

# CONSERVATIVE AGENDAS AND CAMPAIGNS

## THE RISE OF THE MODERN “TOUGH ON CRIME” MOVEMENT

*“Doubling the conviction rate in this country would do more to cure crime in America than quadrupling the funds for [Hubert] Humphrey’s war on poverty.”*

—Richard Nixon, 38th President of the United States of America

*“[President Nixon] emphasized that you have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to.”*

—H.R. Haldeman, Nixon’s Chief of Staff

The “tough on crime” movement refers to a set of policies that emphasize punishment as a primary, and often sole, response to crime. Mandatory sentencing, Three strikes, truth-in-sentencing, quality of life policing, zero tolerance, and various other proposals that result in longer and harsher penalties and the elimination of rehabilitation and other programs are all contemporary examples of “tough on crime” policies.

The effects of these policies are alarming. Local, state and federal governments have all adopted and implemented these policies resulting in enormous increases in drug arrests, more punitive sentencing proposals, resurgence of the death penalty, departure from juvenile justice systems, and increased racial profiling and community surveillance. While proponents claim these policies are race-neutral, poor people and people of color are overwhelmingly affected and ensnared by the criminal justice system.

In the following article, scholars Katherine Beckett and Theodore Sasson argue “that conservative politicians have worked for decades to alter popular perceptions of crime, delinquency, addiction, and poverty, and to promote policies that involve ‘getting tough’ and ‘cracking down.’”<sup>1</sup> They also challenge the claim that political elites were simply responding to popular opinion about crime and punishment, and instead argue that conservatives played a large role in shaping the public’s perceptions about crime. The authors document how the modern “tough on crime” movement was part of a larger effort to increase votes for the Republican Party, and more significantly, to redirect State policy away from social welfare toward social control.

It is important to note that while the modern “tough on crime” movement—and the resulting incarceration boom—can be traced to late 1960s and early 1970s, many activists justifiably argue that the U.S. government has always had a “get tough” policy beginning with Native colonization. However, for the purposes of understanding the modern Right, this section will focus primarily on the electoral and political development of the “get tough” movement since the 1960s.

### SECTION OBJECTIVE

*This section will provide a historical narrative of the rise of the modern “Tough on Crime” movement. It will explore the Right’s role—along with the cooperation of liberals and the mainstream media—in promoting punitive state policies.*

### IN THIS SECTION

- Origins of the Current Conservative Discourse on Law and Order
- History of Racially Disparate Drug Law Enforcement
- Role of the Right: Intellectual Development of Conservative Crime Theory
- Organizing Advice: Q&A with Break the Chains
- Additional Resources

## The Origins of the Current Conservative Discourse on Law and Order

By Katherine Beckett, Ph.D. and Theodore Sasson, Ph.D.

Over the past several decades, the U.S. government has enthusiastically declared and waged wars against crime and drugs. In this article, we focus squarely on this issue: Why have national-level politicians so vigorously waged a war on crime and drugs that has created the largest prison population in the world? We argue that in response to the social challenges of the 1960s, conservative political leaders—and, increasingly, those at the national level—began to highlight the problem of street crime in an attempt to steer state policy toward social control and away from social welfare.

In what follows, we show that conservative politicians have worked for decades to alter popular perceptions of crime, delinquency, addiction, and poverty, and to promote policies that involve “getting tough” and “cracking down.” We also show that when advocating such policies, these political elites were not simply responding to popular beliefs and sentiments about crime and punishment, although they did help to shape the public’s perceptions of the crime problem and preferences regarding what to do about it. Rather, their activities were part of a larger effort to realign the electorate in ways that favor the GOP and, even more significantly, to reorient state policy around social control rather than social welfare.

### Turning Protest Into Crime

In the years following the U.S. Supreme Court’s 1954 *Brown v. Board of Education* decision, civil rights activists across the South used direct action tactics and civil disobedience to force reluctant southern states to desegregate public facilities. In an effort to sway public opinion against the civil rights movement, southern governors and law enforcement officials characterized its tactics as “criminal” and indicative of the breakdown of “law and order.” Calling for a crackdown on the “hoodlums,” “agitators,” “street mobs,” and “lawbreakers” who challenged segregation and African American disenfranchisement, these officials made rhetoric about crime a key component of political discourse on race relations.

As the debate over civil rights moved to Washington, depictions of civil rights protest as criminal rather than political in nature reached the national stage. For example, after President Kennedy unenthusiastically expressed his willingness to press for the passage of civil rights legislation in 1963, Republicans and southern Democrats assailed him for “rewarding lawbreakers.”<sup>2</sup> Later, Richard Nixon (1966) blamed civil rights leaders for the problems of crime and violence, arguing 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>3</sup>

Throughout this period, phrases like “crime in the streets” and “law and order” equated political dissent with crime and were used by conservatives in an attempt to heighten opposition to the civil rights movement. Conservatives

*...phrases like “crime in the streets” and “law and order” equated political dissent with crime and were used by conservatives in an attempt to heighten opposition to the civil rights movement.*

also identified the civil rights movement—and, in particular, the philosophy of civil disobedience—as a leading cause of crime. Countering the trend toward lawlessness, they argued, would require holding criminals (including civil rights protesters) accountable for their actions through swift, certain, and severe punishment.

### The Crime Issue In National Politics

The rhetoric of “law and order” became more prominent in 1964, when Republican presidential candidate Barry Goldwater announced that “the abuse of law and order in this country is going to be an issue [in this election]—at least I’m going to make it one because I think the responsibility has to start someplace.”<sup>4</sup> Despite the fact that crime did not even appear on the list of issues identified by the public as the nation’s most important, Goldwater, a prominent civil rights opponent, made “law and order” the centerpiece of his campaign and promised that his party would do more to protect it:

Tonight there is violence in our streets, corruption in our highest offices, aimlessness among our youth, anxiety among our elderly. ...Security from domestic violence, no less than from foreign aggression, is the most elementary form and fundamental purpose of any government, and a government that cannot fulfill this purpose is one that cannot command the loyalty of its citizens. History shows us that nothing prepares the way for tyranny more than the failure of public officials to keep the streets safe from bullies and marauders. We Republicans seek a government that attends to its fiscal climate, encouraging a free and a competitive economy and enforcing law and order.<sup>5</sup>

There is no evidence that these early claims-making activities were a response to a demonstrable increase in public concern about crime. Opinion poll data show that other concerns—especially civil rights and the Vietnam War—were of far more concern to most Americans. On the other hand, it does appear that the tough anti-crime rhetoric struck a chord among some voters; those opposed to social and racial reform were especially receptive to calls for law and order.<sup>6</sup>

The responsiveness of these members of the electorate does not imply that they were manipulated or duped by political elites. Rather, the discourse of law and order provided a means by which a number of preexisting fears and concerns—about the pace and nature of social change, as well as the means used in an attempt to bring this change about—were tapped, organized, and given expression. As urban riots became a more frequent and highly publicized occurrence, the discourse of law and order provided a compelling means by which these concerns about social

### CONSERVATIVE THEORIES OF CRIME

During the tumultuous decade of the 1960s, conservatives offered two theories of the newly politicized crime problem:

- 1) An individualistic theory suggesting that both poverty and crime are freely chosen by dangerous and undeserving individuals who refuse to work for a living and are not penalized for doing so
- 2) A cultural theory asserting that the “culture of welfare” is the primary cause of a variety of social ills, including poverty, crime, delinquency, and drug addiction

Although distinct in some ways, these individualistic and cultural theories both identify “permissiveness” as the underlying cause of crime and imply the need to strengthen the state’s control apparatus. As a rallying cry for Republicans, the permissiveness frame helped forge the party’s new (but unstable) political majority. In the 1980s and 1990s, the ascendance of this frame has also helped to legitimate the assault on the welfare state and the dramatic expansion of the penal system. In short, the construction of the crime issue as a consequence of excessive permissiveness has been extraordinarily useful to conservative opponents of civil rights and the welfare state.

change, racial reform, and increasingly unruly forms of political protest could be expressed.

Ironically, it was the success of the civil rights movement in discrediting more explicit expressions of racist sentiment that led politicians to attempt to appeal to the public with rhetoric that tapped into white fears regarding racial reform in more subtle ways.<sup>7</sup> In subsequent years, conservative politicians also found the crime issue, with its racial subtext now firmly in place, useful in their attempt to redefine poverty as the consequence of individual failure and to recast welfare programs and their recipients in an unflattering light.

### **Crime, Poverty, and Welfare**

Throughout the 1960s, civil and welfare rights activists drew national attention to the issue of poverty. These activists not only highlighted the plight of the poor, but also argued that inequality of opportunity and racial discrimination ensured that poverty would remain widespread and concentrated in minority communities. To remedy this situation, they sought, among other things, to expand the Great Society welfare programs. These programs, they argued, were not only a humane and appropriate response to poverty, but also a means of addressing the crime problem.

By contrast, conservative opponents of the Great Society programs argued that poverty and crime were caused by a combination of bad people and excessive “permissiveness.” Independent presidential candidate George Wallace ridiculed “soft social theories” of crime in especially memorable ways:

If a criminal knocks you over the head on your way home from work, he will be out of jail before you're out of the hospital and the policeman who arrested him will be on trial. But some psychologist will say, well, he's not to blame, society is to blame. His father didn't take him to see the Pittsburgh Pirates when he was a little boy.<sup>8</sup>

According to this conservative argument, crime and related social problems originate in individual choice and greed rather than in social conditions; acting as though crime is affected by social conditions is not only wrong, but lets people off the hook when they make irresponsible choices.

