

**Contributions to Mass Incarceration:
A Study on the Tough-on-Crime Policies of the Clinton
Administration and their Institutional Effects**

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Abstract

Over the past 50 years, the United States has produced an exceptionally punitive criminal justice system resulting in the world's largest prison population. Attempts to explain its rapid emergence have amassed an extensive and interdisciplinary body of research. Generally speaking, there is presently no determined causal theory of "mass incarceration" phenomena. Nonetheless, institutional frameworks have provided greater insight into the epistemic underpinnings of crime and punishment. Social, historical and economic theories have shown that institutions engender meaning and context which can shape action and ideas and facilitate systematic change accordingly.

Analysis of penal policy development from a political institutional perspective is somewhat lacking within such literature. As a result, it will be the framework of this paper. Discursive institutionalism operates under the principle that political institutions are built upon a dynamic force of structure and agency that enable power. Accordingly, ideas and discourse are privileged as explanatory tools because they represent the various contextual nuances of policy development in a holistic way.

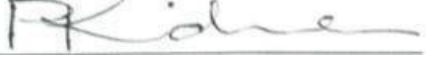
Utilizing the methodological toolkit of discursive institutionalism, we will undertake a case-study analysis of the discursive processes and outcomes of the Clinton administration approach to crime. Our specific analytical focus will be upon the executive-level politics engaged in during the policy-development stages preceding the passage of the largest, most costly anticrime bill in American history.

The *Violent Crime Control and Law Enforcement Act of 1994* represented the Democratic Party's first "tough-on-crime" foray. It was also enacted at a time when crime was in decline. Yet examination of the Clinton administration's pursuit of punitive criminal justice and mass incarceration outcomes is perceptibly incomplete if not in terms of academic rigour then at least focus. Our intention is to evaluate the material and symbolic consequences of these outcomes in terms of both structure and agency

Statement of Originality

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no previously published or written by another person where due reference is made in the thesis.

Prudence Kidman

(Signed):  Date: 25/10/18

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Chapter One

Introduction

“Mass incarceration is uniquely American.”

(Ta-Nehisi Coates on the Daily Show 2015)

Midway through the 20th Century many Western countries began to experience an unprecedented ideological shift towards tougher systems of criminal justice. Among them, the United States established a penal order featuring rates of incarceration in excess of any other nation. Sixty years on, it has sustained this draconian carceral legacy and maintains the largest prison population on the planet (Wamsley 2016).

Including federal and state prisons, state, local and county jails and immigration and juvenile detention facilities, 2.3 million Americans in January 2017 found themselves behind bars (Wagner & Sawyer 2018). This was in addition to those under non-custodial supervision including parole and probation services which together controlled more than 4.5 million offenders (Wagner & Sawyer 2018). More than 6.6 million people in total were under some form of correctional control. They included 2.6% of the population aged 18 or over or 1 in 38 adults (Kaeble & Cowhis 2016, p. 1).

State and local jurisdictions have historically housed the vast majority of American inmates and in the past 40 years, their numbers have increased 500% (The Sentencing Project 2016). Furthermore, states incur the bulk of the financial burden, with \$US57.7 billion worth of state expenditure on corrections in 2016 alone (The Sentencing Project 2016). The majority of inmates detained in that year were convicted of violent or property offences. Historically, however drug convictions have featured prominently in the American criminal justice system, with one in five of all inmates incarcerated for possession, trafficking or other non-specified drug offences over and above similar crimes involving violence (Wagner and Sawyer 2018).

Race is another defining feature of American punishment. According to the Bureau of Justice Statistics, per sample of 100,000 US residents over the age of 18 years, 274 white people are imprisoned (Carson 2018, p. 8). For black Americans the number swells disproportionately to 1,608 and for Hispanics, rests as 856 (Carson 2018, p. 8).

In recent years the US prison population has undergone an overall incremental decrease (Gramlich 2018) and there are signs of reforms occurring. Justice advocates select community and state leaders, Christian conservatives' groups and those traditionally on the left of the political spectrum have variously led the charge (Green 2015; Garland 2018). However the scale of change needed to reverse the all-encompassing damage caused by historic hyper and mass incarceration would require systemic transformation (Green 2015).

The exceptionality of America's criminal justice system has garnered immense academic interest. The resultant body of literature is wide-ranging; a confluence of sociological, legal, historical, cultural and criminological influences (Garland 2001; Simon & Feeley 1992; Tonry 2015; Barker 2009; Miller 2015). As a consequence, this seems to have led to a lack of determinate conclusion around how such a magnitude of incarceration occurred. The intersection of crime and punishment and social organisation according to race, culture, citizenship and class have become primary analytical platforms (Tonry 2009; Wacqaunt 2009; Garland 2001). Moving forward, contemporary scholars are increasingly exploring local sources for explanations of over-imprisonment (Pfaff 2002; Campbell & Schoenfeld 2013; Barker 2009).

Crime control and penal policy has been shaped by political institutions and the actors occupying prominent leadership roles (Gottschalk 2008). According to Gottschalk (2008, p. 236), political science as an academic discipline has historically overlooked the study of politics, crime and punishment in America. In its place, other social science disciplines have filled the void with seminal literature on the causes of punitive criminal justice and mass incarceration. Some have been able to demonstrate the ideational motivations and legislative impacts of government at its executive branch level (Tonry 2013; 2015; Campbell and Schoenfeld).

Consistently, academia has focused on the Republican administrations of Richard Nixon and Ronald Reagan or at very least their respective contributions to punishment and crime control as they ran parallel to major institutional changes and carceral events (Alexander 2010; Unnever 2014; Tonry 2015). Since Nixon, only two Democrats have occupied the White House and just one alone has promoted a "tough-on-crime" approach.

Our research here is guided by the logic that those who hold power within governing structures such as decision- and policy-makers are critical to political action and institutional change. Their choices, platforms and positions are ultimately those with tangible outcomes, namely the passage of legislation (Lowndes 2010; Schmidt 2008). Scrutiny of their influence - specifically in this instance in relation to our interest in crime and punishment - may clarify further the role of the individual in the manifestation of political phenomena. Key to our purpose then will be to unpack the contributions of the political actors involved in the American rise of punitive criminal justice; particularly those at the executive level of government and in the area of ideational leadership. Our chosen case for analysis is the Clinton administration.

William Jefferson “Bill” Clinton served as the 42nd president of the United States of America from 1993 to 2001. Arguably, among the most notable aspects of his tenure was its ideological unorthodoxy (Hale 1995). The ascendancy of neoliberalism in the post-Cold War era had already begun the lengthy process of disrupting traditional political party allegiances before Clinton’s arrival. The Republicans had held executive office for 12 years and there was clearly a well-established propensity towards conservative ideals and leadership (Campbell & Schoenfeld 2013). By the end of the 20th Century, however, the electoral success of the Democratic Party both on Capitol Hill and in the White House had signalled a fundamental shift in American politics. Yet Clinton’s election was emblematic not only of his party’s revival but the materialisation of their new approach to presidential politics. His platforms, policies and programs reflected a melding of liberalism and conservatism (Hale 1995). Healthcare, welfare, the economy and foreign affairs were all obvious and notable items on Clinton’s agenda as he took office. Nevertheless it was his administration’s approach to law and order which would set it apart and stands as the Democrats’ first and defining foray into tough-on-crime politics.

The *Violent Crime Control and Law Enforcement Act of 1994* was in many ways Clinton’s legislative opus. It remains a landmark chapter the US law and order narrative. The omnibus crime bill was touted as a highly ambitious bid to curb an epidemic of violent crime and recidivism. It was and is the largest federal crime control legislation package in American history and, with a budget of \$35 billion, the costliest (Miller 2012, p. 577). It was also critiqued as overly broad, ambiguous and dense (Chernoff, Kelly & Kroger 1996) and continues to inflame criticism.

The Democratic party's opening-term crime and punishment platform can be readily understood as a product of its environment. Certainly the problems it sought to address had been of major concern in the United States since the 1960s. Get-tough responses had proved electorally successful for numerous politicians and over time, undoubtedly helped determine normative consensus around hard-line policies which would eventually outlast their usefulness (Palmiotto 1998; Campbell Schoenfeld 2013).

Empirical evidence shows violent and drug-based crime began declining in the US in the early 1990s and notably before the passage of Clinton's 1994 bill (Levitt 2004). At the same time, the rapid nature of growth in the nation's prison population which had occurred particularly throughout Reagan's 1980s "war on drugs" had begun to ease. Despite this, the 1990s not only witnessed sustained levels of high incarceration, during Clinton's watch the length of prison sentences increased (Travis, Wester & Redburn 2014, p. 68). From this point, the explicit law and order role played by his administration and the specific significance of its policies and their consequences are the focus of our attention.

The qualitative methodological approach of the single-case study will be employed in this thesis as it allows for the utilisation of multiple sources to lead and inform. The underlying principle of the single-case study is the facilitation of in-depth analysis resulting in knowledge amelioration and robust understanding (Vromen 2010). The aim of this thesis is to explore ideas about crime, punishment and politics that shaped the Clinton administration's policy development and outcomes. In doing so we will also endeavour to analyse the ideational nature of Clinton's approach and his overt use of rhetoric in the lead up to and delivery of the *Violent Crime Control and Law Enforcement Act of 1994*.

According to political science academic Vivien Schmidt (2008; 2018), discursive institutionalism promotes holistic conceptualisation and analysis of political institutions. The prevalent frameworks of institutional analysis are historical- (HI), sociological- (SI) and rational choice- (RI) based. Each of these frameworks has a rigid definition of the *institution*, which creates static explanations of institutional outcomes: based on "self-reinforcing historical paths (HI), all-defining cultural norms (SI) or rationalistic preferences (RI) respectively (Schmidt 2008, p. 303). As a result, institutions are seen to strictly organise existence, produce meaning and shape capacity for power. The political causes or sources of mass incarceration in the literature are primarily viewed in this static and deterministic way.

The DI framework on the other hand, follows the logic that institutional change or maintenance is dynamic as it encompasses forces of agency and structure. Political actors and processes can be constructed or/and constrained by their internal abilities and contributions.

Through this framework, the analysis of ideas and discourse serve as the primary tools for explanation (Schmidt 2008; 2010). Schmidt asserts that DI, “*contemplates the discourse in which actors engage in the process of generating, deliberating, and/or legitimising ideas about political action in institutional context according to the logic of communication*” (2010, p. 2). Simply put, interests are subjective but real and ideas, ideation, discourse and context all matter in DI explanations of institutional change or maintenance (Schmidt 2008; Beland and Cox 2016).

With ideas and discourse as the guiding devices, our intention is to employ a range of sources to explore the pertinent contexts and complexities of policy making: historical recounts, conceptual scholarship, legislation, Clinton’s speeches and, data regarding crime and punishment. Examining ideas and discourse in this way will hopefully provide greater understanding on: the root causes of American ideas about the politics of crime, the conditions which prompted Clinton’s tough-on-crime policy undertaking, why his administration participated in punitive criminal justice, and how it established political consensus in order to achieve this approach.

It is intended that this analysis will also provide a substantial platform of knowledge and understanding with which to deconstruct the material and symbolic consequences of Clintonist policy. At this point we may be able to more precisely explain the nature of his administration’s contribution to mass incarceration.

Structure

The thesis is divided into five sections. The first is an executive summary of the 1994 Act accompanied by an outline of the broad policy objectives it encompassed. To chart and explain the objectives of the Act, as we will refer to it herein, we will undertake a review of the 356-page *Violent Crime Control and Law Enforcement Act of 1994*. The review process consists of our considerations of: definitions of crime control and punishment solutions;

identifying the main actors, agencies and institutions involved in the deliverance of various initiatives; and noting the funding allocation and budgetary requirements for the execution of the policies. This will provide understanding of how the political actors and policy-makers involved viewed normative perceptions of crime control and penal solutions. Additionally, the summary will serve as a point of reference for the rest of the thesis as we dissect the root ideational causes, developments and consequences of the policy.

The second part will be an examination of the political and social “root causes” of punitive criminal justice in America¹. These served to shape the ideas developed by political actors reflected in the Act. Foremost, we will establish a broad, historical framework to illuminate the political, social and cultural conditions that the policy was development under. We will argue that the initial purpose of “tough-on-crime” politics occurred during the late 1970s. Our scope of analysis will narrow to examine the evolution of crime and punishment politics during the 1980s, at which point the get-tough approach gained normative approval. Thereafter, we will analyse the temporal and spatial conditions that may have prompted and aided the Clinton administration in its policy endeavours. Additionally, we will examine the specific policy coordination process undertaken to effect the passage of the 1994 Act. To complete this section requires analysis of multiple secondary sources. These include scholarship regarding the history of punitive criminal justice in America and the political causes (Tonry 2013; 2015; Campbell & Schoenfeld 2013; Greene 2002); expert accounts regarding the policy coordination process (Chernoff, Kelly & Kroger 1996; McCollum 1995; Feldman 1995); and, the history of modern American politics (Hale 1995). Further, we will survey government and public polling data about crime and punishment (Federal Bureau of Investigations; Bureau of Justice Statistics; Gallup; Pew) and some secondary analysis of these conditions (Levitt 2004).

The third section will involve exploring Clinton’s personal contribution to the policy process: his leadership ideas and rhetoric will be examined and discussed. This will include analysis of the president’s language, his engagement with audiences and patterns of public interaction. To complete this process required examination of Clinton’s 52 law and order policy speeches delivered between October 31, 1991 and September 13th, 1994.

¹ *Root causes* is a noted concept from Schmidt (2017) used to define the ideational forces that may enable action or change.

In addition, we will refer to conceptual and theoretical scholarship around ideational and discourse so as to support and qualify any conclusions drawn (Schmidt 2008; Beland & Cox 2016; Villalobos, Vaugh & Azari 2012).

