14.63%)	<b>30</b> (73.17%)	<b>5</b> (12.12%)	<b>41</b> (100%)
<b>Full Sample</b>	<b>9</b> (14.28%)	<b>33</b> (52.38%)	<b>21</b> (33.33%)	<b>63</b> (100%)

Most of my conservative respondents opposed the call to defund the police. In fact, many reacted with strong emotions when I solicited their thoughts. Greg, a white small business owner

in his early 60s, immediately responded “It’s insanity. I think it’s crazy.” Gabriela, who is a Latina insurance broker in her late 40s, similarly expressed “I think they’re stupid.” Audrey, a clerical worker at a police department who identifies as white and Hispanic, also quipped right away that “I thought that was kind of ridiculous.” Some further suggested that having *more* police, rather than less, will help stem racialized police violence. For instance, Carol, a white woman in her late 50s, suggested that “if there’s enough officers at a scene, then the less likely they are to have to deploy other weapons.” Similarly, Miguel, a Latino elected official in his early 60s, insisted that he’d “rather pay more to have more on the street and have more eyes; instead of having one officer that he’s there for himself, battling himself, has to use force all by himself, versus having three officers that can do less.”

While conservatives’ immediate opposition to defund the police may seem unsurprising, reducing the funding for police department can be consistent with many conservative values, such as fiscal prudence or reducing government power. For instance, Koa, a Native Hawaiian college student in his early 20s, expressed that “I definitely think most CRs [College Republicans] think police are too militarized. ATF [Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives] should probably just not exist.... Yeah, I mean we believe in limited government.” Here, Koa articulated a principled libertarian position and extended his belief in government overreach to include the various branches of law enforcement. In a similar vein, some of my conservative respondents who are elected local officials also pointed to their own experience with policing to make the case for reducing police funding. Patty, a Pacific Islander attorney who previously served on the city council, pointed to the fact that “what we spend in terms of law enforcement in comparison to other cities is considerably less and our crime rate is one of the lowest in the county. And we’ve had a robust community policing in place way before

Defund the Police movement started.” She further argued that “other cities that have defunded the police, crime rates went up...turns out that the number one thing they eliminated was the community policing...because that’s the easiest place to eliminate funding.” Patty concluded that she didn’t see a need to defund the police because “it’s already happened way before the whole movement started.”

Consistent with existing survey evidence, liberals support Defund the Police at a similarly low rate. Yet, rather than outright rejecting the call to defund the police, many emphasized that they support the “idea,” just not the “slogan.” Many, like Amy, a Southeast Asian freelancer in her mid-50s, began their responses with “I object to the term. I think it’s a misnomer.” Some, like Martha, a white retired attorney in her early 70s, even sought to correct me, emphasizing that “you know that that’s a misnomer. They’re not looking to take all money from the police.” Yet, many immediately wanted to make sure that I know that they are not opposed to “the idea” of defunding the police. Cameron, a white nonprofit worker in his early 20s, asserted “I never want to be associated with me, myself, projecting the message of ‘Defund the Police’ because I think it’s a terrible slogan, but I love the idea. Fuck yeah, let’s defund the police and reprioritize the money.” Similarly, Carrie, a white retired health care analyst in her early 60s, expressed that “I hate this defunding the police, but I totally agree with what it really is supposed to mean.”

While these statements can be read as a substantive support for Defund the Police, they are qualitatively distinct from an actual supportive statement. Even though these respondents insisted that they are supportive of “the idea,” many had just as strong an emotional reaction to the call as many conservatives opponents. For instance, Karen, a white stay-at-home mom in her early 50s, immediately responded “I hate that slogan so much. I think that slogan did so much

damage to the Democratic party. I 100% believe in the concept of it.” Similarly, Kevin, a white retired teacher in his late 60s, also immediately quipped, “first, defund the police, could not pick a stupider slogan.” Here, although both expressed support for Black Lives Matter as a movement, and even support for the “concept” of defund the police, the way that the two described their objection to the “slogan” is almost reminiscent of many conservatives who outright oppose Defund the Police.

Furthermore, while many liberals argue that their only quibble is with the wording of the demand, what they substantively support often diverge from decreasing funding to police. For instance, Jen, a white retired retail manager in her late 60s, responded, “it’s the worst choice of words I’ve heard. They just should have said something like reform the police.... It was very unfortunate, very bad, because it’s a good concept. There should be more training in de-escalation. There should be more like social workers.” Lisa, a white retired professor in her late 70s, further argued “those kinds of slogan really hurt us [during the election]...they did. I think the notion of reorganizing or adding to, or changing training...I think that makes a lot of sense.” Although both Jen and Lisa argued that they took issue only with the “slogan” and that they support the “idea,” the policy prescriptions they described poorly correspond to substantively decreasing funding from policing. While in certain instances funding social workers in lieu of armed officers may reduce police funding, if the social workers work under the police department or collaborate closely with the police, it may also result in no change, or even increase, in police funding and capacity as a whole. Similarly, adding or changing police training will typically require an increase in police funding. As such, it is inaccurate to characterize those who proclaimed to only take issue with the “slogan” as overall supportive.