For some opponents of the welfare state, discussions of street crime also illustrated the dysfunctionality of the poor that, they argued, was the true cause of their poverty. According to this culture-of-poverty thesis, poor people are poor because of their cultural values; programs such as Aid to Families with Dependent Children (AFDC) would only reward non-work-oriented lifestyles, thereby worsening the problems of poverty and crime. Furthermore, some suggested, the mere existence of welfare encouraged poor people to think that they are entitled to that which they have not earned. In this twist on the culture-of-poverty thesis, conservatives argued that the “culture of welfare” undermines the (already weak) self-discipline of the poor and promotes “parasitism”—both legal (welfare dependency) and illegal (crime).<sup>9</sup> As presidential candidate Barry Goldwater put it so succinctly,

*According to this conservative argument, crime and related social problems originate in individual choice and greed rather than in social conditions.*

If it is entirely proper for the government to take away from some to give to others, then won't some be led to believe that they can rightfully take from anyone who has more than they? No wonder law and order has broken down, mob violence has engulfed great American cities, and our wives feel unsafe in the streets.<sup>10</sup>

### Discrediting the “Root Causes” of Crime

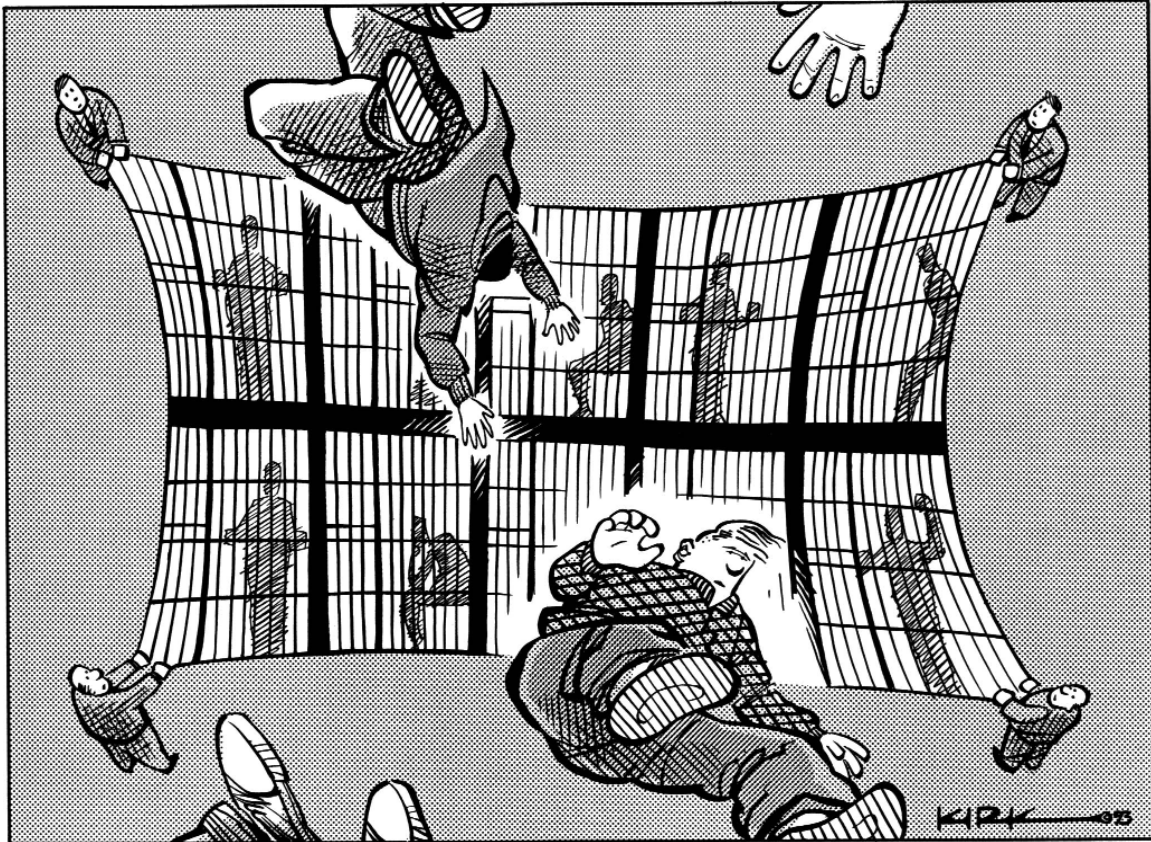
In the mid-1960s, then, liberals and conservatives offered very different explanations of poverty and crime-related problems. According to liberals, social conditions—especially racial inequality and limited opportunities for youth—were the root causes of crime, poverty, and addiction. It is only by addressing these social conditions, they argued, that we may begin to ameliorate the problems they cause. By contrast, conservatives argued that social pressures such as racism, inadequate employment, lack of housing, low wages, and poor education do not cause crime. Instead, people are poor, criminal, or addicted to drugs because they made irresponsible or bad choices. Ironically, social programs aimed at helping the poor only encourage them to make these choices by fostering a culture of dependency and predation.

Highlighting the behavioral pathologies and, especially, the criminality of the poor was thus part of an attempt to transform their image from needy to undeserving. The changing racial composition of welfare recipients may also have facilitated this transformation of the public perception of the poor: Continued migration to northern cities from southern and rural areas meant that increasing numbers of those who received AFDC were African American women and their children. By emphasizing street crime and framing it as the consequence of bad people making bad choices, conservatives made it much less likely that members of the public would empathize with the plight of the poor and support measures to assist them. As historian Michael Katz suggested, when the poor appeared to be dangerous, they were perceived as the undeserving underclass.<sup>11</sup>

As early as 1965, the liberal emphasis on the root causes of crime began to weaken in the face of this conservative assault. Only 4 months after his election, for example, President Johnson declared in an unprecedented special message to Congress his new determination to fight crime: “I hope that 1965 will be regarded as the year when this country began in earnest a thorough and effective war against crime.”<sup>12</sup> Toward that end, Johnson established the Law Enforcement Assistance Administration (LEAA), an agency with a mission to support local law enforcement. To coordinate law enforcement activities aimed at fighting drugs, Johnson also created the Bureau of Narcotics and Dangerous Drugs (now called the Drug Enforcement Agency). These initiatives represented a shift away from the view that the most important crime-fighting weapons were civil rights legislation, War on Poverty programs, and other policies aimed at promoting inclusion and social reform. Over time, the liberal commitment to assisting the poor also attenuated.<sup>13</sup>

### The Election of 1968

The Republican commitment to waging war on crime intensified during and after 1968. During the campaign that year, Republican candidate Richard Nixon followed his conservative predecessors by rejecting social explanations of crime and arguing that the lenience of the criminal justice system was, in fact, to blame for crime and violence. Throughout his campaign, Nixon insisted that the “solution to the crime problem is not the quadrupling of funds for any governmental war on poverty but more convictions.”<sup>14</sup>



Reprinted with permission of Kirk Anderson.

### U.S. SOCIAL SAFETY NET

This rhetorical emphasis on crime was part of a political strategy, developed after the 1964 elections, aimed at weakening the electoral base of the Democratic Party: the New Deal coalition. This alliance of northern, urban ethnic groups and the white South had dominated electoral politics since 1932. But the fact that increasing numbers of African Americans were migrating to the North and acquiring voting rights created quite a dilemma for Democratic officials interested in attracting African American voters while simultaneously maintaining white southern allegiance to the party.

By drawing public attention to the plight of African Americans in the South, civil rights activists forced the Democratic Party to choose between its southern white and northern African American constituencies. Nightly newscasts during the period featured peaceful civil rights protesters being hauled off, rounded up, and otherwise brutalized by southern law enforcement agents. Not surprisingly, support for the civil rights cause grew among nonsouthern whites. This development, along with the increasing numbers of African American voters, eventually led the Democratic Party to cast its lot with African Americans and their northern allies.

Although this decision secured for the Democrats the loyalty of most African American voters, it alienated some of those traditionally loyal to the Democratic Party, particularly white southerners. “Millions of voters, pried loose from their habitual loyalty to the Democratic Party, were now a volatile force, surging through the electoral system without the channeling restraints of Party attachment.”<sup>15</sup> These voters were “available for courting,” and the Republicans moved swiftly to seize the opportunity.