The fourth section will examine the quantifiable outcomes of the Act according to the objectives of its framers. This will serve to assess the success or otherwise of the major policies and programs they put forward. This data is derived from a selection of government sources, public opinion polls (similar to those listed in section two) and secondary interpretations of crime, punishment and policy reports. Our primary time-frame corresponds with the Act's funding allotment period, 1995-2000.

In the final section we explore the symbolic consequences of the Act². These types of outcomes are not immediately evident or strictly quantifiable. Even so, they have an enduring impact on normative understanding, on individual experiences and practices, on the process of systematic criminal justice and on governance. This section deconstructs the cumulative effects of the Clinton administration law and order policies and evaluates the process whereby policies were publicly disseminated. In this we will refer to data derived from all the sources already noted here and others which are acknowledged accordingly.

² A concept noted by Shamma (2016) to describe shifts that are topics of debate, are part of rhetoric or have figurative meaning. Throughout this work we also rely on this term to encompass consequences which are not conventionally quantified.

Chapter Two

The Politics of Crime & Punishment

The body of literature devoted to the politics of criminal justice and mass incarceration in the US is extensive and growing. It features several distinctive approaches to explaining why punitive responses to crime became so widespread in the final decades of the 20th century. These include broad cultural, historical, economic and racial theories of causation as well as contemporary micro-analyses. In this chapter we explore the relative value of these approaches in helping answer the questions set out in this thesis.

Structural Theories

The late 20th Century ascendancy of neoliberalism triggered major economic, social and cultural change. The value of governments and the ways they operated were also fundamentally altered. In considering these events, sociologists and other scholars began to observe a growth in the number of people in Western societies being sent to prison especially for less serious offences. (Garland 1985; Garland 2001; Simon and Feeley 1992; Lacey 2010; Wacquant 2009). This resulted in their producing strong material evidence to demonstrate a correlation between the two.

Most research identified the 1960s-1970s as a starting point for neoliberal change and characterised the period accordingly: post-industrialisation and predominance of the liberal market economy (Lacey 2010); the rise of post-ideological liberal governance (Loader & Sparks 2016); and the advent of poverty politics along with the de-socialisation of wage labour (Wacquant 2009). More simply, this involved various findings relating to the extension of the free market and promotion of competition, the break-up of state-owned enterprises, the erosion of public welfare and the weakening of trade unions. Governments became highly bureaucratic, managerial and centralised and all of this engendered a “new penology” (Simon and Feeley 1992). Criminal justice particularly in the United States, Britain and the Netherlands had previously emphasised internal governance, technocratic policy-making and systematic welfare. However it now came to be typified by reflexivity and reflectivity or the cause-and-effect relationships associated with broader structural demands (Garland 1985; Simon & Feeley 1992; Lappi-Seppala 2008). While temporal analysis showed criminal justice had not been a priority of American governments before the 1970s

(Carmichael & Jacob 2001; Lacey 2010), it eventually became a cog in the governance machine (Garland 1985; Wacquant 2009).

These findings are inherently important to research on punitive crime governance and mass incarceration. They identified the initial socio-political changes that prompted rapid rates of imprisonment. Yet according to contemporary scholarship, structuralist theories overemphasise the totality of exceptional criminal justice and mass incarceration across the West. As a result, the uniqueness of the American experience is undermined. Accordingly, Garland (2018) suggests exploring criminal justice at the state level provides more clarity about sources of punishment than national, systematic analysis.

For our purposes, structuralist theory provides valuable context about elements of policy-making and styles of governance that were fundamental to Clinton era crime-politics.

Social frameworks theories

Social theories of crime and punishment have arguably made the most significant impression on this body of knowledge. Culture, class, race and symbolic predisposition are the primary conceptual and analytical frameworks they rely upon.

Culture

As a theoretical forerunner, Foucault's genealogical account of discipline and punishment focused on cultural discourse and texts. Similar critical thinking lead some scholars to question whether a successful or effective system of crime control actually existed (Garland 2001; Pettit 2002). Others took up the idea that modern democracies had failed to organise criminal justice in a rational way (Cavadino and Dignan 2006; Lappi-Seppala 2008; Lacey 2010). Evidence suggested systems of punishment were not suited to reducing crime, that they failed to rehabilitate offenders and that they misrepresented the need for society to be protected from dangerous criminals (Pettit 2002; Beckett & Herbert 2010). Meanwhile, researchers began to examine patterns of crime and punishment, particularly in Western society, and their relationship with political rhetoric (Garland 2001; Wacquant 2009; Pratt 2007; Newburn & Jones 2005). It was noted that cultures conducive to neoliberal governance were, socially, more exclusionary (Lacey 2010). Prominent examples such as the United States and Britain also shared a history of harsh penalties. In a symbolic sense, Newburn and Jones (2005) suggest that lessons drawn on a transnational scale played an important role in

the normalisation and spread of punitive agendas. Globalisation and cultural liberalism has perpetuated confirmation bias as a characteristic of contemporary national governance. America as the global source of hegemonic power is by implication the source of punitiveness.

Wacquant (2009) posits that certain nations amplified the principles of Western civilization during the Cold War in a bid to enhance solidarity. It served to popularise democratic, liberal and capitalist rhetoric. Meanwhile, fiscal conservatism with its government belt-tightening and reduced taxation took hold. An associated manufacturing sector decline known as de-industrialization resulted in high levels of unemployment and unrest. Those once dependent on welfare, unskilled labourers and the uneducated found themselves increasingly incompatible with societal values. In the US, for example, Richard Nixon downsized the nation's welfare system on the premise it was ineffective and inefficient. To legitimise this, he derided the burden of providing a safety net for the less fortunate as adverse to American liberalism and democracy (Lacey 2010).

Garland (2001) found the neoconservative conceptualisation of crime and punishment following this period of major economic and social upheaval served to normalise harsher responses to crime. In the US, political elites began to pursue market-oriented reforms of governance which further impacted on welfare and employment, specifically for people of colour in urban areas. All of this correlated with the punitive turn in law and order politics which became the predominate form of power and control of the masses (Garland 2001; Wacquant 2009).

Some scholars believe America's exceptional punitive nature is due to weak institutional arrangements which permit the politicisation of crime (Tonry 2009; Lacey 2010; Lacey & Soskice 2015). Tonry (2009) identifies four cultural pillars that shape the style of socialisation rhetoric and ideation in the US: political paranoia, political fundamentalism, constitutionalism and race. Accordingly, special interest groups and political parties use symbolic politics to mobilise support for tough-on-crime agendas, specifically the manipulation of outrage and fear of crime (Pettit 2002). Simon (2001) asserts the success of symbolic politics is predicated on people's inherent desire to seek collective identities which validate risk and according response.

The role and significance of religious culture in America and its ties to penal policy-making is a central theme in the literature (Unnever, Cullen and Applegate 2005; Tonry

2009; Tonry 2013). Manichean moralism, Tonry (2009, p. 381) argues, is foundational to political culture and mostly associated with the conservative right. In a similar vein, the empirical research of Unever et al. (2005) indicates the cultural proclivity for moralisation and intolerance largely rests with conservatives and Protestant Christians. Both trace the historical development of American crime and punishment policy as occurring predominately under conservative administrations.

Tonry (2009, p. 390) argues America's moralistic and politicised styles of governance are exacerbated by a culture of individualism. He also points to evidence of policy-making based on ensured compliance of socialisation methods and political agenda (Tonry 2013). Further, political actors have historically manipulated institutional conditions through legislation. As a result, US policy has been shaped by a tendency to place political interests before the logic of necessity (Tonry 2009; 2013; 2015).

The politicisation of crime and punishment in the United States has created a cyclic culture of control. Governments have been able to mobilise public trust and reinstate the value of government in the modern era through appearing to be tough-on-crime (Wacquant 2009; Garland 2001). Meanwhile, an indifference towards the social sources of crime has exacerbated divisions, criminogenic conditions and the propensity for violence (Miller 2015).

Class

According to social theory literature, rhetoric is an important tool of class-based analytical frameworks. Scholars frequently argue that individuals once perceived as welfare dependents of industrial era governments are now the targets of crime framing, welfare reforms and crime control (Wacquant 2009; Garland 2001; Garland 2014; Campbell and Schoenfeld 2013; Mauer 2001; and Cardora 2014). Marginalised groups such as the mentally ill, the poor and homeless, ethnic minorities and single-parent families are criminalised to support political narratives (Amundson, Zajiceck & Hunt 2014; Caplow & Simon 1999). Meanwhile, crime victims and their support groups have been deployed in public discourse to enhance outrage which then justifies strong political responses (Ginsberg 2013; 2014). Wacquant argues this has enabled the punitive policy strategies used to manage poverty and marginality (2010, p. 198). This conclusion is supported by national arrests and imprisonment rates which show marginal groups systematically overrepresented (Simon & Caplow 1999).

This extensive and diverse body of epistemic approaches supports a rich and dynamic theoretical body. However the literature is not without criticism and should be addressed as

such. Sociological- and historical-styled institutionalism can lead to reductionism. According to Barker (2009), these practices undermine the relative cultural experiences of criminal justice and governance according to various state-level jurisdictions. The final point of reproach is the grand narrative style of these explanations. Contemporary scholarship has criticised conclusions that characterise American statecraft as inherently and uniformly retributive. Barker (2009) and Garland (2018) believe generalisations of this type have the potential to undervalue the myriad underlying, state- and local-based explanations of punishment. Nevertheless, it should be acknowledged that class- and culture-based theories have provided an invaluable framework for further institutional analysis. These bodies of work arguably provide the theoretical foundation of contemporary research and indeed, do so here. They have yielded strong evidence of the normative and symbolic nature of law and order politics essential to our discursive analysis of political rhetoric and ideas.

Race

Among the most significant, relevant literature are those regarding race. Its discussion in relation to the development of modern American criminal justice is often employed as a variable to highlight systemic failures or emphasize the exceptional character of American penalty. However scholarship devoted to race theory is ever- expanding particularly in the area of critical theory and advocacy. The concept of race is a central causal variable used to explain the punitive and incapacitate nature of American law and order (Tonry 2009; Alexander 2010; Mauer 2004). These theories are overwhelmingly supported by data evincing the disproportionate incarceration of African Americans (Lacey & Soskice; Caplow & Simon 1999; Unnever, Cullen & Applegate 2005; Miller 2015).

Alexander (2010) proposes that modern corrections and the collateral consequences of mass incarceration can be likened to the racial disparities evident during the Jim Crow era of segregation.

Racism and racialized politics are a constant in American history (Tonry 2009; Weaver and Lerman 2014). According to Frost and Clear (2016), interpretation of evidence of institutional racism is becoming harder to identify and absolutely determine. Although racism is no longer socially or politically acceptable, it is still prevalent. The literature of race has produced significant and diverse theoretical and analytical conclusions about the politics of crime. Mauer (2004) determines that there is a culture of executive and congressional discursive manipulation based on the criminalisation and marginalisation of African Americans. Of the more notable examples cited are those relating to the 1980's

‘war on drugs’ (Alexander 2010; Tonry 2009; 2013). Public support was mobilised via the open criminalisation of African Americans and the misrepresentation of the crack and crime epidemics by political actors. Furthermore, their narratives were bolstered by sensationalist media coverage (Newburn and Jones year; Glassner 2000). More generally, others have pointed to the over-reporting of black street crime and over-emphasis of black violence (Pratt 2007; Glassner 2000).

Contemporary scholarship in relation to race and crime politics poses important questions regarding the presence and significance of institutionalised racism. In addition, the work plays an important methodological role in terms of contributing effective and holistic empirical research.

Social Movements and Public Opinion

There are three prominent theories on public opinion: penal populism, the democracy-at-work thesis (DWT) and the elite manipulation theory (EMT). Penal populism is arguably the most notable. The ontological premise of penal populism is Sir Anthony Bottoms’ ‘populist punitiveness’ theory (1995). Bottoms states the notion of “the people” is fundamental to the maintenance of democracy as it provides unification. Meanwhile, populism is the mode of operation that mobilises support based on grass roots interests. Populist groups are fundamentally characterised by their emotive nature, distrust of bureaucracy and internal socialisation (Pratt 2007, p. 9).

Penal populism asserts that institutional responses to issues such as crime must be strong. As an innate part of life, crime has the potential to endanger one’s existence; fear of crime as such is an evidently rational response. The systematic failure to address crime provides powerful conditions for upheaval and change (Dzur & Mirchandani 2007). Pratt (2007) determines that it is therefore in a political actor’s best interests where possible to align him/herself with populist groups. However politicians do not merely pander to the whims of populism. Fear of crime is manipulated by political actors and is a favoured tool when leveraging agenda for legislative success (Simon 2011; Campbell & Schoenfeld 2013).

Proponents of penal populism engaged in historical analysis of public responses to crime have found America has a propensity for punitive discourse (Newburn & Jones 2005; Pratt 2007). Alternately, some scholars claim penal populism highlights only how weak

institutional arrangements and culture have exacerbated punitive sentiment (Lacey 2010; Green 2006; Tonry 2009; Dzur 2010). Stanley (2008) argues penal populism is a thin ideology which tends to inflate the actuality of populism. Specifically in terms of American politics, he questions whether populist groups possess the centrality, authority and capacity to exact change. Tonry (2013) contends America's constitution and anti-big government culture guard against tyrannical interest groups. Nonetheless, penal populism addresses the interaction of various institutional actors during periods of high-crime politics. This provides clarity around the significance of non-political actors and how they contribute to political action via symbolic means.

The democracy-at-work thesis was developed by political actors (Frost & Clear 2016) and presents their roles as inherently positive. Proponents of DWT assert that American politicians are merely responding to the public during noted instances of penal policy formulation. Any legislative consequences are the result of responsive and effective policy-making although American politicians can become susceptible to certain institutional trappings: decentralised government and localism (Tonry 2009); the electoral incentives of direct democracy (Berdejo & Yuchtman 2013); legalism (Tonry 2013); weak party discipline (Lacey 2010) and special interest demands (Ginsberg 2013; 2014; Unnever et al. 2005). Furthermore, the power of the public to elicit a response from politicians in order to provoke fundamental policy action is vastly overstated. Despite the inherent flaws of DWT, it demonstrates how bias can manifest in scholarship vulnerable to advocacy-styled policy analysis (Robert and Zeckhauser 2011).

