

# LUISS



*Department of Political Science*

Chair of Political Sociology

*Bachelor's in Politics, Philosophy and Economics*

## **The crime issue in American politics: security or discrimination?**

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## PREFACE

America is oftentimes presented as “the land of the free”, even if 2.3 million people in the country are held in correctional facilities. This thesis is centred on America’s longstanding trade-off between security and liberty, which hides a political attempt to uphold national security at the expense of certain constitutional liberties. The purpose of this thesis is to argue that America has put in place a process of securitisation that protects its status as a neoliberal economic power in the international landscape. The politicization of the crime issue and the securitization process that followed have not been a response to rising crime rates, but much rather strategic political and social attempts to shape public perceptions in order to legitimise the persecution of lower-class, poor people and minorities by effectively creating a system that protects higher-class citizens and keeps the status quo in place. The context of criminal law neglects many forms of serious and imputable crime and damage perpetrated by corporations or states. The tendency is to filter those down, processing almost exclusively crimes committed by the poor and the disadvantaged. In this sense, Neoliberalism and Securitism go hand in hand in the “land of the free”, as economic and political processes, but also as cultural phenomena. It is important to underline the processes that make America unequal, especially because the image that it has in the international landscape gives it an aura of untouchability. In the last years, there have been increasingly discriminatory events against minorities that have been very easily exploitable by the media because they represent dramatic stories, and therefore are very profitable. These increasingly violent and discriminatory actions of the police sparked the intervention of movements that are, in these years, manifesting to be heard and considered to the point that they started looting. Only looking at violent manifesters is one thing, nevertheless, in this thesis, we consider the longstanding tendency of America towards violence and control.

This paper starts with a historical overview of the crime issue in contemporary American politics divided into three key periods. The first one focuses on early crime control, and it goes from the 1920s to the 1950s. The second period focuses on the 1960s but goes up to the 1990s. This part tackles protest politics and the transformation of crime into a national issue. The third part starts from the beginning of the 21<sup>st</sup> century up until today. In the second chapter, the social construction of the crime problem will be the main focus, as well as the importance of the role of media in shaping public perceptions of social issues. For organisational purposes, this chapter is divided into five subtopics. The first one will investigate the issue of crime in American public discourse and the validity of the “democracy-at-work” thesis which holds that American people’s perceptions and beliefs legitimise the increasing toughness in crime control. Following that, the topic of penal populism will be tackled, as well as the social issue of crime as a political instrument and a campaign strategy. The following part will be dedicated to the “issue package” of crime and drugs. The fourth section

will focus on the culture of welfare and its association with criminal activity. Finally, the role of media and elite claims-making are considered in order to draw conclusions on the American public's perception of crime. In the third and final chapter, the economic and political interests behind the process of securitisation will be explored. Firstly, it is necessary to concentrate on the issue of federalism and centralised security to highlight the artificiality of the process. Secondly, the institutionalisation of law-and-order will be considered and speculated upon. Finally, this third chapter will explore the connections between the get-tough approach and American neoliberalism as well as law enforcement and correctional agencies as political lobbies. In the last part, there will be a focus on the penal-industrial complex. It is blatant that American crime control strategies do not reflect the traditional criminological interest in identifying the real and deep sources of crime and that the securitisation of the US is not part of a process of "democracy-in-action", but rather the contrary as it is the expression of an elitist political effort.

## CHAPTER ONE

### **A historical overview of the crime issue in American politics**

Crime and punishment have been increasingly at the centre of American politics since the 1920s. The American fight against crime has bureaucratic origins. According to the constitutional tradition of the US, local and state law enforcement is primarily the bearer of most crime control responsibilities, while federal commitment is restricted to crimes that strictly violate federal laws or interfere with federal matters, but during the 19<sup>th</sup>-century federal criminal authority was enlarged because of the growth of interstate commerce. The first war on crime started in the 1920s when the federal government (rather than single states) became increasingly responsible for crime control. The 1920s and 30s are, in fact, referred to as “lawless decades”, or crime control decades<sup>1</sup>. The 1940s and 1950s saw police departments across the US continue the trend towards professionalisation, and a rapid expansion of the FBI which quintupled the number of agents in 5 years. During the 1960s, the FBI was reporting (inaccurate) statistical data supporting that the crime rate was increasing, even though it was just property crime rate. This gave great publicity to and generated concern towards the issue of crime, and support for punitive policies increased. The idea that arose was that the civil disobedience of that period was leading to crime and the solution was to be harsher in court sentences, in order to hold criminals accountable for their crimes through punishment. America’s policing became increasingly punitive.

The discourse of law-and-order and the crime and drugs issues were in historical context politically and ideologically useful for Nixon’s, Reagan’s and Bush’s campaigns and American bipartisan politics in general, in order to reconstruct the popular image of the criminal with a racial subtext allowing for more receptivity by the white conservative public. Nevertheless, the effort was not unilateral by Conservatives, as Clinton’s Crime Bill put in place legislation that dramatically worsened the situation. The terrorist attacks of 9/11 have had a huge impact on America’s criminal justice system and many civil liberties took a back seat to safety.

#### **1.1 From the 1920s to the 1950s: Early crime control and the Prohibition era**

In 1920, the 18<sup>th</sup> Amendment marked the beginning of the Prohibition era, which encompassed four presidencies from W. Wilson to H. Hoover, before ending in 1933 under the Roosevelt administration. During the Prohibition era, while consumption of substances did not disappear, cartels were thriving with the illegal alcohol trade. These were years in which crime was boosted, as Prohibition gave birth to modern organised crime, and law enforcement was given a considerable push. This period is identified by many historians and sociologists as the first “war on crime” and it is the beginning of America’s attention to crime rates and the

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<sup>1</sup> Hall K. L., (1989). *The Magic Mirror: Law in American History*. New York: Oxford University Press.

politicization of the issue of crime. This happened even if discrepant with statistical data, so when the crime rate was not rising. In this period, neoclassical theories of crime found immigration and heredity to be a major cause of crime, which justified the governmental policies limiting immigration. Historians oftentimes suggest that this first war on crime was part of a larger political effort to safeguard the position of middle- and upper-class Americans, vis a vis the growing immigrant population. Nevertheless, it is clear that Prohibition and the Depression ultimately contributed to strengthening the federal government and increasing the mandate of the criminal justice system.

In the 1920s there was a larger bureaucratic effort to widen the federal government's crime control jurisdiction and the authority of the Federal Bureau of Investigation, formed in 1908 for that exact purpose. Nevertheless, it came into its own in 1924 when J. Edgar Hoover became its head. A publicity-minded man, he projected the onset of a crime wave that pushed Congress to broaden the mandate of federal law enforcement to encompass prostitution, drugs, and alcohol, as well as a crackdown on immigration and political dissent. The FBI's growth was very gradual during its first decades, but once Hoover was appointed as its director it became much more professional through rigid codes of conduct and a meritocratic policy. By 1930, the power of the Bureau was enhanced by an act of Congress that required them to compile crime statistics to be published in the FBI Uniform Crime Reports. To understand the public relations skills that Hoover had, two things need to be mentioned: firstly, it is quite noticeable how he concentrated on high profile criminals considered public enemies in its first period, as his "poster boys"<sup>2</sup> attracted much mediatic attention and upheld his image as director; secondly, Hoover convinced Hollywood to produce a series of movies promoting the professional and fair image of the FBI agent. He did not focus on the actual growth of organised crime arising from Prohibition until the 1950s and, even then, he went after kidnappers and bank robbers as they were easier to catch and would not have damaged the FBI's high conviction rates. Nevertheless, he won the publicity war, and Congress started a wave of legislation that enhanced the powers of agents with full arrest capabilities, the permit of carrying firearms, and expanded both the number of federal crimes and the FBI jurisdiction.

In 1925, J. C. Coolidge appointed the first National Crime Commission. This body did not accomplish much practically, but symbolically it represents a first intense commitment to fight criminality. In 1926, the Baumes Commission introduced particularly punitive provisions, such as the Fourth Offender Act which entails that when a person is convicted for the fourth time it automatically results in a life sentence, or the Second Offender Act, for a second felony. Moreover, the Commission reduced the number of rules that shortened sentences for good behaviour. Between 1917 and 1927, judges started using the death penalty and

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<sup>2</sup> Gorn, E. (2009). *Dillinger's Wild Ride: The Year That Made America's Public Enemy Number One*, New York: Oxford University Press.

delivered increasingly longer prison sentences. As a result, most Americans felt that crime was one of the most relevant issues of the country, and unsurprisingly President Hoover campaigned and won on a law-and-order platform. In 1929, Hoover charged the Wickersham commission<sup>3</sup> with the duty of directing a survey of American criminal justice at the national level<sup>4</sup> and he appointed Bates to lead the newly formed US Bureau of Prison, which meant that the federal system would set a standard for states' correctional facilities. Hoover gave Wickersham and the commission the task of coming up with methods to enforce the 18<sup>th</sup> Amendment, surveying the federal criminal justice system, and reviewing the administration of justice. In 1933, all the Bureau's functions were transferred to the Division of Investigation, in 1935 it was renamed FBI, and it took the institutional form known today. In 1934, President Franklin Roosevelt turned nine Anti-crime bills into law, enlarging the powers and jurisdiction of the FBI. The principles of Roosevelt's New Deal were applied to criminal justice and revolutionised the face of law enforcement through investment in professional police training programs and enlarging the number of issues for policing. Hoover also convinced President Roosevelt to remove the limitations on information gathering and allowed the FBI to investigate individuals for their suspected beliefs rather than their actions. By the 1940s, each state had developed a police force based either on the state police or the highway patrol model.<sup>5</sup>

During the 1940s, the federal government was much more centralised, and the economic Depression was ended by wartime industry. The crime issue briefly disappeared from the political landscape until the 1950s, when the Kefauver Commission started warning people about the dangers of organised crime, and shortly after the Congress passed laws calling for mandatory sentences for drug offenders. In addition, public support for these measures by government officials (such as Truman's attorney general and the FBI director Hoover) resulted in increasing public concern about delinquency. The whole inquiry of the Kefauver Committee and the Congressional Hearings were broadcasted to a national audience. The number of inmates within these two decades was still consistently rising, mainly because of the punitive nature of drug penalties since the crime rate in those years was declining. The prison facilities studied by the American Prison Association in 1953, because of the riots that started in those years, found that the reasons for the latter were excessive size, unwise sentencing, and officials' indifference. One crucial step during those years towards the end of segregation was the *Brown v Board of Education* decision, which overturned *Plessy v Ferguson*, establishing the "separate but equal" doctrine. The chief justice of the Supreme Court, Warren, held that separate but equal facilities were intrinsically unequal and placed his liberal stamp on many other decisions of the Court during his mandate. The decision led to racial violence in most southern states and with little opposition from state police.

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<sup>3</sup> Attorney-General George Wickersham chaired the National Commission on Law Observance and Enforcement, and his presence was so dominant that the commission took his name.

<sup>4</sup> Walker, S. (1998). *Popular Justice*. New York: Oxford University Press.

<sup>5</sup> Johnson D. R., (1981). *American Law Enforcement: A History*. Wheeling, IL: Forum Press.

The disproportional representation of African Americans in the prison system can be found throughout the whole history of America, but already started from this first period. After World War I reduced immigration, industrialists from the North looked at the south for unskilled labour <sup>6</sup>, and black people started migrating to the north. In the post-war years, northern prison statistics were reporting that African Americans were imprisoned at a higher rate compared to white people for the same crimes. Already in 1926, the US Bureau of the Census data shows that while African Americans made up 9.3 percent of the population, they represented 31.3 percent of the prison population.<sup>7</sup> By the 1930s, there were as many American people in prison as there were in the military, especially in Big Houses, which were integrating mass production into the practice of incarceration (Cox, 2009). According to National Surveys, by 1933 the United States held about 4.300 penal institutions. Nevertheless, in the 1920s and 1930s, the “new penology” came about and some kind of effort was made with the implementation of concepts like diagnosis, classification, and the introduction of specialised personnel like psychologists even if still in a very small ratio compared to the number of inmates. From 1932 to the early 1960s electoral politics was very much influenced by The New Deal coalition, an alliance of urban ethnic groups and the white South. The growing black migration to the North resulted in the increasing participation of black people in politics. Because of this, in 1948 H. S. Truman started pressing for a civil rights platform in order to maintain white southern support for the Democratic party. Only in the 1960s, the portion of the black vote was large enough for the Democratic Congress to pass the first civil rights measures, and finally, Kennedy campaigned on a civil rights platform in 1960.

## **1.2 From the 1960s to the 1990s: Protest politics and the national crime issue**

Transitioning from the 1950s to President Kennedy’s decade the crime rate was low. Sociologist Bell commented “there is probably less crime today in the United States than existed a hundred, or fifty, or even twenty-five years ago” <sup>8</sup>. Nevertheless, in the 1960s crime remerged in national politics as a widespread issue. During those years, the FBI was reporting higher crime rates, and this would continue until its peak in the 1990s. By the 1970s, crime rates had increased by 126 percent, and in 1980 by another 64 percent. This resulted in harsher crime policies that would militarise law enforcement and put more and more people in prison. In this period, the Civil Rights movement was arising. Politicians saw the opportunity of using the civil disorder to their advantage. The introduction of law-and-order and the construction of the crime problem in the 1960s were shaped by the political discourse and activities of Barry Goldwater, southern officials, conservative politicians, and segregationists who identified civil disobedience as a leading cause of crime. They attempted to characterise Civil Rights protests as criminal behaviour to augment opposition to them. Law-and-order

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<sup>6</sup> McKelvey, B., (1977). *American Prisons: A History of Good Intentions*, Montclair, NJ: Patterson Smith.

<sup>7</sup> Christianson, S. *With Liberty for Some: 500 Years of Imprisonment in America*. Boston: Northeastern University Press.

<sup>8</sup> Bell, D. (1960). *The End of Ideology*. New York: Free Press.



became a central campaign issue resonating particularly with conservative white Americans. Following the Supreme court's 1954 *Brown v. Board of education* decision, the use of "direct action tactics" by activists was quite common to force southern states to desegregate. Initially, they had wide public support outside of the South.