## Law and Order: Appealing To Latent Racism

Initially, the GOP targeted white southerners—voters who had formerly composed the Democrats’ “solid South”—as potential “swing voters.” This strategy certainly paid off: The formerly Democratic South is now overwhelmingly Republican, a trend that the resurgence of evangelicalism, concentrated in the so-called Bible Belt, has helped to solidify. Over time, Republican analysts began to suggest that northern white suburbanites, ethnic Catholics in the Northeast and Midwest, and white, blue-collar workers might also be receptive to their socially conservative and racially coded rhetoric. Some conservative political strategists frankly admitted that appealing to racial fears and antagonisms was central to this strategy. For example, political analyst and consultant Kevin Phillips argued that a Republican victory and long-term realignment was possible primarily on the basis of racial issues, and therefore suggested the use of coded anti-black campaign rhetoric.”<sup>16</sup> Similarly, John Ehrlichmann, Special Counsel to the President, described the Nixon administration’s campaign strategy of 1968 in this way: “We’ll go after the racists. That subliminal appeal to the anti-African-American voter was always present in Nixon’s statements and speeches.”<sup>17</sup>

New sets of Republican constituencies were thus courted through the use of racially charged code words—phrases and symbols that “refer indirectly to racial themes but do not directly challenge popular democratic or egalitarian ideals.”<sup>18</sup> The discourse of “law and order” is an excellent example of such coded language, and allowed for the indirect expression of racially charged fears and antagonisms.’ In the context of increasingly unruly street protests, urban riots, and media reports that the crime rate was rising, the capacity of conservatives to mobilize, shape, and express these racial fears and tensions became a particularly important political resource.

## Partisan Dealignment and the Republican Southern Strategy

As the traditional working-class coalition that buttressed the Democratic Party was ruptured along racial lines, race eclipsed class as the organizing principle of American politics. By 1972, attitudes on racial issues, rather than socioeconomic status, were the primary determinant of voters’ political self-identification.<sup>19</sup> The “southern strategy,” as this tactic came to be known, eventually enabled the Republican Party to create a new division between some (mostly white) working- and middle-class voters and the traditional Republican elite, on one hand, and “liberal elites” and the (disproportionately African American and Latino) poor on the other.

The initial success of the “southern strategy” helps to explain why the liberal commitment to tackling the root causes of crime weakened over the course of the 1960s. At first glance, the Democratic embracement of law and order is puzzling: Throughout this period, much of the public retained the view that crime has environmental and social causes and remained committed to addressing these. But leaders in the Democratic Party were especially worried about the views and sentiments of a particular segment of the voting public: swing voters. Like their Republican counterparts, Democratic strategists had noted that economically liberal but socially conservative white voters were shifting their loyalties to the Republicans—and were strongly attracted to the Republican campaign for law and order. The liberal backpedaling on

*As the traditional working-class coalition that buttressed the Democratic Party was ruptured along racial lines, race eclipsed class as the organizing principle of American politics. By 1972, attitudes on racial issues, rather than socioeconomic status, were the primary determinant of voters’ political self-identification.*

crime appears to have been part of an attempt to woo these voters back to the Democratic Party.

The long-term result of the GOP's southern strategy has been not so much a partisan realignment that works consistently in its favor, but rather the destabilization of the electoral system. The number of swing voters (as well as nonvoters) has grown, and voters increasingly cast their ballot for the candidate (rather than the party) they prefer. Analysis of these swing voters—variously referred to as the forgotten workers; Reagan Democrats; waitress moms; lunch-pail dads; soccer moms; and, most recently, office park dads—has become something of an industry among pollsters and political analysts.

The increased importance of these swing voters, along with Republican and Democratic reluctance to target and mobilize alienated (and disproportionately young, poor, and nonwhite) nonvoters and the winner-take-all electoral college system, encourage candidates from both parties to avoid taking anything that might be perceived as a controversial stand. Of course, the perceived need to court swing voters sometimes conflicts with the parties' need to maintain the allegiance of their more loyal base. But in the case of crime, the apparent popularity of the get-tough approach, especially among swing voters, meant that challenges to the war on crime have been few and far between.

The shift in liberal political discourse also occurred in the context of growing criticism, from scholars and activists across the political spectrum, of rehabilitation.<sup>20</sup> Not surprisingly, conservatives opposed rehabilitation on the grounds that punishment must be harsh and painful if it is to deter crime. But many liberals also became critical of policies associated with rehabilitation during this period, arguing that open-ended (“indeterminate”) sentences designed to facilitate the correction of offenders created the potential for the intrusive, discriminatory, and arbitrary exercise of power. Under the weight of these twin (if quite distinctive) critiques, the rehabilitative project was called into question. The declining legitimacy of rehabilitation as a penal philosophy undoubtedly made it more difficult for liberal politicians to offer a clear alternative to the conservative calls to crack down on criminals, and may also have facilitated the Democratic leap onto the law-and-order bandwagon.

### **Nixon's Federalist Dilemma**

After assuming office, the Nixon administration was forced to contend with the fact that the federal government has little authority to deal directly with street crime outside of Washington, DC. Administration insiders concluded that the only thing they could do was “exercise vigorous symbolic leadership.” Toward that end, they waged war on crime by adopting “tough-sounding rhetoric” and pressing for largely ineffectual but highly symbolic legislation.<sup>21</sup> Not fooled, journalists began to report that, despite Nixon's tough talk, the crime rate was still rising.

Nixon administration officials attempted to resolve this dilemma in several ways. First, Nixon requested—and received—a massive increase in LEAA funds to support local law enforcement.<sup>22</sup> Second, new statistical artifacts were created in the hope that these would permit a more flattering assessment of Nixon's capacities as a crime fighter.<sup>23</sup> Most important, however, was the administration's identification of narcotics control—for which the federal government has significant responsibility—as a crucial anticrime weapon.<sup>24</sup>

To explain and legitimate this new focus on drugs, administration officials argued that drug addicts commit the majority of street crimes to pay for their habits. In fact, the evidence marshaled to support this claim was quite problematic. For example, in a well-publicized speech in

1971, Nixon claimed that drug addicts steal more than \$2 billion worth of property per year. According to the FBI, however, the total value of all property stolen in the United States that year was \$1.3 billion.<sup>25</sup> Despite these kinds of problems, fighting drugs became a crucial weapon in the war on crime.

### The Assault On Defendants' Rights

The Nixon administration's claim that crime is a consequence of "permissiveness" also had important implications for criminal and constitutional law. Under the leadership of Justice Earl Warren, the U.S. Supreme Court had strengthened the protections offered to criminal defendants throughout the 1960s. For example, in *Mapp v. Ohio* (1961), the court ruled that state police officers, like federal law enforcement agents, were, under most circumstances, obliged to obtain a search warrant before conducting a search or seizing evidence.<sup>26</sup> In *Gideon v. Wainwright* (1963), the Court ruled that people accused of a crime were guaranteed the right to counsel. In *Escobedo v. Illinois* (1964), coerced confessions were deemed inadmissible. And in *Miranda v. Arizona* (1966), the Court ordered that suspects must be informed of their legal rights upon arrest and that any illegally obtained evidence would be inadmissible in the courts. Finally, under the Warren Court, defendants were permitted to argue that they had been entrapped when the idea of the crime in question originated with the police or when police conduct "fell below standards for the proper use of governmental power."<sup>27</sup>

Many of these legal rights and protections were undermined or abandoned altogether during the Nixon era. Some of the legislation sponsored by the Nixon administration directly challenged these legal protections.<sup>28</sup> By appointing several conservatives (including Warren Burger and William Rehnquist) to the Supreme Court, Nixon ensured that defendants' rights were further weakened. For example, in 1973, the Burger Court undermined the Warren Court's interpretation of the Fourth Amendment's prohibition against unwarranted searches and seizures by ruling that if an arrest is lawful, "a search incident to the arrest requires no additional justification."<sup>29</sup> All of these efforts to undermine criminal defendants' rights were rooted in the notion that the excessive lenience of the criminal justice system was an important cause of crime. Although these changes in criminal and constitutional law did diminish defendants' rights, but researchers have concluded that they did not have a demonstrable effect on the rates of arrest, conviction, or incarceration.<sup>30</sup>

### The Reagan Years

Despite the centrality of the law and order discourse to the GOP's electoral strategy, the salience of the crime and drug issues declined dramatically following President Nixon's departure from office in 1974. Neither President Ford nor President Carter mentioned crime-related issues in their State of the Union addresses or took much legislative action on those issues.<sup>31</sup> As a result of this inattention, both the crime and drug issues largely disappeared from national political discourse in the latter part of the 1970s.

During and after the 1980 election campaign, however, the crime issue once again assumed a central place on the national political agenda. Candidate and President Ronald Reagan,

*Reagan thus articulated the central premise of the conservative project of state reconstruction: Public assistance for the poor is an illegitimate state function; policing and social control constitute its real "constitutional" obligation.*

following the trail first blazed by his conservative predecessors, lavished attention on the problem of “crime in the streets” and promised to enhance the federal government's role in combating it. Once in office, Reagan instructed the new U.S. Attorney General, William French Smith, to establish a task force to recommend “ways in which the federal government can do more to combat violent crime”<sup>32</sup> and began to pressure federal law enforcement agencies to shift their focus from white collar offenses to street crime. By October 1981, less than 1 year into the new administration, the Justice Department announced its intention to cut in half the number of specialists assigned to identify and prosecute white-collar criminals. The Reagan administration's crackdown on crime also explicitly excluded domestic violence on the grounds that it was “not the kind of street violence about which it was most concerned.”<sup>33</sup>

In subsequent years, President Reagan frequently returned to the topic of crime, striking all of the now-familiar conservative themes. Time and again, for example, he rejected the notion that crime and related social ills have socioeconomic causes:

Here in the richest nation in the world, where more crime is committed than in any other nation, we are told that the answer to this problem is to reduce our poverty. This isn't the answer... Government's function is to protect society from the criminal, not the other way around.<sup>34</sup>

