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2017

## The Racial Politics of Due Process Protection: Does partisanship or racial composition influence state-level adoption of recorded interrogation policies?

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### Recommended Citation

Carmichael, Jason T. and Kent, Stephanie L., "The Racial Politics of Due Process Protection: Does partisanship or racial composition influence state-level adoption of recorded interrogation policies?" (2017). *Criminology, Anthropology, & Sociology Faculty Publications*. 1.  
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# **The Racial Politics of Due Process Protection: Does Partisanship or Racial Composition Influence State-Level Adoption of Recorded Interrogation Policies?**

**Jason T. Carmichael and Stephanie L. Kent**

## **Abstract**

Discoveries of wrongful convictions have increased substantially over the last several decades. During this period, practitioners and scholars have been advocating for the adoption of policies aimed at reducing the likelihood of convicting a person for a crime they did not commit. Implementing such policies are vitally important not only because they help ensure that the innocent do not receive unwarranted sanctions or that the guilty go unpunished but also because cases of wrongful conviction can erode public confidence in the criminal justice system and trust in the rule of law. To avoid such outcomes, many states have adopted policies through legislation that aim to reduce system errors. It remains unclear, however, why some states appear more willing to provide due process protections against wrongful convictions than others. Findings suggest that dimensions of racial politics may help explain the reluctance of some states to adopt protections against wrongful convictions. Specifically, interaction terms show that states with a Republican governor and a large African American population are the least likely to adopt policies aimed at protecting against wrongful convictions. We thus identify important differences in the political and social context between U.S. states that influence the adoption of criminal justice policies.

A wide-body of literature has pointed to the prevalence of false confessions during police interrogations and the resulting wrongful convictions (e.g., Dixon, 2006; Feld, 2014; J. Gould & Leo, 2010; Huff, 2002; Kent & Carmichael, 2015; Leo, 2008; Leo & Richmond, 2007; Sullivan, 2005; Thompson, 2012; Trainum, 2016). These scholars advance very compelling arguments in favor of

mandatory recording of police interrogations to reduce the likelihood of false confessions. Despite calls for legislative change in this area, data from the Innocence Project show that the vast majority of U.S. states have failed to adopt policies mandating police to record interrogations of suspects. To date, scholarship has failed to account for the reluctance on the part of most state-level policy makers to implement such policies. The primary aim in this study is to better understand why some states appear to be resisting a mandate for police to record custodial interrogations of criminal suspects. This is particularly troubling given that Garrett (2011) and the Innocence Project estimate that 15–20% of wrongful convictions between 1989 and 2007 were caused by false confessions coerced by police during custodial interrogations ([innocenceproject.org](http://innocenceproject.org)). These false confessions, which are typically gained through intense psychological pressure and other coercive tactics employed by the police, could be prevented by simply requiring the recording of interrogations (Leo & Richmond, 2007; Trainum, 2016). Yet less than one in three U.S. states have instituted laws that mandate the electronic recording of custodial interrogations (Innocence Project, n.d.). That so few states require mandatory recording remains baffling, particularly given the relatively low cost (as compared to other policies such as DNA preservation) associated with instituting such a policy.

## **Brief Overview of Recorded Interrogation Literature**

Scholarship has outlined both the benefits and costs associated with required recording of custodial interrogations. Sullivan (2005), for instance, provides a thorough explanation of the benefits. First, recordings expose and thus aim to prevent police misconduct, which protects suspects, but also officers, from unjustified charges of abuse. Second, recordings provide juries with clear evidence from confessions and inconsistencies in statements thereby alleviating the problem of conflicting testimony from suspects and law enforcement. Third, officers are able to focus on nonverbal cues from suspects because they do not have to record details of the interrogation on paper. Fourth, recordings can serve as training materials to police recruits who are learning interrogation techniques. Finally, recording interrogations suggest to the public that the criminal justice system is dedicated to protecting a suspect's due process rights.

The disadvantages outlined by Sullivan (2005) are fewer, and the main resistance to these laws comes from law enforcement agencies. One potential concern with recording is that suspects may be less likely to confess or witnesses less likely to be forthcoming when they know they are being recorded. Second, law enforcement agencies may be skeptical of proposals from academics or defense attorneys whom they perceive as unsupportive of or unfamiliar with police work. Finally, police agencies claim that recording is either too expensive or not feasible (Kassin, Leo, Meissner, & Richman, 2007). But these arguments are not supported by empirical research (Leo & Richmond, 2007). Leo and Richmond (2007) claim that the initial costs of maintaining electronic recording will pay off in the long run because multiple interrogators need not be present to take notes (as is frequently required when interrogations are not recorded), and officers themselves will spend less time writing statements. And there are additional cost savings. There are fewer trials when police have recorded evidence (Sullivan, 2006). There may be fewer expensive litigation claims related to police misconduct when recordings provide clear evidence of interrogation tactics (Leo, 1996) and fewer cases of wrongful conviction that must be later ameliorated.<sup>1</sup> Furthermore, multiple studies show that recording interrogations does not decrease the “hit rate” of confessions or incriminating statements made by suspects (Leo & Richmond, 2007; Sullivan, 2005) perhaps because many states can legally record interrogations without notifying suspects (L. Oliver, 2005). Even when suspects are notified, Slobogin (2003) reports that they are not deterred from speaking candidly. Finally, evidence from the police themselves runs counter to the argument that they are disadvantaged in some way by recording. Buckley and Jayne's (2005) survey of police in Alaska and Minnesota found that officers believed that recording was more beneficial to prosecutors than defense attorneys.