During its first years in office, President J. F. Kennedy did little to placate the protests, and only when the brutality of the southern states was getting daily television reports the President sustained civil rights legislation. Nevertheless, this was seen by conservatives as an act that was "rewarding lawbreakers". There was a re-emerging of the crime issue and crime rhetoric, but this time as national issues. The civil rights issue became a national one, as well as the characterisation of civil rights protests as criminal. This led to the common image that even pacific protest leaders like Martin Luther King Jr. were criminals. In 1964, the presidential campaign of Goldwater was mostly on law-and-order grounds even if it was not felt like a priority by the public yet (especially street crime, which is what Goldwater was focusing on). This attitude triggered attention towards national security issues by the public, and during Johnson's mandate the tendency of preferring national bodies rather than local law enforcement was increasing. During the 1964 presidential campaign, L.B. Johnson stressed that crime control is a local responsibility and that the statistics of the FBI were only the result of other factors, like the growing tendency to report crimes and accuracy of officials' reports. He sustained that welfare programs were fighting crime and were not one of its causes. When the Civil Rights Act passed in 1964, the liberal discourse was sustaining that social reform, inclusion and the "war on poverty" programs would eradicate crime at its roots, by stressing the social conditions that generate crime. While the Voting Rights Act of 1965 finally gave black voters a chance to use their voice, Conservatives were "fighting crime" through law-and-order dialectics that had a racial subtext and by discrediting welfare programs (referring to "the culture of poverty"). In March 1965, President Johnson declared the "war on crime" and presented Congress with the Law Enforcement Assistance Act, establishing a federal role in local law enforcement ("police, prisons, and the courts"). This Act permitted the transfer of military weapons and equipment from the defence sector to local law enforcement to this day. This proved that the conservative discourse was more effective on the electorate, which caused liberals to change their plans and their dialectic<sup>9</sup>.

In 1968, Congress passed the Omnibus Crime Control and Safe Streets Act, which created the Law Enforcement Assistance Administration (LEAA). It was charged with the duty of supporting state and local crime control by giving aid to authorities. The agency started with 60 million dollars, but by 1982 it had spent 7 billion dollars. Social reform was downplayed, as most liberals' position now was that social long-term solutions had to be accompanied by short-term law enforcement. While the liberal position became milder,

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<sup>9</sup> Johnson, L. B. (1965). *Special Message to the Congress on Law Enforcement and the Administration of Justice*. The White House.

the conservative position went one step further into Securitism by launching a tough critique of rehabilitation based on the potential for the arbitrary and discriminatory exercise of power. This meant that liberals did not have a valid alternative to the conservative viewpoint on crime anymore. Nixon's point of view was that "the deterioration [of respect for the rule of law] can be traced directly to the spread of the corrosive doctrine that every citizen possesses an inherent right to decide for himself which laws to obey and when to disobey them"<sup>10</sup>. Nixon campaigned with a neoclassical approach to crime, which means that he reckoned the cause of a crime being not social factors, but not enough restrictions on the natural criminal impulse of humans. His solution was more convictions and a stricter approach: a critique of liberal permissiveness. Men are accountable for their actions<sup>11</sup>. Wallace also campaigned on law-and-order grounds, while Humphrey shyly offered a more moderate approach, not of repression of crime, but liberation and protection from it, and not of fear but hope<sup>12</sup>. The crime issue was a very highlighted one in the elections, and it generated huge attention from the media. Crime, political dissent, and race were merged in the political discourse. Bigger amounts of money were spent on police training programs to contain riots and protests.

Once in office, Nixon's promises were hard to maintain, because the Federal government did not have much authority to deal with street crime in other states. Even if it was possible to intervene in some way, the local government would get recognition for the federal work. Therefore, what the administration did was to exercise vigorous symbolic leadership using tough-sounding rhetoric and pressing for symbolic rather than effectual legislation. After that, the media reported that the crime rate was not lowering, even after Nixon's verbal toughness. In response to this, federal aid to local law enforcement was enhanced even further and more dramatically. The High Impact Anti-Crime Program was targeting cities of medium size with Law Enforcement Assistance and Administration (LEAA) discretionary fund. At the same time, a new statistical assessment of the fight against crime was being developed to conclude that progress was being made. It showed that even if crime was not decreasing, the rate of increase in the crime index was decreasing. The federal government has a lot of authority on narcotics control, and they certainly acted on it as part of the anticrime fight as a last attempt to reduce the crime rate. To justify it, administration officials said that the majority of street crimes were committed in order to gain money for drug addictions. In 1970, the Organized Crime Control Act was created. It sought the eradication of organised crime by establishing new penal prohibitions and enhanced sanctions<sup>13</sup>.

President Nixon declared the "war on drugs" and talked about drug use as "public enemy number one." In 1971, the Rockefeller laws created a mandatory minimum sentence of fifteen years to life for possession of

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<sup>10</sup> Nixon, R. (1966). *If Mob Rule Takes Hold in the US*. U.S. News and World Report.

<sup>11</sup> Republican National Party. (1968). *Republican Party Platform of 1968*. The American Presidency Project.

<sup>12</sup> Finkenauer, A. *Crime as a National Political Issue, 1964-1976*.

<sup>13</sup> United States Code. (2013). *Title 18*. Vol. 12. Washington Dc: Government Printing office.

four ounces of narcotics, which was the same sentence for second-degree murder. The White House strongly influenced Congress to pass questionable provisions, such as the “no-knock”, which allowed agents to enter a house without a search warrant, or the “preventative detention” allowing judges to detain a suspect for sixty days waiting for trial. The centrality of the crime and drugs issues went on until the 1974 Watergate scandal which brought the attention of the public from street crime to office crime. Reagan’s presidency in 1980 marks a new era in criminal justice policy, which includes the reversal of many liberal institutions. In 1982, the LEAA that used millions of dollars to try to better law enforcement was abolished and became the National Institute of Justice. The economy was in recession and what the critics call “Reaganomics” has been found to stress class and race tensions even more. Both Reagan and Bush called out a drug crisis and acted on it by boosting spending for law enforcement, despite the difficult situation many Americans were in because of the economic recession. Reagan doubled the FBI’s funding. At the end of the 1980s, he announced a “zero tolerance” policy. This was followed by a huge number of drug seizures, arrests and convictions, and the system became increasingly more punitive in order to avoid a crack cocaine epidemic. As chief executive, Reagan appointed conservative-minded justices to the Supreme Court, which became more tolerant of police behaviour and less inclined towards the rights of defendants<sup>14</sup>. Drug laws were rewritten, and federal money went from schools to prisons. Despite all the efforts and the harsh legislation, overall drug use did not lower.

A National Household survey by the Department of Health found that crack cocaine was used by 0.6 million people, against 11 million for marijuana and 1.5 for powder cocaine. Nevertheless, 40 percent of people were incarcerated for crack cocaine, 33 percent for powder cocaine, and 12 percent for marijuana<sup>15</sup>. Increasing media coverage created growing concern from the public towards drug use, which led conservatives to push even more for legislation, and there was a clear transition from a rehabilitative intent to a punitive one. In 1984, the Comprehensive Crime Control Act was passed. It created the US Sentencing Commission, which declared that “the rehabilitation of a criminal was of secondary importance to protecting the public and sentences should reflect the seriousness of the crime committed”<sup>16</sup>. It eliminated parole in the federal system and set mandatory minimum-sentencing guidelines. Harsh sentences with no consideration for mitigating factors increased America’s prison population even further. Incarceration rates went from 100 per 100,000 residents in the middle of the 20th century to 760 per 100,000 in 2008. Using clever law-and-order rhetoric, President Reagan managed to blur party lines with the “Reagan Democrats”. The hedonism of the Reagan years included lowering taxes and cutting government spending, but the overall American debt grew because no cuts were made to the very expensive items such as social security and defence spending.

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<sup>14</sup> Bodenhamer, D. (1992). *Fair Trial: Rights of the Accused in American History*. New York: Oxford University Press.

<sup>15</sup> Beck A. J., Mumola C. J., (1999). *Prisoners in 1998*. (<https://www.bjs.gov/content/pub/pdf/p98.pdf>).

<sup>16</sup> Sullivan L. E., (1990). *The Prison Reform Movement*, Boston: Twayne.

In the historical years in which the police force was gaining more and more power, capability, and discretion, Bush took the rhetoric one step further, with campaign adverts that represented him as the candidate that would have enforced law and maintained order. The Willie Horton case was a turning point in his campaign, as it let him surpass Dukakis by a margin of votes that has not been equated since 1988. The conservative bias of the Supreme Court was reflected in decisions like *Gates v. Illinois* or *United States v. Leon*, which permitted the usage of warrants with factual errors and inadequate probable cause, giving police a “good faith” exception to the exclusionary rule. The first mandatory minimum sentence for drug offences passed in 1986, the Anti-Drug Abuse Act, which envisioned a very controversial clause with a huge disparity of sentence for crack cocaine and powdered cocaine. Between 1985 and 1995, Congress passed and implemented twenty new mandatory sentencing laws, applying to most kinds of crimes from murder and rape to drunk driving and drug offenses, even for simple possession without intent to distribute. This took away discretion from judges who can consider the offender’s life history and their potential for rehabilitation, which is necessary especially for drug charges. By the late 1980s, the war on drugs filled America’s prison population to unprecedented levels, and an absurdly disproportionate number of inmates were Black or Latino. In 1993, three-strikes laws were approved, requiring life sentences without parole for third-time offenders of serious felonies. Initially, it did not distinguish between violent and non-violent criminals. These laws resulted from the murder of Polly Klaas, a young girl who was brutally killed by a man who had been in and out of prison his whole life. The media, news, and television clearly influenced criminal justice policy in this case and in many more. Low-level offenders received life sentences for relatively minor crimes because they had previous charges.

President Clinton was the first democrat to use law-and-order dialectic, departing from the usual liberal “lenience” on crime by stating that “you can’t have civil rights without order and safety”. He declared to be in favour of the death penalty and drafted The Violent Crime Control and Law Enforcement Act of 1994, which was a prime example of the neoclassical attitude towards crime. It is referred to as the largest crime control bill in the history of the United States. It was a 30 billion dollars package that extended the three-strikes policy to the federal system and created lengthy sentences for repeated offences. The idea behind it was that prisoners serving longer sentences would be much older at the time of their release into society, which would reduce the number of crimes. Nonetheless, the number of people imprisoned tripled from 1980 to 1994, and many more prisons were built and were shortly overcrowded. This act decimated communities of colour and accelerated mass incarceration. In fact, the number of inmates when Clinton took office was 1.3 million, and when he left there were 1.95 million<sup>17</sup>. President Clinton also vowed to add 100,000 more officers into the nation’s police force, even if, according to a review of almost thirty case studies on the size of police, there is no consistent

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<sup>17</sup> Lussenhop, J. (2016). *Clinton Crime Bill: Why Is It So Controversial*. BBC News ([www.bbc.com/news/world-us-canada-36020717](http://www.bbc.com/news/world-us-canada-36020717)).

evidence that a bigger police force decreases violent crime<sup>18</sup>. Clinton reduced sentences for federal drug crimes by exempting first-time nonviolent drug offenders from the mandatory minimum penalties, but he left in place many Reagan sentences and expanded the federal death penalty<sup>19</sup>. When Clinton finished his mandate, the violent crime rate declined, but experts find the causes to be independent of the law. For the bill to pass, the White House had to accept the Republican proposal of using 10 billion dollars of federal government money to fund prison construction between 1995 and 2000. These funds would only go to the states that passed “truth-in-sentencing” laws, eliminating ‘good time’ provisions. According to these laws, offenders had to serve 85 percent of their prison sentence. This was very effective.

### **1.3 From the 1990s to 2021: The war on terror, current populist right, and coded language**

During the Bush administration, the crime focus was more around terrorism. “Enhanced interrogation” techniques (torture) were approved by the justice department. The approach of Bush to national security led to the controversial approval of policies adopted in secret. This meant that detainees disappeared into secret CIA prisons, the use of torture was diffused to gather evidence, as well as the rendition of suspects to countries that famously practice torture. The 1996 Anti-terrorism Act inaugurated during the Clinton Administration included the federal death penalty for terrorism charges and penalties for people providing them with information. In 2009, the US Supreme Court had the largest number of criminal case filings since 1932, the year before the end of Prohibition (when most cases were alcohol-related). In this period, there was the largest increase in immigrant crimes, which were mostly related to re-entry by immigrants or abuse of visas and entry permits. Many critics agree that civil liberties in America have often contracted and expanded throughout its history, rather than being fixed and immutable.

In 2001, President Bush started the “war on terror” and signed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, more commonly known by its acronym USA Patriot Act. This act expanded government powers to monitor private conversation and mail, and it allowed police to obtain search warrants without notifying the owner of the asset. This act also made it easier to deport non-citizens who were suspected of being a threat to security. Some critics argue that it was rushed into law by an extremely nervous Congress in the aftermath of 9/11. The act was meant and created to confront the challenges of terrorism, but law enforcement found it to apply to other crimes, such as cybercrime, money laundering, and political corruption. The act had a “sunset provision”, which means that its major provisions would have expired unless they were extended. Nevertheless, it was renewed in 2006 by

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<sup>18</sup> Eck J. E., Maguire E. R., (2000). *Have Changes in Policing Reduced Violent Crime? An Assessment of the Evidence*, in *The Crime Drop in America*. Cambridge: Cambridge University Press.

<sup>19</sup> Yassky, D. (2016). *Unlocking the Truth About the Clinton Crime Bill*. New York Times.

(<https://www.nytimes.com/2016/04/10/opinion/campaign-stops/unlocking-the-truth-about-the-clinton-crime-bill.html>)

Bush. The attacks of 9/11 finally took the US policing from community policing to the homeland security area. In fact, after the attack, there was the largest reorganization of federal bureaucracy since World War II<sup>20</sup>. The Bush administration claimed that it was acting to “safeguard civil liberties while strengthening the US department of justice”.

In 2009 Barack Obama became the first African American president of the United States. Obama’s criminal policy plan was to increase justice for the citizens that America had forgotten. Nevertheless, once in office, Obama and Eric Holder, attorney general, expressed their joint support for the renewal of some controversial provisions of the Act that were supposed to “sunset” at the end of the year, including the national security letter (NSL) provision, which lowered evidentiary requirements for NSL, allowing the FBI to ask companies to turn in information about their customers and patrons. Another was the blanker gag order. Both provisions have been regarded as violations of the 1<sup>st</sup> and 14<sup>th</sup> amendments. The other was the lone wolf provision, which allowed the FBI to get court orders to wiretap a terrorist suspect who was not connected to any terrorist group or government. Another very controversial provision was extraordinary rendition, which entails apprehending suspects in any part of the world and transporting them to the USA, where they must appear in front of state or federal court. Rendition was extensively criticised for affiliation with black sites (secret detention centres), ran by the CIA in territories that are outside of US jurisdiction. Connected with them, there have been allegations of abuse and mistaken identities. Bush acknowledged black sites in 2006, and they were officially closed by Obama in 2009. Nevertheless, he still supported rendition by that year. Obama stayed true to his campaign promises in 2009 when he announced a ban on “enhanced interrogation” techniques. Obama expanded the ban to include the prohibition of inhumane treatment of prisoners.

In 2007, marijuana arrests reached a record high, being 47.5 percent of the national drug arrests. Even if the USA permits medical use of marijuana, under the 1970 Federal Controlled Substances Act, it is considered in the highest category of potential abuse. Despite many medical studies on the beneficial characteristics of marijuana, federal prosecutors refused to abandon the prohibition approach until the end of the Bush administration in 2008. Obama represented a more pragmatic figure in the context of the drug debate. In May 2009, Obama nominated Kerlikowske and vowed to desist from using the term “war on drugs”, because it implied that the government was at war with its citizens. Obama’s goal was to redirect federal resources from law enforcement and anti-trafficking efforts into the prevention and treatment of drug abuse, while law enforcement directed toward drug offences was 75 percent to 90 percent of the budget during Bush’s administration.