Reagan also echoed his conservative predecessors on the supposed relationship between crime and welfare. The naive view that “blocked opportunities” cause crime, Reagan suggested, led liberals to believe that the “war on poverty” would solve the problem. In fact, it is the government's attempt to ameliorate poverty—not poverty itself—that causes crime:

By nearly every measure, the position of poor Americans worsened under the leadership of our opponents. Teenage drug use, out-of-wedlock births, and crime increased dramatically. Urban neighborhoods and schools deteriorated. Those whom the government intended to help discovered a cycle of dependency that could not be broken. Government became a drug, providing temporary relief, but addiction as well.<sup>35</sup>

Thus, like Nixon and others before him, Reagan argued that welfare programs such as AFDC not only “keep the poor poor” but also accounted, along with lenient crime policies, for the rising crime rate. In fact, studies investigating the relationship of welfare and crime have found that greater welfare spending is associated with lower—not higher—levels of crime.<sup>36</sup>

Under Reagan, it became even more clear that conservatives sought not only electoral success, but a fundamental reconceptualization of the purpose and function of government. Administration officials argued quite explicitly that their liberal predecessors had distorted the government's functions. The state would be on more legitimate constitutional grounds and would more effectively help the poor, they suggested, by scaling back public assistance programs and expanding the criminal justice system and law enforcement:

[T]his is precisely what we're trying to do to the bloated Federal Government today: remove it from interfering in areas where it doesn't belong, but at the same time strengthen its ability to perform its constitutional and legitimate functions.... In the area of public order and law enforcement, for example, we're reversing a dangerous trend of the last decade. While crime was steadily increasing, the Federal commitment in terms of personnel was steadily shrinking.<sup>37</sup>



Reprinted with permission of Kirk Anderson.

### MANDATORY SENTENCING

Reagan thus articulated the central premise of the conservative project of state reconstruction: Public assistance for the poor is an illegitimate state function; policing and social control constitute its real “constitutional” obligation.<sup>38</sup> The conservative mobilization of crime-related issues was thus a key component of the effort to legitimate the shift from the “welfare state” to the “security state.” This reinterpretation of governmental responsibilities has affected not only federal priorities, but state-level spending as well.

Once again, conservative claims-making on the crime issue was not a response to a clear shift in public attitudes or beliefs. Prior to the Reagan administration’s renewal of the war on crime, the view that crime had its origins in welfare dependence and humankind’s propensity for evil was not widely supported. In fact, most Americans continued to attribute crime to socioeconomic conditions throughout the late 1970s and into the early 1980s. In 1981, for example, a national poll found that most Americans believed that unemployment was the main cause of crime. Similarly, a 1982 ABC News Poll found that 58% of Americans saw unemployment and poverty as the most important causes of crime; only 12% identified “lenient courts” as the main source of this problem.<sup>39</sup> As the decade progressed, however, public opinion did shift in more punitive directions.

#### **JUST SAY NO: Launching the War On Drugs**

When it came time to translate its rhetoric into policy initiatives, the Reagan administration faced the same dilemma as the Nixon administration had before it: In the United States, fighting conventional street crime is primarily the responsibility of state and local government. Once again, the identification of drugs as a crucial cause of crime partially resolved this dilemma. In

1981, FBI Director William Webster announced, “The drug problem has become so widespread that the FBI must assume a larger role in attacking the problem.”<sup>40</sup>

As a result of the Reagan administration's renewed interest in battling drugs, federal law enforcement agencies were able to stave off the General Accounting Office's proposed, across-the-board budget cuts. By contrast, funding for agencies with responsibility for drug treatment, prevention, and education was sharply curtailed. By 1985, 78% of the funds allocated to the drug problem went to law enforcement; only 22% went to drug treatment and prevention.<sup>41</sup> The only agencies that fared worse than those with drug treatment and prevention responsibilities in the 1982 budget were child nutrition (down 34%), urban development action grants (down 35%), and school milk programs (down 78%).<sup>42</sup> The Reagan administration's early emphasis on the need for a tough approach to drugs gave law enforcement agencies a distinct advantage in the bureaucratic scramble for antidrug funds.

In sum, the Reagan administration's emphasis on the need for a tough approach to crime facilitated the emergence of the war on drugs and shaped the nature of that campaign. The administration's analysis of the causes of the drug problem was remarkably similar to its assessment of the crime problem: Drug use and abuse were a consequence of bad people rather than dangerous social conditions. “Narco-traffickers” and “drug pushers,” they argued, were especially evil individuals motivated solely by greed. Drug users were also individually culpable:

If this problem is to be solved, drug users can no longer excuse themselves by blaming society. As individuals, they're responsible. The rest of us must be clear that .... we will no longer tolerate the illegal use of drugs by anyone.<sup>43</sup>

This belief in the importance of individual accountability also guided the recommendations made by the Department of Education under the leadership of (future drug czar) William Bennett. Students caught with drugs, Bennett argued, should be kicked out of school. Counseling these kids not only smacked of moral relativism but implied that drug abuse has root causes that are worth exploring.<sup>44</sup>

Although public opinion has not been irrelevant to the development of federal drug policy, the get-tough approach to drugs, like the war on crime before it, was not primarily a response to changes in public attitudes. As of 1981, only 3% of the American public believed that cutting the drug supply was the most important thing that could be done to reduce crime; 22% felt that reducing unemployment would be most effective. Furthermore, the percentage of poll respondents identifying drug abuse as the nation's most important problem had dropped from 20% in 1973 to 2% in 1974 and hovered between 0% and 2% until 1982. Thus, public opinion polls do not indicate that there was an upsurge in concern about drugs prior to Reagan's declaration of war, nor is there evidence of widespread support for the idea that fighting crime and drugs through tough law enforcement was the best solution to these problems.<sup>45</sup>

*....the get-tough approach to drugs, like the war on crime before it, was not primarily a response to changes in public attitudes.*

## The Escalation of the War On Drugs

Political and media attention to “the drug issue” intensified significantly in the summer of 1986. In part, this surge in attention to the drug issue was a response to the cocaine-related deaths of athletes Len Bias and Don Rogers and the increasing visibility of the crack cocaine market. The claims-making activities of federal officials also played a key role.

In October 1985, the DEA sent Robert Stutman to serve as the director of its New York City office. Stutman made a concerted effort to draw journalists’ attention to the spread of crack. “The agents would hear me give hundreds of presentations to the media as I attempted to call attention to the drug scourge,” he wrote later.<sup>46</sup> He explains his strategy as follows:

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 [were] concerned, crack was the hottest combat reporting story to come along since the end of the Vietnam war.<sup>47</sup>

This campaign appears to have been quite effective. The number of drug-related stories appearing in the *New York Times* increased from 43 in the latter half of 1985 to 220 in the second half of 1986.<sup>48</sup> Other media outlets soon followed suit.

In an attempt to ensure that their party was perceived as taking action on the drug issue, Democrats in the House began putting together legislation calling for increased antidrug spending. In September 1986, the House passed legislation that allocated \$2 billion to the antidrug crusade for 1987, required the participation of the military in narcotics control efforts, imposed severe penalties for possession of small amounts of crack cocaine, and allowed the death penalty



Reprinted with permission of Kirk Anderson.

for some drug-related crimes and the admission of some illegally obtained evidence in drug trials. Later that month, the Senate proposed even tougher antidrug legislation, and in October, President Reagan signed the Anti-Drug Abuse Act of 1986 into law. In addition to the House proposals described above, this legislation prescribed harsh mandatory minimum sentences for some drug offenses.<sup>49</sup>

Between 1986 and 1990, a period that bridged the administrations of Ronald Reagan and George Bush, drug use was one of the nation's most publicized issues. The 1988 Anti-Drug Abuse Act added more mandatory minimum sentencing statutes, including a 5-year minimum sentence for first-time offenders convicted of possessing five or more grams of crack cocaine.<sup>50</sup> Now, heightened public concern about drugs reached its zenith immediately following President Bush's national address in 1989, in which he focused exclusively on the drug crisis. Federal funds allocated to the battle against drugs grew rapidly. In fact, federal antidrug spending was greater under President Bush than under all presidents since Richard Nixon—combined.

The crime issue also enjoyed a high profile in the 1988 presidential campaign, in part as a result of George Bush, Sr.'s successful manipulation of what came to be known as the "Willie Horton" incident. Horton, a convicted murderer who had served most of his prison sentence, absconded from a Massachusetts furlough program while Michael Dukakis, Bush's Democratic rival, was governor. While on the loose, Horton kidnapped a couple in Maryland and raped the woman. During the 1988 campaign, Bush and his supporters used the incident in stump speeches and television commercials to mobilize outrage about crime and blame it on "liberal Democrats" like Dukakis. As one of Bush's political operatives explained, the incident was "a wonderful mix of liberalism and a big black rapist."<sup>51</sup>

### **CLINTON ONBOARD: The Triumph of Law and Order**

The outbreak of the Persian Gulf War in early 1991 eclipsed domestic issues, and President Bush largely ignored crime and drugs during the 1992 campaign season. This shift probably reflects the inefficacy of the war on drugs (as indicated by increases in drug-related emergency room visits and in the overall supply of cocaine and heroin within the United States), as well as candidate Clinton's relative invulnerability on these issues.