Elite manipulation theory is an analytical framework that examines how political elites exploit fear of crime in order to serve political interests (Frost & Clear 2016). Beckett and Sasson's (2004) historical discursive analysis found that crime and punishment was not a systematic concern of the American public prior to the 1960s. Thereafter, political rhetoric was employed by politicians in an adversarial manner for the purposes of socialisation aimed at mobilising support for punitive law and order. Additionally, politicians have been careful to remain aligned with normative, democratic values to ensure legitimacy. However this scholarship tends to undermine the durable boundaries that constrain forms of tyrannical political discourse fundamental to democratic government.

Public framework scholarship provides an important bottom-up perspective of public deliberation and its influence on public policy. For this thesis, the mobilisation of ideation and

utilisation of rhetoric will be strictly analysed from a top-down perspective. Notwithstanding, this body of work provides invaluable knowledge about the power of ideas and rhetoric.

Micro level analysis

Social theories of crime and punishment provided the foundations for the current empirical research trend within the literature. Contemporary crime and punishment academia has shifted towards analysis of micro level institutional processes, resulting in a more nuanced body of knowledge. Recent findings have helped classify and clarify causal variables that have legitimated punitive penal policy and punishment methods in America.

Macro-institutional analysis has been criticised as too broad in its approach to the systemic exceptionality of American punitiveness (Barker 2009; Garland 2018). According to Pfaff: *“If one is to find out why prison populations have historically grown in the United States over the past 50 years, it is necessary to find the initial sources of growth”* (2012, p. 1242). As such, the utilisation and analysis of micro data has become essential to conclusions drawn within this literature. Micro level data includes state and local level crime and punishment rates as well as types of corresponding governance (Pfaff 2012, p. 1242). Historical institutionalism research has shown experiences with governance in America are more distinguishable at the local level (Tonry 2009; Campbell & Schoenfeld 2013). Localism is constitutionally engrained which means it is equally bound by culture and legality (Tonry 2009). Empirical research has furthered this notion, having found that perceptions and experiences with crime and punishment are a primarily state-based phenomenon (Pfaff 2012; Baker 2009; Simon and Caplow 1999; Miller 2005). Central to this conclusion is comparative analysis of interstate experiences which have highlighted the differences in levels of punitiveness (Barker 2009; Simon and Caplow 1999; Miller 2015). Barker’s (2009) in-depth cases study analysis found significant differences between New York, Washington and California. She posits that local institutional dynamics such as social composition and governmental culture affect the way crime is governed and interpreted. More broadly, Cavadino and Dignan (2006) suggest a state’s style of democracy is indicative of how inclusive and exclusive the society is. Barker (2009) too found a strong correlation between socially and economically exclusionary societies, strong distrust in government and higher levels of incarceration. Additional single case study analyses reveal other sources that originate at local and state level which shape punitiveness such as special interest groups (Volokh 2008; Ginsberg 2014; Unnever et al. 2005), determinate sentencing practices

(Aharanson 2013) and electoral cycle incentives (Berdejo and Yuchtman 2013; Dyke 2007). Such detailed research serves to provide greater insight into relative experiences of crime and punishment. Collectively, they enrich the conclusions of the social theories reviewed above but have the potential to arrive at relativist findings. Nonetheless, the acknowledgement of relative experiences and context is an epistemic principle shared with the approach in this thesis. It therefore, has logical merit.

Criminal justice and mass incarceration literature delivers an extensive range of theoretical, analytical and conceptual conclusions. As a body, it captures the complexities and nuances of crime and punishment politics to provide holistic understanding. Policy development both encompasses and is engendered by perceptions of crime, punishment, culture, class, race and governance. This has produced material and symbolic consequences that are equally concurrent and incalculable. Nonetheless, we find that the literature can underestimate the significance and dynamic role of executive power in the perpetuation of penalty. As such, this thesis seeks to qualify the contributions of executive institutional policy development.

Chapter Three

Violent Crime Control and Law Enforcement Act of 1994

The Democrat crime bill was introduced into the House on October 26 1993, the delivery of this omnibus bill to passage was not a smooth one. It was the subject of intense congressional battling, in-party politicking and rigorous public campaigning (Chernoff, Kelly, Kroger 1996). The bill repeatedly failed to pass both the House and Senate and incurred multiple amendments and rewrites particularly at the behest of three substantial committee reports (Congress 1994) . On August 21, 1994 the House passed the legislation 235 yeas to 195 nays. The Democrats voted 188-64 for it and the Republicans 131-46 against (Office of the Clerk 1994). Four days later, the Senate approved the bill 61-38 with the Democrats 54-2 in favour and the Republicans 36-7 to the negative and 1 no-vote recorded (ProPublica, 1994) . It was finally signed into law on September 13.

The bill's primary objectives were proactive prevention and systematic commensurate punishment. Its initiatives were myriad and dynamic; something of a moving spread of ideology, policy directives and programs.

Crime control

“Reclaim our streets from violent crime and drugs and gangs; to renew our own American community” (Clinton State of the Union address 1994).

The Act embraced the notion that public safety was dependent upon controlling crime. To achieve this, three broad strategies were used: those designed to boost police protection, deployment, training and education; those designed to deliver community empowerment through funding for the restoration of public infrastructure such as lighting, safety hotlines and public forums; those designed to examine gun control as a means of disarming drug and gang criminals and restoring the ability of police to enforce law. These strategies were arguably tantamount to effective and proactive policy. They served to prevent, deter and protect.

Law enforcement

Central to this three-pronged approach was the deployment of 100,000 police nationwide. Community policing programs or “Cops on the beat” (COPS), was set to cost the federal government \$8 billion (Title I). It involved dispatching officers to public areas pertinent to criminal activity such as schools, parks and somewhat mundanely, street corners (Title I). This took place more specifically in urban areas where violence and gun and drug use had become endemic. It was stated that an increase in beat-police would enhance public safety via appropriate management of and protection against crime.

COPS also involved community-oriented engagement between law enforcement and the main perpetrators of criminal violence (career offenders, gang members, drug users, and juveniles). This was deemed necessary for effective crime fighting, with officers provided with additional training for gang resistance as a means of enhancing an interventionist and preventative approach (Title III, Subtitle B; Title IV, Subtitle A; Title XV). It was reasoned that this would diminish cyclic arrangements that perpetuated street-level and violent crime more generally.

Community-oriented policing also consisted of a comprehensive and reflexive approach to law enforcement. Domestic violence was becoming recognised as a prevalent form of violent crime across the US but due to its personal and endogenous nature, it was difficult to police in a traditional sense. Officers needed to be trained to identify and manage

the problem more effectively. Additionally, police were encouraged to arrest perpetrators of domestic violence rather than treat offences as misdemeanours (Title IV).

To effectively combat violent crime, it was necessary to make improvements to the Federal criminal justice system. It was noted that the Act would likely place extra demands upon the Federal Bureau of Investigations and Department of Justice. Accordingly, they were respectively compensated with \$199 million and \$245 million additional funding (Title XIX). To enhance federal crime, control the Act also extended special considerations to local and state officers to encourage their participation (Title XXI). The Byrne program encompassed a range of programs to combat violent crime and ensure the health and wellbeing of officers and their families. It was allotted \$1 billion funding (Title XXI, Subtitle A).

The enhancement of technocratic standards for the betterment of law and order was a legislative imperative, something which required institutional reform. Funds were made available to local and state governments to recruit and train a new wave of community-oriented officers. In addition to the billions of for policing generally, an additional \$14 million for the prioritisation of local recruitment efforts (Title III, Subtitle H). A further, \$100 million was offered to states to be distributed in the form scholarships for the development and promotion of the 'Police Corps' (Title XX).

Since law enforcement mostly required the development of state-level service delivery, funds were supplementary and left to the discretion of state governments. Nonetheless, general improvement and reform was necessary across the board. Funding was provided for the modernisation of policing techniques, technology, and education (Title XXI). States were also incentivised to develop a centralised databank for the sharing of crime efforts and policing techniques, and the Act made a commitment to develop added centralised databases (Title IV). Additionally, federally-funded policing initiatives were subject to ongoing evaluation to ensure transparency and foster research and development. The Act noted that a cohesive and cooperative institutional environment would enhance crime control abilities. The ideal outcome would be independent, dynamic and pragmatic law enforcement at all levels of governance.

Finally, to emphasize its support for the institution of law enforcement, the federal government included a clause in the Act to increase penalties for crimes against law enforcement officers (Title XXXII).

Prevention

Along with community-based policing, the development of local infrastructure and resources by community members and organisations was a top priority. Generally, the Act budgeted upwards of \$3.8 billion for the array of prevention programs (Title III). Federal grants and incentives were made available to state and local governments to improve existing or install new surveillance equipment for monitoring street crime, in addition to the upgrading of lighting in parks and near transit services (Title IV, Chapter 3). In relation to domestic violence, public hotlines were set up to effectively respond to and manage an increased demand for services (Title IV, Chapter 1).

The *Ounce of Prevention Council* was key to community empowerment, with funds issued for the improvement of social infrastructure (Title III). Money was made available to experts, businesses and community organisations for the development of justice alternatives and diversion programs. These targeted first-time offenders, petty criminals and youth deemed at risk of exposure to gang activity. They included after school care, job training, mentoring and on a more innovative note, midnight basketball leagues.

Funds were also set aside to create public awareness around distinguishing the significance of sex crimes, domestic violence and gang violence (Title III; Title IV). National campaigns were staged both in schools and via various public service institutions. Their purpose was to provide guidance and awareness regarding ethical conduct, promote public safety and encourage community empowerment (Title III).

Gun control

The final dynamic of the Act's emphasis of proactive crime control was an increase in gun restrictions and regulations. This was to counter an apparent increase in their general criminal use as well as during domestic violence (Title XI, Subtitle D), crimes against children (Title XI, Subtitle B) and those committed by juveniles (Title XIV; XV). The aim was to ban so-called non-essential assault weapons which had become prevalent in street crime. The list comprised 658 weapons including semi-automatic rifles or at least those able to accommodate large capacity ammunition-feeding devices. Additionally, the Act outlined the prohibitions of handgun ownership by juvenile persons. This was a strong response to the rise in violent, juvenile crimes that involved handguns (Title XI, Subtitle B).

Lastly, the Act declared its support for the ‘Brady Bill’ with 150 million dollars’ worth of funding for its continuation (Title XXI, Subtitle F). The Brady bill foremost contained regulations such as criminal and mental health background checks for the sale and purchase of handguns. In addition to restrictions, new responsibilities and rules applied to manufacturers, licensures and owners. The aim was to educate the public about safe and fair use of handguns in addition to making production, distribution and ownership more transparent. Furthermore, the controls were a way to protect police from engaging with criminals with potentially superior weaponry (Title XI).

Punishment

“We must work together to ensure hardened criminals who prey upon the innocent receive punishment commensurate with the harm -- physical, emotional, and financial -- that they have inflicted.” (Clinton 1993 in Proclamation 6551)

Justice

Punishment encapsulated the ‘tough’ aspect of the Act and involved major reform. Penalties were increased for several offences across the board. They included but weren’t limited to sex offences against minors (Title IV), people smuggling (Title VI) and drug use and trafficking (Title IX, Subtitle A). The primary aim was to deter by emphasising punitive punishment outcomes.

Ensuring victims’ rights was a centrepiece for legislative action on punishment. While police and community empowerment had been established as a first line of defence for law-abiding citizens, crime was seen to be an inherent part of any society. In addition to penalty enhancements, the Act outlined restorative restitution and assistance for victims (Title XXIII). Thus, those harmed received some semblance of justice and a degree of insulation from ongoing harm caused by the crimes committed against them. This was particularly so for those most vulnerable among them such as women and children in cases of domestic violence and sexual abuse) (Title IV) and particularly elderly victims of fraud (Title XXV).

With grants aimed at reducing domestic violence, the Act not only recognised a potential increase in policing efforts but also from the courts system. Education about cases would be provided to judges and other pertinent actors (Title IV, Chapter 2). Furthermore, the potential for delicate victimisation proceedings required funds for state court sensitivity training (Title

IV, Chapter 1). Ideally, these stipulations were designed to promote and inure a systematic culture to secure victims' rights.

Sentencing

The mid-1980s marked the beginning of extensive reforms to federal sentencing guidelines (Tonry 2015). The Act was one of four federal crime bills that coincided with the reforms. In turn it reflected and supported dynamic institutional change.

Violent and habitual offenders;

Foremost, the Act looked to reduce the recidivism problem that had contributed to the proliferation of violent crime during the early 1990s. This required the reduction of parole, which Clinton (1994) later acknowledged in a letter to the Senate had created “revolving door” for violent offenders and exacerbated the crime problems.

Of the most notable initiatives were the Violent Offender Incarceration (VOI) and Truth-in-Sentencing incentive grants (TIS) (Title II, Subtitle A). To combat violent crime, correctional facilities needed to become a stronger, more visceral pillar of punishment for violent and habitual offenders. The administration committed 7.9 billion dollars to states for the implementation of VOI and TIS. It was reasoned that because the states were the primary vehicle for carceral service delivery and crime was essentially a local issue and dealt with as such (Murphy 1995, p. 749), a systemic enhancement of prison capacity was necessary.

Foremost the Act encouraged apprehension and incarceration of serious offenders through VOI. States that strictly committed to TIS mandates were afforded federal funds to “expand, modify, improve, develop and construct” correctional facilities (Title II, Subtitle A, p. 20). TIS eligibility required states to implement determinate sentencing guidelines to reduce discretionary complexities and ensure commensuration. Correspondingly, the states were expected to implement programs ensuring violent offenders were sentenced and incarcerated. The sentencing provision determined that offenders who had committed a violent or drug-related offence must serve 85% of the sentence.