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<sup>20</sup> Oliver W. M., (2007). *Homeland Security for Policing*. Upper Saddle River, NJ: Pearson.

In 2007, a census bureau report revealed that 3 times as many African Americans live in prison than in colleges. As of 2010, the US had the world's highest incarceration rate. The country contains only 5 percent of the world's population, but 25 percent of the prisoners of the world. Although America's crime rate declined, the total prison population continued to increase in the last twenty years. Experts agree that a rate of incarceration so high is responsible for the diminishing crime, but other social political and economic factors played their roles, such as harsher sentencing laws, lack of social safety nets, and a legacy of racial tumult (Powers, 2004). The number of aging inmates has been rising, as a result of the get-tough policies and legislation sending people to jail at a very high rate as well as eliminating or reducing the only lever represented by parole and "good time" programs. Starting in 2007, the prison reform movement, also called the "reinvestment movement" was responsible for some state funds being invested in drugs and mental health programs. Following this wave, in 2008 Bush signed the Second Chance Act amending the Omnibus Crime Control and Safe Streets Act of 1968. The Act was designed to readdress the reintegration of ex-convicts into society and to lower recidivism through the expansion of job training programs and placement services. This Act saw Bush go back to the "compassionate conservatism" rhetoric that he campaigned with and let go of once he was in office. Between 2008 and 2010 quite a few "compassionate release" programs were enacted.

American correctional facilities are very racially segregated places. This results from prison policies aimed at separating ethnic and racial groups. Since 9/11, illegal immigrants and noncitizens have become the fastest-growing segment of the prison population. This is worrying because non-residents do not automatically have the right to legal representation, which means that the only way they aren't left powerless in the system is if they have money. The National Drug Threat Assessment of 2009 stated that "Mexican drug trafficking organizations represent the greatest organised crime threat to the United States"<sup>21</sup>. According to their assessment, the maximum drug threat was represented by cocaine, then methamphetamine, then marijuana, heroin, pharmaceutical drugs, and ecstasy (MDMA). According to it, many urban street gangs were increasingly becoming involved in the distribution in connection with drug trafficking organizations. In the 2000s, many new criminal justice trends developed from state movements, bringing to the diminished reliance on mandatory minimum sentences and a tendency to lessen sentences. There was a development as far as the diminishing of black imprisonment rate, paralleling the decline in the number of black offenders between 2000 and 2008. Nevertheless, this is probably due to a lower aggressiveness over drug offences<sup>22</sup>. These numbers still mean that black males are incarcerated at a rate almost seven times bigger than white males. Obama did lead a national conversation on race, sometimes addressing episodes of violence and racial tension<sup>23</sup>, but still, he increased the budget of the Bureau of Prisons in 2011, making it 6.8 billion dollars.

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<sup>21</sup> National Drug Intelligence Center. (2009). *National Drug Threat Assessment*, Department of Justice, Washington, DC.

<sup>22</sup> Sabol W. J., et Al. (2009). *Prisoners in 2008*. Bureau of Justice Statistics, U.S. Department of Justice.

<sup>23</sup> Shear M. D., Alcindor Y. (2017). *Finding Michael His Voice on Race*. New York Times.

Obama's milestone and one of his most significant efforts was the Fair Sentencing Act, signed in 2010. This act, an example of virtuous congressional bipartisanship, reduced penalties for crack cocaine offences, diminishing the disparity in sentencing between crack and powder cocaine. The act set up an independent commission in 2014 that adjusted the guideline ranges for drug crimes in a more equitably, and the president commuted eight federal inmates. This was the first time that "retroactive relief was provided to a group of inmates who most likely would have received shorter terms if sentenced under current drug laws, sentencing rules and charging policies..."<sup>24</sup>. In 2015, at the NAACP annual convention, President Obama expressed his intention to correct the criminal justice system in his different components, "communities, courtrooms and cellblocks", where he also addressed the restoration of voting rights for felons that served their sentences and the elimination of the "prior conviction" box in employment forms. Especially in his last years in office, he tried to employ his executive power to correct disparities, reduce excessively harsh sentences and cut costs. He pushed Congress for a sentencing reform bill<sup>25</sup>, and surprisingly enough he was the first president to visit a federal correctional facility<sup>26</sup>. However, the Congress was not sharing his views that the nation, both Republicans and Democrats, ended up giving excessively punitive sentences to an exaggerated number of people, often non-violent offenders, ignoring the moral and financial cost that that would have on the country, so the federal prison system numbers kept growing. Pitts commented on the get-tough war on crime saying America was "applying simplistic answers to complicated questions... bumper sticker solutions have a way of bringing unintended consequences"<sup>27</sup>. In 2014, recreational marijuana sales in Colorado became the nation's first legal cannabis industry. The debate on whether drug abuse needs to be classified as an addiction and mental health problem rather than a criminal offence has not stopped the American government from spending 1 trillion dollars over "the war on drugs" over the last forty years. Despite the state evolution on drug policy, at the federal level marijuana is still classified in the same category as heroin, as far as addictive potential.

Donald J. Trump, a consistent law-and-order advocate in his younger years, announced his candidacy in 2015, referring to Mexican immigrants as criminals, drug dealers, and rapists. His presence and comments throughout his public life gave life to a phenomenon unknown under any other modern president: the cult of his personality became a symbol of white supremacy and nationalism, a sense of triumphalism that Jon Meacham, Pulitzer Prize winner, described as "it's saying we're American- and you're not"<sup>28</sup>. While violent crime rates were at historically low levels, the small increases in the numbers (homicides increased 10 percent

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<sup>24</sup> Savage C., (2013). *Obama Curbs Sentences of 8 in Crack Cases*. New York Times.

<sup>25</sup> Lederman, J. (2015). *Obama Urges Criminal Justice Reforms*. Houston Chronicle.

<sup>26</sup> Baker, P. (2015). *Obama Takes Reform Message Behind Bars*. New York Times.

<sup>27</sup> Pitts L. Jr. (2015). *American Justice System Not Worthy of the Name*. Houston Chronicle.

<sup>28</sup> Barry, D., Eligon, J. (2017). *A Rallying Cry or Racial Taunt Invoking the President: Trump!*. New York Times.



in 2015) were enough to call for a dangerous crime wave that necessarily required a return to punitive tactics and tough police action. During his speech in 2016, Trump used the phrase “law and order” four times, depicting a dangerous image of urban centres and promising to restore safety to them, which reminded a lot of listeners of the lock-em-up language of the 1980s (especially since both African Americans and Mexicans are minorities). During the campaign, Trump and Hillary Clinton debated over police strategies and specifically over the effectiveness of stop-and-frisk policing. According to Trump, it was not only constitutional (even if declared unconstitutional by a federal court) but useful because it saved lives. Clinton disagreed. Even if it took a while to register in the popular consciousness of the American people, they were forced to confront the issue of the use of deadly force by police because of a series of killings of unarmed black men over the past 10 years<sup>29</sup>, after which very few police officers received a felony conviction, a phenomenon that criminologist Frank Zimring called “a civil rights crisis”<sup>30</sup>. Over the years of harsh criminal policy, law enforcement has become increasingly militarised.

During the Trump administration, Attorney General Sessions began to reverse the guidelines put in place when Obama was in office, according to which states could develop legal cannabis state programs without federal interference. Sessions sustained that cannabis is a threat to society, even if there is no legitimate evidence, and survey data indicates that legalization has not resulted in an increase of use among teenagers, on the contrary in some states teen use is lower now than before legalisation. Studies looking for a correlation between legalisation and increased crime have found none. On the contrary, prohibition in the past did cause an increase and cannabis laws have burdened society and minorities with criminal records, which complicates their chances to find decent jobs and housing. In states where medical use of cannabis is permitted, fewer painkillers are prescribed, and fewer people overdose from opioids<sup>31</sup>. Sessions has been a faithful implementer of Trump’s vision and is responsible for dramatically changing the Justice Department deviating from its historic mission of defending civil rights, through the approval of very unconstitutional, homophobic, and racist initiatives like the anti-Muslim immigration ban or like the *Masterpiece Cakeshop v. Colorado Civil Rights Commission* decision. In the latter, Sessions was on the side of the baker who refused to bake a cake for a marriage that involved a gay couple, supporting a constitutional exemption from a non-discrimination legislation for the first time<sup>32</sup>. While Obama vowed to phase out private prisons at the federal level, Sessions overturned the ban<sup>33</sup>. Between 2000 and 2018, the number of individuals housed in private prisons increased 45 percent. Trump’s presidency ignited a firestorm over race, religion, civil rights and gave hope to white supremacists. If we look at violent crime rates, they have decreased, but one type of criminal activity that

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<sup>29</sup> Zimring F. E. (2017). *When Police Kill*. Cambridge: Harvard University Press.

<sup>30</sup> *Ibid.*

<sup>31</sup> Neill Harris, K. (2018). *Why Sessions’ War on Weed Won’t Work*. Houston Chronicle.

<sup>32</sup> Cole, D. (2018). *Trump’s Inquisitor*. New York Review of Books.

<sup>33</sup> Williams, T. (2018). *Glimpse Inside Private Prisons is a Disturbing View*. Houston Chronicle.

continued to rise over 2017 is hate crimes, more than 70 percent regarding race, religion, or sexual preference. The current democratic President Biden might represent a ray of hope in the sense that he is not making explicitly controversial and racist comments, and he did not claim to be the law-and-order candidate, so the public is not expecting particularly punitive criminal policing.

## CHAPTER TWO

### The social construction of the crime problem and the role of media

Considering Weber's concept of *vielseitigkeit* (which refers to the multiplicity of meanings associated with reality), Garland points out that crime-related issues are socially and politically constructed and acquire meaning through their interpretation. Crime does not affect policy decisions, but rather the way in which the crime is perceived and the political positions arising from that perception. Media, public opinion, and politics (and policies) are interconnected in complex ways. There is a complex and issue-specific relationship between public priorities and government policy initiatives. There is extensive evidence that perceptions of the gravity of the crime problem are determined and influenced by opinion leaders, be that media or the head of state. The war on drugs did not reflect the magnitude of the problem nor any public disapproval of drug use, but rather the agenda of the federal administration of the time. After the US Crime Bill, Gallup published a survey that revealed that over 80 percent of respondents believed that crime was the most serious threat to individual rights and freedoms. Only 41 percent of Americans identified the lack of economic opportunity as a more serious danger.

#### 2.1 Crime in American public discourse and the democracy at work thesis

When Weber refers to *vielseitigkeit*, he is underlying the many-sidedness of reality that social constructivists like Bourdieu in "In other words" point out. Garland, in his inquiry about the crime issue, believes that social objects are multi accentual. Social actors fight between them in order to select a way of framing issues. There are two main and contrasting conceptions of justice. The consensus perspective holds that the legislation and the administration of justice are a reflection of an agreement throughout society on issue topics such as the relative seriousness of crimes. According to this conception, the criminal just system gives harsher sentences to some crimes compared to others because of the general societal view, which is to say because this is what society as a whole believes. Violent street crimes are more serious than white-collar crimes, and the sentencing reflects this degree of societal consensus. Contrarily, the conflict perspective highlights the opposite: an absence of consensus. Conflict theorists reckon that specific crimes are punished with harsher sentences because the dominant social class has been able to impose its view upon the system. In the view of Garland's competing issue frames, one has had the best on the other.

In the last few years, statistic polls have registered a decline in public support for the criminal justice system, as most people reckon it is excessively lenient and set towards the protection offender rather than the rights of the individual victim. Following Packer's models of criminal justice, this would represent a due process model, which envisions that the justice system should include many safeguards to protect the rights of

the accused, even if that makes it harder to secure a conviction. Americans view the system itself as a cause of crime because when asked to state the causes for the increase of crime rates, they mentioned the leniency of the criminal justice apparatus. The American public would rather the state adopt what Packer defined as the crime control model, according to which the prevention of crime and the punishment of the offender take precedence over protecting the rights of the offender. No stage of the system escapes public criticism, but courts and correctional authorities are more criticised than the police.

Public opinion plays a significant role in criminal justice policymaking, not only because policymakers consult public opinion surveys, but also because public views are directly engaged in the criminal justice process, as American judges have to face re-election. This makes them more responsive, while in many cases their European counterparts are appointed for life. Politicians both at a state and federal level value public opinion. It is clear that in order to ensure compliance with legislation, the government needs to make sure that the public believes that the laws are legitimate (Robinson and Darley, 1995). For a punishment to be just, public views on the gravity of the crime must be considered to elaborate an equitable punishment for diverse kinds of offences, as the 8<sup>th</sup> Amendment of the Constitution prohibits cruel and unusual punishment. This requires the public to hold the same values and a general consensus on the acts that represent the most dangerous threat. The order of priorities of different groups internally to society differs, therefore it is the government choice which group's priorities to take into consideration. Supporters of the consensual model like Durkheim believe that criminal law reflects "the collective consciousness of society" and criminal laws are made to protect common community values through enforcement. Marxist thinkers, on the other hand, reckon that people from different social classes and ethnicities disagree about what acts should be criminalised.

Law-and-order emerged as a key issue during elections, sometimes a decisive one like in the case of the Willie Horton incident. Provisions like the three-strikes legislation passed after public pressure, and legislators and policymakers can use public opinion to advance their policy agendas. Nevertheless, people's perception of social issues like crime depends on many factors, for example, whether they have been victimised. Social and cognitive psychology research shows that is certainly not accurate, that people do not use information rationally and scientifically and the way people respond to information depends on numerous factors, such as their prior attitudes. Most of the time, information is incomplete and for crime and justice issues there is also a moral dimension that cannot be overlooked. For instance, the specificity of a crime story influences the punitiveness of the public's response (Doob and Roberts, 1984; Stalans and Diamond, 1990). The public often over-estimates critical statistics on crime and recidivism rates and, on the other hand, underestimates the severity of the justice system. Lord et al.'s (1944) concept mapping technique yields information about what beliefs are most accessible, the connection among them, and the sorts of beliefs

available in memory. This technique can also assess the principled nature of opinions and whether people have conflicting values about a category of people.

The most common misconceptions of the public are that crime rates are always rising, that a high percentage of crimes are violent, and that many criminals re-offend, which explains the punitive nature of the public's reaction. Prior knowledge and context shape interpretation and responses to both detailed stories and abstract questions, and how people assign meanings to them. The general public ideology on crime is that it is committed by a small identifiable group of people with a certain disposition and temperament and that it can be prevented through harsher penalties that systematically exercise deterrence on offenders. This implies that offences are not committed because of external circumstances but because of the specific personality attributes of the criminal, which are less likely to change. Accordingly, American state information systems carry criminal record information on 50 million individuals.