These responses are distinct from liberals who are unequivocal in their support for Defund the Police. For instance, when asked about her reactions about defunding the police, Juliet, a white woman in her late 40s who works in finances, exclaimed “Please! Let’s! I’m ok with that.... I always say I was a victim of a felony, a robbery...the police did nothing. I didn’t get my stuff back, the people didn’t get caught. For what? Any police interactions...just escalates the violence.... We have militarized our police and we have funded them to the detriment of everything else.... So I’m a big fan of defunding the police.” Similarly, Karina, a Latina community organizer in her early 20s, also unequivocally said “I would say yeah to defund the police. Yeah, I would say abolish it the way as we know it. I think that’s one of the biggest misconception of people is like, ‘oh, we’ll defund it, how are they going to do their job?’” It’s like, well, they’re not doing it anyways if we fund them.” Juliet’s and Karina’s responses are distinct from other liberal responses, not just in their enthusiastic support, but also in their recognition that the substantive aim of defunding the police is indeed to have less policing.

## **6.2 We Need the Police: Organic Solidarity and Police**

What explains for liberals’ purported comfort with the “idea,” but not the “slogan,” of defund the police? I argue that, much like conservatives who oppose Defund the Police, many liberals express a deep organic solidarity towards the police—that is to say, a belief in their fundamental interdependence upon the police. Thus, as the Durkheimian approach would predict, reform-minded liberals may be comfortable in reexamining and redefining police’s place in the societal division of labor, but they are reticent to embrace the slogan of defund the police, which contains punitive connotation and even possible implication of wholesale abolition of police from the social body.

A typical expression of organic solidarity towards the police looks like this articulation by Gabriela, a conservative Latina insurance broker in her late 40s: “Police officers are in the line of danger every day.... I’m thankful for our police officer that put themselves in those situations to protect the rest of us.” Here, it is critical to note that Gabriela did not just recognize the work that police do as important, but further as something that she herself is dependent upon. Expressions of organic solidarity need not be as gushing as Gabriela’s. Greg, a conservative white small business owner in his early 60s, expressed “I don’t want to give them hero status...I’m not saying they’re not heroes, but I’m just saying that gets overplayed, but they are incredibly needed to keep our society sane.” While Greg, who had negative interactions with the police union during his time on the city council, was more cynical, he nevertheless continued to stress “our” society’s great dependence upon the police.

This expression of organic solidarity is abundant among liberals as well. Alyssa, a social worker in her late 40s who identified as white and East Asian, expressed that “it’s really important, as Democrats, that we continue to show that we are in support of police officers who are doing their job keeping the peace.... When we go out there with a social worker and a police officer, we want them to go first...because they’ve had the training and they have the weapon. It’s a dangerous job.” Alyssa drew upon her concrete work experience to underscore that the specialized skills and roles that the police have in the society’s division of labor makes them indispensable and worthy of support. Similarly, Georgia, a liberal Black retired police dispatcher in her mid-60s, responded: “I think money shouldn’t be defunded from the police because there is lots of crime and they do have to go out there. I think that whatever money they have, they would need it to protect the society or—whatever it is, is needed for them to do their job.” Here, not only did Georgia emphasize that police did the critical work of protecting the society, but she



further stressed that however much collective resource is needed to do this job is unequivocally justified.

With the mounting public documentation of police violence against unarmed Black civilians, liberal's organic solidarity towards the police allows liberals to reframe the problem as an issue of ill-defined division of labor and reinterpret the call to defund the police as one to create better divisions of labor. For instance, Gayle, a liberal Black retired educator in her late 60s, responded: "we just need to reallocate...the funding to go to certain sources if there's a domestic challenge or a mental illness challenge, have a team that can go that maybe has a social worker, someone that can calm the situation down instead of escalating it. That's not taking any funding from the police department but it's helping the police department with resources that they can't really handle because they don't have the expertise." Gayle distanced herself from calls to take funding away from the police, which could be viewed as a punitive policy against the police; rather, Gayle argues that what is necessary is to rearrange the division of labor so that issues like intimate partner violence and individuals with mental health needs can be handled by those with specialized training.

