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The Evolution of Crime and Politics in America

Ted Gest*

I. INTRODUCTION

Fighting crime in the streets has been high on the political agenda in the United States for the last four decades. This article reviews the evolution of that campaign and assesses its prospects in the early twenty-first century, when it has been transformed, in many ways, into a war on terrorism.

Politics is based partly on dealing with the public perception of social problems. The rise of crime as a political issue has paralleled the dramatic increase in rates of crime categories classified violent by the government. In 1960, the rate of reported violent crime was 161 per 100,000 Americans.¹ By 1964 violent crime jumped to 191 per 100,000 Americans,² and, by 1991, violent crime peaked at 758 per 100,000 Americans—well over four times the total only three decades earlier.³ It may surprise those who cheered the crime decreases of recent years to learn that the 2000 figure of 506 violent crimes per American was roughly the same as that of the early 1980s, when many Americans believed that crime was one of the nation's most serious problems.⁴ Admittedly, the data from the FBI's Uniform Crime Reports are imperfect because they only include incidents reported to law enforcement agencies, only a fraction of the true totals. Still, the data show that crime in modern America has ebbed and flowed in the last four decades, as have public perceptions and the intensity of politicians in trying to attack the problem.

II. THE BEGINNING—THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

It was in the year 1964, when the violent crime rate increased by nearly twenty percent in just one presidential term, that Barry Goldwater, the Republican presidential candidate, made crime a major campaign issue in what turned out to be a crushing defeat by incumbent Lyndon Johnson.⁵ Johnson acknowledged the resonance of Goldwater's rhetoric by appointing a commission on law enforcement

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1. FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS (1975).

2. *Id.*

3. FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS (1991).

4. FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, UNIFORM CRIME REPORTS (2000).

5. TED GEST, CRIME & POLITICS: BIG GOVERNMENT'S ERRATIC CAMPAIGN FOR LAW AND ORDER (2001).

and administration of justice.⁶ The commission's 1967 report and enactment of a wide-ranging federal anticrime law the following year set the stage for a lengthy and expensive government war on crime.

The crime campaign has been erratic, with policy often made in an atmosphere of crisis. One widely publicized episode—such as a child's kidnapping, a sports figure's death from crack cocaine, a murder by a sex offender, or a mass shooting in a public high school—can be the catalyst for a law that increases criminal sentences, requires a public registry of ex-convicts, or provides for a new crop of school safety officers. These measures often have unintended consequences, both on individual offenders who get caught up in the net and on the budgets of agencies that end up supporting programs long after the original incident that inspired them. Moreover, relatively few anticrime measures are thoroughly evaluated.⁷ As a result, when the next major episode occurs and politicians scramble to react, they may, as frequently happens, have no solid evidence from their last foray into crime fighting on which to base their next move.

The hit-and-miss story of anticrime policy in the United States started in earnest in the late 1960s when Congress reacted to the rising crime threat and recommendations of Johnson's commission by passing, in 1968, the first of many so-called "omnibus" crime laws.⁸ The statute thrust the federal government into what was primarily a state and local issue. Before 1968, Congress generally had not set national policy, with the important exceptions of narcotics regulation and gun control.⁹ A major result of the new statute was the creation of a bureaucracy in the Justice Department to dispense money to states and localities for crime-fighting projects.¹⁰ The idea was that the federal government would finance innovative and experimental programs that local entities could not support on their limited budgets.

Though the concept was sound, the agency, known as the Law Enforcement Assistance Administration (LEAA), got off to a rocky start when Congress ordered it to be run by a "troika," a three-person administration that frequently did not come to agreement on major issues.¹¹ LEAA established a number of significant advances, including more education for law enforcement officers and special units in prosecutors' offices to help crime victims and witnesses.¹² At the same time, a great deal of money was spent on police equipment, some of dubious

6. *Id.* at 5-6.

7. See LAWRENCE W. SHERMAN et al., NATIONAL INSTITUTE OF JUSTICE, PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING, xi (Feb. 1997) (explaining that limitations in funding of "why some innovations work, exactly what was done, and how they can be successfully adapted in other cities.").

8. GEST, *supra* note 5, at 19-20.

9. *Id.* at 109-55.

10. *Id.* at 20.