This tendency derives from biological theories of crime, which assume that criminals are distinct from non-criminals, and are biologically prone to crime. They started in the 19th century when Lombroso suggested that criminals are atavistic (evolutionary throwbacks), and they share common physical attributes. Lombroso's biological positivism that attributes crime to biological characteristics has inspired contemporary biological theories that focus on biochemical conditions, neurophysiological conditions, genetic inheritance, and intelligence. On the other hand, sociological theories of crime stress the context rather than the individual, suggesting that crime is shaped by external factors. One sociological theory was elaborated by Shaw and McKay in the 1920s and 30s and denominated social disorganisation theory. According to it, patterns of delinquency are the highest in poor areas, where healthcare and housing are deficient. The theory finds the causes of crime to be social, specifically neighbourhood dynamics and the breakdown of social norms due to ethnic diversity and competing cultural traditions. Drawing from Durkheim's explanation of the breakdown of social norms and rapid social change, Merton (1957) developed the anomie/strain theory according to which criminal activity is due to a growing gap between the cultural goals of a society (or a group of people) and the structural means that are provided to them for achieving them. The frustration arising from the gap between means and goals forces some people to commit crimes. In *The Exclusive Society* (1999), Young develops a theory of crime that relates it to structural and cultural processes altogether. The structural processes he considers are the dismantling of the welfare state and the increasing gap between the rich and the poor since both of these contributed to the exclusion of minorities and disadvantaged groups. Contemporary American consumer capitalism emphasises abundant consumption and material success, which contributes to growing feelings of deprivation of the "less successful". Different contemporary theories look at physical space (e.g., defensible space theory), social disorder (e.g., broken windows theory), or social opportunities that inspire criminal activities (routine theory).

In the 1950s and 60s, concepts of status frustration and differential opportunity emerged and were theorised by subcultural theorists in North America in order to explain the criminality of disadvantaged groups. Cohen conducted a study on the criminal activity of young and lower-class individuals and elaborated on the concept of status frustration. Lower-class young people created their own subcultural system of values as they could not adhere to middle-class cultural goals. Cloward and Ohlin underlined the differential opportunity structures that are available to them in different contexts, namely the criminal structure, the conflict structure, and the retreatist structure. The first one draws them to crime, the second one to violence, and the third one to drug abuse. Another theory worth mentioning is the Social Control Theory, which does not strictly explain why people commit crimes, but more specifically the opposite effect: why people obey legislation. Hirschi's theory, elaborated at the end of the 1960s explains conformity to social norms with strong social bonds. When these are broken or weak, people become deviant and commit crimes. Social bonds have four key elements: attachment, commitment, involvement, belief. When the attachment is strong, expectations of conformity are stronger. When commitment to a certain lifestyle is strong, an individual will have much more to lose by committing delinquent acts. The more an individual engages in law-abiding behaviour, the less time will be spent in law-breaking behaviour. Belief is connected to family and upbringing, which strongly influences deviance.

Right realism sees individuals as rational actors, capable of weighing the benefits and disadvantages of each action in a fully informed and lucid way. It appeared around the 1980s in order to explain rising crime rates, which were enough to declare the failure of sociological theories. This approach, brought on by Wilson, Murray, Cornish, and Clarke, to mention some of them, elaborates a theory that holds that individuals decide to commit crimes, as well as the time and place. A range of policy initiatives arose from theories of rational choice, using different strategies that were supposed to reduce the number of opportunities for crime, like increasing surveillance, better design of cities, and concealing assets. Contrarily to the latter, left realism envisions that crime affects the lives of the disadvantaged in a disproportionate amount, because of concepts like relative deprivation. Crime is due to groups or individuals perceiving to be unfairly treated or disadvantaged compared to other groups or individuals in society, through a subjective assessment. Another explanation for criminal activity is social, political, or economic marginalisation, which determines the creation of subcultures.

In short, the debate is whether the right path for criminal justice policy is a punitive one, which entails building more correctional facilities, passing harsher sentencing legislation and increasing the number of police officers, or a rehabilitative one, which would mean investing in crime prevention and social development, and increasing the number of social workers. Since the 1930s, America's answers to this

question have been various, but the general trend is a punitive one. The democracy at work thesis holds that increasing preoccupation with the issue of crime by the public results in the adoption of law-and-order policies. It is in contrast with the constructivist academic literature that highlights the socially constructed nature of crime and drug use. The modernist rehabilitative initiative is based on penological modernism, which is the foundation of criminal justice and social welfare. It stands by the interpretation that deviant conduct is at least partially caused, and not only freely chosen. It entails rehabilitation as the right principle for corrective measures. Considering the two main alternative discourses on crime, there has been an emphasis shift from rehabilitation and reintegration to a social control system that structures and limits the choices and the behaviour of individuals, through deterrence and punishment (what Garland calls “therapeutic nihilism”). This shift is reflected in the Neoclassical discourse that sees criminals as freely choosing and rational agents, as well as cultural theories highlighting moral depravity of criminals find the solution to be deterrence, retribution, and public safety through incapacitation. Another solution is the new penology (elaborated by penologists and experts), who are uninterested in the symbolic dimension of punishment and find technocratic and practical techniques to manage crime. The shift towards this and the liberal critiques of rehabilitation of the 1960s and 1970s are parallel to the policy shift. Garland points out how penal organisations in America have been vulnerable to external political pressures because the ideological shift does indeed coincide with a political and governmental change of orientation.

## **2.2 Penal populism: crime as a political instrument and a campaign strategy**

Law-and-order policies are an expression of penal populism. Roberts reckons that “penal populists allow the electoral advantage of a policy to take precedence over its penal effectiveness”. According to this view, law-and-order policies are directed at electoral success, much rather than reducing crime rates or ensuring justice. He lists three basic elements of penal populism. The first one is enormous attention to the attractiveness of policies. The second is an intentional or negligent disregard for the actual effects of policies. The third is the inclination towards a simplification of public opinion and an assumption of its nature. Penal populism consists of the neoclassical dichotomy between pure and corrupt people. The politicization of the crime issue, penal populism, and law-and-order as its expression influenced state and local policy, the expansion and reorientation of the crime control system, and the development of the penal industrial complex.

The issue of crime is not inherently a social control issue, but it is constructed as such by social actors and therefore the extent to which it is included in the political agenda and its urgency depends on the pervasiveness of the imagery that surrounds it. This gives rise to complex cultural processes that influence the formation and expression of the perceptions of the public. The war on drugs of the 1980s was ignited at a time when the rate of crime incidence was declining. The public’s propensity to identify crime and drugs as

America's most important issue is not primarily retraceable to the actual incidence of them, but it is much more and consistently connected to prior political initiatives. Ever since the 1960s, conservatives have pushed the notion that criminal behaviour has socioeconomic causes, and the individuals that commit crimes are naturally inclined to break the law. This is part of a larger political project that includes the replacement of social welfare with social control as a principle for state policy.

The neoclassical pessimistic view sees men as inherently deviant and necessarily calls for the expansion of the social control apparatus as an obligation for the state, rather than ensuring civil rights, welfare, and the reduction of social inequalities as a duty. As soon as American people started pushing for the latter in the 1960s, conservative politicians advanced their vision of the security and social control state. To legitimise this project and their connotation and interpretation of crime-related problems, as well as their critique of the welfare state, they pushed the idea of an undeserving and dangerous criminal underclass. The law-and-order approach is particularly popular among those who hold racially and socially conservative views and have racially charged hostility towards the underclass. This has been crucial as a diagonal strategy for the swing voters.

Furthermore, law-and-order policies and populism share a performative style. At the roots of law-and-order policies there is a very fine constructed coded language, which is very adaptable to different situations. The type of language used is direct, simple and emotional, fear-evoking. Lakoff defines it as post-truth, as objectivity shapes perceptions less than emotional factors. With empty rhetoric and questionable truthfulness, anything can be depicted as a danger, and anyone as a criminal, especially to uneducated masses. Moreover, law-and-order policies and populism create social contrast. This broad appeal to fear, which can be applied to immigration, protests, and civil disobedience (or invasions, riots, and crime) is something to which people have historically responded. One example of the elasticity of this rhetoric, and a prime instance of penal populism, can be found by comparing the 2016 and the 2020 political campaigns of Donald Trump. Looking closely, the tactic and the language remained coherent, but the "others" (in the typically populist dichotomy "us versus the others") are different. In 2016, the threat was immigration and the potential crime and economic danger that it represented. In 2020, his very lively rhetoric is much rather addressed to "radical socialists" and protesters, much like Nixon at the time of the Civil Rights movement.

Populist law-and-order policies represent a political Rorschach test. This is to say that they survive by adapting themselves to what the public is fearing the most and changing along with public opinion. As obvious as it might be, it is worth mentioning the role of the media, central in shaping public opinion and diffusing this rhetoric of fear of change, and resentment for those who are bringing it about. The Reagan administration started pressuring law enforcement agencies and institutions to ignore white-collar crimes and shift their focus



on street crimes and violence.<sup>34</sup> White-collar crime was excluded from the crackdown on crime, as well as corporate and domestic violence because regarded as “not the kind of street violence about which the Task Force was organised”<sup>35</sup>. The explanation for the focus on street crime, together with the racial connotations that accompanied it, is very accurately explicable in terms of the electoral strategy of the Republican Party. Richard Wirthlin, the director of the planning committee for both Reagan and Bush, declared that the key swing voters were ethnic Catholics, labour and blue-collar workers<sup>36</sup>, working-class men and families, and the best way of appealing to them was based on the social issues, especially law-and-order ones. In fact, the Republican platform in 1980 was based on the “firm and steady application of criminal penalties”, increased use of the death penalty, and the “firm punishment of drug pushers and drug smugglers with mandatory sentences”<sup>37</sup>. The emphasis on street crime and drug use was instrumental to generate support for conservative economic and social policies, regarding individual impulses and vices as the cause for social issues rather than the rest of society.

### 2.3 Crime and drugs as “issue packages”

Today’s Drug Enforcement Administration (DEA) was developed in 1973 from the Federal Bureau of Narcotics (FBN) which dates back to 1930. By the late 1930s, 35 states embraced the Uniform Narcotic Act, regulating different types of drugs from cocaine to opium and its derivatives and Congress passed the Marijuana Tax which made its recreational use illegal. Prohibition of alcohol did not work and provided an opportunity for organised crime to enter a new and profitable market. Reagan paid particular attention to the issue of street crime, but once he was in office, he understood the institutional difficulties that he would have encountered with this project, and he shifted the attention from street crime to street drugs. While at the beginning of his mandate, public attention for drug abuse was low, after Bush talked about drugs as the “most pressing problems facing the nation”, a New York Times and CBS News Poll reported that 64 percent of the American public believed the same.<sup>38</sup> Just like criminal activity, drug use and abuse were defined as a social control issue rather than socioeconomic or public health crime in political discourse, identifying the contraction of civil liberties as a just solution to this problem.

The trend towards strict law enforcement became more common as many Democratic policymakers also were advocating for tough anticrime and antidrug legislation. Liberals and conservatives alike started drawing on the vast cultural legacy that constructs the image of the poor as undeserving and dangerous,

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<sup>34</sup> Pear, R. (1980). *Reagan’s Advisor’s Giving Top Priority to Street Crime and Victim’s Aid*. New York Times.

<sup>35</sup> Davis, D. S. (1983). *The Production of Crime Policies*. Social Justice/Global Options.

<sup>36</sup> Moore, J. (1981). *The Campaign for President*. Ballinger Pub. Co.

<sup>37</sup> Republican National Party. (1980). *The Official Report of the Proceedings of the Republican National Convention*.

<sup>38</sup> New York Times/CBS News Poll. (August 1990). Pp. 2-4.

through discussions on crime and drug use. Nevertheless, scientific research does not support this image. There has been extensive social scientific research on the relationship between drug use and crime, but the results that arose are ambiguous. The general results prove that the two coexist in some social groups, but not in others. In the cases where the relationship exists, criminality precedes drug use<sup>39</sup>. Much of the association between drugs and violence derives from the illegal nature of the drug market and the socioeconomic context of fights over market share (Goldstein, 1989; Brownstein et al., 1992). Contrarily to these empirical difficulties, the connection between crime, drugs, and violence stayed intact and strong in politics and public general ideology alike. The war on drugs put in place by Reagan and Bush was inspired by this connection and further reinforced it.

The origin of the war on drugs came from the 1982 attempt of Attorney General Smith to enlarge the budget of the Justice Department, which is when he declared that it was necessary to launch an official war on drugs. Shortly after, Reagan announced his administration's effort to do so. The emphasis on the need for a tough approach to crime facilitated the initiation of a war on drugs and shaped the nature of the whole campaign<sup>40</sup>. Reagan's administration had been underlying the necessity of enlarging law enforcement and punishing drug abuse, but before 1986 the rhetoric was addressing drug pushers and narcotraffickers, after that it was amplified to include casual drug users as well. "Drug abuse is not a private matter. Using illegal drugs is unacceptable behaviour. And the costs are paid by all of society"<sup>41</sup>, said Reagan. Individuals were responsible for themselves. Bush carried on with this same attitude.

Even though public support for the war on drugs was central for its legitimisation and expansion, it is blatant that this public support was at least partially generated, as public support did not increase before Reagan declared an emergency<sup>42</sup>. Political and media attention and concern towards the issue only increased in the summer of 1986. In 1985 the DEA director in the New York City office explained his strategy by saying:

*In order to convince Washington, I needed to make it [drugs] a national issue and quickly. I began a lobbying effort and I used the media. The media were only too willing to cooperate, because as far as the New York media was concerned, crack was the hottest combat reporting story to come along since the end of the Vietnam war.*<sup>43</sup>

These claims-making activities are powerful because the news almost exclusively reports emerging trends and emergencies in law enforcement or criminal activity. As Fishman put it, the success of this strategy of

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<sup>39</sup> Chaiken, J. M., Chaiken, M. R. (1990). *Drugs and Predatory Crime*. The University of Chicago Press.

<sup>40</sup> Zimring, F. E. and Hawkins, G. (1992). *The Search for a Rational Drug Control Policy*. Cambridge University Press.

<sup>41</sup> Reagan, R. (1986). *Remarks at a White House Kickoff Ceremony for National Drug Abuse Education and Prevention Week*. The American Presidency Project.

<sup>42</sup> Gallup, G. Jr. (1991). *The Gallup Poll, 1990*. Rowman and Littlefield Publishers; Roberts, J. V. (1997). *Public Opinion, Crime and Criminal Justice*. The University of Chicago Press.

<sup>43</sup> Stutman, R. M., Esposito, R. (1992). *Dead on Delivery*. Grand Central Publications.

intermedia influence was obvious as the primary source of information of New York media was law enforcement<sup>44</sup>. Therefore, the majority of the media outlets in this period were reporting drug-related news and the epidemic of crack-cocaine and related violence, as well as directing interest into the solution of enhanced surveillance and control policing<sup>45</sup>.

