

# Baumgartner, POLI 195 Spring 2013

How the death penalty came back  
after *Furman* (1972)

Reading: Jonathan Simon,  
“Interposition”

January 30 2013

# Interposition

- The court imposed itself in politics.
- Reaction of political leaders in the South: “Interpose” themselves to protect citizens against the implementation of these unconstitutional usurpations.
- Doctrine of “massive resistance” – don’t allow desegregation, etc.
- Unsuccessful in the particulars of for example school desegregation, but quite successful in other ways
- Broader politics of response to a series of huge decisions made by the Courts

# Some Big Changes by the Warren Court

- 1954 Brown v. Board – no more separate but equal.
- 1962-64, Baker v. Carr: One-man one-vote. (Guarantees all congressional districts have to be the same size, ends over-representation of rural areas.)
- 1963 Gideon v. Wainwright: Requires indigent defense attorneys.
- 1966 Miranda – criminals need to be read their “Miranda rights”. If not, charges have to be dropped.

# Impeach Earl Warren



# More Court Decisions (Chief Justice Burger)

- 1972 Furman – a majority of states support the death penalty, but “evolving standards of decency” say they are wrong.
- 1974 Roe v. Wade – abortion is legal.
- (Note: Both Warren and Burger were Republicans... Warren had actually been Gov of California.)

# Huge Accomplishments, or a Threat to Traditional Values?

- Many hail those decisions as making important transformations in American society.
- But many begged to differ!
- Court: on the side of criminals, minorities, abortionists, feminists.
- Who is on the side of the “silent majority”?

# The Republican Party

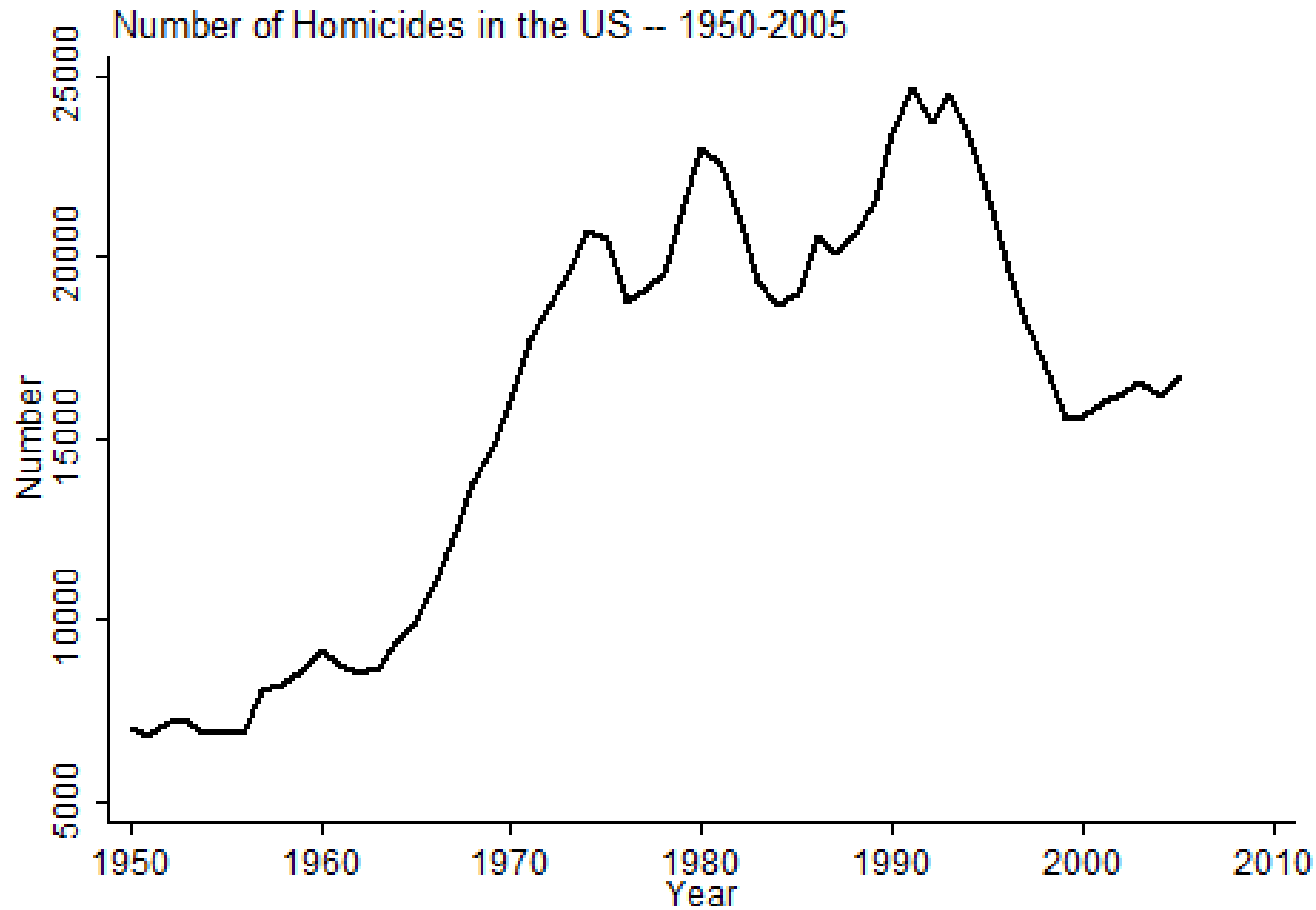
- “Populism” – a response against the “Washington elite” that thinks it knows better than elected officials at the state and local levels
- “States’ rights” – rallying cry