Other nationwide surveys of law enforcement reveal that once police are required to record interrogations and the practice becomes entrenched in their routine of processing criminal suspects and witnesses, police report that they find this requirement useful and efficient (Sullivan, 2005). It seems unlikely then that requiring recording would place undue burdens on law enforcement.

Historically, problems have arisen when interrogations are not recorded (for reasons noted above), and some states have recognized the importance of mandating recording. Illinois was the first to require recording statewide through changes to the state revised code. In other states, like Alaska and Minnesota, the state Supreme Court implemented the requirement. But legal experts argue that mandates to record interrogations are ideally adopted through legislative change at the state level because they are better able to dictate exactly when and where recordings will take place, what constitutes exceptions to the law, the procedures regarding equipment and storage of evidence, and the consequences of failures to record (Sullivan, 2005).

Having a recording of all interrogations, post Miranda rights, would leave little question about the validity and reliability of statements made by both police and suspects. Furthermore, scholarship has shown that the leading factor associated with wrongful convictions is eyewitness misidentification (Collins & Jarvis, 2009; Trainum, 2016). Studies have shown that between 77% and 84% of wrongful convictions are due to eyewitness error (Garrett, 2011; Huff, Rattner, & Sagarin, 1996; Scheck, Neufeld, & Dwyer, 2000). This type of error is more likely when police officers threaten or badger witnesses during interrogations. False confessions have also led to a number of wrongful convictions. Scheck, Neufeld, and Dwyer (2000)'s data on exonerated individuals suggest that false or coerced confessions were the primary grounds for conviction in about 25% of the first 62 postconviction DNA exonerations, and Garrett (2011) finds that 16% of the first 250 exonerees confessed to crimes they did not commit, corroborating its role as one of the most common causes of wrongful convictions (Feld, 2014; Kassin et al., 2010; Trainum, 2016), but one that scholars claim could be reduced with only minor modifications to state statutes.

Despite these serious concerns, many states appear reluctant to adopt legislation that mandates the recording of custodial interrogations. That said, little is known about why some states institute these laws and others do not because no empirical analyses of state differences in electronic recording exist. Theory borrowed from political sociology may offer some insight. The political preferences of the electorate, legislators, and state executives might impact the likelihood of legislative adoption, but the social characteristics of states may also matter. The present study examines whether sociopolitical conditions within states can help determine why some have passed legislation aimed at protecting the due process rights of those accused of committing crimes and others have not.

## **Theoretical Framework**

### *Political Explanations*

Based on the assumption that decisions about laws and punishments are intrinsically political (Chambliss, 1999; Garland, 2005; Kent & Carmichael, 2014; Yates & Fording, 2005), criminologists have increasingly borrowed from political sociology to help explain the variation in punitive crime control policies. A large body of scholarship now exists to support the idea that the criminal law and the broader criminal justice system are at least partly shaped by the structural context, particularly the political ideology of politicians and the citizenry. Garland (2001), for instance, notes that conservatives generally believe that crime is an individual decision stemming from immorality while liberals are more likely to see the social environment as the root cause of crime. Stemming from this view, Republican Party voters tend to favor harsher punishments and heightened social control of street crime and Republican politicians have regularly used law and order issues to gain



votes from less prosperous, nonminority citizens who resent the underclass and who are more likely to live where violent crime risks are greater (Edsall & Edsall, 1991; Garland, 2001; Kent & Carmichael, 2014; W. M. Oliver, 2003, p. 126). Beckett (1997) shows that both conservative voters and politicians are concerned that criminal courts are too lenient. Given this, one would expect conservatives to be less likely to support policies such as those mandating the recording of custodial interrogations because they provide protections for criminal suspects. Scholars have described two mechanisms that allow political ideologies to translate into legislative change related to the criminal justice system. First, in a democratic system, public preferences should affect laws and criminal justice policy. Second, the ideologies and preferences of those who control the legislative and executive branches of state government may also contribute to the adoption of due process legislation. Both of these processes are outlined and tested below.

### *Republican Politicians*

One way to test the above assumptions is to examine the political composition of the legislative and executive branches. The state executive is responsible for final decisions about changes to law and procedure because she or he has the power to veto legislation and use executive orders to change decisions made by the courts. It is not surprising then that many studies find that the presence of Republican executives predicts a variety of criminal justice outcomes. Studies report that greater Republican political strength is associated with more severe punishments including increased imprisonments at the state or national level (D. Jacobs & Carmichael, 2001; D. Jacobs & Helms, 1996; D. Jacobs, Malone, & Iles, 2012), a state's likelihood of having the death penalty as a possible sanction (D. Jacobs & Carmichael, 2002), and the number of executions in the United States (D. Jacobs, Qian, Carmichael, & Kent, 2007).

Davies, Blaize, and Pollitz-Worden (2009) note that the majority of studies that examine the role of politics on the criminal justice system focus on punitive outcomes such as those noted above. Scholars have paid less attention to how political factors may influence policies and programs that protect due process rights for those suspected of committing crimes. Those that have done so find a relationship between political leanings of jurisdictions and a state's willingness to adopt additional due process protections. Kent and Carmichael (2014) found that states dominated by Republicans are significantly less likely to adopt a set of policies aimed at reducing wrongful convictions. Owens and Griffiths (2012), however, found that the political ideology of a state did not predict whether states had laws that provide for compensation to those wrongfully convicted of a crime.