Media attention was interpreted as a sign of increasing public concern about drugs, as polls report that public concern only raised following Bush's national address in 1989, concentrating solely on the drug emergency. It stayed at the centre of American politics until the 1990s when the Persian Gulf War started. Bush overlooked drugs during the campaign of 1992. This is a consequence of the failure of the war on drugs, as drug-related emergency room visits did not decrease, and cocaine and heroin supplies in the US were increasing. When the drug issue encountered a bipartisan consensus, with the Democratic platform of 1992, it came back into the political agenda with Clinton's administration. The consequences of the law-and-order policies of the 60s and the Reagan-Bush war on drugs that kept drugs a major public issue together with criminal violence can be seen in the Anti-Drug Abuse Act of 1986, which substantially increased maximum sentences for drug trafficking crimes, imposed mandatory minimum sentences for possession and trafficking crimes and provided for the deportation of aliens who after immigration were victims of addiction, or had a conviction for a controlled substance crime<sup>46</sup>. It also increased enormously the mandatory sentences for possession of small quantities of crack cocaine<sup>47</sup>. As Tonry pointed out in *Malign Neglect*, these provisions had a disproportionate effect on minorities, especially African American youth.

Despite the evidence that the use of illegal drugs is evenly distributed by race<sup>48</sup>, the war on drugs has had more disruptive effects on minority communities. Survey data shows that 13 percent of all monthly drug users are African American, 35 percent of arrests, 55 percent of convictions and over 70 percent of prison inmates for drug possession are black or Hispanic<sup>49</sup>. These numbers show the huge effort of law enforcement of fighting minority communities. The focus on crack cocaine is indicative of the racially diverse consequences of the war on drugs. The habit of smoking cocaine was already diffused in middle and upper-class communities in the late 1970s, but the dangers of this drug were only strongly publicised after crack cocaine, a less expensive form, appeared in the inner city around the second half of the 1980s. The Anti-Drug Abuse Act put in place penalties from 5 to 20 years for possession of less than 100 dollars' worth of crack cocaine<sup>50</sup>. Looking at sentencing, each gram of crack cocaine is the equivalent of 100 grams of powdered cocaine, while before

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<sup>44</sup> Fishman, M. (1978). *Crime Waves as Ideology*. Oxford University Press.

<sup>45</sup> Reinerman C., Levine, H. G. (1997). *Crack in Context*. Berkeley: University of California Press.

<sup>46</sup> Weld, W. F. (1987). *Handbook on the Anti-Drug Abuse Act of 1986*. US Department of Justice.

<sup>47</sup> Bailor, B. S. (1989). *A Practitioner's Guide to the Anti-Drug Abuse Act of 1986*. Washington DC.: American Bar Association

<sup>48</sup> US Department of Justice, *Sourcebook of Criminal Justice Statistics, Tables 3.103-3.105*, contained in Tonry, M. (1996). *Malign Neglect*. OUP USA.

<sup>49</sup> Donziger, S. (1996). *The Real War on Crime*. Harper Perennial.

<sup>50</sup> Bailor, B. S. (1989). *A Practitioner's Guide to the Anti-Drug Abuse Act of 1986*. Washington DC.: American Bar Association.

1986, federal sentencing laws regarded possession of the two equally. Moreover, street crack dealers buy their powdered cocaine from large-scale retailers<sup>51</sup>. During the Reagan administration, the media mischaracterized crack as a more prone to violence, stronger, more addictive drug. Crack offenders are likely to be charged with more serious offenses than other substance offenders<sup>52</sup>, and black people are more likely to be convicted for crack offenses than white people, which use more powdered cocaine<sup>53</sup>. Finally, the Act was not the result of the scientific assessment of the relative dangers of the two forms of the same drug, creating very serious sociological consequences.

## 2.4 Crime and the culture of welfare

The rhetoric of law-and-order was mobilized by the opposition to the civil rights movement, composed of southern governors and law enforcement officials. When civil rights became a national issue and protestors began demanding welfare rights, the battle over state policy got more intense. The public debate was concentrating on the competing images of the “deserving” or the “undeserving” poor, criminal or drug addict. Conservative rhetoric was characterising these problems as examples of immorality, bringing forward the former. In the 1960s, Kennedy toured rural Appalachia. Following that, Harrington’s “The Other America” became a best-selling book. In order to explain the number of poor people (40-50 million in that period), intellectuals referred to Lewis’ “culture of poverty” concept. It depicted poverty as a way of life, inherited through generations rather than resulting from the context. This was appropriated by conservatives, which were already emphasising behaviours of individuals rather than their setting and context for criminality. This justified the image of the “undeserving poor”<sup>54</sup>.

Similarly, Moynihan published an infamous report attributing black poverty to the family structure and their subculture, calling it a “pathological tangle”:

*a community that allows large numbers of young men to grow up in broken families, dominated by women, never acquiring any stable relationships to male authority, never acquiring any set of rational expectations about the future- that community asks for and gets chaos. Crime, violence, unrest, disorder, are not only to be expected, but they are very near to inevitable. And they are richly deserved.*<sup>55</sup>

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<sup>51</sup> If one looks at the process of making crack cocaine, it is less refined than powdered cocaine, but according to the US Sentencing Commission, the purity of substances is not to be considered for sentencing.

<sup>52</sup> Belenko, S., Fagan J. A., Chin, K. L. (1988). *Criminal Justice Responses to Crack*. SAGE Journal.

<sup>53</sup> Morley, J. (1995). *Crack in Black and White*. The Washington Post.

<sup>54</sup> Reagan, R. (1984). *Remarks at the Annual Conference of the National Sheriff's Association in Hartford, Conn.* The Presidency Project.

<sup>55</sup> Reagan, R. (1983). *Remarks at a White House Ceremony Observing Crime Victims Week*. The Reagan Library.

America, therefore, indulged in long discussions on the behavioural properties of the least fortunate, attributing poverty to the lifestyle choices of individuals or communities. This intent of promoting cultural reasons for poverty led conservatives to stress the behavioural pathologies and in particular the criminality of the poor. There is a strong racialised nature in this imagery and crime-related behaviours with racial connotations and emotional characteristics were very effective signifiers of the supposed immorality of the poorer class. What Katz hypothesised is that “when the poor seemed menacing, they became the underclass”<sup>56</sup>.

In short, the rhetoric on crime and drug issues was utilised and exploited to diffuse the image of the dysfunctional nature of the underclass and to promote individualistic explications of a multitude of social problems. By 1972, after the welfare state emerged in America because the welfare rights movement pressed for it, 3 million Americans received benefits like the Aid to Families with Dependent Children (AFDC). Due to the increasing black migration from rural areas into northern cities, a substantial number of Americans who were receiving said Aid were African Americans. This gave way to theories attributing poverty to the rejection of work ethic, which entitled conservatives to argue that welfare aid encouraged non-work-oriented lifestyles and proliferating poverty, with a gendered dialectic that referred to “welfare mothers” failing to teach their children the skills and values that tilt them towards productive work. The disreputability of black women was centred on charges of sexual promiscuity, while males were seen as unproductive and lazy members of society. The culture of poverty and the culture of welfare threatened self-discipline and promoted parasitism (both legal such as welfare dependency and illegal like crime). Crime and social pathologies were, according to this rhetoric, rooted in family instability and worklessness which derived from welfare permissiveness.

The belief that social inequality is criminogenic pushed liberals to believe that the war on poverty would contribute to the reduction of crime. Critics of the liberal perspective were sustaining that social or economic assistance programs for the poor were excessively lenient, and detrimental to them (“Government became a drug, providing temporary relief, but addiction as well”<sup>57</sup>). According to them, aid programs like the AFDC, pushed by liberals, would not only keep the poor in their economic condition, but they were also responsible for the rise of the crime rates, as they were detrimental to morality and responsibility towards criminality<sup>58</sup>. Crime was, for them, a consequence of welfare and social programs. On the other hand, conservatives were more effectively trying to help them and better their situation through cuts on public assistance programs and investment in the expansion of the criminal justice system and law enforcement. Reagan’s main point was that social help programs were an illegitimate function of the state, while the central

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<sup>56</sup> Reagan, R. (1984). *Remarks at the Annual Convention of the Texas State Bar Association in San Antonio*. The Reagan Library.

<sup>57</sup> Reagan, R. (1984). *Radio Address to the Nation on Proposed Crime Legislation*. The Reagan Library.

<sup>58</sup> Hale, C. (1989). *Economy, Punishment and Imprisonment*. Contemporary Crises.

obligation of the government was towards social control and policing. The GOP strategy, described by Lee Atwater, consisted of the following:

*There are always newspaper stories about some millionaire that has five Cadillacs and hasn't paid taxes since 1974... And then they'll have another set of stories about some guy sitting around in a big den saying so-and-so uses food stamps to fill his den with booze and drugs. So it's which one of these that the public sees as the bad guy that determines who wins... ”*<sup>59</sup>

Therefore, political elites might have consciously directed the perceptions of the public towards their interpretation of who is the “bad guy”. Nevertheless, with time the American public has become more aware and less likely to adhere to these structural explanations.

## **2.5 The role of media and elite claims-making**

Crime is everywhere, from fiction to news, as conflict lies at the base of all dramas. The amount of media coverage on crime stories explains the public interest in criminal justice, as well as the restricted nature of their knowledge of the criminal justice system. The information that is diffused is not reflecting the true nature of crime as it is recorded in official documents, statistics, or victimisation surveys. Media provokes a distorted view of reality. The American model of procedural justice certainly heightens the drama. Events in the courts follow the adversarial model that sees two hypothetical equals that represent opposing sides. The European inquisitorial model, on the other hand, might be perceived as less compelling for the public. This might be a factor in America's interest in crime and justice. US Courtrooms admit televised cameras, and citizens can participate at least passively in every major trial just like the jury. American media coverage of crime stories has always been extensive, and edited criminal summaries are streamed on television in programs like Inside America's courts. American cinema and television also flourish with police/FBI movies. “Dragnet” was the first one put on television in the 1950s, providing great public relations for the LAPD and law enforcement more broadly. It founded the police procedural genre, which is one of the most successful and enduring in American television history.

A characteristic of modern society is media as a fundamental source of information about the world. A poll suggested that over 90 percent of the respondents declared that media is their principal source of information about crime specifically. It is clear that news media performs a very important function regarding the setting of the agenda: it does not necessarily tell the public what to think, but it effectively tells them what to think about<sup>60</sup>. The social and political issues that receive particular attention from the media are likely to be

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<sup>59</sup> Edsall M. D., Edsall, T. B. (1992). *Chain Reaction*. W. W. Norton & Company.

<sup>60</sup> McCombs, M. E., Shaw, D. L. (1972). *The Agenda Setting Function of the Mass Media*. Oxford University Press.

mentioned as the nation's most important<sup>61</sup>. Stories that are discussed very specifically through episodic news frames are more likely to induce individualistic attributions of blame, while general thematic stories that identify public issues in a general and historical context provoke the opposite<sup>62</sup>. Both the quantity and the quality of media images and stories influence the public's perception of social issues and how to solve them. In media channels, officials are privileged in exposure, so they represent important actors in the formation of political and public opinion, and the creation and shaping of popular culture. The mutual interdependence of state politics and mass media in America is not only strong but it has strong consequences, for example, that political and state officials are privileged in defining and interpreting social problems compared to other non-state actors. Political elites have more access to mass media and, having the ability to shape it, they frequently represent the sources of the depiction of "issue packages" that identify liberal permissiveness with rising crime rates. The punitive trend in policies is not much due to a worsening crime situation, nor due to public perceptions, but caused at least partially by political attempts to shape the public view towards crime, drug addiction, and problematic conduct attributed to poor communities. There is a tight relationship between the reported incidence of crimes, levels of public concern about crime, and support for punitive policies.

Public concern is strongly connected to prior political initiatives on crime and drug issues. It does not only and not primarily result from an increase in the incidence of crime, but much more from the diffusion of punishment and control as the main solutions to criminal behaviour through political, ideological, and discursive processes. Studies suggest that the news and media have an effect on the perceptions of crime seriousness. In these, two competing hypotheses have been tested: the desensitization and the anchoring hypothesis. The first option was that seeing violence on television de-sensitised Americans to the seriousness of crimes, while the second was the opposite effect, meaning violence of television inflates the perception of them. A negative correlation between the frequency of media use and the seriousness of ratings for crimes would mean that the first one was correct, otherwise one would observe a positive relationship. The second option and a positive relationship emerged from different analyses. In fact, seriousness ratings of crimes were significantly higher for people who were high media users.

Generally, the legitimacy of the governing institutions of a country rests on the fact that leaders respond to the will of the public that is expressed through official and formal political mechanisms. Nevertheless, modern democratic prominence of public opinion led governments to give way to it as it is<sup>63</sup>. Modern democracy provides techniques for the creation, shaping, channelling, and mobilising of public opinion. Especially for creating and shaping it, broadcast media technologies have sped up the process enormously, but

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<sup>61</sup> Bennet, W. L. (1980). *Public Opinion in American Politics*. Harcourt College Pub; Iyengar, S., Kinder, D. R. (1987). *News That Matters*. The University of Chicago Press.

<sup>62</sup> Iyengar, S. (1994). *Is Anyone Responsible?* The University of Chicago Press.

<sup>63</sup> Ginsberg, B. (1988). *The Captive Public*. Basic Books.

they also heavily influenced the nature of electoral campaigning by constant attempts to appeal and shape the perceptions of nonpartisan voters through public relations and advertising efforts in order to get their vote<sup>64</sup>. Therefore, American politics shifted away from mass mobilisation and towards advertising in political campaigns, and this coincided with the creation of modern journalism. While 19<sup>th</sup>-century journalists reported the facts, modern journalists increasingly shape and reprint the facts, under the promotion of state officials and whoever can afford public relations services. Schudson reflected on this, objective news is biased in favour of the powerful, in this particular case government officials. “Newspapers that had once fought the interests now depended upon them for handouts”<sup>65</sup>. One study found that 72 percent of the totality of the sources for network television news were government officials or leaders of political groups and institutions. <sup>66</sup>Less represented are social movement activists, or other non-state actors that would disseminate alternative issue frames.

The struggle to shape media representations is played on an unequal playing field. The concept of elite claims-making investigates why institutionalised sources are able to access and shape mass media. Social issues can be framed in different ways. Gamson refers to “interpretive packages” to describe the structures that organise the various discursive elements that make up diverse issue frames. They are conceptual frames for analysing the chaotic and mixed content and meaning of media content. At the centre of each interpretive package, there is a core frame which is a central idea that gives meaning to a series of events related to the issue. Packages also have a set of signature elements that serve as condensing symbols. Beckett’s analysis lists four “issue packages” for crime and four for drugs. The issue packages for crime are Respect for Authority, Balance Needs, Civil Liberties under Attack and Poverty Causes Crime.