Mandatory minimum sentencing, known colloquially as “three-strikes-you’re-out”, was a prominent aspect of the administration’s punishment agenda. They were to be utilised in cases against a range of habitual offenders. The Act outlined that a defendant facing a third charge could be sentenced to 25 years-to-life if they have been previously convicted of: “2 or more serious violent felonies; or one or more serious violent felonies and one or more serious

drug offenses” (Title VII, p.187; VIII, p. 190). Public safety was said to be paramount, with career violent criminals unlikely to re-enter society.

Drug offences were deemed an overwhelming threat to social and economic security and directly linked to violence. However, Clinton (1994) recognised that the parole system had failed to control the cyclic nature of drug crimes. Serious drug offences were dealt with under TIS and three strikes, yet Title IX additionally outlined extended penalties for drug trafficking, dealing, smuggling and the use of substances in federal prisons.

Forcible rape was an important subcategory of (part 1) ‘violent crime’ that required a strong and dynamic methodical response³. Habitual sex offenders or sex offender’s familiar with their victims such as child abusers and rapists were the target of extensive retribution (Title IV). In addition to potential determinate sentencing and mandatory restitution payments, violent sex offenders were to be cited on a public register (Title XVII). State law enforcement was funded to establish and develop offender databases which would be thereafter federally centralised. This would serve to protect the public through means of offender identification. Furthermore, it restricted offenders occupying public spaces pertinent to minors, ultimately preventing and deterring crimes via systematic control and punishment.

State authorities were also provided compensation for helping capture and incarcerate illegal “aliens” (Title XIII). At the same time, Title XIII outlined requirements for the advancement of various federal immigration enforcement and deportation procedures.

For intentional and severe federal crimes, the Clinton administration emphasised the use of the death penalty. Title VI encapsulated an extended list of crimes punishable by execution and expanded justification and procedural processes for its use. The federal death penalty was viewed as a significant source of retributive punishment. Furthermore, it sent a commensurate message to offenders and was a source of deterrence (Clinton 1993).

Juvenile offences;

At-risk youth were to be first dealt with under the proactive preventative and interventionist measure outlined in the crime control portion of the Act (Title III). Support resources emphasised community involvement and contextual consideration so juveniles would be dealt with appropriately. Nevertheless, punishment was a necessary aspect of crime control and commensuration. First-time offenders were offered alternative consequences such as community service, rehabilitation and boot-camps (Title XIV) in addition to social- and

³ According to the FBI, ‘Part 1 violent crime’ includes murder and nonnegligent manslaughter, forcible rape, robbery and aggravated assault.

economic-based alternatives. This dynamic approach to juvenile crime was established to diminish the allure and viability of gang culture. The optimal aim was adequate punishment to the deter and prevent habitual criminality prior to adulthood.

However, if escalation did occur, swift systematic justice needed to follow. Hence increased and improved assistance from the state judicial system was required. State prosecutors were given stronger powers and extended support to manage juvenile cases (Title III, Subtitle Q). Title XIV charted harsher penalties for juveniles found committing adult-capable crimes. Title XV foremost provided a definition of ‘criminal street gangs’, which was pertinent to penalties for and procedural management of serious, collective juvenile offences.

First-time and non-violent offenders;

The Act also aimed to redefine and distinguish categories of crime to reflect the diversification of consequences and punishment. This was specifically so where non-violent, first-time and low-level drug offenders were concerned. Boot-camps were also offered to non-violent offenders who incurred less than 6-months’ incarceration (Title II). Ideally this was to discourage reoffending whilst upholding commensurate punishment imperatives.

Low-level drug offences;

State courts and governments were afforded funds to develop and establish drug courts (Title V). This progressive solution was arguably the result of the inability to effectively manage and punish crimes of this nature by previous administrations. It was hoped drug courts would deal appropriately with a range of offences including low-level drug use and, in special cases, drug trafficking.

For incarcerated low-level drug offenders, opportunities to enter rehabilitation programs in addition to supervised release were federally funded to deter escalation and prevent cyclic outcomes. Aftercare components such as halfway residential houses were made available to offenders with families (Title II). While these criminals would experience appropriate punishment, it was understood post-release presented a new set of challenges. Sobriety, job attainment and mental health were some difficulties faced by offenders after incarceration. Further, the burden of an offender’s choices and habits and the tangible consequences of punishment on their dependents would be reduced via aftercare support (Title III, Subtitle U).

Having looked at the content of the legislation framed in isolation we will examine the broad political, temporal and spatial context in which it was delivered.

Chapter Four

Tough-on-crime: An American Political Imperative

There is no current universally accepted model of crime control. According to Pettit (2002), as a result the philosophy upon which many Western nations have built their criminal justice system has no inherent logic. Having said that, this has not historically tempered American political actors in their pursuit of “tough-on-crime” agendas. As previously cited, towards the end of the 20th Century, crime and punishment ideas began to reflect the prevailing neoliberal agenda (Simon & Feeley 1992).

Here we examine the political, social and cultural origins of punitive criminal justice ideas and discourse pertinent to the 1994 anticrime Act. Our first level of analysis will concern the broad historical circumstances that led to a general determination of crime politics. Thereafter, our scope narrows to look at the temporal and spatial events that enabled Clinton’s presidency and helped re-contextualise the crime-politics nexus. Lastly, we examine the specific state of crime and punishment prior to Clinton’s ‘arrival’ and his political response to the status quo.

Ideational root causes

Nixon

The 1970s was indicative of a “critical turning point” for American politics and criminal justice. Foremost, Richard Nixon’s presidential campaign with the deployment of the “Southern Strategy” encapsulated the monumental realignment of party politics (Lerman & Weaver 2014, p. 2). Nixon’s manipulation of heightened racial tensions resulting from the civil rights captured the Democrats historical constituency of middle-class white southerners (Lerman & Weaver 2014, p. 3). Law and order on the other hand, was in a period “destabilisation” according to Campbell and Schoenfeld (2013, p. 1390). The get-tough agenda which currently characterises American law and order was in its infancy and Roosevelt’s post-WWII New Deal with its focus on welfare and the rehabilitation of the criminal classes was all but over.

Reagan

By the time Reagan came to power in 1981 a tough on crime political approach was institutionalised. However, the type of punishment advocated to effectively control crime and

exert retribution was still being contested Federal level rhetoric and ideation regarding law and order became the subject of intense moralisation (Campbell and Schoenfeld 2013, p. 1389). Those committing crimes were regarded as knowing participants in their own social and economic insecurity; as individuals who had chosen the wrong side of the tracks over legitimate work and civic participation (Tonry 2013; Garland 2014). This was especially thought of drug users. The enforcement-driven war-on-drugs campaign, according to the Reaganites, was justified and warranted. According to some scholars, this was indicative of and vindicated the symbolic institutional racism of the post-civil rights era (Jacobs and Carmichael 2001; Moriearty & Carson 2010; Wacquant 2009). They pointed to the crack cocaine epidemic at the epicentre of Reagan's approach and the fact it predominately affected minorities in urban criminogenic areas (Lerman & Weaver, p. 9). Use of the highly addictive drug was synonymous with violence and disaffection in predominantly African American communities. The anti-drug abuse act of 1986 and 1988 stipulated mandatory minimum sentences (Congress digest 1992, p. 128). Notably, these were applied based on a 100:1 ratio depending on the kind of drug involved. A conviction for holding 5 five grams of crack cocaine resulted in the same five-year jail sentence applied to possession of half a kilogram of powder cocaine (Simon 2011, p. 29). This effectively incentivised state and local law enforcement to target low-level criminals and ultimately led to hyper-incarceration rates (Campbell and Schoenfeld 2013, p.1329). From 1986 to 1991, "drug offenses accounted for 44% of the increase in prison populations" (Bureau of Justice Statistics 1993, p. 4). Furthermore, black inmates serving sentences for drug use or possession increased 447% while white incarceration rates increased by 115% (BJS 1993, p. 5).

The burden of extensive crime control and systematic punitive punishment fell on state and local governments (Campbell and Schoenfeld 2013, p. 1397). This was due in part to the political and cultural system of federalism that had organised Americans since 1787. It was also the case that Reagan's neoliberal-motivated 'devolution revolution' sought to re-emphasise governance at the local level but paradoxically maintain a federalist agenda. In addition to the increasing diversion of the federal government's role in social and welfare provisions (Jensen 2000, p. 260).

The rapid increase of offenders meant state and local correctional facilities were overcrowded, underfunded and under-resourced (Greene 2002, p. 6). Nonetheless, many offenders were sentenced to relatively short terms, meaning correctional facilities were in a

constant state of flux. Due to a revolving door of eligible offenders, the parole system emerged in numerous states as an alternative ongoing means of punishment and control.

The carceral system generally became another means of governance in accordance with the central tenets of neoliberalism: anti-big government, social conservatism and economic liberalism. Historic, intensive crime control efforts and punitive punishment methods became synonymous with effective criminal justice.

Republican success in capturing the moderate vote during Reagan's ascendancy left the Democrats plagued by in-fighting. This resulted in overt disunity. Many of the party's stalwarts were seen by younger members as left-leaning, weak and out of touch with voters (Hale 1995, p. 208). They viewed them as activist liberals who were overly focused on minorities and welfare. The new, Southern-led brigade believed that the preoccupation with social and economic upheaval triggered by the Cold War era had further cemented the republican southern stronghold (Hale 1995, p. 213). The solid platforms and neoliberal agenda of the right exacerbated the apparent, fundamental division on the left. Ultimately, enabling the dominance of conservative politics and Republican executive power for 12 years.

Bush

Crime and punishment ideas, discourse, ideation and rhetoric were fundamentally captured by neoliberal politics; the agenda was owned by the Republican party. Consequently, crime became a political wedge issue (Campbell and Schoenfeld 2013, p. 1396). The Republicans' success with punitive penal policies cemented an institutional path-dependency of a strong crime and punishment platform. According to Chernoff et al. (1996, p. 535), G.W.H Bush's presidential campaign was in part successful due to the strong Republican approach to crime with its mobilisation of typical conservative philosophies and punitive crime and punishment policies and programs.

The 'Crime Control Act of 1990' was the legislative outcome of the Bush administration's crime policy efforts (Congressional Digest, 1992, p. 128). His policy campaign had been based on hard-line "anti-crime, pro-victim platform" (Greene 2002, p.18). The most notable initiatives included the increased protection of victims' rights in judicial proceedings, habeas corpus restrictions and the provision of benefits for law enforcement personnel injured in the line of duty. In addition to the introduction of correctional

alternatives in a bid to diminish concerns about prison-overcrowding that had been caused by Reagan's war on drugs (Congressional Digest 1992, p. 128; Greene 2002, p.8).

Adopting the philosophical strategies of the Reagan administration and streamlining policy choices, Bush attempted to uphold the punitive law and order legacy of his predecessors. Nevertheless, Bush's conservative policies and programs missed their mark. Much to his disappointment, his plans to expand the federal death penalty, narrow legal protections offered by the exclusionary rule, restrict habeas corpus and modify firearm controls lacked necessary support and failed to materialise (Bush 1990). Unlike his Republican predecessors, Bush was found wanting in terms of the quality of his rhetoric and ideational leadership. His technocratic and disproportionately small offerings made for a poor public and congressional reception (Chernoff et al. 1996, p. 539).

However, politicians able to effectively sell a tough-on-crime stance were by 1992 almost guaranteed success. Historical determination and electoral returns made certain that it had become the normative approach. Nevertheless, there were various immediate temporal and spatial considerations that shaped fundamental ideas. There had been more than a decade of unprecedented high levels of crime, but it was a new day and there was a presidential election to be won.

In the face of repeated electoral failure, the Democrats had tried to recapture their historical support base during the 1980s. There were notable efforts made by various out-party groups to reformulate the party's image, message and philosophy (Hale 1995, p. 208). By mid-decade, the 'Democratic Leadership Council' was established. Its members would become known colloquially as the 'New Democrats'. They were indicative of contemporary liberals born of the social-conservatism and fiscal liberalisation that had engulfed the American landscape.

During the 1988 presidential elections, Michael Dukakis became the party's frontrunner. And still the Democrats lost the election when he advocated the countrywide expansion of an ill-fated prison furlough program. Monumental scandal erupted after convicted murderer Willie Horton received weekend release under the scheme and proceeded to twice rape a woman, violently assault her fiancé and steal their car (Chernoff et al. 1996, p. 537). The policy failure was ultimately utilised by the Republicans to perpetuate an image of the Democrats as the weak law and order party (Newburn and Jones 2001). And was another fundamental part of the Bush-led presidential success for the Republicans.

Despite the intense hard-line efforts of Republican governments, however, there was evidently an ongoing issue with crime; especially violent crime, which was at an all-time high by the end of 1991 (Levitt 2004). Within a population of 250 million, there were 1,911,767 instances of violent criminal activity or 758.2 incidents per 100, 000 citizens (FBI)⁴. To put this into perspective, at the beginning of Reagan’s presidency in 1981 the rate of violent crime per 100,000 citizens within a population of 230 million was 593.1 (FBI). This was in addition to a rate of imprisonment which had dramatically increased over the decade from 369,000 to 883,593 inmates (Gillard 1992, p. 1)). Meanwhile crime control and punitive justice was still a popular approach within public discourse. According to a Life magazine poll conducted by Gallup (Crime) in 1992, 83 per cent of the American public believed the justice system was “not tough enough”.

The 1991-92 presidential election period provided the Democrats with a window of opportunity to showcase a newer approach. Moreover, for the first time in more than 20 years law and order was an open political platform. Having learnt from Dukakis’ grave misstep they aimed to become legitimately tough on crime (Chernoff et al. 1996).