This belief that a better division of labor is what could solve issues with policing is echoed by 31 other liberals and 5 conservatives. Other examples include Gene, a conservative Black minister in his mid-50s, who recounted how he was once called by the police to diffuse a stand-off involving a veteran who was in his congregation, concluding that "police officers need some help to deal with some of these different situations." Jasmine, a liberal Southeast Asian therapist in her mid-40s, argues that "if we talk about defunding the police, such as the disability side of it...you can't require a police officer who's got six months of training to do what we do with six years of training." Ted, a conservative white realtor and elected official in his mid-40s,

also conceded that “I would agree that police officers are often asked to do things that might not be particularly well-suited for them. For example, dealing with homeless people.... When you have a cop with a badge and a gun approaching a homeless person, it sort of is the perfect scenario to have that go bad.” Laura, a liberal white retired social service administrator in her early 70s, lamented: “I think we need to have more robust social service network that will help identify problems that people are having earlier, whether it’s substance abuse or homeless or whatever, and get the resources in place so that people don’t have to commit crimes.... So that you have uniformed police officers doing the things that need to be done.”

Reducing police involvement with intimate partner disputes, individuals with mental health or substance dependency issues, and individuals experiencing homelessness, as well as providing more robust social services, are all worthwhile goals—and would doubtlessly reduce instances in which police deployed excessive force. Yet, it is also important to acknowledge that most of these policy fixes would not have prevented the death of George Floyd and the death of many other unarmed Black civilians at the hand of the police, the core issue that precipitated these discussions around policing. Such elision was made possible only through the lack of solidarity towards Black Americans. This lack of solidarity is reflected in two ways. First, as I will describe in more depth in the next section, both liberal and conservative respondents do not find themselves in either organic or mechanical solidarity with activists, affected communities, and Black communities within their evaluations of defund the police as a policy demand. Second, the organic solidarity toward police, that is, the belief that the larger collective is interdependent upon the police, fundamentally rests upon how the collective is constructed and who is imagined to be included in this collective. In other words, to assert that police is

necessary to keep “our society” sane—as Greg, the conservative white business owner, claimed—depend upon who is imagined to be part of “our society.”

Here, some alternative formulation of society’s interdependence upon police did emerge among my liberal respondents. For instance, Wayne, a liberal Black clergy member in his early 40s, who articulated that he is for defund the police but doesn’t think “it goes far enough,” addressed an imaginary white critic: “white folk, you all have the complexion for the connection and protection. We don’t, and that’s documented history.” More hesitantly, Jessica, a liberal white college administrator in her early 40s, proffered: “The slice I want to defund is the slice that is over-policing black and brown neighborhoods.... I think that policing needs to take a good, long, hard look at where it came from and like its roots in slave patrols, and even how the laws that it is enforcing came into being as a way to basically like protect white suburban enclaves from the intrusion of Black folks.” Rafael, a liberal Black professor in his mid-60s, also expressed: “I think what defund might mean to all those dollars that go into fighting crime, and again, keeping Black folks where they belong, keeping people of color where they belong, for that matter, even keeping all of us of color in our places, including some white folks.... Most dollars could be better used improving communities and having certain communities police themselves.” In their articulations, Wayne, Jessica, and Rafael all recognized that the police plays a function that others in the society depend upon; however, not only do Black Americans not have an equal access to these services as white Americans, as Wayne noted in his cleverly-worded critique, a large part of the police’s function is to keep Black Americans “in their place” for the benefit of whites, as Jessica and Rafael point to. While not denying society’s interdependence upon police, when Wayne, Jessica, and Rafael reasserted the inclusion of Black Americans as part of the society, they raised questions of whether if this organic solidarity

applies to all and who benefits from this interdependence at whose expense. This results in far more favorable evaluations of the demand to defund the police.

Some liberals also fully reject such organic solidarity exists between society and the police. Juliet, the liberal white woman described in the previous section, pointed to her experience of being robbed and argued that police would not have prevented the robbery, did not get her things back, nor caught the perpetrators. Juliet's experience is corroborated by FBI statistics, which found that in 2019, police had arrested or identified offenders in only 45.5% of violent crimes and 17.2% of property crime (Federal Bureau of Investigation 2020). Juliet's support for defund the police stems from her experience that police does not fulfill the function that the society purportedly depend upon police to perform; instead, Juliet asserts that all police does is "escalate the violence." Similarly, for Karina, the liberal Latina community organizer, her retort towards critics of defund the police is rooted in the belief that the police isn't doing their job anyway even when they are funded.