Like many "new" Democrats, 1992 presidential hopeful Bill Clinton was determined not to suffer the fate of the previous Democratic presidential candidate, Michael Dukakis, who was portrayed by the Bush administration as hopelessly "soft on crime." As both governor and presidential candidate, Clinton expressed strong support for expanded police efforts, more aggressive border interdiction programs, and tougher penalties for drug offenders. The 1992 Democratic platform also embraced the idea that levels of crime and drug use are a direct function of crime control efforts: "The simplest and most direct way to restore order in our cities is to put more police on the streets."<sup>52</sup> Clinton emphasized the need for greater law enforcement efforts and boot camps for juvenile offenders, and he touted his record on capital punishment. (Perhaps to make the point, Clinton returned to Arkansas in the midst of the 1992 campaign to oversee the execution of a convicted killer with an IQ in the 70s.)

In August 1993, Republicans announced an anticrime legislative package calling for increased federal aid for local law enforcement, enhanced federal support for prison construction for states willing to adopt "truth-in-sentencing" provisions, more mandatory minimum penalties, and new restrictions on the federal appeals process for death row inmates. One week later, Clinton and several key congressional Democrats proposed their own anticrime legislation, calling for much

the same. The only meaningful differences between the two parties' proposals were their positions on gun control, crime prevention programs, and the requirement that federal aid to local law enforcement be used to bolster community policing efforts (all of which the Democrats favored and the Republicans opposed).<sup>53</sup> Although these differences are not insignificant, both parties overwhelmingly emphasized the need to spend more on police and prisons. Only the Congressional Black Caucus developed anticrime proposals oriented toward a radically different goal: to "prevent crime [by making social investments, particularly in urban areas] and reform the criminal justice system to make it more fair."<sup>54</sup>

The publicity associated with these legislative proposals appears to have had an impact on public concern about crime. The percentage of those polled who felt that crime was the nation's most important problem increased from 9% in June 1993 (when Republican legislators announced their new campaign) to 22% in October and to 32% by January 1994.<sup>55</sup> Attention to the crime issue increased still further when President Clinton used his 1994 State of the Union address to urge more congressional action, including the adoption of a federal equivalent of California's three-strikes law (which made life imprisonment mandatory for three-time convicts). Later that year, a national poll found that 72% of the voters endorsed these three-strikes provisions; 28% opposed them. Most Democrats—pleased with new poll results indicating that Republicans no longer enjoyed an advantage on the crime issue—continued to support the expansion of the criminal justice system while offering only tepid criticism of some mandatory sentencing provisions and mild support for some preventive measures.

The final version of the Violent Crime Control and Law Enforcement Act of 1994 authorized \$6.9 billion for crime prevention efforts, \$13.8 billion for law enforcement, and \$9.8 billion for state prison construction. The cost of the bill, originally estimated at \$5.9 billion, was now estimated to be \$30.2 billion.<sup>58</sup> The legislation was sent to President Clinton in August 1994 and was hailed as a victory for the Democrats, who "were able to wrest the crime issue from the Republicans and make it their own."<sup>59</sup>

### **EVEN TOUGHER: Keeping Up With the Republicans**

With Republicans demanding still-tougher solutions to the crime problem, House and Senate campaigns in the fall of 1994 focused more on crime than on any other issue. In Florida, gubernatorial candidate (and brother of the current president) Jeb Bush called for corporal punishment of the sort practiced in Singapore. On the television program *Meet the Press*, Texas Senator Phil Graham promised a "real crime bill" that "grabs violent criminals by the throat, puts them in prison, and that stops building prisons like Holiday Inns." In North Carolina, congressional candidate Fredrick Kenneth Heineman urged that provisions of the North American Free Trade Agreement be used to export U.S. criminals to Mexico, "where they can be warehoused more cheaply."<sup>60</sup>

Under the leadership of then-House Minority leader Newt Gingrich, the Republican Party enthusiastically announced its "Contract With America"—including new anticrime proposals. This legislative package proposed further strengthening truth-in-sentencing, mandatory minimum sentencing, and death penalty provisions and weakening restrictions on the admission of illegally obtained evidence. In addition, the Republicans proposed eliminating funding for all preventive measures. Privately, Republicans justified this move by expressing doubt regarding the efficacy of crime prevention programs and by pointing out that their main beneficiaries were the urban poor—a group famous for its loyalty to the Democratic Party.<sup>61</sup>

The goals advanced in the Contract With America were subsequently embodied in a series of bills passed easily in the House in February 1995. Although President Clinton and the Democrats did manage to retain separate funds for community policing efforts and the ban on assault weapons, the 1996 legislation largely embodied the get-tough approach to crime and decimated federal support for crime prevention programs. Asked to explain President Clinton's failure to provide any real alternative to these proposals, one administration official said, "You can't appear soft on crime when crime hysteria is sweeping the country. Maybe the national temper will change, and maybe, if it does, we'll do it right later."<sup>62</sup> Since that time, few congressional representatives have been willing to deviate from the bipartisan consensus in favor of "getting tough."

### **Expanding the War on Crime**

Early in the 21st century, the war on crime is expanding in new ways. Just 6 weeks after the September 11, 2001 attacks on the Pentagon and World Trade Center, Congress passed one of the broadest anticrime bills in American history. The USA Patriot Act (short for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) was passed on October 26, 2001, at the height of the anthrax scare, a time when many legislators did not even have access to their offices. Not too surprisingly, the statute was adopted without much debate, despite the fact that the 342-page document amended a wide array of federal statutes covering everything from immigration law to privacy for library and bookstore patrons

Many other provisions of the USA Patriot Act have stirred up controversy. Belated concern about aspects of the bill led various congressional committees to hold hearings on aspects of the bill after its adoption. But so far, neither Democrats nor Republicans in Congress have been willing to challenge the bill in any sustained manner. The fear of being labeled "soft on terror" now stifles debate in much the same way that the fear of being seen as "soft on crime" has for decades.

### **Enron and Other Corporate Crime**

Even as the country recovered from the attacks of September 11, 2001, a new crime-related scandal burst onto the front pages, this time featuring allegations of misconduct in the boardrooms of some of the nation's most prominent Fortune 500 firms. In these cases, high-ranking executives were accused of knowingly "cooking the books" in order to overstate the profitability of their companies. Knowing the real deal, these insiders then sold their stock at high prices, leaving employees to incur the hit when stock values subsequently plummeted. Some employees lost not only their jobs, but also, in some cases, their entire retirement savings. As revelations of this and other kinds of corporate fraud rocked the country, Congress passed legislation that increased the penalty for some kinds of corporate fraud from 5 to 25 years. As in previous years, fear of opposing what seemed to be a tide of public outrage led many representatives to vote for a bill about which they had many reservations. As one senator said, "Nobody wants to get out ahead of that get-tough train."<sup>63</sup>

The seeming severity of the increased penalties for some forms of criminal fraud has left some wondering if tough criminal sanctions will be any more successful in deterring corporate crime than they have been in deterring street crime.<sup>64</sup> Whatever the answer may be, fears that corporate executives are being highly—and overly—criminalized seem misplaced. Much corporate misconduct is not prohibited by criminal law, and the prison and jail populations remain over-

whelmingly poor and disproportionately nonwhite—and will continue to be for the foreseeable future. Furthermore, the financial price tag of corporate crime far exceeds that of street crime. According to a recent FBI estimate, the combined cost of burglary and robbery is \$4 billion a year. By contrast, the annual cost of white-collar fraud is thought to be around \$200 billion.<sup>65</sup> Estimates of the cost of white-collar crime would undoubtedly be much higher if more corporate misconduct was defined as a crime in the first place. As one scholar recently put it, “The biggest scandal of all is how much bad [corporate] behavior is perfectly legal.”<sup>66</sup>

### **Budget Crises**

In short, both the scope of the war on crime and the federal government’s role in it have expanded significantly as a result of the increased federal involvement in the war on crime, as well as congressional action against terrorism and corporate crime. At the same time, some state governments are quietly attempting to undo some of the more draconian and extreme aspects of the get-tough approach to crime and drugs.

During the legislative season of 2001, for example, state governments across the country adopted legislation that either slowed or reversed tough sentencing policies in an effort to reduce levels of incarceration. These efforts took different forms: Five states expanded drug treatment programs that provide judges with alternative sentencing options, four states revised mandatory sentencing laws, and seven states passed legislation designed to ease prison overcrowding.<sup>67</sup> Declining levels of crime, concern about the massive numbers of released felons reentering the work force with little education and few skills, and decreasing tax revenues and worsening budget crises all seem to have fueled support for these measures.<sup>68</sup>

In the fall of 2002, faced with very serious budget deficits, many states began to take more drastic measures to reduce prison populations and cut correctional costs. In Oklahoma, for example, Republican Governor Frank Keating asked the Pardon and Parole Board to find a way to release 1,000 nonviolent inmates. Looking for ways to make an even more significant impact on the state budget, several other states are considering overhauling draconian drug laws passed in previous decades.<sup>69</sup> By contrast, national political leaders, including congressional representatives, remain committed to the war on crime and have refused to modify the harsh sentencing provisions of the Anti-Drug Abuse Act of 1986 or repeal tough mandatory minimums for other offenses. Consequently, the federal prison population continues to grow quite rapidly while the number of state prisoners is stabilizing. In the year 2000, the state prison population increased by 0.3%, whereas the federal prison population grew by 8%.<sup>70</sup>

### **Conclusion**

Beginning in the 1960s, conservative politicians at the national level began to focus an unusual degree of attention on the problem of street crime. That they did so is somewhat surprising: Not only is the capacity of federal government officials to respond to this type of crime fairly limited, but there was no indication that public concern about crime had increased or that the public believed that getting tough was the best way to address this problem. Similarly, in the 1980s, conservatives called for the wars on crime and drugs *before* the public demonstrated any increased desire for such measures. These politicians made law and order a centerpiece of their political platforms, promoted the view that these social ills stem from permissiveness in the forms of criminal justice leniency and welfare dependency, and argued for tough criminal justice and welfare policies in order to address the problem.