The makeup of the legislative branch is also likely to influence the adoption of policies that protect due process rights because they dictate criminal justice policy. Specifically, a Republican-controlled state legislature that favors strengthening the criminal justice system will likely be less supportive of laws that are perceived to restrict the ability of the police to interrogate suspects. Prior research generally supports the notion that Republican legislatures advocate for stronger social control of street crime and more punitive laws. For example, the proportion of the state's budget spent on corrections increases with more Republicans in the state legislature (Stucky, Heimer, & Lang, 2007). Similarly, D. Jacobs, Malone, and Iles (2012) found that increases in prison admissions were partly explained by Republican control of state legislatures. Again, only a few studies looked at the effect of Republican legislatures on laws and policies that favor due process. Kent and Carmichael (2015) report that states with Republican-controlled legislatures have more laws that protect criminal suspects from wrongful convictions, and Davies et al. (2009) find that Republican control of the statehouse leads to less state-level support for indigent defense. The goal here is to assess whether a similar mechanism could help explain the adoption of laws that require police to record custodial interrogations.

## *Public Partisanship and Legislative Access*

In their analysis, Zalman, Larson, and Smith (2012) demonstrate that liberals are more concerned about the possibility of convicting innocent people so laws that mandate the recording of custodial interrogations may be more common in states with more Democrats. Republicans, on the other hand, tend to be more concerned about increasing police powers and making the overall criminal justice system more punitive. Prior studies have offered mixed support for these claims. Weidner and Frase (2003), for instance, found that states where more voters supported a Republican presidential candidate had higher rates of incarceration and others found higher incarceration rates of African Americans in particular (D. Jacobs & Carmichael, 2002; Keen & Jacobs, 2009), but other studies find no effect of votes for Republican presidential candidates on incarceration and sentencing decisions (Wang & Mears, 2015).

While these studies contribute to knowledge about how citizen ideology creates variations in criminal justice outcomes, they fail to consider potential interactive effects between citizen ideology and other potentially important factors. In particular, a number of states allow members of the public to place issues on the ballot. Scholars have argued that when citizens are authorized to place issues on the ballot, governments in those jurisdictions become more responsive to public demands than would be the case under a less direct form of democracy (see Lascher, Hagen, & Rochlin, 1996; Lupia & Matsusaka, 2004). Under such a scheme, it seems plausible that policy makers in these jurisdictions would be more likely to adopt policies that are consistent with public opinion to avoid public-driven initiatives that can leave lawmakers with little flexibility if they pass. The regression models presented below will assess this possibility.

## *Racial Threat*

As noted in the introduction, recording police interrogations confers several important benefits, including the potential to reduce public distrust in how police interrogate suspects, which may improve police–community relations. Scholars also claim that recorded interrogations are especially useful in preventing wrongful convictions of racial minorities because citizens of color account for more than 70% of those who have been wrongfully convicted and later exonerated (Innocence Project, n.d.).

Criminologists have long reported that social control varies with the proportion of the population that belongs to a racial or ethnic minority group (cf. Behrens, Uggen, & Manza, 2003; Liska, 1992). The racial threat perspective specifies that a large minority population threatens the interests of the majority group, who then respond politically by demanding, among other things, increased social control (Blalock, 1967). This aligns with empirical research which finds that those of European descent are more fearful of crime and hold more negative stereotypes about racial minorities in places with large minority populations (L. Bobo & Hutchings, 1996; Chiricos, McEntire, & Gertz, 2001; Golden, 2012; Pickett, Chiricos, Golden, & Gertz, 2012; Quillian & Pager, 2010). The perceived threat posed by minority populations' results in support for coercive social control efforts that largely target street crimes committed by minority groups (Carmichael & Kent, 2014; Ruddell, 2005). For example, support for capital punishment is higher in places with large African American populations (Baumer, Messner, & Rosenfeld, 2003), cities with more African Americans have more police (Carmichael & Kent, 2014; Holmes, Smith, Freng, & Munoz, 2008; McCarty, Ren, & Zhao, 2012) and more incidents of police use of lethal force (Willits & Nowacki, 2014), states with more racial minorities spend more on corrections (Stucky et al., 2007) and incarcerate more people (D. Jacobs & Carmichael, 2001; D. Jacobs et al., 2012), and counties with more African Americans have higher jail populations (Carmichael, 2005). Larger percentages of African American residents have been associated with higher execution probabilities (D. Jacobs et al., 2007), more severe

sanctioning of juvenile offenders (Carmichael, 2011; Carmichael & Burgos, 2012), and legislation allowing the use of the death penalty in U.S. states (D. Jacobs & Carmichael, 2002).

While the majority of research focuses on threat produced by African Americans, some of the above studies found a similar effect associated with a large Latino American population. African American communities have a long history of contentious relationships with law enforcement but some scholars claim that Latino American communities also have problematic relationships with local police (Huang & Vaughn, 1996; Walker, 1997) particularly given the increase in local police participation in the enforcement of immigration law (Decker, Lewis, Provine, & Varsanyi, 2009). The most recent test of this ethnic variant of the theory on police behavior found that, controlling for the amount of crime, cities with high proportions of Latino American residents had more police (Kent & Carmichael, 2014) perhaps because police administrators and the public respond to a perceived criminal threat posed by Latino American by strengthening the police force. If Latino American threat influences the adoption of due process protections such as requiring all interrogations to be recorded, then jurisdictions with a large Latino community will be less likely to require police to record interrogations.