Respect For Authority holds that civil disobedience, the increasingly permissive judicial system and the welfare arrangements contribute to the decline of respect for authorities. The exemplars are stories of criminals who glaringly violate the law without fear of punishment. The catchphrases are “permissiveness”, “accountability”, “law and order”. This package was brought forward by Goldwater and Republicans in the 1964 election campaign. On the other hand, Balance Needs is focused on the necessity of addressing crime and at the same time its root causes. Only focusing on the roots of crime would bring to the neglect of law enforcement but ignoring the deeper causes of crime would represent a big mistake. “Balance” is the central catchphrase. This package was the main alternative for Democrats in the 1960s to contrast Respect for Authority. Civil Liberties under Attack represents the need to develop policies that reflect the principles of

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<sup>64</sup> Burnham, W. (2007). *Critical Elections and the Mainspring of American Politics*. W. W. Norton & Company.

<sup>65</sup> Schudson, M. (1981). *Discovering the News*. Basic Books; Gans, H. J. (2004). *Deciding What’s News*. Northwestern University Pr.

<sup>66</sup> Whitney, D. C. et. Al. (1985). *Geographic and Source Biases in Television News 1982-1984*. Institute of Communications Research: University of Illinois.



democracy and the protection of civil rights, watching out for law-and-order policies that disregard due process and civil liberties. The catchphrases are “due process”, “rights of the accused” and “civil right”. This package was sponsored principally by civil rights organisations. Poverty Causes Crime reflects the need to attack structural causes of crime, as people are influenced by the environment and the context they live in. Crime is seen as a response to the hopelessness of poverty. Policies should address socioeconomic inequality, policies that do not represent unjust and excessive punishment directed towards the weakest members of society. The catchphrase is “root cause”. This package mainly belongs to Lyndon Johnson and liberal politicians. The issue packages for drugs are Get the Traffickers, Zero Tolerance, Need More Resources and War Fails. Get the Traffickers’ core issue is the need to stop narcotraffickers through effective prosecution. Casual drug users are the victims of peer pressure. Catchphrases are “just say no”, “pushers”, “merchants of death”. This was brought on by the Reagan administration. On the other hand, Zero Tolerance sees casual drug users as criminals as well, and not victims. Drug abuse is not a victimless crime, but it is reflecting on the rest of society, which is complementing for the unproductive members. The root of the problem is missing accountability for drug use. The catchphrases are “user accountability” and “get tough”. This package was sponsored by the Reagan and Bush administrations after 1986. Need More Resources holds that lawmakers must be convinced to allocate resources, rather than rhetoric, on the anti-drug campaign. Politicians are seen as insincere and using social issues for political advantage. In fact, “election-year politics” is the main catchphrase. This was the main Democratic alternative to the Reagan and Bush packages. War Fails questions if prohibition and strict control and enforcement reduce the harm caused by drugs. Law enforcement threatens civil rights and prohibition increases crime by creating an alternative illegal market. The alcohol prohibition era is an exemplar for his package. Drug policies should address the socioeconomic causes. Catchphrases are “root causes”, “harm reduction”. The package is characteristic of civil rights organisations.

Through these packages, it is easier to see the consequences of journalists relying on official sponsors on the public’s perception of the crime issue. Around 75 percent of displays that were reliant on state sources represented Respect for Authority, and 62 percent of the totality of displays. The American public was very exposed to stories that complained about liberal permissiveness and emphasised the need for punishment, because of the majority of state sponsors in crime-related stories in the news. As for the drug issue, the dominating packages were Get the Traffickers and Zero Tolerance and given the majority of state sources, War Fails received little representation, and almost exclusively by non-state sponsors. The alternative critical perspective was for the most part absented from television news coverage, which explains the framing of the drug issue and the lack of more critical discussions. Moreover, covering the crime and drug issues from the law enforcement agencies’ perspective fulfils the media’s interest in dramatic and vividly shocking news. The

“48 Hours on Crack Street” CSB special received the highest ratings of similar programs in five years<sup>67</sup>. Finally, media coverage does interfere with policy in many ways. Firstly, by influencing policymakers directly. In the 1980s politicians used increased media coverage on the drug issue as evidence of a public preoccupation with the issue, in order to account for their political initiatives. Media has influence over public opinion, and it can influence the local and federal policymaking process<sup>68</sup>. Moreover, media discourse is a fundamental part of the context in which political opinions are created. In this case, it generated public support for crime and drug legislation of punishment rather than prevention.

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<sup>67</sup> Reinerman C., Levine, H. G. (1997). *Crack in Context*. Berkeley: University of California Press.

<sup>68</sup> Surette, R. (2010). *Media, Crime and Criminal Justice*. Wadsworth Publications Co.

## CHAPTER THREE

### The economic and political interest behind securitisation

The creation and maintenance of corrections have been costly. The federal, state, and local government has spent more than 30 billion dollars in 1994<sup>69</sup>. The growth and the changing composition of the prison population have been accompanied by an increasing honesty about the intent being more custodial than correctional. The shift away from the correctional intent has been reinforced by the rapid growth in the number of inmates. Surely, resources for correctional activities such as education or vocational training have lowered both in relative and absolute terms<sup>70</sup>. The number of people on parole and probation has also increased almost as fast as the number of people in prison, and in the same way black people and other racial minorities are overrepresented. The intention of parole and probation has also shifted from rehabilitation and reintegration to management and supervision<sup>71</sup>. Albeit some securitisation and anticrime measures are more symbolic than practical, the politicisation of the crime and drug issues at the national level has generated an expansion and reorientation of the federal, state, and local crime control system.

#### 3.1 Federalism and centralised security

The federalisation of crime control started ever since Goldwater put political emphasis on the crime issue. Right after, Johnson also appealed to Congress for the creation of a federal pilot program for the assistance of local crime control agencies for the same purpose. The result of this pressure was the Law Enforcement Assistance Act which created the first federal grant program<sup>72</sup>. It was administered by the Office of Law Enforcement Assistance (OLEA). The program at first was not comprehending large sums of money and it was not meant to be a large source of financial support for local agencies<sup>73</sup>. The creation of the Office served as a precedent for the federal government's assumption of responsibility for local crime control. It mobilised and strengthened the criminal justice and law enforcement lobbies<sup>74</sup>. In 1969, a report was published as an account of the accomplishments and finding, containing recommendations. It sustained that crime was rooted in the structure of federal society and implied that crime control was mainly achievable through the expansion of the criminal justice system. It advised the federal government to support the various components of the system at the federal and local level<sup>75</sup>.

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<sup>69</sup> Holmes, S. A., (1994). *The Boom in Jails is Locking Up Lots of Loots*. New York Times.

<sup>70</sup> Irwin, J. K., Austin, J. (1994). *It's About Time: America's Imprisonment Binge*. Wadsworth Pub Co.

<sup>71</sup> See, S. (1997). *Poor Discipline*. University of Chicago.

<sup>72</sup> Advisory Committee on Intergovernmental Relations, (1977). *Safe Streets Reconsidered: The Block Grant Experience 1968-1975*. US Government Printing Office. Washington D.C.

<sup>73</sup> The expenditure of OLEA was about 20 million dollars in only three years.

<sup>74</sup> Feeley, M., Sarat, A. (1980). *The Policy Dilemma*. University of Minnesota Press.

<sup>75</sup> Advisory Committee on Intergovernmental Relations, (1977). *Safe Streets Reconsidered: The Block Grant Experience 1968-1975*. US Government Printing Office. Washington D.C.

To implement the suggestions, Johnson passed the Safe Streets and Crime Control Act, which called for the establishment of a categorical federal assistance program towards local governments. Republicans opposed the program and proposed a revenue-sharing system for the distribution of federal anticrime funds. It generated a debate that ended with the establishment of the Law Enforcement Assistance Administration (LEAA) within the Department of Justice, comprising the administration of 60 percent of grants to states and 40 percent to local governments. In the next period, the number of federal funds allocated for this intent increased drastically. The Safe Streets Act is the first major block grant. At first, the Republican call for federal crime control leadership was controversial for liberals and conservatives alike. This was because, first of all, it competed with the Great Society programs for funding and, second, it was inconsistent with the federalist allocation of crime combatting responsibilities.

This federal fight against crime was contradicting the conservative emphasis on state rights that emphasises local responsibility for law enforcement<sup>76</sup>. Direct funding as well as criminal justice programs by law enforcement is also an instrument through which the federal government influences anticrime policies at the local level. Albeit the LEAA was dismantled in 1980, the Comprehensive Crime Control Act established a federal funding program for states, which is now administered by the Office of Justice Programs. In 1984, the Sentencing Reform Act, enacted by Congress, changed federal sentencing procedures dramatically. It sought to reduce the unjustified disparity and to eliminate a perceived leniency of the system<sup>77</sup>. It called for the setting of the US Sentencing Commission, an independent agency that could develop the guidelines that would limit judicial discretion and decision-making power. Simultaneously, Congress adopted the mandatory minimum sentencing statutes. They already existed before 1984, but they were very rarely enacted and not directed towards a whole class of criminals<sup>78</sup>. The Anti-Drug Abuse Acts also provided for the allocation of more federal funds to state and local law enforcement structures. In 1986 it increased the authorisation by over 1 billion dollars, and it permitted that these funds be used for the construction of non-federal correctional facilities<sup>79</sup>. One of the provisions of the 1986 Act connected mandatory minimum penalties for trafficking directly to the amount of money that was involved. This constrains judges insofar as they have fewer factors to consider in arbitrating the just punishment.

Already from 1988, the federal government required states to conform to sentencing standards to obtain federal funding. It set clear standards for the recipients including the adoption of user sanctions and drug

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<sup>76</sup> Caplan, G., (1973). *Reflections on the Nationalisation of Crime*. Law and The Social Order Journal, Issue N. 3.

<sup>77</sup> US Sentencing Commission. (2017). *Mandatory Minimum Penalties in the Federal Criminal Justice System*. US Government Printing Office. Washington D.C.

<sup>78</sup> Ibid.

<sup>79</sup> Committee on Foreign Affairs. (1986). *Compilation of Narcotics Laws, Treaties and Executive Documents*. US Government Printing Office. Washington D.C.

testing strategies. The 1994 Crime Bill went even further and gave about 8 billion dollars to states in order to construct and operate new prisons, and about 10 billion dollars to allocate in the police force to hire new members<sup>80</sup>. These funds, especially the ones for prison construction, only went to states that adopted truth-in-sentencing policies of the government and a “binding sentencing guideline system”<sup>81</sup>. In this way, the federal government was able to induce states to apply rigid sentencing strategies. The states that implemented them would have lighter fiscal pressures. These mechanisms of federal support and political dynamics at the state level are responsible for a dramatic increase of drug arrests and convictions numbers at diverse levels of the criminal justice system. It has had dramatic consequences for African Americans and minorities.

### 3.2 The institutionalisation of law-and-order

In the 1960s, Packer theorised two models of the criminal justice system: the crime control model and the due process model. Crime control is a more conservative model which focuses on efficiency. Its basic aim is suppressing crime to ensure public order. According to this model, controlling crime and reducing crime rates is held as more important than individual and collective freedoms. It advocates for severe punishment for offenders. It gives law enforcement the duty of detecting suspects, the courts of determining guilt, and the correctional system of inflicting punishment. On the other hand, due process is a liberal model, which focuses on fairness and upholds constitutional rights, as well as the protection of individual rights and freedoms. The crime control model produced stricter policies, like the law-and-order approach.

The crime control consensus has five core elements (Reiner, 2013). Firstly, Crime is public enemy number one. Secondly, crime has individual and not social responsibility. Thirdly, crime discourse and criminal policy are zero-sum games as concern for victims cannot be shared with understanding or sympathy for offenders. One precludes the other<sup>82</sup>. As an example of this, a senior US Justice Department official is quoted in Tonry saying: “People are either for victims or for criminals”<sup>83</sup>. Fourthly, the crime control model works. Criminal justice can and will control crime through deterrence, prevention and incapacitation provided it is tough enough, meaning provided with sufficient powers and resources. Finally, a high-crime society is normalised. In ‘The Culture of Control’, Garland shows how crime risks and the idea that our society is full of crime has infiltrated in popular culture and routine. These crime concerns and security measures enhance fear rather than security because they remind people that crime is around the corner<sup>84</sup>. The more security provisions, the more they are regarded as normal, and they will be missed when they are not present.

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<sup>80</sup> Wright, P. (1994). *Federal Crime Bill*. Prison Legal News.

<sup>81</sup> Ibid., Reitz, K. R. (1996), *The Federal Role in Sentencing Law and Policy*. Sage Publications Inc.

<sup>82</sup> Zimring, F. E. (2001). *Imprisonment Rates and the New Politics of Criminal Punishment*. SAGE Journals.

<sup>83</sup> Tonry, M. (2004). *Thinking about Crime*. 137. Oxford University Press.

<sup>84</sup> Zedner, L. (2003). *Too Much Security?*. International Journey of the Sociology of Law.

Law-and-order policies are the neoclassical response to rising crime rates, and they achieved great popularity with the public during the years. Law-and-order rhetoric oftentimes brought candidates to the presidency, as it was one of the major stimuli of the political campaigns of many presidents. Populist law-and-order policies have been central to American politics as a response to violence and crime, but mostly as a strategy to keep the primacy of social control over social welfare as a state responsibility. It is also a means of political propaganda, proved to be appealing to a multitude of American people, who are influenced by fear-evoking rhetoric of charismatic personalities but especially for conservative white people. Furthermore, as proved in the last chapter, the media instantly and effectively distributes the fear-evoking messages and dialectic around the world. Law-and-order policies have had various historical steps and it has cleverly been adapted and modified by the status quo to try and impede forces of social change by defining them as “criminal” and by building a strong crime control system. Moreover, the prison-industrial complex and the economic interests of corporations trigger a vicious circle of abuse in American prisons. If law-and-order policies are a tool for reducing criminality, then they are not a very effective one, as statistics of the US prison population prove. Mechanisms like plea bargaining, Alford pleas, the bail system, and the continuous efforts of disenfranchisement of felons make the American criminal justice system a very hard one to escape.

Bauman explains the social production of moral indifference in modern society and says that it is created through authorization, routinization, and dehumanization of the victims by ideological definitions and prototypes. Bureaucratisation and institutionalisation are fundamental in this process, or better the identification of the elimination of violence as a basic element of the civilising process. This entails the concentration of violence under state control. In ‘Crime Control as an Industry’, Nils Christie believes that the prison system as a product of law-and-order is moving in the same direction as extermination camps in the past, insofar as it is a product of industrialisation, and a combination of thought patterns, social organisation, and technical tools. It is clear that America as a highly industrialised and democratic country does not have extermination as its final goal, but protection against crime. Some death sentences will be carried out, some inmates will be released, and some will die in prison, by suicide, natural causes, or violence during incarceration (Human Rights Watch, 1992), but a significant portion of American lower-class males might end up living their most active lives in prisons. The parallel is centred on “energetic first beginnings” in changes in the legal system, the ideology of just deserts, the increased power and growth of controlling forces, the growing number of prisoners, and the rationale for handling them.