In sum, many began with the presumption of organic solidarity towards police, that is, the belief that police performs an integral function that society depends upon, when they are evaluating issues relating to policing. This not only results in conservatives' outright rejection towards defund the police, but also underlies many liberals' reinterpretation of defund the police to mean increased specialization and redefined division of labor. Yet, the belief that society needs police is contingent upon who is considered to be part of the society. Some recognize that Black Americans are often both excluded *from* accessing police service and excluded from being a full member of society *by* police. As such, the characterization that society is interdependent upon the police can only be true if Black Americans are not considered to be part of the society.

### **6.3 Unrelatable and Division: Mechanical Solidarity and Black Lives Matter**

In addition to organic solidarity with the police implying an exclusion of Black Americans from the collective, many liberals and conservatives also did not express any solidarity—mechanical or organic—with activists, affected communities, and Black Americans in general. Discussions of activists, affected communities, and Black Americans largely are often matter-of-fact or negative, without acknowledging that those who are in overpoliced race-class subjugated communities are also members of the societies. Furthermore, especially among liberals who object to the “slogan” of defund the police, activists are often portrayed as anathema to social cohesion, leading to a perceived justified rejection of their demand.

Whereas all 63 respondents mentioned some consideration relating to the police when evaluating the call to defund the police, only 49, or about three-fourth of respondents made any mention of activists or affected communities. 11 liberals, or about one-fourth, did not make any mention of activists or affected communities, whereas only 3 conservatives, or about one in seven, failed to do so. While this may seem surprising, this may be due to the fact that most conservative discussions involving activists and affected communities are negative, which, under the post-Civil Rights “color blind racism” (Bonilla-Silva 2018), liberals who share these views may choose to not verbalize. Even more strikingly, even though in my standardized question I explicitly asked for my respondent’s reactions to “the police killing of unarmed Black Americans and the protests that followed,” only 28 respondents, or roughly 40%, made any reference to “Black” or “African American” in their responses.

Yet, when my respondents did discuss activists and affected communities, not only are the respondents unable to establish solidarity with them, many view activists and affected communities as actively undermining the mechanical solidarity that holds American society

together. For instance, Ruby, a conservative Southeast Asian woman and a retired real estate agent in her mid-60s, brought up her vocal opposition to defund the police without my prompting. Yet, when I asked Ruby to imagine why the activists are pushing to defund the police, she was genuinely perplexed. “Probably police robots that’s being tried out in New York, that actually have sniper guns on their backs? I don’t know.... I think it’s just a weird brainwashing that’s happening with the left.... I don’t know, maybe that’s why.” Many questions after, when we moved on to her thoughts on her fellow Trump supporters, Ruby seemed to have found her answer:

God, family, and country, that is the three most important things to people like me. We believe in the constitution.... We had the freedoms that were guaranteed in the Bill of Rights and the left wants to destroy that.... It goes hand-in-hand with defunding the police, getting rid of law and order. Why on earth would you want to get rid of law and order?... If you want chaos, that’s the perfect environment for globalists and the government to say “Martial law. Chaos, we’re going to take over.” And they dictate to you how you live.... So that could be why. Just dawned on me.... A lot of these anarchists that want to defund the police, like Antifa, like BLM, they’re being funded by one of the most disgusting globalists in the world by the name of George Soros. He pays for everything, pretty much. He pays people to go protest.

First, Ruby struggle to identify the possible circumstances and motivations that may lead one to advocate for defunding the police. This inability to empathize and put oneself in the position of those advocating for defund the police reflect a lack of mechanical solidarity, or perception of sameness and shared values, toward the activists and affected communities. Then, after some talking, Ruby landed on the convoluted conspiracy that defund the police is intended to create more government control; she further drew upon antisemitic dog-whistles of “globalists” and pointed towards Jewish billionaire George Soros as the possible orchestrators of the movement to defund the police. While all of which may seem to be nonsensical ramblings that can be easily factchecked as untrue, understanding Ruby’s comments in a Durkheimian framework makes it clearer that it is not the empirical details, but contestations around belonging and social cohesion,

that is at stake for Ruby. For Ruby, defunding the police is a ploy for “the left” to destroy the mechanical solidarity that is based upon Americans’ shared value around Christianity, traditional family, and patriotism.

This inability to identify with people who may advocate or benefit from defunding the police and this articulation that these people are threatening to the mechanical solidarity that binds Americans together is prevalent among conservatives. For instance, in a more racially tinged articulation, Koa, a native Hawai’ian college student in his early 20s, expressed that “Black Lives Matter proved the exact thing they were hoping to disprove in our mind, which is that we do need help, because these people are trying to destroy us at the end of the day.” Joanna, a white entrepreneur who declined to share her age, further insisted that “the BLM is taking advantage of the African community.... One of the founders, I believe was one of the founders had stated out of her own lips that they evoke the spirits of their tribal ancestors. Ok, that is called necromancy. That’s witchcraft. That’s demonic. And those kinds of things, that’s just pure evil.” Katalina, a Latina real estate broker in her late 30s, states “To glorify the person [George Floyd] also is ridiculous.... We worshipped this person [like] he was the standard of American society and he wasn’t at all.... And it just makes you question how genuine or how staged it was for this to have happened. The looting is definitely uncalled for.... It just made the US look like we were weak.”