Recent studies show that not only is there more social control in terms of harsher punishments in places with many minorities, but there are also more laws that disadvantage criminal suspects, suggesting that due process is less of a concern in places characterized by racial threat. Manza and Uggen (2006) found that states with high African American populations were the most likely to have enacted felony disenfranchisement laws that restrict convicted felons from voting. Whittle and Parker (2014) found that states with large minority populations had more stigmatizing collateral sanctions against convicted felons. Davies et al. (2009) report less state support for indigent defense in states with high levels of racial threat. These studies indicate that laws and policies that disadvantage street criminals and instead favor a crime control model of criminal justice are at least partly produced by responses to racial threat.

But more recent studies argue that simply examining the size of a racial or ethnic minority population as an indicator of threat is too simplistic. Increasingly, researchers have refined the minority threat explanation by looking at how the threat produced by a sizable African American population is conditional on other macro level social factors, namely, political factors. For example, Stucky (2012) reports that arrest rates of African Americans are higher in cities where this group accounts for a greater share of the overall city population, but when the city also has an African Americans mayor, arrest rates of African Americans decline. Carmichael and Burgos (2012) also show that life sentences are more frequent in jurisdictions with more African Americans but the size of the effect is larger in jurisdictions where judges are elected to their office (as opposed to appointed). Findings like these suggest that public policies are not just products of a majority's response to the threat posed by minorities but are also influenced by local politics; however, most empirical studies analyze political ideologies and racial composition as separate factors and fail to consider interactions between politics and race. The present study fills this gap in the existing literature by considering the possibility of a joint effect.

Fluctuations in crime rates may also influence criminal justice policy. Through the media, the public is regularly informed about the extent of crime (especially violent crime) in their communities. This heightened awareness likely creates fear of victimization among the public that, in turn, may spark demands for harsher punishment and possibly less concern for due process rights afforded to criminal suspects. Some empirical evidence supports such a claim. For instance, D. Jacobs, Qian, Carmichael, and Kent (2007) reported that the probability of execution is greater in states with the highest murder rates. This hypothesis is tested to see if similar mechanisms operate when states consider mandating that police record interrogations. Finally, it seems likely that states with a record of convicting innocent people would be more inclined to adopt policies to avoid such errors. To account for this possibility, the models control for the number of exonerations in each state.

## Current Study

Drawing on the literature reviewed above, the possibility that sociopolitical conditions within each state influence state adoption of policies aimed at reducing wrongful convictions is considered. Specifically, the analyses assess factors associated with the adoption of legislations that require the recording of police interrogations of suspects. The present study focuses on political explanations. As outlined in the previous section, both theory and research have demonstrated that political conservatives are less likely to support policies they believe would weaken law enforcement. Given this, the following set of hypotheses related to the political structure will be assessed:

**Hypothesis 1:** States with Republican governors will be less likely to have mandatory recording statutes

**Hypothesis 2:** States with Republican-controlled legislatures will be less likely to support policies that would strengthen due process rights while potentially limiting the ability of police to garner confessions from criminal suspects.

**Hypothesis 3:** States with a more conservative public will be less likely to support the adoption of statutes that require law enforcement to record the interrogation of suspects.

**Hypothesis 4:** States that allow citizens to place issues on the ballot, particularly those in more conservative states, will be less likely to adopt policies requiring recorded interrogations because politicians in these jurisdictions will be more responsive to the policy preferences of their constituents.

Hypotheses are also derived from theory and research on racial threat. Racial threat theory suggests that stronger social control efforts are likely in places with many racial minorities. If this is true, the following hypothesis is expected:

**Hypothesis 5:** States with large racial minority populations will be less likely to restrict law enforcement powers, including their ability to obtain confessions during interrogations which might be constrained when recording is required.

Because the political factors that shape punitive criminal justice outcomes are largely racialized by Republican politicians in order to gain electoral support (Alexander, 2010; Beckett & Sasson, 2004) and because large minority populations may represent a strong political force in their own right which may allow them to influence policy outcomes (Jackson, 1989), there may be less support for laws that aim to protect criminal suspects in states with high racial threat *and* a Republican state executive. Hence, it is expected that:

**Hypothesis 6:** States with many racial minorities *and* a Republican governor will be less likely to have a law requiring the recording of custodial interrogations.

Two additional hypotheses are related to the control factors introduced. They are:

**Hypothesis 7:** States with higher crime rate will be less inclined to increase the due process rights of suspects by mandating that police officers record interrogations.

**Hypothesis 8:** States with a history of wrongful convictions will be more likely to adopt measures to protect against such errors.



## **Data, Measures, and Estimation**

The hypotheses outlined above are assessed using a data set containing social and political variables for all 50 states. Annual data are gathered for each independent variable between 2000 and 2010. The one exception was the percentage minority which was interpolated using census data in 2000 and 2010. The start of the series is ideal because very few (two) states had adopted legislation that required police to record interrogations prior to the year 2000. The analyses also predict the adoption of such policies through 2011. While more states may adopt such policies in the future, those states that wanted to adopt such policies have had ample opportunity to do so. At a minimum, further delay by state legislators in nonadopting states indicates a strong aversion to pursue such a policy. The goal here is to ascertain what social and political conditions in a state might explain why some states adopt due process protections aimed at reducing wrongful convictions and why other appear to reject such policies.