In conformity with Feeley’s “New Penology”, the criminal system concentrates on the management of aggregate populations rather than changing individuals through rehabilitation, or punishment. Law-and-order policies are democratic crime control by the voting majority, and there are no limits as long as they do not hurt

the majority. According to Feeley, the New Penology has no intention of rehabilitating individuals, and its focal intent is not to punish but to identify and manage unruly groups. In addition, the whole institution of crime control is a part of the system of production. Since the birth of positivistic theories of crime control, incapacitation is deemed as more effective than treatment. Moreover, the lower classes are very easily transformed into the dangerous classes, and the advancement of chemical drugs gives the public the perception that the most severe methods are legitimate in the fight against them and professionalisation of law enforcement guarantees a good job but reduces attention to the totality of values. Østerberg (1991) finds four categories for social institutions in society: the production institutions characterised by rational goal attainment, the reproductive institutions designated by caring and service, the institutions of politics and power, and the institutions that coordinate principles and values where cultural and scientific institutions belong. In the latter category, knowledge is produced and reproduced. Law and juridical institutions involve conceptualisation and evaluation, they do not deal with one-dimensional weights. Nevertheless, the law has been pushed towards the production institution category that makes it a means of utility and moves it away from cultural institutions. This means losing essential root qualities such as human experience. Østerberg's classification in four types is reasonable because it is hard integrating one type with the other, as solutions for one are not fit for others. Courts acting as instrumental tools sacrifice the protection of values. In an unjust society, it is fundamental that values rather than structural processes be protected, as the most democratic and fair judge might still be badly equipped in an unequal society.

### **3.3 American neoliberalism and individual rights**

Neoliberalism is the economic and cultural theory and practice that has taken over since the 1970s. As an economic doctrine, it holds that free markets maximise their efficiency and prosperity as they signal consumer needs to producers, optimise the allocation of resources, provide incentives to entrepreneurs and workers<sup>85</sup>. In "Masters of the Universe", Stedman Jones identifies three main phases in the development of the neoliberal project. The first phase includes the development of neoliberal ideas in Europe between a small group of economists. The second one is set in the US, and it is a phase of institution building, knowledge production, and organising that allowed it to have a base in culture and politics (e.g., Neoliberal Thought Collective). In the third phase, neoliberal ideology colonises the world and shapes both global trade and development discourse. In fact, beyond economics, neoliberalist discourse also dominates American culture and politics. Its advocates believe it also promotes political and personal virtue<sup>86</sup> as free markets are associated with democracy, liberty, and ethics. On the contrary, welfare states are seen as undermining personal responsibility and are to be fought with discipline and workfare.

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<sup>85</sup> Kay, J. (2003). *The Truth About Markets*. Penguin UK.

<sup>86</sup> Tomlinson, J. (1990). *Hayek and the Market*. Pluto Press.

Aspirations of good life have been infiltrated by materialist and acquisitive values<sup>87</sup>. The negative consequences of this vision have been much predicated by socialist theorists and classical liberal political economists. Neoliberalism is seen by critics as a revolution of the rich, a class struggle, having seen the consequences it had on society such as huge increases in inequality. It had negative economic, ethical, and socio-political consequences. Free markets generate concentrations of power and monopolistic accumulations of wealth that undermine their own freedom. Neoliberalist allocation of resources is reflecting the consumer power of the rich and not human needs and social necessities. The ethical harms that neoliberalist culture imposed on American society as a materialistic market society include egoism, short-termism, and irresponsibility towards others. The materialistic aspirational culture prioritises the will for the individual success and the accumulation of wealth and goods.

Necessarily, culture and morality have a big part in how economic circumstances are perceived and interpreted. It is the key concept in “anomie”, the main explanation of crime and deviance in classical social theory, presented in the previous chapter. This inequality and competitiveness produce social and political harms, namely poor health, social conflict, and violence<sup>88</sup>. Many studies prove American democracy is threatened by diffused inequality<sup>89</sup>. The perception that law-and-order policies and the get-tough approach are successful rests on the assumption that incarcerated people cannot hurt anyone outside prison, but incapacitation only works if the prison population keeps rising (in absence of rehabilitative intentions). Moreover, this strategy to fight crime is underpinned by the idea that a small group of persistent criminals is the major problem and that offenders are a distinctive group. The oppressive and dangerous trends in criminal policy are fundamentally rooted in the political economy of neoliberalism and its cultural and social consequences. Neoliberalism is associated with higher levels of serious crime and more punitive crime control compared to social democracies. The concept of “anomie” refers to this tension that results from unsatisfied (and unsatisfiable) aspirations and the character of material neoliberal desires as well as the inequality of opportunity generates social tension and conflict. Especially in the context of American society that predicated the mythology of open opportunities for all, if this is not the case, it leads to crime and deviance especially among the lowest in the social hierarchy.

The focus is not the structure of opportunities but the social meaning these opportunities have in American society. It is important to look not only towards the disjuncture between cultural aspirations and structurally available opportunities but at the values of society. If these are highly materialistic and defined

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<sup>87</sup> Hayward, k. (2004). *City Limits*. Routledge.

<sup>88</sup> Wilkinson, R. G. (2005). *The Impact of Inequality*. Routledge.

<sup>89</sup> Jacobs, L., Skocpol T. (2005). *Inequality and American Democracy*. SAGE.



primarily in monetary terms, then anomie and therefore deviance is very highly to be present. Moreover, these aspirations can never be satisfied as there is no end to the amount of money a person can chase, and the people that fail to obtain those goals have no possibility of compensation elsewhere in the context of a society that exclusively gives value to material goals. A neoclassical deterministic account of crime leaves no scope for moral responsibility, which is not compatible with just punishment, while probabilistic explanations leave space for other factors that make offending more likely, rather than inevitable. Therefore, the neoclassical depiction of crime as an individual choice resonates with the individualism of American life, and the conservative neoclassical argument that welfare programs provoke other social pathologies makes sense with the cultural propensity of attributing social problems to inadequate socialisation and faulty family life.

In this context of extreme economic inequality, the reason why people accept a system imposed over them where wealth is produced by the collective and kept between a few people at the top of the social hierarchy is contained in the concept of hegemony. Neoliberalism is a hegemony in the sense that power is maintained through shifting cultural processes of winning the consent of the population. Envisioning neoliberalism as a hegemony puts forward the concept of neoliberalism as a political project of erasing the line between public and private to create a society based on private, market competition. This project began when liberalism entered a crisis. Liberal hegemony was never a unified phenomenon and there were different aims (individual rights and liberty or the common good), which gave way to the birth of the social welfare state even though very limited in its scope and very exclusionary in practice. The Walter Lippman Colloquium birthed neoliberalism which, contrarily to liberalism, envisions an active interventionist state. Neoliberalism exploited situations of crisis, what Klein calls “the shock doctrine”. In a state of crisis, uncertainty, devastation, and fear are used as an opportunity to enact radical political and economic change at once. Therefore, although crime and drug use were lowering in the 1970s, neoliberalism was able to articulate the need for a new kind of liberalism that had its roots in individual liberty and responsibility towards the alleged epidemic of crime.

Neoliberals argued that the welfare state gave way to a culture of poverty, violence and crime, concentrated in minority communities. It did not point towards racist housing policies or globalisation as a cause for the loss of manufacturing jobs, but that the common good approach was not fit and did not create equality and hope but entitlement and dependency. The solution was discipline and law-and-order policies. In some way, race has been socially constructed in the American political discourse and public consciousness as a cultural phenomenon rather than a biological reality, in order to rationalise systems of economic exploitation<sup>90</sup>. Neoliberalism, then, can be seen as a very successful political project insofar as it won a class war through the criminalisation of the racialised poor class and the simultaneous expansion of the police state.

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<sup>90</sup> Fields, B. J., Fields, K. E. (2012). *Racecraft: The Soul of Inequality in American Life*. Verso.

Neoliberalism has two faces: the progressive one that embraces diversity, free trade and global markets, and a conservative one that pushes through punitive policies that have disproportionate consequences on poor people. In the name of national security, America was able to hand out huge contracts to private security companies that make profits with public contracts.

### 3.4 Law enforcement and correctional agencies as political lobbies

The impulse for the growth and organisation of the vocal American law enforcement lobby was bought about ever since the 1960s when Goldwater started the politicisation of the crime issue, followed by the Law Enforcement Assistance Act and many Supreme Court decisions that were aimed towards the protection of the defendant's rights. The first statements of the police lobby regarding this topic expressed concern about the expansion of federal funding for local law enforcement. In 1965, the International Association of Police Chiefs passed a resolution against the efforts of the federal government to interfere in their local matters<sup>91</sup>. Nevertheless, with time, federal funding became quite significant and was received with eagerness. By 1974 the police received 54 percent of the nations' 15 billion dollars criminal justice budget. The law enforcement lobby attempts to protect and ameliorate the working conditions of its associates. In 1977, law enforcement agencies and the DEA identified asset forfeiture provisions as a potential source of revenue and began to lobby Congress for it to broaden the conditions for the invoking of civil forfeiture statutes<sup>92</sup>. Civil forfeitures only required that law enforcement agencies demonstrate "probable cause" that the property is related to a drug or criminal offence.

In response to these lobbying efforts, Congress expanded the scope of both criminal and civil forfeiture statutes in 1978<sup>93</sup>, allowing it for all profits from drug trafficking and all assets purchased with them, as well as the money that was going to be used for drug exchanges. It allowed the government to seize property never involved in illegal activities<sup>94</sup>. The provisions were expanded further in the 1984 Comprehensive Crime Control Act and permitted the seizure of goods up to a hundred thousand dollars even without a complete court proceeding and the assets were allowed to remain within those agencies. It also expanded the government's authority to require the forfeiture of profits from organised crime<sup>95</sup>. These provisions allowed police to have a direct incentive for the identification and persecution of drug law offenders, as they were allowed to maintain

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<sup>91</sup> Advisory Committee on Intergovernmental Relations, (1977). *Safe Streets Reconsidered: The Block Grant Experience 1968-1975*. US Government Printing Office. Washington D.C.

<sup>92</sup> Wisotsky, S. (1983). *Exposing the War on Cocaine*. The Michigan Law Review Association.

<sup>93</sup> Regarding state forfeiture provisions, in California police groups lobbied to reduce the burden of evidence required consistently, decrease the quantity of substances necessary to seize a vehicle, expand the kinds of property that can be seized and increase the amount they could keep from zero to 90 percent.

<sup>94</sup> Jensen E. L., Gerber, J. (1996). *The Civil Forfeiture Assets and the War on Drugs*. Sage Publications Inc.

<sup>95</sup> Weekly Congressional Quarterly. *Enactment of Crime Package Culmination of 11 Year Effort*.

95 percent of the value in their discretionary funds<sup>96</sup>. The Anti-Drug Abuse Act of 1986 and 1988 broadened these provisions even further. This increased the number of people prosecuted and arrested for drug crimes, and it has been extremely lucrative for law enforcement agencies, and it made drug offenders a priority even compared to violent offenders. In any case, this broadening of the asset forfeiture provisions was largely in response to the lobbying efforts of law enforcement agencies at the federal and state level.

The tactics used by the police lobby include attempts to increase the public's fear of crime and perception of criminals. When there was a threat of cutting the budget of police officers, the Fraternal Order of Police (FOP) hired a public relations firm. This firm was responsible for running television commercials that underlined the growing crime rates and the impossibility of protecting the citizens by the police if said cuts were going to be implemented. The FOP spent about 10,000 dollars in a week for this public relations campaign, but it was successful in convincing politicians to renounce this project<sup>97</sup>. Another intent of the law enforcement lobby is to promote politicians that are particularly tough on crime at different political levels. In many cases, politicians compete for this endorsement, as Bush and Clinton did in 1992. Bush was endorsed by the FOP, which announced that he was "a great friend to law enforcement" and praised him for proposing the toughest crime bill ever seen<sup>98</sup>. The FOP also praised Clinton's decision to maintain minimum sentences for possession of crack cocaine.

Correctional agencies also are powerful political lobbies. The substantial expansion of the penal system was not in the plans of those who began advocating that federal funding be directed towards state and local criminal justice agencies. In reality, during the 60s and 70s reformers outside and inside the LEAA believed that federal funds would have been better allocated in community programs redirecting offenders away from the criminal justice system. These programs, though, did not lead to a reduction in the number of people who are part of this system. Community-based alternatives became supplements to the traditional programs, and therefore widened the range of criminal justice. The funds for alternative programs went back to criminal justice agencies<sup>99</sup>. The most powerful shift away from rehabilitative alternative methods and towards retribution, deterrence, and incapacitation was the ascendance of the politics of law-and-order which translated into the dramatic expansion of the federal and state crime control systems. Consequently, the number of criminal justice employees has increased greatly. The American Correctional Association more than doubled its members in only six years and increased its budget steeply.

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<sup>96</sup> McAnany P. D., *Assets Forfeiture as Drug Control Strategy: an Assessment*. US Department of Justice.

<sup>97</sup> Chambliss, W. J. (1994). *Policing the Ghetto Underclass*. Oxford University Press.

<sup>98</sup> Marcus, R., Devroy A. (1992). *Police Group Gives Bush its Blessing*. The Washington Post.

<sup>99</sup> Austin, J., Krisberg, B. (1981). *Wider, Stronger, and Different Nets*. SAGE Journals.

Correctional workers' associations are active at all levels in attempting to ensure the continued expansion of their employers and politicians perceived as allies to the criminal justice system. For instance, after California built 16 new prisons (one every year), the California Correctional Peace Officers' Association (CCPOA) became one of the most powerful lobbies of the state. The CCPOA represents a generous political action committee (PAC) and spends large amounts of money in support of specific politicians and their policies. It was one of the largest contributors to the three-strikes-and-you're-out initiative. These lobbying efforts and many others obtain great results, they are very effective. In fact, 38 of the last CCPOA sponsored initiatives and bills were enacted. Rural areas are particularly supportive of legislators that promote prison expansion, as they are often less rich, and they compete to secure contracts for the construction of prisons in their areas. Given that prisons sometimes are one of the first large-scale and unionised employers in these areas, some also buy the required land by themselves and then donate to the state with the condition that it gets used for that purpose <sup>100</sup>. As the Bureau of Prison affirmed, people started realising that prisons are a "recession-proof, environmentally clean, attractive safe industry" <sup>101</sup>. Nevertheless, the consequences for rural areas are not always as beneficial as they expected.

### **3.5 The penal-industrial complex**

One of the consequences of the war on crime was the increasing racial disparity in prison populations. In 1960, racial minorities made up 40 percent of inmates, while only fifteen years later they represented 49 percent. The incarceration rate for black people between 1973 and 1979 was more than nine times higher than the one for whites. Despite the overgrowing prison population, beginning in 1973, mandatory sentencing laws were introduced. The states following this trend toward mandatory sentencing filled American prisons beyond their capacity by the end of the 1990s. In 1972 the LEAA surveyed American prisons and reported that the psychologists and architects who were sent there were shocked by the oppression they found and suggested halting construction of prisons until after the existing ones were improved, which contributed to more prison overcrowding. When Johnson first called for a war on crime correctional facilities and institutions began to function as a central engine of American inequality. Anticrime funding by the federal government incentivized service providers to ally with police departments courts and prisons. When Nixon took over welfare programs were reduced, and investments were made towards policing and punishment. By the Reagan years, both the federal government and the states piled on punitive sentences for crack cocaine dealers, imposing a strong racial bias.