Ideational development & policy coordination

Clinton

The Democrats’ new crime policy and legislation package was now developed by Joe Biden and Chuck Schumer. The task demanded extensive and strategic coordination. As a Senator, Biden was of the “congressional chamber which held extensive power over the executive body”. He was constitutionally “required to protect its key interests” (Bertelli and Grose 2011, p. 768). He was a career politician and chair of the senate judiciary committee. He was also a good friend of Clinton and served with him on the Democratic Leadership Council. He “advocated holistic crime bill reform and was known for being loquacious and thoughtful” (Fandos 2015). Schumer, on the other hand, was a member of the House of Representatives, which held sway over federal departments, budgets and appropriations in addition to its nominal role as champion of public will (Bertelli and Grose 2011, p. 768). He hailed from New York, was also a member of the House judiciary committee and was known as a “consensus builder” (Clinton 2005, p. 823). The efforts of the two came to be known as the “Biden-Schumer Strategy” (Chernoff et al. 1996, p.540).

⁴ Uniform Crime Reporting Statistics State-by-State and national crime estimates by year/s

Crime control as a concept of effective legislation had already been the centrepiece of the three previous Republican omnibus bills. Palmiotto asserts these were characterised by aggressive arrest rates, swift convictions and punitive justice (Palmiotto 1998, p. 208). Though, this could not be, for the Democrats it would have been too great a departure from their liberal principles. Biden and Schumer instead adopted a modified ‘crime control’ approach. Their objective was to balance Republican definitions and policies with liberal principles such as due process, consideration of the social conditions of crime and commensurate punishment. Chernoff et al. (1996, p. 406-407) called their approach tough but liberal, value-laden and strategically ambiguous.

The characteristically liberal aspects of Democratic crime control were their social programs for prevention and intervention, and gun control (Greene 2002, p. 27). The increase of policing numbers was not a revolutionary political idea (Levitt 2004, p. 172). It had been historically used by conservatives and for Nixon, it was part of his get-tough approach success (Palmiotto 1998; Chernoff et al. 1996). For the Clinton administration, the notion of deploying 100,000 extra officers became a central slogan. Yet it was considered a policy which lacked definition when introduced to the House. For Republicans, the initiative potentially amounted to ineffectual posturing, “political pork” and welfare spending” (Moore 1995, p. 739). These claims would also be the showpiece of Republican counterattacks in the mid-term elections (Chernoff et al. 1996, p. 532). Moreover, concern grew about the source of funding for law enforcement which was traditionally managed and subsidized by state taxes (Murphy 1995). Some claimed the policies were indicative of ever-increasing federal power over state governments (Moore 1995, p. 739). In the meantime, concern continued to grow about street-level violence. On the non-Republican side at least, many determined that the cause of the ‘epidemic’ was the failure of policing efforts during Reagan’s ‘war on drugs’ period. Hence, prevention programs and reforms were necessary (Murphy, p. 749). In high criminogenic areas such as New York ‘community law enforcement’ had shown itself to have a tangible effect on crime rates. Comprehensive policing policies and funding allocations gained bipartisan support from mayors nationwide including prominent Republican Rudy Giuliani (NYC) and, as such, was pertinent to the passage of the legislation (Levitt 2004, p. 172).

Gun control provisions were an important part of the liberal crime control approach with Schumer at the forefront (Greene 2002). Nevertheless, the regulations were extensively opposed by conservatives, causing congressional gridlock. Opposition to a vast amount of the

Bill and gun control specifically was fundamentally driven and organized by Republican Party associates. These allies included historical special interest group, the 'National Rifle Association' (NRA) and conservative model-legislator group, the 'American Legislative Exchange Council' (ALEC). In final House preparations even, the bill's sponsor Jack Brooks voiced strong distain for gun control. Ultimately, Schumer was able to pass the AW ban by a slim margin as it was part and parcel of proposed law enforcement enhancements and public safety (Chernoff et al. 1996, p. 564).

Chairman of the crime subcommittee Bill McCollum (1995, p. 563) claimed fear of crime overwhelmed many Americans and facilitated the necessity for hard-line policies. During the Clinton period, violent crimes captured public, media and political attention. They included the murders of Polly Klaas (Three Strikes), James Darby (Gun control), Meagan Kanka (Sexually violent sex offense registry) and the LA riots (law enforcement and gangs). They provoked and abetted a strong Democratic response. Specifically, uncompromising policies for the protection of the public and their interests were seen as germane to all aspects of the Act. The sentencing and punishment portion explicitly emphasized victims' rights, enhanced domestic violence provisions, offered protection in sexual violence cases and increased penalties against child abusers. For Biden and Schumer, the weight given to these policies was important in offsetting strong public focus on violent street crime (Ginsberg 2013, p. 132).

In another lesson-drawing moment from the Dukakis era, the 'Southern' Democrats chose to pursue an extension of the federal death penalty. Characteristically, it was a popular policy among Republicans and indeed for more than 80% of the American public (Gallup, 1994). For the Democrats, though, it was major point of contention and once again halted passage. Notably, the death penalty was also a source of in-party debate. Left-leaning members and Black Caucus allies wanted to include the Racial Justice Act as a provision. It encompassed procedural limitations to using the death penalty otherwise disproportionately applied in cases involving African Americans (McCollum, p. 561).

The validity of other prominent punitive measures were debated too such as truth-in-sentencing and three strikes. They were framed as radical solutions to the violent recidivism problem which was at the heart of the Act. These mandates were intended to re-emphasize punitive punishment and diminish poor parole policies (Greene 2002, p. 18). National Association of Chiefs of Police Vice President Morton Feldmen (1995) called them a

pragmatic solution. However, if not exacted correctly he warned they could become political fodder and left weakened. In 1992, the Attorney General William Barr had openly criticised various states 'policies that allowed early prison release for prisoners. Barr argued that these policies had led to high levels of crime and recidivism, and as a result he published recommendations for policy reform. For the most part, the mandates gained bipartisan political support.

Biden had previously overseen success with mandatory minimum sentencing for drug crimes as a committee member in 1986. Hence he informed much of the debate and policy outcomes. So too did conservatives who campaigned and advised on mandatory sentencing of drug-users in the early 1980s. Additionally, both parties along with various special interest groups had shaped the passage of TIS for chronic, violent offenders which resulted in successful implementation in Washington State in 1984 (Greene 2002). It is also worth noting that state governments were set to receive millions of dollars for prison enhancements which secured the support of governors and mayors and tempered most other criticisms of the bill.

In terms of historical ideation about crime control, punishment and politicking, all roads now led to the conclusion of the technical side of the administration's policy coordination efforts. This of course collided contextually with time and space: burgeoning homicide rates, repeated national outrage over the murder of innocents, the reverberations of the L.A. Riots. From here, our attention shifts to Clinton's role as president, as orator and as the preeminent spokesmen on America's plight.

Chapter Five

New Democrats & The Activation of Tough-on-Crime Ideas

According to Schmidt (2008, p.314), one must examine both structure and agency to analyse political action. Unfortunately, however, the latter has typically been viewed as a by-product of the former rather than a discrete framework leading to claims of reductionism and determinism. Schmidt (2010) acknowledges historical, sociological and rational choice arrangements undoubtedly contribute to political institutional analysis. She also agrees they may help determine the epistemic conditions that enable ideas to form, under which changes occurs. However, she points out that neo-institutionalism emphasises that institutional action is dynamic and can be more agent-centric than otherwise assumed (2008; 2010).

Consideration of agency can therefore illuminate pertinent temporal and spatial conditions that enable specific political action. Agency, according to discursive institutionalists, is the ability of an actor to activate ideas through rhetoric (Schmidt 2008; Beland and Cox 2016). Analysis of agency as a mechanism in political action therefore requires examination of the rhetoric dynamics and processes of key ideational actors (Schmidt 2017).

Ideational leaders are individuals who have power and ability to activate ideas (Schmidt 2017, p. 250). The leadership role of the US president is unique, multifaceted and significant. The president is head of the United States, leader of the party and commander-in-chief of the armed forces (Article II). They must engage in extensive public governance requiring open, deliberative communication, and in bureaucratic lawmaking which requires coordination of various interests. The president's power over crime governance is considerable yet qualified by the machinery of congress, the workings of bureaucracy and public will (Obama 2017, p. 823).

According to Obama (2017, p. 812), in law-and-order politics the president primarily seeks to influence and enhance party agenda. To ensure an administration's legislative success, the president needs to gain the support of the congress. According to Villalobos, Vaughn and Azari (2012), a president's policy proposal is more likely to gain congressional support via substance over tone. It needs to be informed, balanced and pragmatic for the stakeholders involved.

Here we will clarify Clinton's ideational and discursive contributions to the Act. Our focus will be on his ability to harness historical and normative ideas on crime to capture the support of congress. To complete this section, we examine Clinton's law and order policy proposal speeches. There were 52 between his presidential candidacy announcement (October 3, 1991) and the signing of the Act (September 13, 1994).

The 'New Democrats' President

Clinton eclipsed his competition in the 1992 Democratic primaries and was then able to secure more than double the Electoral College votes of George Bush (Roper 1992). The incumbent presented a lacklustre campaign and suffered from the view his presidency had encompassed economic insecurity. Clinton had twice been governor of Arkansas (1979-1981 and 1983-1992). He had also led the DLC alongside Joe Biden and Al Gore in 1989. Both were prominent in the Southern Democrat movement and would be key players in his administration. Clinton's presidency was the materialisation of the Democratic Party's new

approach to presidential politics (Hale 1995). It would feature a tough and smart crime platform.

Clinton's first two years were marked by flagging popularity blamed on his struggle to influence Congress. Ponder (2012, p.302) asserts this culminated in Capitol Hill's "Republican Revolution" of late 1994. Within 12 months, however, Clinton had again been able to garner sufficient public favour to ensure his re-election would be a *fait accompli*. Despite two crippling government shutdowns over health and education spending in 1995, he emerged a relative cleanskin as the Republicans and their figurehead Newton Gingrich were overwhelmingly blamed for the crisis.

Parry-Giles (2012, p. 243) characterises Clinton as "quintessentially chronotropic". He suggests his character was defined by time and place; that his articulations were nostalgically etched in the national psyche. Americans would remember him as they did the great changes of political circumstance of the mid-1990s and beyond this, the landmark reconstruction of its penal order (Campbell and Schoenfeld 2013, p. 1401).

Of course, politicisation of crime and punishment was nothing new. In fact one could argue many Clinton policies were repackaged ideas proposed by previous administrations with varying success such as sentencing mandates and habeas corpus repeals. This time, however, they were presented with a combination of New Democrat moderate appeal and exalted oratory. Like Reagan, Clinton was a strong and charismatic rhetorician. Bush, on the other hand, had laboured under an overly technocratic approach to delivering fundamentally similar initiatives.

Clinton the rhetorician

For political action to occur ideas must have value and be exchangeable, to facilitate consensus. Political communication is a discursive process whereby a leader engages the public to activate ideas and secure support (Schmidt 2008, p. 310). Schmidt asserts they must resonate with normative understanding and that appropriate rhetoric is fundamental to this process. *Rhetoric* here is taken as the reasoning behind an agent's longing to seek people influence (Thompson cited in Schmidt 2017, p. 262) whether via persuasion, coercion or collaboration. Examination of rhetoric may therefor illuminate the how a powerful actor engages in public discourse and draws them together for a common purpose (Carstensen & Schmidt 2016, p. 322).

Clinton spoke often and utilised numerous strategies to do so effectively. Fortunately for him tough-on-crime politics already had normative grounding in the public consciousness. Notwithstanding this, he was charged with leading the Democrats' first tough-on-crime venture and one where their credibility was at stake. He regularly promoted policies at public forums, openly discuss community concerns and accepted feedback and criticism. All the while, he framed crime as an American crisis; referring to streets and public places as riddled with violence and communities as broken and unstable (Clinton 1994, p. 326).

Clinton's rationale for this narrative was a statistical increase in violent crime, particularly urban homicide, exacerbated by economic hardship. Yet it might be argued it also suited his purpose to elicit moral panic for political purposes. Schmidt (Thompson cited 2017, p. 262) found rhetoric frequently appeals to audiences in a manner indicative of pathos. To this effect, Clinton bolstered his accounts with vivid imagery and evoke the victimisation of society's most vulnerable. He twice claimed to good effect that *"160,000 children stay home everyday from school due to fear.... they'll be shot or knifed or beat up in some way"* (Clinton 1994, p. 327).

At-risk youths evidently also had Clinton's empathy. He didn't dehumanise them as he did bona fide gang members and other habitual offenders and unlike adult wrongdoers, he offered them lenience. Arguably, this in turn helped him justify retributive punishments like three strikes mandates and the death penalty. Yet the line between youth victims, offenders and gangs was often blurred. Clinton never explicitly acknowledged the Bloods or Crips or their various sub-groups. Even so, no one could have doubted who he was talking about whenever he spoke of gang violence. At the time, youth homicide and urban gang culture were referenced ad nauseam both in popular culture and the media (Glassner 1999, pp. 70-72). Ultimately, this served to compound perceptions of gang proliferation and by implication, underline the need for the kind of pragmatic solution Clinton was proposing.

In 1994 Clinton staged multiple public forums on crime in Chicago heavily attended by students, parents, emergency servicemen and community leaders. This was notable for several reasons. With 48.5% of Illinois having voted for him in 1992 (Federal Election Commission 1993, p. 19) he considered its capital an electoral stronghold. His visiting was therefore a play to his strengths. It allowed him to deliver a confident message before a captive audience. Secondly, Chicago was in the 1990s heavily-affected by street violence and gang crime (Costanza & Helms 2012). Not only did its citizens approve of him and his

politics, he spoke to their plight and did so with their mayor and police chief at his side as disciples of his community policing solutions. According to Beland and Cox (2016, p. 432), such consensus of the public and political elite allows ideas to be activated and action to occur. In Chicago in 1995, this rang palpably true for Clinton despite his mandatory sentences and saturation policing initiatives which would send so many of its young black citizens away, as they would everywhere.