### *The Dependent Variables (DVs)*

Data for the DV were taken from the Innocence Project website ([www.innocenceproject.org](http://www.innocenceproject.org)). The Innocence Project is an advocacy organization founded in 1992 by prominent defense lawyers Barry Scheck and Peter Neufeld. Their mission is to investigate potential cases of wrongful convictions and, once identified, to provide legal representation required to prove the innocence of prisoners. To date, exonerations have primarily been achieved through the testing of DNA evidence. Beyond working to exonerate prisoners who have been wrongfully convicted, the project advances a state-by-state campaign to have policy makers adopt policies that reduce the likelihood that such errors happen in the first place. As part of their efforts, the Innocence Project's advocacy work has involved the development of model legislation for state legislators to consider if they wish to reduce the likelihood of wrongful convictions. Recommendations include instituting laws to allow inmates' access to postconviction DNA testing, laws that require the preservation of DNA evidence, reform to eyewitness procedures, crime lab oversight, regulations related to the use of informants, financial compensation for those individuals wrongfully convicted of a crime, and, importantly, protections against false confessions. Policies aimed at protecting suspects against false confessions have largely included demands for legislation that requires police to record interrogations because evidence suggests that coerced, false confessions are responsible for a substantial share of all wrongful confessions (J. Gould & Leo, 2010; Trainum, 2016). The primary focus here is on the adoption of recorded interrogation legislation in this particular study because, unlike other policy recommendations, recording interrogations are very inexpensive to implement relative to more costly alternatives such as DNA preservation. Thus, while a state's legislative body may be reluctant to adopt some of the policies advanced by the Innocence Project because they may require substantial resources to implement, it is unlikely that a state's aversion to adopting recorded interrogations can be attributed to resource constraints, so one must look for alternative explanations to account for such reluctance.

Over the last decade, a number of state legislatures have passed legislation requiring police officers to systematically record all interrogations in an effort to reduce system errors. As stated above, the goal is to assess the explanatory power of a series of theoretically derived models that may better explain why some states have made these statutory changes and others are reluctant to do so. To this end, the DV is a dummy variable coded "1" in those years when a state had legislation requiring recorded interrogations, otherwise "0." The list of states with legislation requiring recorded interrogations and the political context in those states are listed in "Note" section.<sup>2</sup> The study focuses on the state rather than alternative levels of aggregation because it is primarily concerned with testing political accounts that may be associated with the adoption of recorded interrogation policies and because relevant statutes can only be adopted at the state level.

## *The Explanatory Variables*

Data for the explanatory variables were taken from the U.S. Census, the Innocence Project website, or the Federal Bureau of Investigation's (FBI) Uniform Crime Reports. A number of individual variables to account for political differences between states are included. These include Republican control of the state's legislative or executive branches as well as a proxy measure of citizen ideological preferences. The strength of the Republican Party in each state is operationalized using two separate variables. The first is a dummy variable coded "1" if Republicans control the state legislature using a 55% threshold. The second factor is a dummy variable coded "1" if the state has a Republican governor. A proxy for citizen ideology based on voting in presidential elections is also introduced. Drawing on the scholarly understanding of political ideology, a proxy is used as an indicator of public resistance or support for wrongful conviction legislation. This proxy is a dummy variable coded "1" if the majority (over 50%) of the citizens in each state voted for the Republican candidate for president in presidential elections since 2000. While imperfect, the proxy can capture the extent to which citizens in a state are in favor of adopting policies that can protect against wrongful convictions. Data for all of the political variables were taken from the U.S. Census.

The final politically derived variable is a measure of the degree to which citizens in a state can directly advance legislative change through ballot initiatives. Both a direct effect of allowing citizen ballot initiatives on adoption of due process legislation as well as an interactive model that assesses if state legislatures with a more conservative public and the right to seek ballot initiatives are more responsive to citizen preferences are considered. To capture this possibility, a dummy variable is constructed and coded "1" if a state allows citizen ballot initiatives, "0" otherwise. The list of states that provide a ballot initiative option is collected by the National Conference of State Legislatures ([www.ncsl.org/research.aspx](http://www.ncsl.org/research.aspx)).

Beyond the political factors mentioned above, the models also account for additional theoretically derived measures that may contribute to the adoption of wrongful conviction legislation in a given state. Specifically, variations in criminal activity are accounted for by including the violent crime rate (murder, rape, robbery, and aggravated assault) in each state taken from the FBI's Uniform Crime Reports. The extent that states have experience with cases of wrongful convictions is accounted for by including the number of exonerations in each state. Exoneration data are taken from the Innocence Project webpage. Finally, the influence of minority presence on the adoption of wrongful conviction legislation is assessed using the combined percentage of both the African American and Latino American populations.

## *Estimation*

To predict state-level adoption of legislation requiring police to record the interrogation of suspects, a pooled time-series logistic regression technique is employed. Logistic regression is the appropriate technique because it produces the most reliable estimates when the DV is dichotomous as it is here (see Long & Freese, 2006, for a detailed discussion of regression with categorical variables). It is worth noting that each model builds in an implicit causal order by using explanatory variables lagged 1 year behind the outcome (e.g., values for the explanatory variables in 2000 are used to predict the outcomes in 2001). Finally, the variance inflation factor (VIF) was well below 2.0, suggesting that multicollinearity is not degrading the results (the highest VIF score is 1.58 for percentage of African American).

## **Results**

### *Descriptive Statistics*

Table 1 presents the means, standard deviations, and the range for each of the variables. The table illustrates how varied states are in their willingness to adopt legislation aimed at reducing or

**Table 1.** Predicted Signs and Descriptive Statistics.

Variable	Predicted Sign	Mean 2001	Mean 2010	Standard Deviation Overall	Min Overall	Max Overall
I = Mandatory recording of police interrogations	Dependent variable	0.04	0.31	0.39	0	1
Violent crime rate	—	420.34	366.45	170.32	78.20	822.70
Percentage of minority	—	17.94	21.75	12.66	1.30	50
I = Republicans control of state legislature	—	0.36	0.32	0.49	0	1
I = Republican governor	—	0.58	0.46	0.50	0	1
Percentage of Republican presidential vote	—	50.43	47.84	9.06	26.4	71.5
I = Public initiated ballots allowed	Joint	0.48	0.48	0.50	0	1
No. of exonerations in state	+	0.38	0.36	0.85	0	6

Note.  $N = 551$  state years.