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<sup>100</sup> Dozinger, S. R. (1996). *The Real War on Crime*. Harper Perennial.

<sup>101</sup> Elvin, J. (1994). *Corrections-Industrial Complex Expands in U.S.* National Prison Project Journal.

The prison–industrial complex is the association of the fast expansion of the prison system and prison population to the political and economic influence of private businesses that make profits from providing goods and services to government prison agencies. Most of them are corporations and lobby groups that exploit the cheap labour of inmates. Creating profit opportunities using inmate labour boasts clear economic benefit at the expense of the inmates. It is almost like America prioritizes financial gain over rehabilitating criminals, which should at least be considered (if not equally important) for eliminating crime, which is a felt issue in the US. Law-and-order policies, the categorization of drug abuse as a criminal rather than a health issue, the War on Drugs and the different sentencing between crack and cocaine has significantly influenced the development of the prison-industrial complex. As the criminal justice system expands, the size, resources, and authority of the interest groups benefitting from its enlargement are also augmented<sup>102</sup>. Law enforcement agencies, correctional workers and, increasingly, private firms are part of the “penal industrial complex”, and they are mobilising in different ways to ensure the continuation of the war on drugs so that they can maintain this leverage.

The expansion of the penal system and correctional facilities ensures a market for private vendors of a wide and diverse arrangement of services and goods. These may be financial firms that are competing to underwrite prison construction, or private companies providing prison services like architecture and building design, consultant or security personnel and personnel management, drug detention, medical services, transportation services, food services, etc. In general, defence companies are violently marketing law enforcement tools and crime control devices for them, so much that many companies created law enforcement and prison technologies divisions. These entrepreneurial activities have been encouraged and sponsored by the government and the National Institute of Justice has held a major conference on law enforcement technologies in the 21<sup>st</sup> century<sup>103</sup>. These efforts are also very profitable, as the Bureau of Labor Statistics has demonstrated by ranking security as one of the fastest-growing service industries.

The number of private prisons is also rising, and even though the majority are still publicly owned and managed, the rate of growth for the former is four times greater than that of state-owned prisons. This privatisation comes as no surprise given the increasing size of the prison population, as a solution to prison overcrowding and the weight of the war on drugs on the population in terms of tax money. Nevertheless, this practice constitutes a supply-side economic policy that will not lower the size of the prison population<sup>104</sup>. For instance, the state of Florida let the Wachenhut Corrections Corporation manage several of the prisons in the state, and WCC is paid on a per-day and per-prisoner basis. The state of Florida ensured that the prison will

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<sup>102</sup> Christie, N. (1993). *Crime Control as Industry*. Routledge.

<sup>103</sup> Elvin, J. (1994). *Corrections-Industrial Complex Expands in U.S.* National Prison Project Journal.

<sup>104</sup> Christie, N. (1993). *Crime Control as Industry*. Routledge.

not ever be less than 90 percent full<sup>105</sup>. Private firms, therefore, have increasingly been able to have a say and make a difference regarding the grants of good-time credits and parole proceedings.

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<sup>105</sup> Thomas, R. D. (2000). *How to Make Crime Pay*. Thomas Investigative Publications Inc.

## CONCLUSION

American criminal justice research and policy is dominated by a conservative-managerial alliance (Cohen, 1988). In the context of the political campaigns in the American bilateral system and the advancement of law-and-order, penological research has become less interested in the deeper social causes of crime and more focused on the punitive intent and the development of efficient crime-control policies. It is described as an expression of popular values and direct democracy (democracy-at-work), but it is not. It was much rather a focal component in the ideological framework of the conservative project put in place to reconstruct the configuration of the state in order to replace social welfare with social control as the basic principle for state policy. The punitive and managerial trends alike are two sides of the same incredibly cynical coin, as both are fundamentally uninterested in the reintegration of offenders and prefer incapacitation, punishment, and control. Neoliberalism means that America pushes increasingly towards freedom of the market, and control of the people. It creates anomie and a sense of anxiety and frustration that pushes people towards materialistic and impossible goals. The basic point is that states should enact policies that promote inclusion, not exclusion and stigmatization. It is fundamental in this sense to create a richer and more meaningful public discussion that includes underrepresented perspectives, in order to stimulate political action for the true democratization of crime and drug policy in America. Once we consider that the neoliberal conjuncture is not the only alternative, and it has not come about naturally but has been socially constructed, America might be able to employ critical and theoretical resources to create a future that goes beyond living in competition and towards true equality.

*The very oppressive pervasiveness of capitalist realism means that even glimmers of alternative political and economic possibilities can have a disproportionately great effect. The tiniest event can tear a hole in the grey curtain of reaction which has marked the horizons of possibility under capitalist realism. From a situation in which nothing can happen, suddenly anything is possible again.*

(Mark Fisher)

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# EXCERPT

## INDICE

### **PREFAZIONE**

#### **CAPITOLO PRIMO: Sintesi storica del problema del crimine nella politica americana contemporanea**

- 1.1 Dagli anni Venti agli anni Cinquanta: Le prime azioni anticriminalità e l'era del Proibizionismo
- 1.2 Dagli anni Sessanta agli anni Novanta: Le proteste civili, il problema nazionale del crimine e la guerra contro le droghe
- 1.3 Dagli anni Novanta ad oggi: La guerra contro il terrorismo, la destra populista americana e il linguaggio codificato

#### **CAPITOLO SECONDO: La costruzione ed interpretazione sociale del problema del crimine e il ruolo dei media**

- 2.1 La criminalità nel discorso pubblico americano e la teoria della "democrazia in atto"
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#### **CAPITOLO TERZO: L'interesse politico ed economico dietro al processo di securitizzazione**

- 3.1 Federalismo e centralizzazione della sicurezza
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- 3.3 Neoliberismo americano e diritti individuali
- 3.4 Le forze dell'ordine e le agenzie correttive come lobby politiche
- 3.5 Il complesso penale-industriale

### **CONCLUSIONE**

*La schiavitù o altra forma di costrizione personale non potranno essere ammesse negli Stati Uniti, o in luogo alcuno soggetto alla loro giurisdizione, se non come punizione di un reato per il quale l'imputato sia stato dichiarato colpevole con la dovuta procedura. Il Congresso ha facoltà di porre in essere la legislazione opportuna per dare esecuzione a questo Articolo.*

### *-XIII Emendamento alla Costituzione Americana*

Gli Stati Uniti accolgono solamente il 5 per cento della popolazione mondiale, ma ben il 25 per cento dei detenuti del mondo. Una persona su quattro si trova in prigione nella “Terra della libertà”. Il tasso di incarcerazione americano è in assoluto il più alto nel mondo- pari a 2 milioni e 300 mila persone circa attualmente reclusi. Tali evidenze sono il prodotto dell’insieme di scelte politiche, economiche e sociali susseguite in America a partire dagli anni ’20. L’enfatica petizione di principio del tredicesimo emendamento della Costituzione Americana, nell’abolire la schiavitù, garantisce la libertà, ma ammettendone privazione laddove venga commesso un reato. Questo emendamento, e quest’inciso, sono state valorizzate al fine di “rimpiazzare”, di fatto, la scomparsa della schiavitù al termine della Guerra Civile, la quale rappresentava un sistema economico fondamentale per gli Stati del sud. In questa luce, gli afroamericani e le minoranze negli Stati Uniti sono passati dall’essere prigionieri in condizioni di schiavitù ad essere prigionieri in condizioni di detenzione inframuraria. Questo elaborato di tesi si concentra sul compromesso tra sicurezza e libertà che questo Paese si pone oramai da un secolo. Il bisogno di fare questa scelta, la soluzione che vi è stata data, e gli strumenti che a detti fini sono stati apprestati, nascondono alle loro radici un tentativo politico di innalzare la sicurezza nazionale ed il controllo dello Stato anche a costo di incidere su libertà costituzionali non indifferenti. In tale contesto, lo scopo di questa trattazione mira ad argomentare sul processo di securitizzazione tramite il quale l’America protegge il proprio status di potenza economica neoliberale, all’interno del panorama internazionale.

La politicizzazione delle tematiche della criminalità – e il processo di securitizzazione che ne è risultato – sono state legittimate con il preteso consenso pubblico e i tassi di criminalità in crescita. Tuttavia, hanno rappresentato maggiormente la condizione di attuazione di un progetto strategico politico e sociale di manipolazione delle percezioni pubbliche, che ha difatti legittimato la persecuzione di cittadini poveri, di classi inferiori o minoranze. D’altro canto, questo sistema economico e politico dona indubbia protezione ai cittadini ricchi, di alta produttività e di classe sociale più elevata, mantenendo e rinforzando lo status quo. Sul piano della politica criminale, la giustizia penale americana trascura, infatti, molte forme di crimini commessi anche da Stati, governi o corporazioni, talvolta violenti, altamente imputabili e che certamente arrecano serio danno. A fronte di questa tendenza di permissivismo americana, molto stringenti sono invece le sanzioni rispetto a crimini commessi da minoranze, persone con dipendenze, poveri e svantaggiati. In questo senso, il

neoliberismo e l'attenzione alla sicurezza e al controllo vanno di pari passo nella "Terra dei liberi", sia come processi economici e politici, ma anche come fenomeni culturali, che stanno cambiando le percezioni individuali di concetti come "successo" verso un'interpretazione materialistica ed irraggiungibile. Si appalesa importante avere riguardo a tali processi che rendono l'America una nazione di fatto altamente disuguale e discriminatoria, in contrasto con l'immagine che il Paese cerca di accreditare per se stesso dal punto di vista internazionale. Negli ultimi anni abbiamo assistito sempre di più ad eventi discriminatori che hanno avuto importante risonanza mediatica, in quanto storie drammatiche di giustizia sociale. Queste azioni violente e discriminatorie anche da parte della polizia hanno provocato l'azione, a volte molto decisa, di movimenti di eguaglianza come Black Lives Matter, che cercano di far sentire la propria voce, anche dal punto di vista istituzionale, per avere la possibilità di mettere in atto un cambiamento. Queste azioni, e reazioni, possono essere considerate singolarmente, ma non sono nuove e hanno radici nelle tendenze violente e di controllo di vecchia data per l'America.

L'elaborato tratta, al principio, una sintesi storica delle tematiche relative al crimine nella politica americana contemporanea, divisa in tre periodi chiave. Il primo si concentra sulle prime azioni anticriminalità e sull'era del Proibizionismo, con riferimento ad un periodo che va dagli anni '20 agli anni '50. Il secondo si focalizza sugli anni '60 ma arriva fino agli anni '90: questa parte approfondisce le proteste civili, la trasformazione del crimine in un problema nazionale e la "guerra contro le droghe". La terza parte comincia con l'inizio del XXI secolo fino ad oggi e tratta della guerra contro il terrorismo, della destra populista americana, nonché del linguaggio codificato che le appartiene. Il secondo capitolo reca la costruzione ed interpretazione sociale del problema del crimine, con una particolare attenzione al ruolo dei media nell'influenzare e modellare le percezioni pubbliche rispetto ai problemi sociali. Questo capitolo è diviso in cinque paragrafi. Il primo investiga il crimine nel discorso pubblico americano e la validità della teoria della "democrazia in atto" che sostiene che le percezioni e credenze del pubblico americano vanno a legittimare l'incremento nella severità del controllo del crimine. Di seguito, verrà trattato l'argomento del populismo penale, ovvero del crimine come strumento politico e strategia elettorale. Oggetto dei due paragrafi successivi è l'associazione tematica di due attributi sociali che vengono accostati al comportamento deviato e criminale nelle strategie di contrasto del crimine americano. Il crimine e l'abuso di droga da un lato, e il crimine e la cultura del welfare dall'altro, vengono considerati come "pacchetti problematici", come elementi che coesistono negli individui proni al crimine e che concorrono al consolidamento del loro status. In tale ambito, il ruolo dei media e le affermazioni elitarie sono considerati al fine di trarre conclusioni sulla percezione del crimine da parte del popolo americano. Il capitolo finale è dedicato all'interesse politico ed economico che si sottende e permea il processo di securitizzazione. A partire dal processo di centralizzazione della sicurezza e dal Federalismo americano per evidenziarne l'artificialità degli sviluppi, specifica attenzione è riservata all'istituzionalizzazione delle politiche di "law-and-order", oltre che all'interrelazione tra l'approccio

repressivo “get-tough” ed il neoliberismo americano, riservando particolare considerazione alle forze dell’ordine ed alle agenzie correttive nella loro funzione di lobby politiche. Da ultimo l’elaborato ha riguardo al complesso penale-industriale. È quindi chiaro che le strategie di controllo del crimine, e la ricerca penale, sono dominate da un’alleanza manageriale-conservativa (Cohen, 1988) e non riflettono l’intento criminologico tradizionale di identificare le reali e profonde cause del crimine.

Il processo di securitizzazione negli Stati Uniti non è, infatti, parte di un processo di “democrazia in atto”, ma più che altro riflette, al contrario, l’espressione di uno sforzo politico dell’élite americana. Nel contesto delle campagne elettorali del Sistema bilaterale americano, la ricerca penale risulta meno concentrata sulle cause sociali e profonde dell’atto criminale e molto di più sull’intento punitivo e restrittivo che si vede riflesso nell’avanzamento delle politiche “law-and-order”, e nello sviluppo di politiche efficienti di controllo. Tutto ciò viene descritto come espressione di valori popolari e democrazia diretta, ma non lo è. È stato soprattutto una componente focale nel complesso ideologico del progetto conservativo, che è stato messo in atto per ricostruire la configurazione dello Stato e rimpiazzare il welfare sociale con il controllo sociale, come principio di base per l’azione statale. Entrambe le tendenze del sistema di giustizia americano, punitiva e manageriale, riflettono lo stesso disinteresse nella riabilitazione e la preferenza per “l’incapacitazione”, punizione e controllo dei detenuti. Il neoliberismo si traduce in un America che spinge sempre di più verso la libertà di mercato e allo stesso tempo “l’incapacitazione” e il controllo delle persone repute “non produttive”. Questo crea un senso di anomia, ansia e frustrazione che porta le persone ad avere visioni materialistiche di successo e obiettivi irraggiungibili. Il punto focale è che gli Stati dovrebbero mettere in atto politiche di inclusione, non esclusione e stigmatizzazione. In questo senso è fondamentale creare un dibattito pubblico più ricco e significativo che include prospettive sottorappresentate, che stimolino azione politica per una vera democratizzazione del sistema penale americano. Una volta compreso che l’alternativa neoliberista non è l’unica, che non è parte di un processo naturale ma è artificialmente costruita, gli Stati Uniti potrebbero essere capaci di utilizzare le loro risorse critiche e teoretiche per creare un futuro che va oltre la vita e la libertà in competizione e verso una vita e una libertà in comune.