Clinton's rhetoric also drew heavily on broad, moralistic and culturally-driven reasoning. He declared his crime bill would restore safety on American streets, protect the middle-class and reinvigorate the national community (Clinton in State of the Union Address 1994). It was the kind of language that played on the value of normality and the commonality of American exceptionalism. It embraced public good in a way suggestive of a new ethos (Thompson cited in Schmidt 2017, p. 262).

The cumulative effect of Clinton's voice and his evocation of moral panic, victimisation, criminalisation and cultural aspiration created the perception of a powerful response to crime. Furthermore, the costly and retributive solutions the Democrats were posing, were viewed as justifiably pragmatic. For policies to materialise into law, however, the activation of ideas at the public level is nominal if they are not then translated for policy actors.

According to Schmidt (2018, p. 262), policy coordination requires ideational agents to construct and disseminate information to an established discursive community of policy actors, elites and experts. If policy entrepreneurs or actors involved in both public communication and policy coordination can consolidate support for an idea and build "intellectual consensus" they are more likely to achieve their objectives (Schmidt 2008; Beland and Cox 2016). Due to the complex nature of the American presidential and federal system, the capturing of congressional support for a policy is a necessity. Additionally, Tonry (2013) contends that American policy actors have historically not favoured or engendered evidence-based criminal justice policy. As a result, the development of crime and punishment policies have been plagued by politicisation. It is argued that this is a sentiment which is fundamentally present within the Clinton crime act.

As discussed in Chapter four, most of the deliberative policy coordination between the Clinton administration and Congress was conducted by Biden, Schumer, Brooks and other congressional leaders. However we resolved that Clinton played an important

supplementary role as a rhetorician who enhanced their efforts. He secured support from interest groups and lobbyists, publicly engaged with members of congress who didn't agree with certain policies, facilitated compromise and applied pressure.

Rhetoric dimensions like bipartisan appeals and mandate claims are common to the presidential policy proposal coordination process. Villalobos et al. (2010) argue they are less likely to capture congressional interest. Policy tone mechanisms on the other hand can be instrumental to policy success. These include the signalling both of presidential priorities and policy input from sources beyond standard political sectarianism such as victims' rights groups and police unions (Villalobos et al. 2010).

Clinton utilised both bipartisan appeals and signalling but in terms of the latter, primarily required four "essential principles" be included in the 1994 Act. According to his Press Secretary DeeDee Meyers this included: "*Strong assault weapon ban, 100,000 additional police officers, stronger punishment penalties and prevention money*" (1994, p. 2 of 12).

For some commentators at the time this encapsulated a tough and smart crime agenda (Chernoff et al. 1996; McCollum 1995). Yet the mix of characteristically liberal and conservative ideas was cause for disquiet among many of Clinton's own party allies and Republicans alike. To counteract this, he sought to legitimise the policy and its programs via a strategic framing of issues. In terms of the law enforcement agenda, he employed the simplistic yet punchy "*100,000 more police*" slogan (1993-2001). It was used heavily throughout a proposal campaign purposely devoid of programmatic detail.

Undoubtedly, law enforcement bodies approved of the mantra and what they believed it encompassed: more jobs, money and resources. This meant Clinton could publicly engage with them, use the slogan to signal his support for them and reinforce his police-driven focus. He consistently praised law enforcement and evidently held them in the highest esteem. However the idea Clinton would engender the goodwill of the very practitioners he would rely upon to enforce his agenda was hardly surprising, while the benefits were obvious. As Campbell and Schoenfeld assert (2013, p. 1408), the securement of law enforcement parties can have a palpable effect with state-level institutions and voters.

Politically, the prevention provisions associated with the Clinton law enforcement policy did serve to provoke Republican claims of liberal partisanship regarding budgeting for police and mayor-led community empowerment programs (McCollum 1995). However

Campbell and Schoenfeld (2013, p. 1407) claim the public outcry for action on criminal justice at the time, at whatever cost, eliminated congressional concern.

The Act's punishment provisions were also a focus of division which required hard-line and moralistic rhetoric framing. Clintons' (1993) support for capital punishment was predicated on the idea that the worst of the worst would be commensurately dealt with. However it became a wedge issue which resulted in 58 in-party and allied dissenters in the 485-strong House of Representatives (Clinton 2005, p.611). In a bid to manage his own ideological and political interests, Clinton went beyond conventional frameworks and principles to leverage support from conservatives whilst aiming not to offend important allies. This was apparent from his reaction to the down-vote which he saw as a personal choice among those unwilling to compromise specifically on the death penalty and its provisions (Clinton 1993). Ultimately, he found himself in a cycle of appeasement and counter appeasement as the Racial Justice Act provision became a political sacrifice.

Gun control, another controversial policy, required Clinton to strategically use bipartisan appeals to temper ideologically-driven concern. Based on commonality and solidarity, the role of these appeals features democratic reasoning (Beland and Cox 2016, p.439). For members of Congress, specifically, adherence to a bipartisan appeal for a policy that has public favour may result in all parties receiving credit (Villalobos et al. 2012, p.554). However a president can use a bipartisan appeal in an "inverse" manner to contest the ability and good nature of a policy actor (Villalobos et al. 2012, p. 555). In other words, to isolate dissenters. In Clinton's crime speeches there is strong evidence he uses bipartisan appeals both to gain acceptance and contest resistance (Beland and Cox, p. 428).

Beyond Congress Clinton similarly appealed to special interest groups and asserted that his predecessor's efforts were culpable in creating crime. He claimed the recidivism at the heart of violent crime was because "nothing substantial had been implemented for whole generation" (1994). This was highly contentious considering many of his policies were repackaged versions of those less effectively espoused by Bush and others.

Clinton initially framed the crime bill as non-partisan and for all Americans, most notably during his 1994 State of the Union address. By the time of the final period of congressional voting late that year and with mid-term elections approaching, however, his altruistic tone had somewhat evaporated.

The failure of H.Res. 517⁵ resulted in Clinton heavily criticising the Republicans and deploying partisan blame as a counter measure (Green 2002). In a public address to the National Association of Police Organizations, he stated House Republicans had chosen NRA special interest demands over the safety of law enforcement and the public (Clinton 1994). Yet like most aggressive claims levelled at party rivals with the potential to isolate key congressional actors, it was a short-lived strategy. The ideologically ambitious initiatives in the proposal required a balance of interests and not displays of favouritism with the potential to further deter cooperation. Clinton as such, can be seen to engage broadly with Republicans, Democrats, special interest groups and the public alike.

In the final days before the bill's passage he once again found merit in positive appeals and urged the Senate via a letter of petition (dated 22 August 1994), with its deciding vote, to uphold "the same bipartisan spirit that marked the debate". Consequently, the Act was universally heralded as a shared accomplishment.

Clinton's instinctive aptitude for grassroots engagement and widespread appeal cast him among the most reasonable of US presidents and apart from authoritarians like Reagan and Nixon. His ideational leadership was defined by his ability as a rhetorician. It was this skill which enabled him to gather his own political cohort and naysayers alike to the same table and to capture the public consciousness. By doing this he built a tough-on-crime consensus. Clinton was the first Democratic president to risk such a stance and in one fell swoop manage to eclipse the failures of Bush and Dukakis.

Chapter Six

Material Outcomes

The period that encompassed Clinton's presidency is known as the 'crime decline' (Levitt 2004). In the first year after the enactment of his crime bill, in 1995, there were 13,867, 143 crimes committed in the United States (FBI, p. 5). In 2000, there were 11,605,751 (FBI, p. 5). Violent offences, which were the main source of concern and driver of legislative action, dropped 39% from 1,798,785 to 1,424,289 (FBI 1995, p. 10; 2000, p.11). Additionally, property crime indexes fell 29% over the same period. When relative

⁵ House of Representatives resolution Violent Crime bill resolution

population growth over the 5 years is considered, crime overall substantially decreased (FBI 1995, p.6; 2000, p.6). Yet the contribution of the Clinton administrations' agenda and policies to the downward trajectory is subject to ongoing debate.

The following chapter examines the material outcomes of executive-level crime legislation in accordance with the provisions laid out in the 1994 Act. Specifically, it focuses on the results often used by those in power to quantify policy success. General crime, arrest and incarceration rates have been included to provide clarity about the 'reality' of objectives encapsulated within the legislation. Our window of analysis is 1995-2000, the Act's funding allotment period, unless stated otherwise. While its effect continued beyond Clinton's presidency, for the sake of clarity analysis we will follow the federal funding timeframe.

An evaluation of crime control policies & programs:

Broadly, the Act aimed to control crime, protect the public, provide justice for victims and punish those responsible. This required a dynamic and proactive approach to crime prevention which included the enhancement of law enforcement, community policing initiatives, community empowerment and gun control.

Law enforcement

Under the COPS program, local and state governments received one billion dollars between 1995 and 1999 (Ludwig and Donohue 2007). An additional 102, 155 law enforcement officers were hired (Bureau of Justice Statistics 2016, p. 2). Post enactment, Clinton determined the success of his bill's crime control objectives by emphasising its law enforcement component: *"Since I took office, my administration has focused on a simple but effective crimefighting strategy: 100,000 more police...Today's report shows that our strategy is making a difference"* (Clinton 1999). Traditionally, the measurement of police performance has relied on "crime-related counts" like arrest (Rosenbaum, Schuck, Graziano and Stephens, 2008, p. 46). Here, these serve as a preliminary measurement.

In 1995, US law enforcement made a total of 15,119,800 arrests (BJS 1995, p. 208). Five years later, this had dropped to 13, 980, 297. Levitt (2004, p. 177) concludes Clinton's increased police presence alone contributed "between one-fifth and one-tenth to the overall crime decline". However law enforcement expert and career cop Patrick V. Murphy (1995, p.747) asserts crime and policing in the US is "uniquely local" and findings based on law enforcement numbers should be made tentatively.

Community policing was fundamental to the Act's prevention and enforcement enhancements. Because individual states retained discretion over its delivery, however, there is no systemic standard for measuring the performance of police in providing the services involved. The Bureau of Justice Assistance law enforcement framework determines that community policing can be measured in three ways (1995, pp. 45-51): how effectively it reduces fear and improves quality of life; how efficiently it uses resources and maximises outcomes; and how equitably it treats the public.

Public response and satisfaction underlined each criterion. Public esteem for law enforcement remained relatively stable during the 1990s. A 1995 national Gallup poll determined public confidence ranged from a great deal (26%) to quite a lot (32%) and some (30%). In 2000 the corresponding findings were 18%, 36%, and 33%. Yet when participants were asked about their perceptions of crime relative to their local area, 46% said they felt there was less crime in 2000 compared to 24% in 1996. Meanwhile, victimization rates also decreased substantially from 38.4 million in 1996 to 25.9 million in 2000 which were the lowest since 1973 (NCJ 1995, p. 1; 2000, p. 8). From this, one could argue that emphasis placed on policing strategies had an outward effect on law enforcement efforts and rates of crime which satisfied public interest.

Gun control

Crucial to more effectively managing and reducing serious crime and appeasing public concern, the Act also recognised the need to regulate the firearms wielded by criminals. Gun control relied upon the Brady bill and the Assault Weapon Ban (AWB).

The AWB was framed as a direct means of curtailing overtly violent street-crime and protecting the public and police. In facilitating structural clarity, our analysis of it relies upon homicide data. Unlike other crimes which occur in huge volumes, murder and non-negligent manslaughter provide the level of detail necessary to evaluate the ban's effectiveness. The annual FBI Uniform Crime Report serves as our primary source of information. UCR datasets are reliable as the nationally recognised American standard and featured prominently in Clinton's speeches.

In terms of perspective, firearms were used in 30% of all robberies, aggravated assaults and other violent offences committed in 1995 including murder (FBI, p. 11). Their

presence comes sharply into focus, however, when homicide is examined in isolation, with 7 out of 10 killings committed during the period involving a gun (FBI, p. 17).

Furthermore, the data portrays handguns overwhelmingly as the weapon of choice. Significantly, the AWB sought specifically to ban long-barrelled burst-fire weapons and not those designed for use in one hand. Of 13, 673 firearms murders in 1995, 11,198 involved handguns, 917 shotguns and 637 rifles (FBI, p. 18). Despite the overall decrease in crime by 2000, firearms were still the most frequent weapons used in homicides (65.6%) and 51.7% of those murders had handguns present (FBI, p. 18).

The Brady bill outlined the federal government mandate for background checks required on the sale of firearms by federal licensures (FFL). The required waiting period provision within the act was eliminated due to an expiry clause. However, the bill fundamentally paved way for the National Instant Criminal Background Check System an FBI database for the management of instant background checks by FFL's (Ludwig and Cook 2000, p. 59). NICS catalogue data in turn provides the most reliable and accurate means to determine the success of the Brady legislation. From its development in 1998 until 2018 there has been 297,610,993 firearm background checks completed (FBI). However, only 1,569,497 have resulted in a licence denial, most of them linked to a previous felony conviction. According to Ludwig and Cook (2000, p. 590), the Brady bill did not result in an overall decrease in gun-related homicides. This has led many scholars to believe that gun control encompassed in the 1994 Act had little to no effect on crime control during the Clinton era (Levitt 2004; Vizzard 2015).

An evaluation of punishment policies & programs:

The major punishment initiatives encapsulated in the Act aimed to deter, incapacitate and punish offenders relative to the crimes committed. Underlyingly it served to protect law-abiding citizens and provide justice to crime victims in meaningful, lasting ways.

State prisons are the primary source of corrections in the United States. To examine the impact of legislation more completely, we also consider rates of federal incarceration. Often Bureau of Justice Statistics data combines both.