**Table 2.** Correlation Matrix.

Variable Name	1	2	3	4	5	6	7	8
1. Record interrogations	1							
2. Violent crime rate	-.05	1						
3. Percentage of minority	-.09	.67	1					
4. Republicans control of state legislature	-.06	-.10	-.16	1				
5. Republican governor	-.16	.01	.01	.22	1			
6. Percentage of Republican presidential vote	-.14	-.03	.01	.52	.12	1		
7. Public initiated ballots allowed	-.06	-.04	-.28	.23	.12	.23	1	
8. No. of exonerations	-.02	.17	.19	.06	.09	-.04	-.05	1

eliminating wrongful convictions. The data show that in 2001, only 2 states (4%) had adopted legislation to require police to record interrogations of suspects and that by 2011, 15 states required this practice (list of states can be found in Note 2). Additionally, roughly one third of state legislatures were controlled by Republicans and about half of governors were Republicans. Finally, citizen initiated ballot initiatives were possible in roughly half of U.S. states. The goal here is to assess whether or not these sociopolitical conditions influence adoption of an inexpensive policy aimed at reducing the likelihood of wrongful convictions.

Table 2 presents the bivariate correlation matrix. The table shows that the correlations are in the direction predicted by the hypotheses presented above. It is noteworthy that the two strongest *negative* bivariate relationships are political indicators. The presence of a Republican governor and the percentage of the state population voting for a Republican president are the two strongest negative correlates with the outcome (Hypotheses 3 and 1, respectively). The next strongest negative bivariate relationship exists between minority presence and the outcome variable (Hypothesis 5). The multivariate analyses that follow will help determine whether these factors are statistically significant when considered together.

### Multivariate Analyses

Table 3 presents results from the multivariate analyses predicting the probability of state adoption of legislation that requires police to record custodial interrogations. Model 1 is a limited specification

**Table 3.** Pooled Time-Series Logistic Regression Estimates Predicting the U.S. States With a Statutory Requirement That Police Record Interrogations, 2000–2010.

Variable Name	Model 1	Model 2	Model 3
Threat and control variables			
Violent crime rate	−0.028*** (0.007)	−0.032*** (0.007)	−0.031*** (0.007)
No. of exonerations in state	0.031 (0.396)	0.062 (0.458)	−0.099 (0.413)
Percentage of minority	0.328** (0.118)	0.567*** (0.110)	0.373*** (0.104)
Political variables			
1 = Republicans control of state legislature	−0.226 (1.07)	−0.102 (1.091)	−0.402 (1.076)
1 = Republican governor	−2.371** (0.804)	0.992 (1.483)	−2.175** (0.825)
Percentage of Republican presidential vote	−0.432*** (0.095)	−0.474*** (0.099)	−0.353** (0.119)
1 = Public initiated ballots allowed	2.209 (2.620)	3.980 (2.567)	15.782 (11.167)
Interaction terms			
Percentage of Minority × Republican Governor	—	−0.251** (0.085)	—
Public Initiated Ballots × Percentage of Republican Vote	—	—	−0.292 <sup>†</sup> (0.189)
Constant	13.597	11.809	9.380
N (state years)	551	551	551
Wald $\chi^2$	45.640***	76.17***	84.26***

Note. Coefficients above with standard errors are in parentheses.

<sup>†</sup>  $p \leq .1$ . \* $p \leq .05$ . \*\* $p \leq .01$ . \*\*\* $p \leq .001$ .

that includes the racial composition variable, violent crime, and measures of the political climate. This early model shows that, consistent with the Hypothesis 7, states with higher violent crime rates are significantly less likely to adopt legislation that requires recorded interrogations. Hypothesis 6 predicted a negative relationship between minority threat and the outcome; however, it appears that states with larger minority populations are significantly *more* inclined to require recorded interrogations. It seems plausible that politicians in states with a large minority population have become responsive to minority group preferences by adopting policies that strengthen due process protections. This is particularly likely given that minorities are more inclined to think police are discriminatory toward members of their community (Pew Research Center, 2014).

Model 1 also includes four separate indicators of the political climate within each state (to test Hypotheses 1–4). The first two identify Republican control of state government. It appears that states with a Republican governor are significantly less likely to adopt legislation that requires police to record the interrogation of suspects. That said, Republican control of the state legislature does not influence the implementation of such a policy. Why are there such divergent findings associated with Republican control of government? It seems plausible that due process policy adoption such as the mandatory recording of interrogations is at least partly a result of motivation by the governor. This is consistent with a rather large body of research which suggests that public opinion on important issues as well as legislative change are shaped by cues from political elites, with the state governor being perhaps the most influential (cf. Darmofal, 2005; Tolbert, Smit, & Green, 2009).

Finally, Model 1 includes tests of citizen political preferences and the presence of democratic policies that allow the public to advance their preferences through ballot initiatives. As hypothesized, states with a more conservative public (i.e., voting for a Republican presidential candidate) were significantly less likely to have adopted legislation mandating police officers to record interrogation of suspects. Finally, despite expectations to the contrary, states that allow the public to place initiatives on the ballot are not significantly more likely to adopt such policies. Later models assess the possibility of the joint relationship hypothesized.