It is important to note that while these conservatives may cite concrete concerns about property and personal safety, it is not primarily *about* crimes. For instance, even though Katalina mentioned looting in her objection, it was not the loss of property, but that the looting made *us* look weak. In turn, Katalina’s insistence that George Floyd was not “the standard of American society,” and implicitly suggesting that this disqualifies the wellbeing of Floyd and others like

him to be a worthy subject of collective concern, is reflective of a lack of mechanical solidarity. Yet, not only did these conservatives lack solidarity towards activists and affected communities, but they further believe that activists and affected communities are actively destroying social cohesion. This is reflected in Koa's pithy articulation that "*these people* are trying to destroy us" and Joanna's accusation that not only are the advocates not of the community, but that they are "pure evil."

While liberals may not share conservatives' conspiratorial views of defund the police, liberals similarly withheld solidarity with activists and the affected. Many emphasized that those who are advocating for defund the police are a numerical minority who are not representative of the larger movement. For instance, when I asked Gayle, a Black retired educator in her late 60s, to imagine why activists may be advocating for defund the police, Gayle responded: "I don't think they are. I think it's still the sensationalize...media, or one or two people that may still be saying it." Lisa, a white retired professor in her late 70s, also derided "these activist types" are passing resolutions about defund the police that "nobody gives a damn about" that makes "the Democratic Party look like it's somewhere to the left of Che Guevara, which is stupid." Many further engaged in boundary works to distance themselves from defund the police activists. Leah, a white homemaker in her late 50s, recounted that when she was at a protest in Washington D.C., "the kids started chanting 'all cops are bastards' and that's when my friend and I walked away. We didn't condone that part." Even more strikingly, when I asked Georgia, a Black retired police dispatcher in her mid-60s, how she navigated the tension between her racial identity and her work during the protests, Georgia replied that "just like there are bad police officers, there're bad citizens out there because I have seen on TV when they had protestors, you had some of these Blacks going out there breaking windows and stuff like that. Those I think were just thugs



anyway.” Liberals withheld mechanical solidarity from advocates of defund the police not only through emphasizing that these advocates are few and ideologically distinct, but further actively distanced themselves from these advocates in their words and actions.

In turn, liberals also accuse defund the police advocates in undermining social cohesion.

Jasmine, a Southeast Asian speech pathologist in her mid-40s, drew an analogy.

When you talk about defund the police, I think that our younger progressives are using the wrong term. You’re using trigger terms.... Kind of like a marriage...sometimes we do trigger words just to kind of hurt each other.... With my husband...the big D word [divorce] comes out. The truth is we love each other too much, that’s not going to happen, but we constantly use this word to hurt each other or to get someone’s attention.... Using the word defunding the police...you’re bring the sword to the table and no one’s going to have a conversation with you.

Much like her conservative counterparts, Jasmine’s opposition to the “slogan” of defund the police does not rest in any concrete concerns about crime. As the analogy to marriage and divorce highlights, it is about how the activists are undermining the solidarity that binds society together. Here, the activists are at fault for “bring[ing] the sword to the table” and shutting down the conversation. Furthermore, Jasmine did not believe that the activists truly want defund the police to happen, but is merely using it to “get someone’s attention.”

## **6.4 Conclusion**

Even though both reformers and critics alike allude to the effects of over-policing and police violence on the one hand and crime and public safety on the other as societal and universal, the mostly middle- and upper middle-class interviewees I spoke to do not imagine their self-interest to be at stake in the contentions around defunding the police. Rather, they assess the contention through the relative solidarity they have toward police and the affected communities. As expected, conservatives are mostly unequivocal in their disapproval for the

Black Lives Matter movements overall and the call to defund the police in particular. They stress their interdependence upon police and struggle to imagine any solidarity with the activists and the affected community, if not constructing the activists as actively undermining social cohesion. Perhaps more surprisingly, despite near unanimous support for Black Lives Matter movements, liberals construct their relative solidarity towards the police and the affected communities in largely the same way. This resulted in liberals insisting that they support the idea of defund the police—taken to mean redefining the place of police in the division of labor, without necessarily disarming or reducing the funding or power of the police—but not the “slogan” of “Defund the Police,” which liberals construct as a divisive provocation from the activists. In contrast, the few liberals who did support defund the police questioned the premise of society’s interdependence upon police by asking who is included in this imagined society.