# “New Deal” to “Crime Deal”

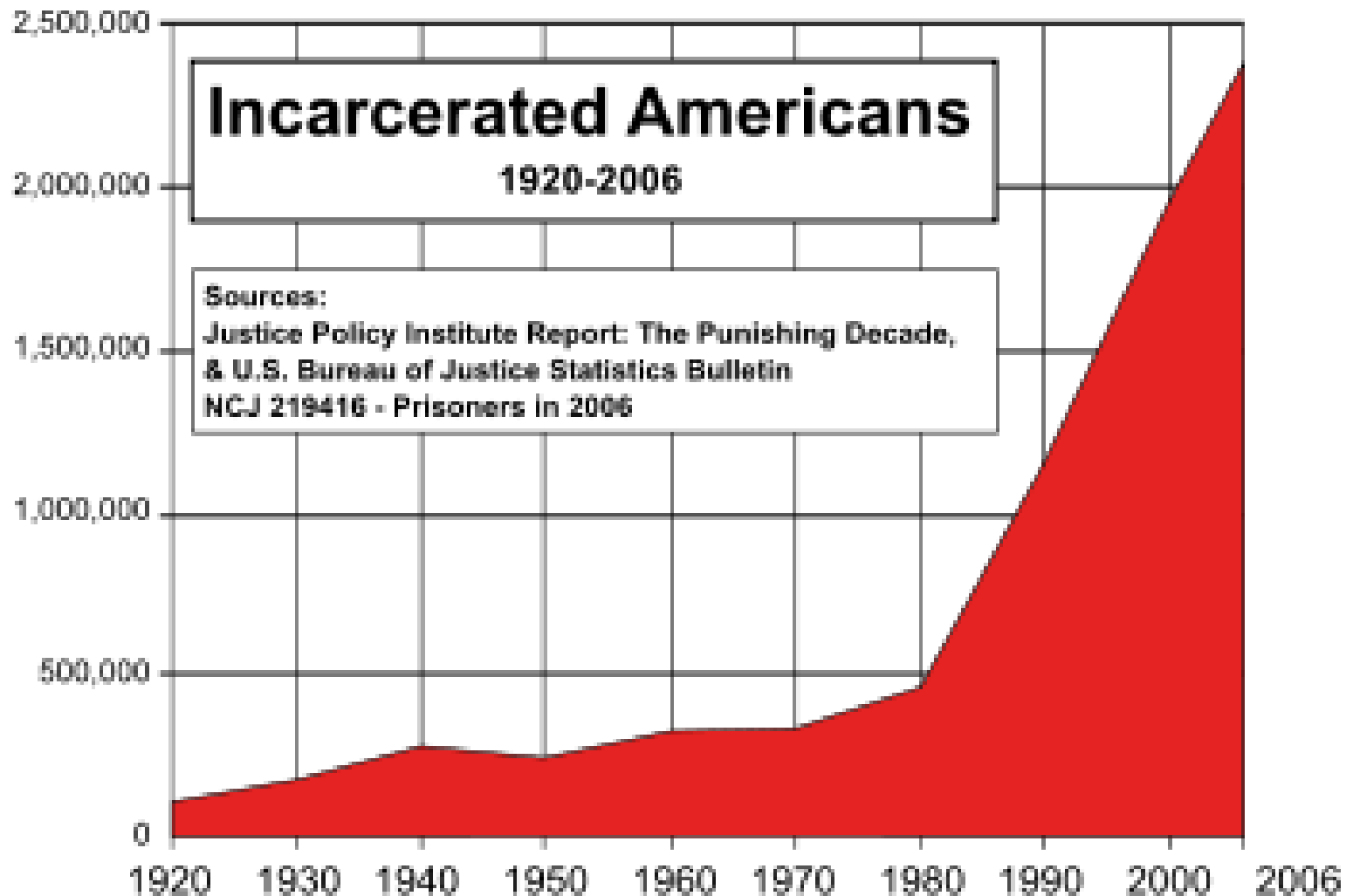
- “War on Crime” as a reaction to all these events of the 1960s and 1970s.
- Rather than oppose integration, new rights, etc., the political response was to focus on crime.
- Death penalty a part of this broader trend