In order to test Hypothesis 6, Models 2 and 3 add an interaction term to the variables considered in Model 1. The results from Model 2 suggest that racial politics is playing a rather strong role in the adoption of due process protection policies. While Model 1 clearly shows that states with a large minority population were more likely to mandate that police record interrogations, this relationship is reversed in states with a Republican governor. In other words, when there is a Republican governor in a state with a large minority population, there is a significantly *lower* likelihood that the state requires police to record interrogations. This suggests that partisan preferences for certain criminal justice policies operate together with racial prejudices and fears to significantly (above and beyond any individual, direct effect these indicators have) decrease the likelihood that due process protections will be adopted.

Finally, in Model 3, assess claims that policy makers are more responsive to policy preferences of the public when ballot initiatives are allowed by further examining Hypothesis 4 and including an interaction term that considers the combined effect of citizen ideology (voting preferences) and the presence of policies in a state that allow for the public to introduce ballot initiatives. The results point to limited support for such claims by indicating that states with a more conservative public that have been authorized to advance ballot initiatives are significantly (at the  $p > .1$  level) less likely to adopt policies requiring police to record interrogations.

### ***Additional Considerations***

A number of additional indicators and alternative specifications were also considered (not shown, but available from the authors) to see if/how they may explain the outcome or improve the overall predictive power of the models. These tests showed, for instance, that the inclusion of alternative measures of crime such as the murder rate or the overall crime rates (which includes both the violent and property crime rates) did not significantly influence the results (i.e., all significant variables in the models remained so with these alternative measures of crime). Similarly, controls for the region of the United States, population, the economic affluence of each state (median household income and unemployment rates), income inequality (GINI index), or the presence of religious fundamentalists did not reach the level of statistical significance in the models and did not alter the original findings. In addition to tests of other potentially theoretically relevant factors, additional interactions in the analyses were considered. First, interactions between the presence of African Americans and the two other direct political measures in the models were tested. Neither the interaction between the percentage of African American and Republican control of the state legislature nor the racial composition interacted with the percentage of the state voting for a Republican presidential candidate reached statistical significance. Overall, these results suggest that the only interactions that exist are those reported in the tables above and that all other explanatory variables operate best as independent, direct predictors of the outcome. These additional tests and specifications bolster confidence in the robustness of the findings.

### **Conclusion**

Over the last several decades, there has been a growing public concern over the possibility that individuals could be convicted and sanctioned for crimes they did not commit (Zalman, Larson, & Smith, 2012) and scholarly attention has followed (c.f., Garrett, 2011; Huff et al., 1996; Martin, 2001). This heightened concern has led to the identification of specific public policies and practices that appear to significantly contribute to system fallibility (Free & Ruesink, 2012) and it is clear that the failure to record custodial interrogations is one important factor that leads to wrongful convictions because it increases the possibility of false confessions. But individual states can initiate statutory changes that can begin to reduce wrongful convictions and other negative outcomes

associated with the failure to record suspect and witness interrogations. Such legislative changes are necessary because it is increasingly clear that wrongful convictions do not simply result from chance error by individuals in particular courtrooms but instead reflect systemic errors (Zalman et al., 2012). In this study, variation in state policies that mandate the recording of custodial interrogations was examined to find out what social and political characteristics contribute to these vast legal differences. The analysis presented above explored sociopolitical factors across all 50 states over a 10-year period to assess their potential influence on this type of legal change.

Prior scholarship suggests that those interested in understanding change in any criminal justice policy or practice may consider the broader political climate. These studies often base their arguments on partisan preferences for more punitive criminal justice policies (e.g., D. Jacobs & Carmichael, 2001; D. Jacobs & Helms, 2001). Specifically, many scholars have noted the link between political conservatism and punitiveness (e.g., L. D. Bobo & Johnson, 2004; Unnever & Cullen, 2010). This argument is relevant to law and policy that governs the police interrogation protocols because the popular assumption is that a requirement to record custodial interrogations of suspects would constrain the ability of police to garner confessions. In other words, and despite arguments that recording interrogations benefit all parties involved (Sullivan, 2005), a requirement that police record interrogations could be viewed as a benefit to the suspect and a restriction of police powers. Because Republican voters and politicians tend to favor policies that are tough on criminals (Beckett, 1997), a law that largely benefits criminal suspects would be unpopular in Republican leaning states. Based on this assumption and recent studies that reported fewer laws that favor the individual rights of criminal suspects in states with majority Republican legislatures (Kent & Carmichael, 2015) and more policies that limit convicted felons access to social services in states with Republican leaning publics (Whittle & Parker, 2014), it was expected that states with Republican legislatures and governors or many Republican voters would be less likely to have a law that requires police to record interrogations. The findings offered support for the political explanations advanced here.

First, results show that public partisanship matters. Findings indicate that states with strong public support for Republican presidential candidates were indeed less likely to require police recording of custodial interrogations supporting the idea that conservative citizens are less likely to favor strengthening the due process rights of suspects. This result aligns with the finding that states that allow citizens to initiate legislative change through public ballot were more likely to require recording. While little evidence exists suggesting that citizens in these states actually used this direct legislative process to initiate these laws, this finding corroborates the possibility proposed by Lascher, Hagen, and Rochlin (1996) that the simple availability of this option indicates greater government responsiveness to public opinion about state law. Together, these findings confirm claims that the political preferences of the American public influence laws and policies that guide how the criminal justice system handles street crime and criminals. A reluctance to “police the police” through recording interrogations of suspects in places with many Republican voters provides evidence that the public’s preference for “tough on crime” initiatives is reflected in decisions about law and policy at the state level. However, the findings go beyond supporting the general importance of partisanship because results suggest that recording interrogations were less likely to be required in states with public ballot initiative rights and many Republican voters. Thus, empirical support is offered for prior assertions (e.g., Lascher et al., 1996), those politicians are more responsive to the policy preferences of the public when public initiated ballot initiatives are allowed.