In thinking of undocumented migration as a law-and-order contention, the central contestation is about whether or not the lawbreaking other, the migrant, is imagined to be a belonging member of the society and in what way. In the case of racialized police violence, who is imagined to be the lawbreaking other is a more complex question. Although the police officers who improperly used force are the ones who broke the law—and in the case of George Floyd, were found guilty in a court of law—conservatives and liberals alike do not find the police to have violated social solidarity. In contrast, those who were killed or harmed by police, the protestors, and the race-class subjugated communities most affected by police violence are viewed to have violated social solidarity regardless of if they have actually broken any law. The case of defund the police illustrates that law-and-order contention can extend beyond the belonging of one social group, but also the relative belonging of two groups.

It is important to note the slipperiness to define who is this other group whose belonging that people are evaluating in relation to the police's belonging. In reality, those who are calling for defunding the police, the Black Lives Matter movements, Black Americans, and those who are affected by over-policing and police violence all have overlaps with one another, but are not perfectly synonymous with one another. There are several ways to explain the interviewees' elision of these differences. First, under the imperative of colorblindness in the post-Civil Rights era, appearing anti-Black is not only often sanctioned in social interactions, but also against people's understandings of themselves as non-racist, especially among liberals (Mendelberg 2001; Wetts and Willer 2019). This may compel some to phrase their objections as against Black Lives Matter, rather than against Black Americans, for conservatives and against "kids chanting all cops are bastards," "activist types," or even "thugs," rather than against Black Lives Matter for liberals. Second, except for a few conservatives who directly assailed George Floyd's character, both liberals and conservatives focused mostly on Black Lives Matter or a subset of the protesters, which allowed them to elide the victim.

## Chapter 7 Revisiting the Punitive Turn

Beginning the second half of the 20<sup>th</sup> century, stringent enforcements of the law and harsh punishments of criminals become a recurrent motif of American politics, reliably garnering popular support during election times. One possible story is that Americans are an increasingly fearful and distrustful people, retreating to their fortified suburbia to avoid any possible risk of harm to their persons and property. This turn toward law-and-order also coincided with increasing demands—and some substantive wins—by Black Americans to be equal members of the society, which was accompanied by similar demands from the growing immigrant populations from Latin America and Asia. Another possible story is that the increasingly resentful white Americans, now unable to explicitly call for the subordination and exclusion of racialized minorities and immigrants, instead call for an increasingly coercive government. In this dissertation project, I spoke to a multiracial group of activists across the political spectrum to find out which story better describe how they experienced the most recent round of law-and-order contestations.

I find very little evidence to support the first story. Without prompting, most activists I spoke to do not spend their life worrying about crime, lawbreaking, and their safety. Even when they did mention law-and-order, their concern is rarely about their personal safety. Instead, by listening to what activists actually say when they engage with law-and-order politics, I find that activists are mostly wrestling with who they imagine the lawbreakers are and how they imagine the lawbreaker fit into the social world. This foregrounds the other register of the law, where law

is understood not as simple cost-benefit calculation of protecting property, but as maintaining the cohesion and cooperation that holds society together.

Yet, even though this is a story about racialized minority being imagined as a lawbreaking other, it is not a straightforward story of suppressing racial threat. Examples abound where activists are able to view lawbreaking others as sharing at least some aspect of similarity, form mechanical solidarity with lawbreaking others, and therefore believe that the lawbreaking others are deserving of mercy. Even when activists imagine lawbreaking others as different, they are still able to construct organic solidarity if the lawbreaking others are contributing members of the society. It is when people construct the lawbreaking others as undermining social cohesion or overstepping their entitlement that they prefer punishment. While this framework draws upon Durkheim's understanding of law and solidarity, it centers the fact that social sameness and difference are constructed, rather than essential. As such, lawbreaking others are punished neither because they violated social solidarity through their action nor because they are intrinsically outside of social solidarity; rather, it is through law-and-order contention that the belonging of the lawbreaking other is established.

In this project, I attended to two law-and-order contentions: undocumented migration and racialized police violence. I find that, even when liberals and conservatives activists have opposing ideological commitments to undocumented migrants and the Black Lives Matter movements, the two construct their solidarity toward migrants and Black Lives Matter in similar ways, resulting in similar policy preferences. Both liberals and conservatives can find themselves in solidarity with undocumented migrants in certain ways, but also believe that undocumented migrants violate solidarity in other ways, resulting in a preference for pathway to citizenship for a limited subset of migrants. Both also tend to imagine themselves to be in organic solidarity

with the police, which, combined with constructing Black Lives Matter activists as undermining social cohesion, results in a rejection of the call to defund the police, regardless of if they support the Black Lives Matter movement.