If not a response to clear public demands to “get tough” on crime, how can the rise of the crime issue to the center of the political stage be explained? The conservative initiative on these issues was part of a larger effort to forge a new Republican electoral majority following the collapse of the New Deal coalition. Doing so involved reaching out to formerly Democratic, white voters who had been alienated by the (belated and reluctant) Democratic embrace of the civil rights cause. Rhetoric about the collapse of law and order, crime in the streets, and the need for strength in the face of chaos proved to be a successful means of doing so.

Conservative initiative on the crime issue has also been aimed at shifting the government’s role and responsibilities from the provision of social welfare toward the protection of personal security. The get-tough policies that have resulted from this campaign are not supported by the findings of most sociological research, which suggest that severity of punishment does not have a significant deterrent effect and that welfare spending reduces rather than increases crime. Nevertheless, these policies have been largely supported by both Republican and Democratic politicians for complex political reasons, and, to a significant extent, by members of the public.

-----

*Katherine Beckett is an associate professor at the University of Washington and Theodore Sasson is an associate professor at Middlebury College. This article is excerpted from their book, The Politics of Injustice: Crime and Punishment in America (copyright 2004, Sage Publications). Reprinted with permission.*

All of the content in this publication,  
plus additional information, can be downloaded  
from the *Defending Justice* companion website:  
[www.defendingjustice.org](http://www.defendingjustice.org).

## THE HISTORY OF RACIALLY DISPARATE DRUG LAW ENFORCEMENT

By Deborah Peterson Small

One hundred years ago, opiates and cocaine were freely available—used both medicinally and recreationally by people throughout the United States. Scores of patent medicines, elixirs and liquid concoctions contained substantial amounts of opium or cocaine. Studies published between 1871 and 1922 paint a striking portrait of the typical drug addict in the early 20th century: a middle-aged, middle- to upper-class White woman living in a rural community.<sup>71</sup> The peak of opiate dependence in the United States occurred near the turn of the century, when the number of addicts was estimated at close to 250,000 in a population of 76 million—a rate far higher than today's.<sup>72</sup> Yet even with the relatively high rate of addiction, the prevailing attitude at the time was that drug addiction was a health problem, best treated by physicians and pharmacists.

Public attitudes about drug use began to change as perceptions about drug users shifted. The source of initial prejudice against opiates can be traced to Chinese immigrants, whose custom of smoking opium seemed strange and foreign. White Americans took their own fair share of opium in concoctions such as laudanum and any number of other available tonics and elixirs, in liquid, powder, or pill form. In 1875 San Francisco passed the first drug law that banned the smoking of opium in opium dens. It was only the smoking of opium which was initially outlawed because it was associated with the Chinese. In 1902, the Committee on the Acquirement of the Drug Habit of the American Pharmaceutical Association declared: "If the 'Chinaman' cannot get along without his 'dope,' we can get along without him." The nation's first drug prohibition law was passed in 1909, when California outlawed the importation of smoking opium.

In 1910 Dr. Hamilton Wright, considered by some the father of U.S. anti-narcotics laws, reported that U.S. contractors were giving cocaine to their Black employees to get more work out of them.<sup>73</sup> A few years later, stories began to proliferate about "cocaine-crazed Negroes" in the South who had run dangerously amuck. One article in the *New York Times* went so far as to say that cocaine made Blacks shoot better, and would "increase, rather than interfere with good marksmanship." As a result of these and other inflammatory stories some southern police departments switched to .38 caliber revolvers, because they thought cocaine made Blacks impervious to smaller .32 caliber bullets.<sup>74</sup> An article in *Literary Digest*, a popular magazine of the era, claimed that "most of the attacks upon white women of the South are the direct result of the cocaine-crazed Negro brain."<sup>75</sup> When Coca-Cola removed cocaine from their popular soft drink, it was not simply out of concern for their customers' health. It was to appease their Southern market, which "feared blacks getting cocaine in any form."<sup>76</sup> These stories were motivated in part by a desire to persuade Southern members of

Congress to support the proposed Harrison Narcotics Act,<sup>77</sup> which greatly expanded the federal government's power to control drugs.<sup>78</sup> The sensationalization and gross distortions were also necessary because little crime was actually being committed by drug users, despite widespread use.<sup>79</sup>

When the American jazz scene popularized marijuana in the 1920s and 30s, Blacks and Whites increasingly socialized as "equals" and smoked together. The racist anti-marijuana propaganda of the time used this breach of racial barriers as an example of the social degradation caused by marijuana. Harry Anslinger, head of the newly formed federal narcotics division, warned middle-class political and community leaders about Blacks and Whites dancing together in "teahouses," using blatant prejudice to sell prohibition.<sup>80</sup> In 1931 New Orleans officials attributed many of the region's crimes to marijuana, which they believed was also a dangerous sexual stimulant.

The first federal law targeting marijuana, the Marijuana Tax Act of 1937, was enacted during the Great Depression, again using racist rhetoric as a chief selling point. It was said that Mexican immigrants, who were vying with out-of-work Anglo Americans for the few agricultural jobs available, engaged in marijuana-induced violence against Whites. The American Coalition, an anti-foreigner group, stated:

*"Marihuana, perhaps now the most insidious of our narcotics, is a direct by-product of unrestricted Mexican immigration. Easily grown, it has been asserted that it has recently been planted between rows in a California penitentiary garden. Mexican peddlers have been caught distributing sample marihuana cigarettes to school children. Bills for our quota against Mexico have been blocked mysteriously in every Congress since the 1924 Quota Act. Our nation has more than enough laborers."<sup>81</sup>*

By the early 1960s, college students and 'hippies' again popularized marijuana. A growing 'counterculture' youth movement questioned the value of the Vietnam War, the sanity of U.S. foreign policy, and governmental authority in general. This period coincided with growing urban unrest by African-Americans impatient with the slow pace of progress in implementing civil rights gains. President Richard Nixon responded by declaring a new "war on crime" that targeted and effectively criminalized both groups of his most vocal critics—urban minorities and student dissidents. Student dissidents were regularly maligned as draft-dodgers, hedonistic drug users and unpatriotic opponents of United States foreign policy. Youth of color were portrayed as purveyors of violence, traffickers of drugs and an overall danger to society. Police surveillance was focused on communities of color, immigrants, the unemployed, the undereducated, and the homeless, who continue to this day to be the principal targets of law enforcement efforts to fight the "war on drugs."

**Deborah Peterson Small is the director of Break the Chains.**

*Printed with permission.*

---

## ROLE OF THE RIGHT: Developing and Implementing the Theory

---

---

### James Q. Wilson: A Dominant Figure Among Conservative Crime Theorists

by Pam Chamberlain

James Q. Wilson is a neoconservative scholar and writer who has rubbed elbows with powerful politicians in a way that has significantly shaped public policy. Five years after starting a political science teaching career at Harvard, he became Chair of the White House Task Force on Crime in 1966. Later, Senator Daniel Patrick Moynihan introduced him to President Nixon. He has been highly influential among academics, policy-makers, and legislators ever since.

Wilson is best known by the general public for introducing the “Broken Windows” theory of crime control in a 1982 *Atlantic Monthly* article written with George Kelling, a theorist on policing (See box on Broken Windows). The article, reasonable in tone and without obvious logical faults, had a profound influence on the general public. The Broken Windows theory, adopted by New York City Mayor Rudolph Giuliani and his Chief of Police William Bratton, was widely credited as a major reason for the city’s reduction in violent crime. That “success” promoted and legitimized several ideas behind the then-burgeoning “tough on crime” movement.

Wilson’s other writing reveals the deeply conservative underpinnings of his theories on crime. As early as 1966, Wilson’s idea pieces on crime began to appear in the increasingly neoconservative journal *Commentary*, where his articles, book reviews, and letters influenced a generation of intellectuals. His 1975 book *Thinking About Crime* claimed that criminal activity is the product of a rational mind and is influenced by how much or how little a person can “get away with.” Without controls, crime grows. According to this perspective, a permissive, undisciplined environment and crime are linked. Ten years later, Wilson published *Crime and Human Nature: The Definitive Study of the Causes of Crime* with Richard Herrnstein, the co-author of the well-known right-wing treatise that links race and intelligence, *The Bell Curve*. They argued that crime is part of human nature, and the most effective controls prevent and punish those natural urges that lead to crime. A speech Wilson gave in 1997 to the conservative American Enterprise Institute described the United States as “two nations”—one of material wealth and social order and the other a chaotic, unstructured and spiritually-empty land of the poor. What will save the second nation from despair is returning to a path where religion is influential and where families remain intact. His latest interest is the preservation of marriage.