The late 1960s saw the punitive turn which redefined criminal justice systems in the US and globally. For America, the rapid growth in the rate of imprisonment began in the late 1970s and early 80s. In 1980 the prison population was 329,821. A decade later it had more

than doubled to 771,243 (Cohen 1995, p. 1). Once again, the prison populace increased from 1990 to 2000 from 773,919 to 1,391,261 (Harrison & Beck 2001, p. 1).

Violent crime was the Clinton administration's major concern and shaped its penal legislative action. Accordingly, violent crime imprisonment numbers grew from 468, 921 in 1995 to 602,073 in 2000. Similarly rates for drug-based crimes increased from 276, 637 to 324, 489. Whilst property crime did not appear to be an explicit preoccupation for the administration, it was a major component of crime overall. During the relevant period, imprisonment for property crime rose from 244, 924 to 295,349 (Mumola & Beck 1997, pp. 10-11; Harrison and Beck 2001, pp. 13-14).

Arguably, the intentions of the Act contributed to the immense growth in imprisonment and will be explored as such. Certainly the growth in the prison population was tangible and contemporaneous. The effect of imprisonment on crime rates and public safety is subject to ongoing debate and we will examine this in Chapter 7.

The Act encapsulated systematic reforms and offered a vast amount of funding to accommodate the emphases placed on punishment. In 1992, on average, violent offenders were sentenced to 89 months' prison but were only serving 48% of their sentences (Greenfeld 1995, p.1). Policy choices enacted by Reagan and Bush led to lenient conviction standards, rapid prisoner turnover and overcrowding. Clinton's administration saw this as having contributed significantly to high rates of violence and recidivism. Moreover, this led to an across-the-board infrastructure and resource depletion within state prison systems. To address these issues, Clinton made funding conditional upon determinate sentencing as a way of reducing recidivism, diminishing the use of parole and ensuring the certainty of punishment. In discourse, this was necessary to rein in gang members and habitual offenders and redirect at-risk juveniles.

Truth-in-sentencing

According to the Act, the Violent Offender Incarceration (VOI) and Truth-in-Sentencing (TIS) Incentive Grants would ensure states were locking up repeat violent offenders. The Act specifically idealised the TIS sentencing mandates whereby violent offenders would serve 85% of their conviction.

Under VOI/TIS, the federal government ensured more than \$7.9 billion of incentive grants to compliant states. They were only eligible for TIS if they agreed to implement the

mandates, and for VOI grants states needed to show a commitment to incarcerating serious, violent offenders. Although 42 states had adopted a TIS-style policy by 2002, only two thirds had been eligible for funding (Sabol, Rosich, Kane, Kirk & Dublin 2002, p. 7).

A BJS report published in 1999 suggested TIS had an innocuous impact on rates of imprisonment nationwide. In 1997, 50% of state prison population growth was the result of violent offences (p. 4) of which 70% was in TIS eligible states (p. 5). A Pew study (2012, p. 17) also found that with the instruction of TIS, sentencing and time served increased and continued growing until 2009. However this was mainly pertinent for violent crimes whereas lesser crimes increasingly attracted lesser sentences, offsetting the trend.

According to the VOI provisions, states were encouraged to improve prison infrastructure and capacity. During the funding period, the TIS states collectively built 16 prisons⁶. Elsewhere, there were 43 built nationwide. In raw terms, the prison capacity problem was diminished with states operating 3% over recommended capacity in 1995 and only 1 % over five years later (Stephan & Karberg 2003). Corrective alternatives were emphasised as an effective means of commensurate punishment for states under the policies⁷. Boot camp facilities increased from 52 to 87 whereas drug/alcohol rehabilitation facilities

decreased from 218 to 196 (Stephan & Karberg 2003, p. 5). TIS also claimed a notable success with the abolition of parole discretionary boards in 14 states from 1994 to 1999 (Wootton 1995, p. 792; Ditton and Wilson 1999, p. 1).

The execution of VOI/TIS among the 42 state jurisdictions produced a melange of outcomes. Indeed some scholars assert that the grant programs in relation to crime rates and public safety had an inconsistent effect and an unremarkable one overall (Sabole et al.; Pfaff 2012).

Three-Strikes

Also incorporated in the Act, three strikes laws were key to the administration's re-emphasis of punishment severity. Mandatory minimum sentencing laws were adopted or bolstered in 24 states (Chen 2008, p. 345). However data suggests the mandates were seldom used and had a limited contribution to the prison population nationwide (Chen 2008). While the most populous US state and most heavily characterised by crime and punishment,

⁶ Extrapolated from information from each of the relevant states correctional facilities databases.

⁷ Total of alternative programs according to confinement and community-based state corrections.

California is the only jurisdiction where determinate sentencing has had a tangible effect upon incarceration. Historically, California also has chronic crime issues and harsh penal tendencies. In 1995 and amid a population of almost 31.6 million, 1,841,984 instances of crime occurred or 5,984 crimes per 100,000 residents (FBI 1995, p. 65). Additionally, California corrections housed 135,646 or 30% of the US prison population at that time (Gilliard and Beck, p. 11).

According to the Legislative Analyst Office, nearly 90,000 people were convicted under Californian Strike Laws between 1994 and 2004 at annual cost of \$1.5 billion (2005, pp. 15). In 2004, there were 35,000 two-strike and 7,500 three-strike inmates, accounting for 26% of the Californian prison population (p. 15).

At the heart of the three strikes law was curbing recidivism through deterrence or incapacitation, in addition to punishment. Chen (2008, p. 347) asserts that three strikes has a moderate effect on crime rates, specifically acquisition of property-based offenses (violent and nonviolent). However other have determined it had a minimal effect on crime due to the increase in substitutional offending (Konandzic, Sloan and Vieraitis 2004; Stemen, Rengifo & Wilson 2006). Furthermore, due to federalised nature of the policy objectives, three strikes had a limited effect on crime due to the lack of implementation (Konandzic, Sloan & Vieraitis 2004).

Given that the death penalty is the ultimate sanctioned punitive punishment available to government, it was no small measure that the Act expanded its federal application to 60 crimes. The Clinton administration believed it to be the strongest, discernible form of deterrence. Clinton told reporters in a press conference in 1993, that it was to be used to “let people know that if they are guilty, they will be punished”. Capital punishment existed in 37 of 51 American jurisdictions over the five years and this did not change. In 1995 there were 56 instances of capital punishment and 3,054 death penalty convictions. In 2000 these were 66 and 3,581 respectively (Snell 1995, p. 1; Snell and Maruschak 2001, p. 1). The rarity of its use in comparison to rates of crime where execution was an applicable punishment led Levitt to believe it had an insignificant impact on crime reduction. Moreover, the deterrent effect it was said to pose was also determined to be minimal, if it existed at all (Levitt 2004, p. 175).

To be clear, US crime rates had declined by the turn of the century. Levitt (2004) asserts there were four factors to explain this: increased incarceration, the increased presence of police, a diminished market for crack cocaine and the ongoing effect of 1973’s landmark

Roe v. Wade decision. He notes the latter not only paved the way for the removal of abortion from crime statutes but contributed to fewer unwanted births and a reduction in the potential for associated criminal activity. Notwithstanding this, the end of the 1990s witnessed the greatest growth in imprisonment in American history. During the final decade of the 20th Century, 617,342 people were incarcerated (Harrison and Beck 2002, p. 1).

In that we have presented the outcomes of the Clinton administration's efforts and legislative actions in some detail in this chapter, it is apparent they were both varied and questionable.

However, what emerges in place of strong evidence of correlation between these endeavours and a general decline in crime, is the real possibility that the 42nd president and his team continued a policy of escalated incarceration regardless. Whether there were external and indeed political motivations to do so will be explored in the final chapter.

Chapter Seven

Symbolic Consequences

Two months after the enactment of the 1994 crime bill, the Democrats lost control of Congress in the so-called Republican Revolution mid-term elections. Commentators assert a subsequent shift in political attention resulted in Clinton failing to commit to his tough-on-crime message (Chernoff 1995, p. 528). As demonstrated in Chapter Six, many of the Act's standout policies failed to materialise or if they did, lacked impact. Yet this is not say White House discourse and policy co-ordination did not have ramifications.

In this final section we examine the cumulative effect of the Act in terms of its symbolic consequences. Unlike material outcomes, they are not easily quantified (Shammas 2016). Even so, the symbolic has a palpable and lasting influence upon language, meaning and norms across a range of institutions that are fundamental to modern society.

Crime control

The notions of crime, punishment, victims and offenders which underpinned the Act were framed in terms of political dogma. They were not informed by academics or experts or at least if specialist consultation did occur, it was not made known. As a result, the courses of

action proposed and adopted by the executive branch of government were arguably predicated on unsubstantiated ideas. In turn, unforeseeable and unintended outcomes arose.

A focus on enforcement and, pointedly, arresting offenders undoubtedly overshadowed the Act's community policing objectives. This was abetted by a steady flow of data reinforcing the former and a lack of standardised measurement with which to extol the latter. Rector, Muhlhausen and Ingram (2000), found that although law enforcement numbers swelled there was no strict provision regarding how the extra officers were deployed. Money that should have been spent on community policing instead went towards civilian support staff, equipment and new technology. The report also found that there was in fact no centralised data system that tracked how or where funds were being used and therefore, no real accountability. Even in high-risk, crime areas which were eligible for additional grants there was a lack of capability around community policing efforts. Evidence also suggests some money designated for chronic crime neighbourhoods ended up in low crime areas (Rector et al. 2000). It goes without saying this undermined the pledge made during the bill's debate to address the social determinants of crime.

Finally, federal funding for the COPS initiative was a temporal, supplementary provision which finished in 1999, according to the Act (Title I). Since then, the states have struggled or been unwilling to commit to the upkeep of the program. Ludwig and Donohue assert this has noticeably affected policing efforts and public confidence in law enforcement. Because criminal justice in the United States is a localised experience (Tonry 2009; Murphy 1995; Barker 2009), the cost of delivering services continues to rest with provincial levels of government. For local and state authorities to sustain Clinton era crime-fighting programs would certainly cost them tens of billions of dollars (Ludwig & Donohue 2007) ⁸. Things may have been good while they lasted but if not self-sustaining programs like COPS ultimately left more needy communities back where they started or potentially worse off.

Punishment

Fundamental to the tough justice enshrined in the legislation was a misconception around how to deal effectively with offenders who committed the most serious of interpersonal crimes such as rape and murder. A common theme among more conservative voters and political elites believed the individuals responsible for these offences were not

⁸Clinton era programs policing standard according to Ludwig and Donohue was defined by maximum return or substantially low crime rates and high levels of public safety.

being adequately punished (Cavallaro 2007; Rickert 2010). They subsequently viewed determinate sentencing as a panacea for violent recidivism. However scholarship asserts that such conclusions are not based on consistent or concrete evidence (Bhati & Piquero 2008; Mears, Cochran, Bales & Bhati 2016).

Victims' rights

The Act codified victims' rights according to the bipartisan principles of public protection and commensurate justice. On the surface, this seemed well-intentioned. Nonetheless, the ideas that formed the basis for these policies lacked informed reasoning and logic.

The child murders of Jacob Wetterling (1989), Megan Kanka (1994) and others each became a national cause celebre, resulting in laws carrying their names. Ginsburg (2014, p. 923) asserts this was indicative of a trend that accelerated during the 1990s. The families of victims would lobby for political action which was then acknowledged by political actors up to and including the president. The politicisation of the fear, sorrow and moral outrage triggered by these crimes effectively became instrumental to the mobilisation and enactment of policy. Unfortunately, these laws not only permitted questionable legal procedures, they constitutionally altered democratic institutions.

Jacob's and Megan's laws federally sanctioned the conditional release and post-carcer supervision of sex offenders. In effect, this normalised their ongoing criminalisation in a way that had cyclic legal repercussions and collateral consequences. According to Rickert (2010 p. 236), in some states an offender failing to notify law enforcement of a change of address or work circumstances, for example, could trigger immediate and escalated retribution. Megan's Law was in fact implemented in 51 jurisdictions each with authority to decide how stringent notification requirements should be. Some regulated that they be applied after release for 10 years, others for life. Similarly, offenders were publicly identified but to what extent. In some states their names, images and addresses were kept on website registers, while in some they were posted on Facebook or other platforms or published by media. How effective these responses have been is debatable. A study of New Jersey's⁹ implementation found Megan's Law did not significantly reduce sex offences, act as a deterrent or impact upon recidivism. At the same time, it was costly and arguably served to

⁹ Megan Kanka was kidnapped, raped and murdered in New Jersey by a recidivist sex offender. The case resulted in a victims' movement and the state was where Megan's Law was first formulated.

unreasonably increase fear of random sexual victimization (Zgoba, Witt, Dalessandro & Veysey 2008).

The Act's consideration of victims' rights also concerned itself with judicial procedure. Federal Rules 413-415 essentially qualified the courtroom exclusion of propensity evidence (Liebman 1995, p. 754). Typically, this resulted in the admissibility of a defendant's criminal history in sexual abuse or child molestation cases. The Act codified the use of prejudicial evidence where similar priors were involved regardless of its probative value (Rickert 2010, p. 213). According to Liebman (1995, p. 754), this meant jurors could pass judgement on offenders based on the idea they were "bad" people. By implication, an innocent person might be criminalised via the diminishment of reasonable doubt and due process, both pillars of systematic justice.

Three-strikes

Clinton-era policy served to over-extend federal authority and legitimise a harsher system of criminal justice. Judicial reforms engendered by punishment laws within the Act enhanced federal legislative power by weakening the independent discretionary power of the judiciary (Kline 1995). According to California District Judge Anthony Kline (1995, p.1088) the mandates primarily caused undue burden on that state's courts due to a proliferation of three strikes cases. This in turn had an impact on the role of the legal actors involved. California's presumptive system required judges to impose strike sentencing for eligible offenders. However if disputes arose the authority of prosecutors to challenge decisions became a determining factor (Tonry 2015; Stemen, Rengifo & Wilson 2006).