The punitive turn is part of a larger story about the shift away from governing through welfare spending and other promotion of the wellbeing of members of the society toward governing through coercion. This change has been extensively understood through the Marxian lens of neoliberalism, the prioritization of free market over other social and political rights, which ultimately advances capital interest. The masses, who do not benefit from neoliberal regime, consent to it as neoliberal governance is framed in the terms of individual freedom and the morality of self-sufficiency. In turn, the state can only manage the increasingly precarious and dispossessed poor and working class through escalating repression, including harsher law enforcement and punishment. While not denying the centrality of neoliberal governance underlying the punitive turn, I assert that attending to how everyday people engage with the politics of lawbreaking and punishment brings to the foreground another facet of contemporary American politics, one not about individual freedom, but about group belonging, which can be loosely understood as underlying neoconservatism.

Recall the interviewees' discussion of migrant illegality. The frame of "quietly productive" is the most consonant with a neoliberal understanding of the punitive turn: the threat of punishment and deportation looms to ensure that migrants remain docile workers. Yet, two other frames—the "limits of empathy" frame and the "propertied rights of citizenship" frame—also lead to punitive preferences. Here, distribution of material resources figure centrally in people's belief that migrants should be punished, but in ways that do not comport with neoliberal understandings. Those, like the East Asian veteran Brad, who empathized with the plight of

undocumented migrants, but believed that we must “care for our own” first are firmly in support of state welfare provision; they believe that at least some migrants have to be excluded not just because they worry about their tax burden, but first and foremost because migrants are not considered to be a belonging and deserving member of society. Those, like the Pacific Islander college student Koa, further expressed the most stringent and punitive preference when they articulated that all migrants must be deported in order to raise the wages for “Americans.” This articulation is in fact anti-neoliberal: the coercive state is called upon not to facilitate competition, but to limit it. Here, again, the contention is not around whether or not the state should actively intervene and promote people’s wellbeing, but around who deserves to receive it. This is similarly clear in how the interviewees made sense of defund the police. While there certainly were a few concerns around looters and protection of property, the core contention rests upon who gets to make demands upon the state.

This dissertation is rooted in a particular point in time, which makes it unable to speak to whether if law-and-order contentions has always been a neoconservative project around belonging or if it had been a more recent reaction to decades of neoliberal globalization. Nonetheless, neoconservatism has been on the rise since at least the 1950s (McGirr 2015) and has come to be a major political force alongside neoliberalism since the 1980s, with major political consequences such as the rise of Trump, it is critical to account for both influences under the punitive turn. The solidarity framework presents a starting point to think about how sameness, difference, and belonging is worked out in United States’ multiracial democracy. Future theorization must focus upon the interaction between the two to understand the contemporary moment.

Turning to the place of race in law-and-order contention, often what is not said about race can be just as illuminating about what was said. For instance, none of my interviewees who preferred full deportation pointed to the lack of mechanical solidarity as their reason; those who did point to the lack of mechanical solidarity emphasized that they only wanted to exclude and punish a circumscribed group labelled as criminal. This illustrated the ways in which, in the post-Civil Rights era, even those who are anti-immigrant recognized that they cannot construct migrants as categorically different and this difference cannot be grounds for exclusion. In turn, being forced to limit excludable difference to “criminals”—even if this category of criminal can be dangerously capacious—those who are advocating for deportation must concede that there are categories of migrants who deserve to stay. Similarly, by being compelled to ascribe the undermining of social cohesion to “BLM” or “activist types,” people must concede that there are other Black Americans who can legitimately make claims upon the state about the appropriate approach to policing. This reveals that, even if law-and-order contentions are coded dog-whistle about racialized minority, the codewords are not perfectly synonymous with the racialized minority they were intended to refer. As such, expressing the contention in law-and-order terms shifts the nature of the contention. This, on the one hand, does allow for concession and increasing decoupling of race from the contention. On the other hand, however, this creates an incentive for pro-migrant and pro-Black Lives Matter activists to reinforce the distinction between the so-called “good immigrant” and “bad immigrant” or “acceptable Black protest” and “unacceptable Black protest,” which inadvertently hurts those who are located at the most vulnerable intersection within these communities.