### WHAT IS BROKEN WINDOWS, ORDER MAINTENANCE, QUALITY OF LIFE AND ZERO-TOLERANCE?

The origins of this movement can be traced to the influential argument that broken windows and other instances of disorder are important causes of crime. According to this view, signs of disorder—like unfixed broken windows—diminish residents' responsibility for their neighborhood, which leads to a progressive growth of wrongdoing. This theory, which has been challenged by recent research,<sup>82</sup> implies that policing should focus on maintaining order and preserving a high quality of life to reduce crime. In New York City, this emphasis led to zero tolerance for any behaviors and people classified as disorderly, such as the streetside “squeegee men” who clean windshields for cash.

NYPD officials and former New York City Mayor Rudolph Giuliani have argued that these tactics are responsible for declining crime rates in New York City. Although these declines have been significant, studies suggest that a number of factors have contributed to the drop in crime that has occurred in New York City and elsewhere. These include demographic changes and declining unemployment levels.<sup>83</sup> A study sponsored by the Justice Department provides further evidence that the decline of the crack cocaine market has also been important, a finding that helps to explain why the homicide rate has dropped in Los Angeles and other cities that have not adopted the zero tolerance approach but whose crack markets have shrunk, and increased in cities that have not experienced a decline in crack use and sales.<sup>84</sup>

There are also political problems with problem-oriented and zero tolerance policing. Unlike the more democratic versions of community policing, neither of these police strategies allows for citizen oversight of the police. In addition, these strategies continue to emphasize arrests and the threat of punishment as solutions to crime. This is most obvious with zero tolerance policing, which sets officers loose on any number of (potential) troublemakers. In New York City, order maintenance has meant a 50% increase in misdemeanor arrests. A disproportionate number of those arrested for petty crimes (such as vagrancy, disorderly conduct, and loitering) are black and Latino.<sup>85</sup> And it is no surprise that complaints about overaggressive officers increased significantly in zero tolerance New York.<sup>86</sup>

—Excerpted from *Katherine Beckett and Theodore Sasson in The Politics of Injustice: Crime and Punishment in America (copyright 2004, Sage Publications). Reprinted with permission.*

The resulting policing practices that emerged from “Tough on Crime” and “Broken Windows” policies targeted youth, the poor, and people of color for intense police scrutiny. When violent crime decreased across the country, advocates of these theories claimed credit. But no causal relationship has yet been shown between the decrease in crime and tougher policing and sentencing policies. In fact, similar decreases occurred in San Francisco and other cities where alternative crime policies, such as abandoning youth curfews and involving community groups, were implemented.<sup>87</sup>

Community policing, an attempt to engage police more actively in neighborhood problem-solving, has in some hands resulted in increased surveillance of certain groups (especially youth), racial profiling, and disproportionate incarceration and sentencing in communities of color and among the poor.

What sounded good on the pages of *Atlantic Monthly* magazine became fuel for policy makers and government officials alike who were eager to demonstrate that “tough on crime” could work.

## National Rifle Association

*“What fakes, frauds and liars! ... [A] shadowy network of extremist social guerillas fueled by anonymous wealth, sophisticated research, free media access and high-dollar consultants. You know, terrorism against freedom isn’t just practiced with bombs and box cutters. Anti-freedom elitists in academia, the media, rich foundations and government can do permanent damage to individual freedoms just as real as an insurrection or coup. Together they form a sort of Taliban, an intolerant coalition of fanatics that shelter the anti-freedom alliance so it can thrive and grow.”<sup>88</sup>*

—Wayne LaPierre, on gun control advocates at the 2002 NRA Annual Meeting.

The NRA was begun in 1871 by two officers of the Union Army, Col. William C. Church and Gen. George Wingate, who were appalled by the marksmanship of many of their troops. For the first 100 years, the NRA concentrated on improving marksmanship for military and law enforcement officers as well as hunters and those who wanted to learn shooting for self-defense. In 1957 affiliates of the NAACP in Monroe, NC, trained with the NRA to defend themselves against the Ku Klux Klan. From the late 1960s, however, the NRA embarked on what it is now most associated with—opposing gun control. In 1977 at its annual meeting in Cincinnati, OH, the NRA made legislative and political action towards opposing gun control its top priority.

While the NRA is officially non-partisan, it supports a legislative and policy agenda aimed at furthering its mission and contributes substantially to candidates that support its goals in national, state, and local legislative races. Quite naturally, these candidates tend to be right-wing conservatives and libertarians who oppose gun control, and are predominantly Republican. The NRA is the country’s largest and most powerful gun-owners’ rights lobby group. One of its many arms is the NRA Political Victory Fund:

*“The NRA-PVF ranks political candidates—irrespective of party affiliation—based on voting records, public statements and their responses to an NRA-PVF questionnaire. In 2002, NRA-PVF was involved in 271 campaigns for the U.S. House and Senate, winning in 253 of those races. These victories represent the election of pro-gun majorities in both the U.S. House and Senate. NRA-PVF endorsed thousands of candidates running in state legislative races and achieved an 85% success rate in those elections. NRA relies on a very simple premise: when provided with the facts, the nation’s elected officials will recognize that ‘gun control’ schemes are an infringement on the Second Amendment and a proven failure in fighting crime. The importance of this premise lies in the knowledge that, as one U.S. Congressman put it: ‘The gun lobby is people.’”<sup>89</sup>*

**CEO/Executive Vice-President:**

Wayne LaPierre

**Budget:** \$120 million

**Staff:** 550

**Board of Directors:** 76, including Sen. Larry Craig, R-ID, Charlton Heston and Ted Nugent

**Headquarters:** Fairfax, VA

**Membership:** 3.5 million (Past members include Theodore Roosevelt and John F. Kennedy)

According to the Center for Responsive Politics, “If lawmakers are guilty of tiptoeing around gun control issues, it is because the NRA and other gun rights groups wield an enormous amount of influence in Washington....Gun rights groups have given more than \$17 million in individual, PAC and soft money contributions to federal candidates and party committees since 1989. Nearly \$15 million, or 85 percent of the total, has gone to Republicans. The National Rifle Association is by far the gun rights lobby’s biggest donor, having contributed more than \$14 million over the past 15 years. Gun control advocates, meanwhile, contribute far less money than their rivals—a total of nearly \$1.7 million since 1989, of which 94% went to Democrats...If gun rights groups have a substantial advantage in campaign contributions, they dominate gun control advocates in the area of lobbying. The NRA alone spent nearly \$11 million lobbying elected and government officials from 1997 to 2003....By contrast, the Brady Campaign to Prevent Gun Violence spent under \$2 million on lobbying from 1997 to 2003....”<sup>90</sup>

### The NRA and Criminal Justice

*“In fact, studies of homicide victims—especially the increasing number of younger ones—suggest they are frequently criminals themselves and/or drug addicts or users. It is quite possible that their deaths, in terms of economic consequences to society, are net gains.”*

—Paul Blackman, Head NRA Researcher, “The Federal Factoid Factory on Firearms and Violence: A Review of CDC Research and Policies.”<sup>91</sup>

The NRA opportunistically cites the decreasing crime rate to advocate against gun control and for various “tough on crime” policies. The website of the Institute for Legislative Action, the NRA’s lobbying arm, states: “The flaw in anti-gun thinking is starkly demonstrated by a confluence of two trends. Simply stated, while guns have been going ‘up,’ crime has been going ‘down.’ The number of privately owned guns rises several million every year and is now at an all-time high...According to anti-gun thinking, crime should be rising by leaps and bounds. In fact, quite the opposite is true. The nation’s violent crime rate (the number of crimes per 100,000 population) has declined every year since 1991 and is now at a 22-year low. And murder is at a 35-year low... Throughout the 1990s, NRA strongly supported successful initiatives in a variety of states to increase prison sentences for violent offenders and reduce parole, and during the last several years encouraged Project Exile-type programs which throw the book at felons who illegally possess firearms. Several law enforcement related factors are cited by the FBI, in its 2000 annual crime report, as among the numerous factors ‘known to affect the volume and type of crime.’ Though ‘gun control’ is absent from the FBI’s ... list of reasons crime has decreased, it is at the top of anti-gun groups’ list.”<sup>92</sup>

For more on the NRA’s position on criminal justice see “Prosecution is Prevention,” at <http://www.nra.org/media/misc/prevention.htm>.

### Endnotes Available Online!

All citations and references are available at [www.defendingjustice.org](http://www.defendingjustice.org) or by contacting PRA.

## ORGANIZING ADVICE: Communities of Color and the War On Drugs

### Q & A WITH BREAK THE CHAINS

Despite equal rates of drug use across racial lines, people of color (those of African, Latino, Native and Asian descent) are much more likely to be the target of punitive drug policies. These communities make up an overwhelming proportion of those penalized by the criminal justice system, incarcerated for long periods of time under draconian sentencing laws, denied access to sterile injection equipment to prevent HIV/AIDS and Hepatitis C, denied public assistance, deported or detained, stripped of the right to vote and restricted from education and employment opportunities as a result of a drug conviction.

**Break the Chains (BTC)** is an organization committed to building a movement in communities of color to oppose punitive drug policies. BTC educates the public, community leaders and policymakers about the drug war's disproportionate impact on communities of color; mobilizes local and national coalitions to advance drug policy reform; and promotes alternative models based on compassion, science, public health and human rights.