Second, results provide evidence that Republican control of the executive branches matters. States with Republican governors were less likely to mandate recording, but only when a substantial minority population was also present, providing additional evidence that political partisanship is necessarily linked to racial composition and racial threat. States with Republican governors are less likely to have laws requiring recording of interrogations, but only in places with many

minorities, suggesting that state executives are sensitive to racial threat and are less likely to support laws that may put restrictions on law enforcement's ability to garner confessions from criminal suspects. Sociologists (Pickett et al., 2012; Quillian & Pager, 2001; Taylor, 1998) claim that racial stereotypes about the typical street criminal and resulting fear of crime fuels some of these reactions. The finding that laws that mandate recording were less likely in states with high violent crime rates supports this assumption.

Contrary to expectations, however, states with Republican-controlled legislatures were not less likely to have a law that requires the recording of interrogations. This is not particularly surprising, however. Voting trends and the party of the governor may be better gauges of political climate than the party affiliations of legislatures because voter turnout is low in most elections for state representatives, so presidential and gubernatorial election data provide a better measure of the public's political preferences. Alternatively, Barrilleaux, Holbrook, and Langer (2002) propose that state legislators are most likely to adhere to party lines and ideologies when there is high electoral competition. Stucky, Heimer, and Lang (2005) applied this idea to imprisonment rates over time and found that partisan politics is most important during contentious elections. It is, therefore, possible that the party of the legislature may only have an effect on law and policy when seats are in jeopardy during close elections, but data to test these possibility were not available. It is clear that future studies should continue to monitor the influence of the general public, the party control of state legislatures, and the party of state executives on criminal justice policy in order to uncover the exact natures of these relationships.

Overall, this study clearly shows how law is structured by social context. The recent data used here (up to 2010) demonstrated that partisanship continues to play an important role in due process policy, despite arguments from some scholars who claim that criminal justice policy-making is becoming less partisan (Beckett & Sasson, 2004; Greenberg & West, 2001). More importantly, results show that partisanship is necessarily intertwined with race and ethnicity. This finding broadens the scope of political and racial threat explanations. The majority of the literature has focused on how politics or racial/ethnic minority threat is predictive of punitive criminal justice outcomes, reporting an increase in coercive social control efforts that largely target street crimes committed by minority groups in places with more racial or ethnic minorities (Carmichael & Kent, 2014; Ruddell, 2005) or more support for the Republican party (D. Jacobs et al., 2007). The present study looked at this perspective from an opposite but complementary view. Findings show that racial and ethnic threat is also useful in explaining a lack of support for laws and policies that *favor* criminal defendants. This fits with criminological assumptions that when crime control is the focus of the criminal justice system, due process becomes less important.

It is clear that recording custodial interrogations benefits all parties involved (Sullivan, 2005). Electronic recordings hold police accountable for their interrogation tactics and this transparency has the potential to increase public trust in law enforcement in a time when it is so crucial to public order in urban communities. Recorded interrogations aide judges and juries in making appropriate decisions (Kassin et al., 2010), so the benefits extend to other parts of the criminal justice process. Electronic recording will not eliminate false confessions, indeed, more attention should be paid to police interrogation tactics in general (Lassiter & Lindberg, 2010), but this measure represents one piece of a strategy that aims to ensure due process to criminal suspects. The present finding that politics, and more specifically, racial politics, influences a state's likelihood to provide due process suggests that support for suspect protections is inconsistent across the United States.

While this study clearly shows how law is structured by social context, particularly the political and demographic makeup of the state, it does have limitations. In particular, while the focus on the adoption of state-level legislation related to recorded interrogations has a number of benefits, it does not allow us to isolate the processes that influence this practice at smaller levels of aggregation (e.g., the municipality). This is potentially meaningful given that a number of municipal police



departments have policies mandating the recording of interrogations in states that do not have legislation requiring them to do so (see the National Association of Criminal Defense Lawyers website for detailed information: [www.nacdl.org/usmap/crim/30262/48121/d](http://www.nacdl.org/usmap/crim/30262/48121/d)). Future scholarship should consider exploring structural conditions within cities to determine if similar conditions identified here are also relevant at the city level.

### **Declaration of Conflicting Interests**

The authors declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

### **Funding**

The authors received no financial support for the research, authorship, and/or publication of this article.

### **Notes**

1. In just one example, in October 2006, a U.S. District Court awarded Alejandro Dominguez 9 million dollars for a wrongful conviction for which he spent 4 years in prison and which was attributed to a false confession elicited by police coercion. Regardless, federal funding is available from federal and other sources to help offset local police costs.
2. Fifteen states have legislation requiring police officers to record interrogations. The states are Alaska, Connecticut, Illinois, Indiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, and Oregon. Ten of the states were controlled by Democrats when the legislation was passed (Democratic governor and Democratic control of the state legislative body). Two of the five (New Hampshire and Missouri) passed the legislation when there was a Democratic governor but Republican-controlled state legislature. Three states passed the legislation while controlled by Republicans (Nebraska, Alaska, and Indiana). It is noteworthy that Nebraska passed the legislation after six exonerations in just 2 years. Also, Alaska and Indiana are the two states that were required by state Supreme Court rulings to record interrogations rather than pass legislation through the state legislative body.

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