What, then, does this entail about the punitive turn and law enforcement policymaking? As the punitive turn partially resulted from the increasing involvement of elected officials and



voter referenda in criminal justice policymaking—as opposed to the unelected so-called “elites” like judge—one tempting interpretation is that these policies are simply “democracy at work” (Beckett 2000). Many scholars take great length to disprove this assertion, demonstrating that not only are punitive preferences inconsistently predicted by any empirical measures of crime and the criminal justice system, but further that these preferences follow, rather than precipitate, concerted media and political campaigns around drugs and crime. My findings suggest, however, that this may be entirely beside the point. While I also find that, even though law-and-order politics is not really about the crime or public safety, this doesn’t mean that these discourses don’t reflect important issues that Americans are grappling with, such as who belongs and who doesn’t. As such, I do not believe that law-and-order’s popularity should be dismissed out-of-hand. Furthermore, I suggest that the solution to the increased and racially-disparate suffering inflicted by the punitive turn is not necessarily curbing popular participation. Rather, my findings reaffirm the importance of counter-majoritarian safeguards in criminal justice policymaking. As the solidarity framework suggests, it is easy for a polity’s majority to prefer harsh punishment if the imagined target of the policy is also imagined to be too different, even if the target doesn’t necessarily deserve it. Yet, unelected officials are not any less susceptible to the solidaristic understanding to punishment. Rather, an explicit counter-majoritarian institutional check must be in place to prevent the unpopular minority from the majority’s wishes to inflict the coercive power of the state upon them for no other reason than for being socially different. This will be a first step for us to get to true democracy at work.

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## Appendix: Interview Questionnaire

### I. Activism Experience (2 questions)

1. Can you walk me through how you first become involved in [organization]? How did you first become politically active?
2. Let's imagine a typical week. Can you walk me through what your work with [organization] looks like?

### II. Personal Political Belief and Behavior (5 questions)

3. How would you describe yourself politically? What does that mean to you?
4. What about other people in your life? Are there specific people in your life that you disagree with politically? Walk through the last time when you got into a disagreement with them. How do you think they arrive at a different political position as you? How do you know? [political other]
5. If you have to pick one, what issue most concerns you today? How did you come to be concerned about this issue? How does it affect you? How does it make you feel (and why)?
6. What were your general feelings going through the 2016 election? What were your feelings towards the candidates? Why do you think your people who support the opposing candidates do so? How do you know? What were your feelings about MAGA? What were your feelings about build the wall?

### III. Immigration (7 questions)

7. On the issue of immigration, some people make the distinction between those who are here legally versus those who are not. How important is this distinction to you?
8. Currently there are roughly 10 million undocumented people living in the United States. If you were to offer a diagnosis, what do you think our government should do with those who are already here?
9. What do you think may be some reasons that people would migrate outside the law? Some people get their information from immigrants they know from their life, others might get it from media, how do you know that these are the reasons? How would you act under these scenarios?

10. Under the Trump administration, there was an emphasis on catching and deporting all undocumented immigrants, whereas under the Obama administration there was a stated emphasis on deporting only those with previous arrest and conviction. How important is this distinction of criminal record to you?
11. Under current law, employers who knowingly hire undocumented immigrants—rather than the immigrants themselves—face criminal penalty. Some believe that the law is justified and under-enforced, whereas others believe that it is not the employers responsibility. How would you describe your position on this issue?
12. There are many undocumented immigrants living in this country who are children or minors, some are brought here by their parents and some came by themselves. What do you think is the appropriate way for our government to deal with them?

#### **IV. Criminal Justice and Legal Attitude (6 questions)**

13. What about the 2020 election? What are some of your thoughts and feelings about the election? What about the major candidates?
14. One issue that has been widely discussed in this current election cycle is the police killing of unarmed Black people and the protests that followed. How would you describe where this issue stands on your priorities and positions? What about the call to defund the police? What may be some reasons that some activists are calling for defunding the police?
15. For some people, their own relationship with the police may inform how they feel about this issue. How would you describe your own relationship with the police? For some people, their own experience with having been victimized by crime may inform this issue. How would you describe your own experience with crime?
16. In many parts of this country, those who have been convicted of a crime would lose their citizenship rights—such as voting and serving on a jury—even after the served their sentence. There are some people who are concerned, whereas others who believe this is deserved. How would you describe your position on these policies?
17. Over the past several election cycles, more and more states in this country have legalized or removed criminal penalties for possessing or recreationally using controlled substances, such as marijuana. One question become what to do with those who were arrested when the substances were still illegal. Some people believe that they should still complete their sentences, while others believe that they should be immediately released and their records expunged. Some further argues that there should be programs and payments to help them reintegrate into the society. How would you describe your position on these proposition?
18. During the COVID-19 pandemic, there had been many protests in Southern California against mask-wearing, vaccination, social distancing, and other public health guideline. What are your feelings about it?

19. President Trump has been investigated and impeached unsuccessfully for several wrongdoings during his presidency. In your ideal world, what do you think ought to happen to him? What about the January 6<sup>th</sup> incident at the U.S. Capitol? Who is responsible for it? What consequences should the people who were there suffer?