**PRA: Why is your group called "Break the Chains?"**

**BTC:** Because our work is about breaking away from the constraints of addiction, prison, disease, and negative ways of thinking that have hampered the development of effective drug policies. The focus of our work is to support the empowerment of people in communities of color that experience the brunt of punitive and misguided drug policies. We believe that people in these communities are developing a powerful momentum for drug policy reform and we are actively generating and encouraging their efforts to mobilize.

**PRA: Has the drug war succeeded?**

**BTC:** No. Despite the escalation of the war on drugs at a cost of billions of taxpayer dollars each year, very little has changed in the availability, price and health consequences of illegal drugs. Half a million Americans, the majority of whom are people of color, are behind bars for nonviolent drug offenses, even though there are roughly equal rates of involvement with drugs across races. Violent crime rates, which fluctuate because of many social

factors, show little apparent relationship to the severity of drug laws.

**PRA: What shift, if any, has there been in the public debate about drug policy in the United States?**

**BTC:** In recent years there has been a definite shift in public attitudes about U.S. drug policy and an increased willingness to try alternative approaches to the current "war on drugs." This shift is evident in the growing voter approval of ballot initiatives allowing for the medical use of marijuana; limiting the ability of law enforcement to seize assets of persons "suspected" of involvement with drugs and mandating that states opt for drug treatment over incarceration for minor drug offenders. Additionally, there are a growing number of public officials willing to publicly challenge the prevailing orthodoxy regarding U.S. drug policy.

In Congress, many of the African American and Latino elected officials who supported mandatory minimum drug sentencing and many other instruments of the drug war, have begun to question its impact on the communities they represent. In 1998, the Congressional Black Caucus declared a "health emergency" due to the crisis of HIV/AIDS in Black communities and lobbied the Clinton Administration for increased funding to address it. They also lobbied for federal funding for needle exchange as a public health intervention to reduce the spread of drug-related HIV—an important element in the overall AIDS crisis. They were ultimately successful in the former, not in the latter, but by raising the issue in Congress they helped broaden the debate about U.S. drug policies.

**PRA: But are there some drugs—like heroin and cocaine—that simply should not be decriminalized or legalized?**

**BTC:** This is a question that we have struggled with for a long time. It is an area where feelings are in conflict with one's thoughts. On the one hand, many of us have personally experienced the harms suffered by individuals and the people who love them because of drug addiction. Consequently, we want to do anything possible to prevent people from developing such problems. There are substances that are more addictive than others, and the physical consequences of substance abuse vary

by substance. Nonetheless, intellectually we cannot find a valid distinction based on addictiveness and/or physical harm between the drugs we categorize as “licit” and the ones we categorize as “illicit.” The addictiveness of tobacco products is on par with that of heroin and cocaine and the physical harms associated with its use have been firmly established. The only basis we can see for the legal distinctions between them are cultural and corporate. We have a more firmly established culture of smoking tobacco products than of sniffing or injecting drugs, and the corporate tobacco interests have been extremely successful in protecting their status as sellers of a legitimate product.

This is not to say that we would like to see heroin or cocaine made as readily available as cigarettes or alcohol. Given the nature of our society, such a scheme would most probably lead to the targeting of vulnerable populations as potential consumers. I think we need to find a scheme that would allow us to regulate access to powerful, potentially addictive psychoactive drugs. At the same time, we would need to focus considerable resources on reducing demand, which would necessarily include addressing issues like delivery of health-care services, including drug treatment; adequate income support for all; housing issues; unemployment and underemployment; the quality of public education and human-resource development. Very few of these issues are within the mainstream of American political conversation today. So, all that is to say that the short answer to the question is no, based on standards of addictiveness and physical harm, we don’t see justification for the distinctions we’ve made between legal and illegal drugs. Since we don’t believe that prohibition enhances the ability to deal with social problems in a free society, we’re against it for all substances.

**PRA: What parameters, if any, should be taken into account when deciding issues like legal age requirements for drug use?**

**BTC:** We should look to the parameters we’ve used in regulating access to alcohol and tobacco products for guidance in establishing legal-age requirements for drug use. Such decisions should be supported by research that analyzes the current age of initiation of drug use among youth and various use patterns including modes of consumption, frequency, and variety of drugs consumed.

**PRA: Are there legitimate, rational reasons for forcibly keeping drugs out of the hands of people who have been known to hurt themselves or others when under the influence?**

**BTC:** It’s far from clear that we know how to make such determinations as to what level of harm to self or others is sufficient to justify forcible intervention by the State absent a criminal act. The whole basis for prosecuting pregnant women who use drugs is that they are hurting another (namely their fetus) while under the influence of drugs. Yet the entire medical and public-health community is united in asserting that the appropriate response to such behavior is not to forcibly attempt to keep these women from drugs through incarceration or some other form of physical restriction. Some people would argue that the very act of injecting oneself with a dirty needle containing heroin or cocaine is harm sufficient to justify the government forcibly restraining such a person in order to save them acquiring an infectious disease such as HIV or Hepatitis C. Such approaches are generally misguided and impossible to administer in a nondiscriminatory manner.

**PRA: Are there any successful alternatives?**

**BTC:** Canada, Australia and a number of Western European countries are increasingly adopting drug policies based on a public health model, as opposed to a criminal justice model. Policies such as providing accessible drug treatment and clean needles concentrate on reducing the harms of drugs instead of punishing low-level users and sellers. As a result of pursuing a more public health oriented approach, these countries have avoided the epidemic of drug related HIV/AIDS that has disproportionately affected communities of color in the United States. The United States should direct more of its resources to drug treatment and community resources if we want an effective drug policy with less waste of human and financial resources.

## Additional Resources

### Critical Resistance

1904 Franklin Street, Suite 504  
Oakland, CA 94612  
Phone: 510-444-0484  
<http://www.criticalresistance.org>

Critical Resistance seeks to build an international movement to end the Prison Industrial Complex (PIC) by challenging the belief that caging and controlling people makes a safe society. Critical Resistance works to abolish the PIC.

### Drug Policy Alliance (DPA)

925 15th Street NW, 2nd floor  
Washington, DC 20005  
Phone: 202-216-0035  
<http://www.drugpolicy.org>

DPA works to broaden the public debate on drug policy and to promote realistic alternatives to the war on drugs based on science, compassion, health and human rights. Break the Chains, a project of DPA, educates the public about the drug war's disproportionate impact on people of color. DPA has offices around the country.

### Families Against Mandatory Minimums (FAMM)

1612 K St., N.W., Suite 700  
Washington, D.C. 20006  
Phone: 202-822-6700  
<http://www.famm.org>

FAMM is a national organization that challenges inflexible mandatory sentencing laws. FAMM's 35,000 members include prisoners and their families, attorneys, judges, criminal justice experts and concerned citizens.

### Justice Policy Institute (JPI)

4455 Connecticut Ave., NW  
Suite B-500  
Washington, DC, 20008  
Phone: 202-363-7847  
<http://www.justicepolicy.org>

JPI generates comprehensive research and reports for policy makers, practitioners and the media on a wide range of criminal justice issues. JPI also provides technical assistance for jurisdictions and communities seeking to reduce the overuse of incarceration.

### Sentencing Project

514 Tenth Street, NW  
Suite 1000  
Washington DC 20004  
Phone: 202-628-0871  
<http://www.sentencingproject.org>

The Sentencing Project produces analysis, data, reports and publications that advocate for reduced reliance on incarceration and increased use of more effective and humane alternatives to deal with crime.

### Books/Reports

Baum, Dan. 1996. *Smoke and Mirrors: The War on Drugs and the Politics of Failure*. Boston: Little, Brown and Company.

Beckett, Katherine and Theodore Sasson. 2004. *Politics of Injustice*. Second Edition. Pine Forge, California: Sage Publications.

Courtwright, David T. 1982. *Dark Paradise: Opiate Addiction in America Before 1940*. Cambridge, MA: Harvard University Press.

Domanick, Joe. 2004. *Cruel Justice: Three Strikes and the Politics of Crime in America's Golden State*. Berkeley, California: University of California Press.

Gray, Mike. 2000. *Drug Crazy*. Paperback Edition. New York: Routledge.

Inciardi, James. A. 1986. *The War on Drugs: Heroin, Cocaine, Crime, and Public Policy*. Palo Alto, CA: Mayfield Publishing Company.

Lusane, Clarence. 1991. *Pipe Dream Blues*. Cambridge, MA: South End Press.

Massing, Michael. 1998. *The Fix*. New York: Simon & Schuster.

Mauer, Marc and The Sentencing Project. 1999. *Race to Incarcerate*. New York: The New Press.

Musto, David F., MD. 1999. *The American Disease: Origins of Narcotics Control*. London: Oxford University Press.

Musto, David F., MD. 1987. "The History of Legislative Control over Opium, Cocaine, and Their Derivatives." In *Dealing with Drugs: Consequences of Government Control*, ed. Ronald Hamoway. Lexington, MA: Lexington Books.

Parenti, Christian. 1999. *Lockdown America*. New York: Verso.

### Endnotes Available Online!

All citations and references are available at [www.defendingjustice.org](http://www.defendingjustice.org) or by contacting PRA.