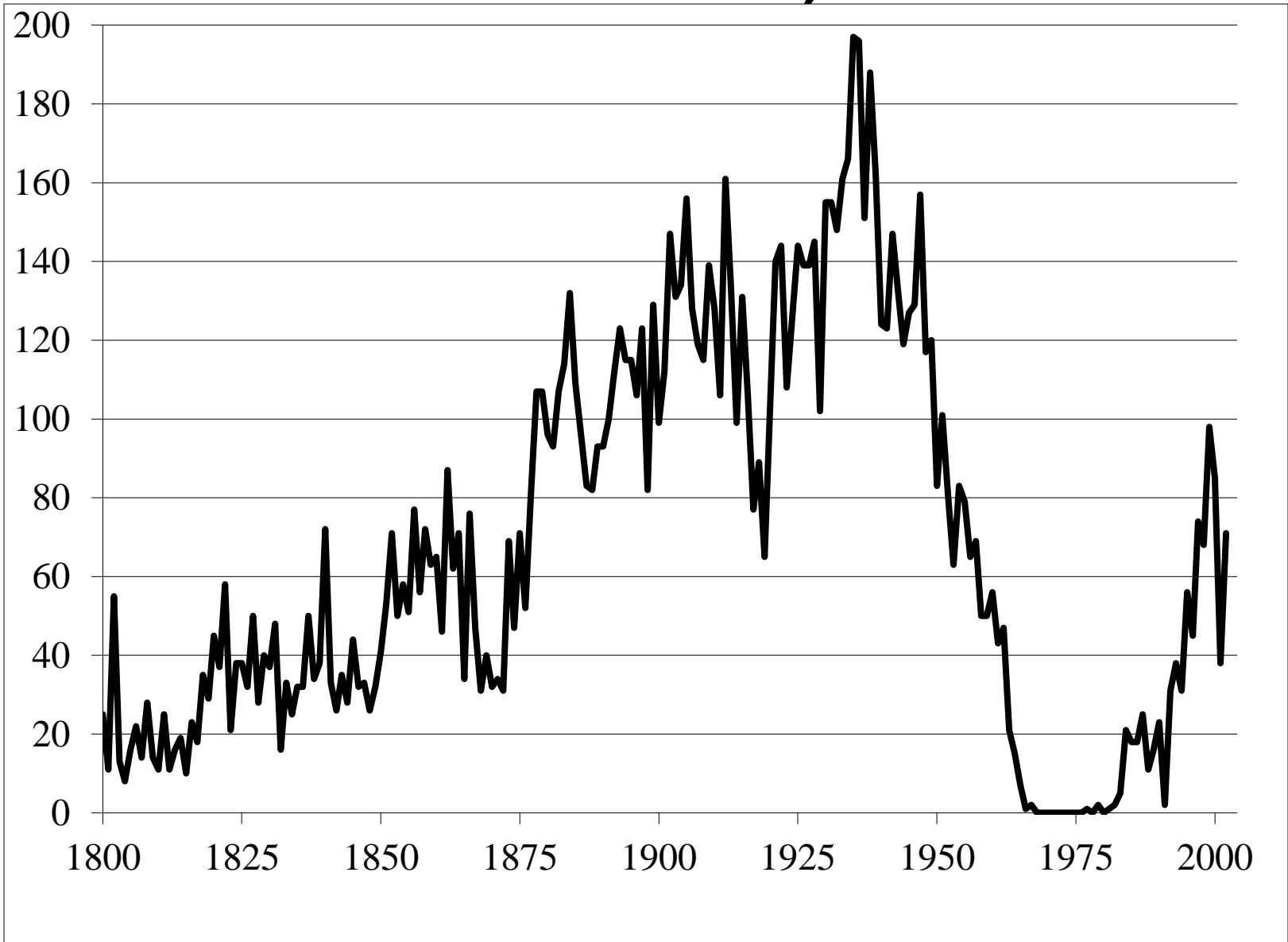
# Crime Really was Increasing then



# Prison population explodes

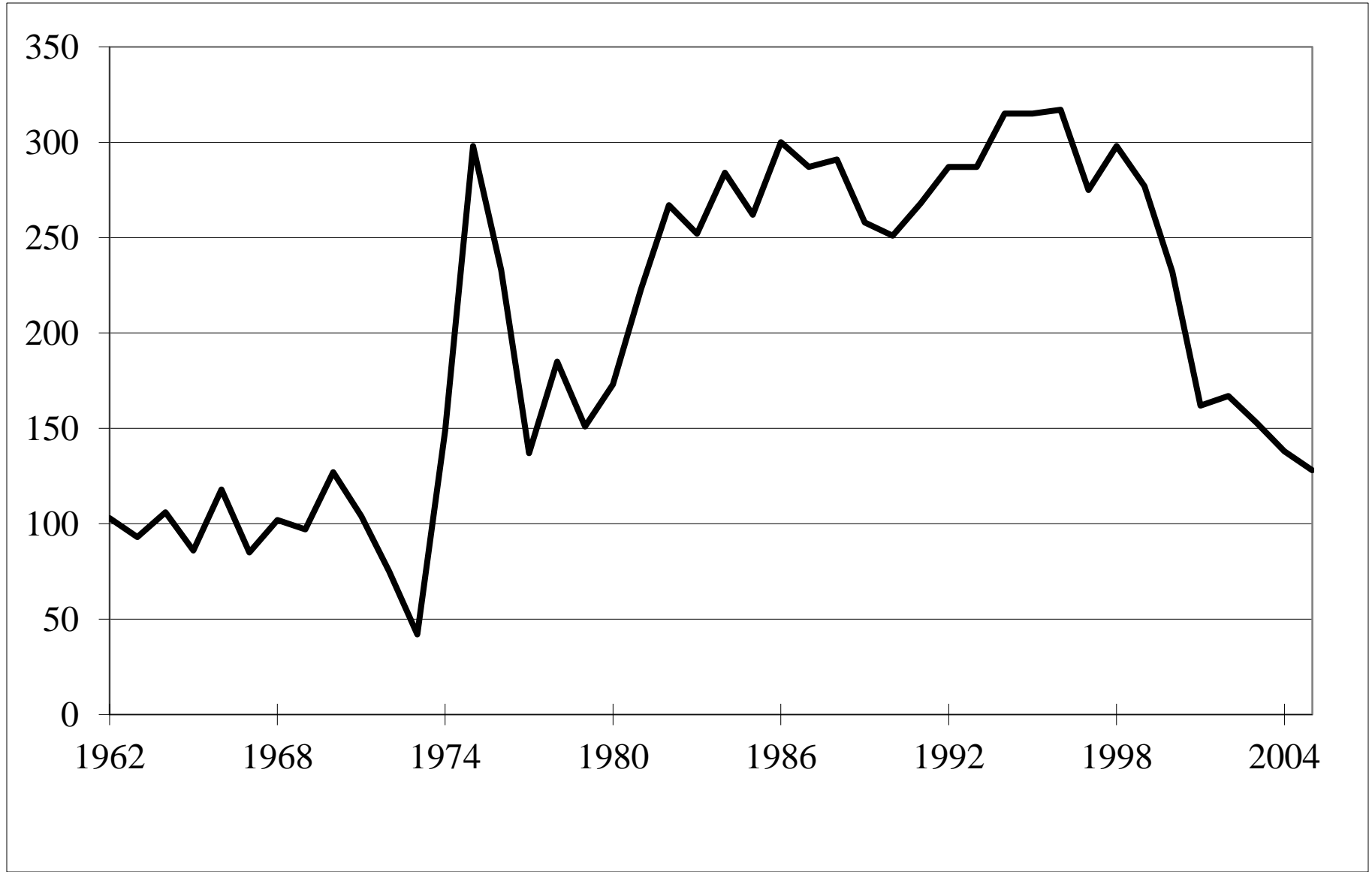


# Executions in the US, 1800-2002



# Number of Death Sentences

From ~ 100 to ~ 300 per year



# The Politics of Commutations

- Gov. Pat Brown (father of current governor of Calif.)
- Gov Mike Disalle (Ohio)
- Possible Democratic presidential candidates in the 1960s
- Attacked for opposing Capital Punishment, commuting too many sentences
- (Of course, there were no executions anyway then.)

# Politically Radioactive

- “Coddling criminals”
- “Protecting murderers”
  
- Standing up for the little guy
- Paying your taxes
- Punishing the guilty
  
- Which side would you vote for?

# Republican Advances

- Richard Nixon, Ronald Reagan both attack Gov. Brown, and he is defeated
- His son, the current governor, remains so skittish about the death penalty that he only announced he supported the referendum to abolish the death penalty after the polls closed.

# A generation of Increased attacks on Crime

- Stage One: A partisan issue
- Stage Two: A bi-partisan issue
- The Democratic Party could not be the party of the criminals
- Incarceration rates, death sentences, executions all rise.



# These trends peak in late-1990s

- Focus this week is on the resurgence.
- Therefore it is a huge puzzle how it all was reversed.
- Incarceration rates still very high. War on drugs, three-strikes laws, etc.
- But the death penalty, our focus, definitely inflected in the late 1990s.