The way the mandates were framed had detrimental implications beyond the obvious for offenders. Taifa (1995, p. 719-724) asserts consideration of strike sentences was based on enumeration rather than culpability or the relative severity of an offence. For instance, one strike might be incurred as the result of a nonviolent drug offence and down the line, contribute to a mandatory life sentence. This was so even if the original conviction was years old. For a defendant on trial, the presentation of antecedents in the consideration of punishment weakened the burden of proof and amounted to obstruction of due process.

Californian three-strikes data highlights the disproportionate effect of the legislation on African and Hispanic Americans. According to the LAO (2005, p. 21), the largest striker group a decade after the enactment of the 1994 bill was African American (37%), followed

by Hispanic (33%), and white (26%). Of the three-striker population African Americans made up 45% of the population (p. 18).

Another disquieting aspect of the so-called habitual offender laws was the proportion of convictions resulting from low-level drug offences. Half of all strikers in California were found guilty of non-serious or nonviolent matters (LOA 2005, p. 18). Many scholars contend this reflected racial bias in apprehension, prosecution and conviction trends (Chen 2008; Tafia 1995). Regardless of the relative merit of this claim, certainly at stake is the question of proportionality (Sutton 2013)¹⁰ or the constitutional notion (U.S. Const. amend. XIII.) that the punishment should fit the crime.

Although the Act removed at the federal level, crack-cocaine possession as a strike-eligible offence, it maintained the 100:1 ratio and corresponding Reagan-era mandates along with their racial implications. Stemen, Rengifo & Wilson (2006, p. 116) concluded Clintonist sentencing reforms compounded an already harsh sentencing regime and hence had more of a symbolic effect. They determined that between 1993 and 2002 stronger sentencing measures in fact contributed to increases in black inmate populations in predominantly Republican states (pp. 132). They concluded that this pointed to a correlation between conservative political ideology, increased incarceration and increased racialised incarceration (p. 133).

Truth-in-Sentencing

Analysis of the indirect effects of TIS laws illuminates their symbolic impact on incarceration rates and indeed governance. The presidential urging of state and local jurisdictions to implement truth-in-sentencing legislation was in some sense indicative of an “inter-branch power struggle”. It was presented to them in a manner typical of Clinton-styled “black-tie federalism” (Bowman & Pagano 1994, p. 1): socially inclusive in terms of public discourse yet politically exclusive in terms of policy formulation. Wary of the logistical pitfalls of abolishing or curbing parole mechanisms, few moderate states actually adopted TIS reform. As a consequence, its overall impact upon correctional expenditure and rates of incarceration was nominal. Anchored by Clinton’s rhetoric and funding commitments, the federalisation of truth-in-sentencing nonetheless did attract a notable degree of partisan interest. And again this came primarily from Republican states (Sheperd 2002, p. 531). This was somewhat unsurprising considering the conservative origins of TIS, with the first such

¹⁰ Dependent on state guidelines. For example, California has two strikes and three strikes sentencing mandate.

laws passed under Reagan in 1984. What wasn't foreseeable was Clinton's willingness to so obviously reinvigorate and promote truth-in-sentencing as a means of generating political capital in the majority-red southeast.

As a sentencing mandate TIS was initially formulated to deter, to determine commensurate punishment and to exact retributive justice. However beyond 1995 it also came to facilitate secondary institutional changes which affected imprisonment rates beyond the parameters of the policy.

Logically, police were fundamental to TIS objectives because they arrested those offenders whose crimes made them candidates for determinate sentencing. However Shepard (2002) found more police who made more arrests didn't deter offenders or temper TIS-category crime rates. What did occur as arrest rates went up for "substitute crimes" chosen by offenders to avoid harsher punishment. This clogged up courts and further burdened the prison system. According to Murphy (1995, pp. 745-6), police arrests tend to be overemphasised as a measure of effectiveness. Of course they can be a reasonable indication of police performance and are easily quantifiable. Yet for politicians and police chiefs they are perhaps too readily converted into political capital (Pfaff 2015 p. 1574). For better or worse, the Clinton administration had an apparent fixation with arrests as a means of effective crime control and ensuring commensuration.

At the next phase of the justice process, the cost-effective interests of public prosecutors are often best served by consenting to pre-trial agreement. This considered, TIS eligible defendants were implored to undertake plea bargains (Sheperd 2002, p. 531). Furthermore, this happened more often as police became emboldened by the new powers thrust upon them by the Act and arrest, and subsequently charge rates, increased.

As passages of legislation, the three strikes and truth-in-sentencing articles were intended to make sure the time fit the crime. However there was no scientific basis that this would be the outcome achieved. If anything, both policies exacerbated the problem of an overcrowded corrections system. Offenders convicted of serious offences were being sentenced to longer non-parole terms, while increasingly zealous police were casting a wider arrest net. In California, as a result of three strikes prisons teemed with both long- and short-term inmates (Chen 2008). "The increased rate of incarceration imposes enormous human and social costs for sentenced individuals, their families, and the communities from which inmates come and to which many of them eventually return" (Chen 2008, p. 365).

Death Penalty

The escalation of death penalty provisions within the Act, although dramatic, had minimal immediate impact on crime and punishment data. Nonetheless, it firmly signalled the administration's prioritisation of political capital over the protection of minorities.

The "Racial Justice Act" (RJA) was to have been a provision of Federal Capital Punishment laws. However in the last days of the policy process it was excluded owing to Republican push-back. Historical evidence according to state-by-state data showed death penalty sentencing disproportionately applied to African American defendants. The RJA outlined how discriminatory patterns of sentencing arose according to the jurisdiction considered (Edwards & Conyers 1995). The findings continue to ring true. Between 1976 and 2018, 1,472 American citizens were legally executed, 55.7% of them white and 34.3% black (Fins 2018, p. 6). This despite the latter making up just 12.3 % of the population. According to Edwards and Conyers (1995), this racial imbalance often occurred due to the bias (unconsciously or not) of prosecutors charged with selecting cases for consideration. They, in turn, helped drive much of the RJA opposition. Of primary concern was the potential for prison-based litigation; in other words, a proliferation of appeals which again would slow the wheels of justice and pressure prosecutors to administer rebuttals. In addition to this were claims the RJA would in fact lead to the death penalty's systematic elimination (Lungren & Krotoski 1995).

The use of the death penalty and executions have decline steadily since the 1990s. Nevertheless, the exclusion of the Racial Justice Act was emblematic of the prioritisation of political interests.

Juvenile Justice

Between 1995 and the new millennium, more homicides were committed by and perpetrated against 20-24-year-olds than any other age group (FBI 1995, p. 16; 2000, p. 17). However juvenile (under 18) crime and victimisation was a major focus of the administration, especially heightened levels of violent crime. In 1996, 2.9 million juvenile arrests were made. This accounted for "19% of all arrests nationally and 19% of violent crime arrests" (Snyder 1996, p. 1). A large portion of juvenile crimes, particularly homicides, were the result of drug and turf wars associated with gang hubris (Cohen, Cork, Engberg & Tita 1998). In 1994, 32% of homicides in Chicago were the result of gang violence and in Los Angeles, 44% (Block et al. 1996; Klein 1995 in Costanza and Helms 2012, p. 283). The economic decline of the late

1980s led to an infiltration of gangs in urban areas which served to amplify criminogenic conditions (Costanza and Helms, p. 282). Notably, gang activity had become characteristically entrepreneurial and consequently provided desperate inner-city youths with jobs (Cork 1999).

There is no systematic theoretical framework for analysing youth gangs and violent youth crime (Costanza and Helms 2012, p. 284). Nor is there a consistent definitional standard of gang participants for crime data purposes due to age variations (Bilchik cited in Howell and Decker 1999, p. 1). As a result, many of the policies in the Act aimed at identifying and managing at-risk youth were also about interrupting serious, gang crimes.

Clinton's framing of juveniles and minority males was indicative of racial politicisation of crime (Morietary & Carson 2012; Chapter 5) and akin to Reagan era crime-fear which qualified the war on drugs. The latter involved the perceived risk of victimisation by minority groups enabled by the criminalisation and qualified the incarceration of that minority, specifically African Americans (Chadee 2003). However Clintonist prejudicial rhetoric was arguably more imperceptible. Matsueda and Drakulich (p. 166) called it "laissez-faire racism".

Clinton spoke loudly and often of protection for juveniles including at-risk youths in urban areas via intervention and deterrence (Morietary & Carson 2012). Rehabilitation programs involving boot-camps and extracurricular activities were aimed at de-escalating juvenile crime and dousing the allure of gang culture. Zimring (2010, p.6) determines, however, that much of the relevant 1990s legislation was designed to lay more charges and make punishments more severe. Title XIV, for example, codified transfer laws whereby juveniles as young as 13 who had committed the most of serious offences were dealt with by adult courts and sent to adult prisons. Young African American males were disproportionately affected with the blame primarily sheeted home to prosecutorial manipulation (Morietary & Carson 2012; Zimring 2010). By 1998, 7,100 juveniles were processed for felonies, with 96% of them male and 62% black (Griffin, Addie, Adams & Firestone 2011, p. 12).

By 2000, juvenile homicide rates had dropped to their lowest in 20 years (Harms and Snyder 2004, p.1). Levitt (2004) asserts various demographic shifts made some contribution but nothing substantial. Meanwhile, the socio-economic conditions that bore gang proliferation in the 1990s remained in the worst-affected communities (Costanza and Helms

2012). According to Blumstein (2002, pp. 50-51), the decline in youth handgun murders and their overt involvement in violence was due to shrinkage of the illegal drug market and a more robust economy overall offering stronger employment opportunities. While noting young people were sensitive to handgun laws, he refrained from drawing any notable conclusion from this.

The sentencing of juveniles throughout the Clinton years contributed to the cyclic criminalisation, incapacitation and marginalisation of African Americans. Although distressing for him to do so, Clinton would later acknowledge that some provisions “cannot be justified” (Clinton cited in Williams 2016). In terms of specifics, Moriarty and Carson (2012, p.282) would conclude that transfer laws had widespread “economic and social reverberations”. Notably, by 2012 1 in 3 African American males in their 20s were under the jurisdiction of criminal justice.

Weighed in terms of rigour, the legislation was flawed. It was without any transparent technocratic input and lacked intellectual accountability. Instead, its framers relied upon politically appealing to public fear of, and in many instances outrage over violent crime. While their Republican predecessors had already established incarceration as the primary tenet of criminal justice the Democrats now sought to capitalise on the its normalisation. More than this, they sought to keep offenders behind bars for longer to address recidivism and sate public demand for commensurate punishment. Clinton’s prowess as a rhetorician at this juncture came to the fore. While there is considerable evidence of the symbolic impacts, indeed damaging impacts, of his administration’s punitive focus, it was not apparent at the time that among those most disaffected would be African Americans. The irony was that black communities like the ones he was deeply affiliated with in Chicago (Chapter 5) and New York were the ones with the most to lose. There is no clear way to know if he pursued these audiences in a cynical way, but it is certainly true he held electoral considerable electoral sway among urban blacks.

Conclusion

The formulation of law and order policy, certainly as it applies within the American political landscape, is subject to an array of institutional variables. The correlating outcomes are also myriad. We have undertaken to examine them here through the prism of *The Violent*

Crime Control and Law Enforcement Act of 1994, the landmark document encompassing the Clinton administration's approach to crime and punishment.

By the time Clinton and his team settled into their work, getting tough on crime was already an established White House trait. It was a platform which had won normative endorsement and widespread appeal, both of which had been engendered by the conservative ideas and practices of successive Republican presidencies. As a result, Clinton's contribution to the mass incarceration phenomenon and everything it encapsulated, as a Democrat, would be as much symbolic as it was material.

Firstly and importantly, our task here has been to deconstruct the ambitious policy response of his administration to it what characterised as a violent crime crisis. On one hand, this entailed a more comprehensive approach to crime management and deterrence via a focus on proactivity and prevention initiatives in concert with a substantially upgraded program of conventional enforcement. On the other, it involved meting out punishments more in line with a tougher brand of justice; one which addressed recidivism, dispensed commensurate penalties and in severe cases, acknowledged calls for stronger retribution.

Following this, we undertook to chart the processes by which the policies enshrined in the 1994 Act were shaped and constructed. Employing discursive institutionalism as a methodological lens, our aim was to analyse political action towards better understanding of the complexities that constrain and construct policy outcomes.

By unpacking the policy coordination endeavours and political entrepreneurship which went into formulating the Act we were able to look further than the determination that they yielded normative legislative success. Certainly this was important: the Clinton administration was able to harvest Republican ideas and blend them with liberal ideology in a way that achieved political consensus and won decisive public favour. Yet the legacy of this course of action went beyond congressional statutes and electoral success.

The 1994 Act codified exceptional and unusual punishments. It enhanced the authority of policy enforcers, namely prosecutors and police. It diminished judicial independence and discretion. It undermined due process and impeded civil and constitutional liberties. It further marginalised minorities and served to criminalise yet another generation of disadvantaged Americans.

In order to understand the full dynamic of Clinton's contribution to American law and order we have examined its import in terms of past, present and future. This required us to dissect consequences beyond conventional measurable capacity. Fundamentally, the participation of the Democrats in the politicisation of crime during the 1990s resulted in a redefinition of American crime and punishment. Yet this was an undertaking bereft of evidence of its necessity and which lacked informed rationale.

This thesis presents a careful case for understanding the dynamics of power in facilitating political action or institutional change. In discussing the role of structure and agency according to the DI framework, we gain greater insight into the nuances of policy making without rendering outcomes as subservient to structures of power.

Towards a contribution to the body of scholarly literature concerned with the political cause of mass incarceration, we have undertaken to demonstrate something of the role of political actors as ideational leaders and rhetoricians in perpetuating this phenomenon.

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