11. *Id.*

12. *Id.* at 32.

quality.¹³ LEAA also required states, the entities that received most federal funds, to engage in a planning process that presumably would ensure that the money would be spent efficiently.¹⁴ However, this rule was enforced sporadically, and only a few states engaged in a thorough planning effort.¹⁵

The program ended up lasting more than a decade, during which violent crime, as measured by FBI crime reports, marched steadily upward. Although by the end of Jimmy Carter's presidency, several billion dollars had been spent on the program, few argued that LEAA was successful enough overall to continue.¹⁶ Part of the problem was a lack of consistent leadership. Starting at the end of Johnson's administration and continuing through the Nixon, Ford, and Carter presidencies, LEAA had a series of directors, all with different ideas about how best to fight crime and none lasting long enough to imprint a vision nationwide. Some LEAA leaders believed that the agency's main aim was to affect the crime rate directly, while others emphasized the improvement of the criminal justice system.¹⁷

Despite LEAA's demise, Congress kept the idea of federal support for state and local anticrime programs alive during the 1980s and gradually expanded it.¹⁸ By the time the largest federal anticrime bill passed in 1994, Washington's spending in the anticrime fight exceeded five billion dollars a year, far above LEAA's highest totals. Under a variety of names, the federal anticrime program influenced policy by providing seed money. The most prominent example was the community policing program known as COPS, started by President Bill Clinton, which aimed at hiring 100,000 more local police officers.¹⁹ Federal funds also created hundreds of specialty courts which handled drug cases and prosecuted firearms-law offenders.²⁰

III. THE EVOLUTION OF THE FIGHT AGAINST CRIME

Since the Johnson crime commission, no national agency has conducted a broad study of crime control. In the absence of a consensus on a national anticrime program, policy-making has been based on the issue of the moment. Jurisdiction of both executive and legislative branches at federal and state levels typically has been fractured, both in making anticrime policy and in enforcing the laws. This often means that anticrime policy is made in bits and pieces, with small groups of legislators and bureaucrats dealing with whatever subject happens to

13. *See id.* at 26 (stating that \$2.3 million was spent on new police cars that were too small to accommodate most police officers).

14. *Id.* at 24.

15. *Id.*

16. *Id.* at 38.

17. *Id.* at 31.

18. *Id.* at 250.

19. *Id.* at 169-70.

20. *Id.* at 129.

fall under their purview. The following sections will summarize how policy has evolved in major areas of crime-fighting.

A. Policing

For many years, police departments sent patrol cars in response to calls for service. It was gradually apparent that this tactic was not very effective against major initiators of violence, like drug-selling gangs. A new theory of problem-oriented policing encouraged officers to analyze crime trends and develop preventive measures.²¹ Later the concept was expanded to community-oriented policing, which encouraged police officers to learn about local problems and community leaders during their walking beats.²²

Meanwhile, the federal COPS program expanded local police forces by ten to twenty percent.²³ However, to satisfy political imperatives, the officers were dispersed around the nation rather than to the highest crime areas.²⁴ Shortly after COPS finished its six-year authorization in 2000, George W. Bush succeeded to the White House. Reacting to the string of school shootings in the late 1990s and requests by law enforcement agencies for more equipment, Congress and the new administration shifted the COPS focus to providing technological help to police and placing officers in schools.²⁵ Evaluations have not conclusively established the extent of COPS's reach or its impact on crime rates.

B. Juvenile Crime

As youth crime rates rose in the 1980s, hard-liners sought to have the most serious offenders shifted from juvenile courts to adult courts.²⁶ These defendants, the youngest in the adult system, did not necessarily get more stringent sentences. Research indicated that many prosecuted in the adult system spent a brief amount of time behind bars and quickly returned to lawbreaking.²⁷ During the 1990s, federal funding for state and local juvenile crime fighting expanded dramatically, but its purposes were split between Republican-inspired programs seeking juvenile "accountability" and more traditional projects that emphasized crime prevention.²⁸

21. HERMAN GOLDSTEIN, *PROBLEM-ORIENTED POLICING* (1990).

22. GEST, *supra* note 5, at 177.

23. *Id.* at 184 (explaining that the actual number of extra police is closer to 50,000 than 100,000, and that only 39,000 to 55,400 of those new officers were expected to remain on the job).

24. *Id.* at 179.

25. National Criminal Justice Association, *Justice Assistance Appropriations in the 107th Congress* (Nov. 2001), available at <http://www.ncja.org/justicebulletin.html> (copy on file with the *McGeorge Law Review*).

26. GEST, *supra* note 5, at 99-100.

27. *Id.* at 100.

28. *Id.* at 101.

C. Drugs

Largely a federal responsibility, the government campaign against illegal narcotics divided its limited resources among programs for the interdiction of foreign smuggling, long prison terms for traffickers, and treatment of abusers.²⁹ Despite sporadic success, none of the three main anti-drug policies have demonstrated long-term dramatic results. The drug abuse problem, as measured by national statistics, stubbornly resists attempts at drastic reduction. Studies cast doubt on the effectiveness of the Drug Abuse Resistance Education program (DARE), in which police officers warn students of drug dangers.³⁰ More recently, a report suggested that a major federal program of televised public service advertisements aimed at young people was having little impact.³¹

D. Guns

After the gun-control provisions in the federal crime law of 1968, most significant attempts at gun control by the federal government were blocked by the gun lobby until the early 1990s. Then, in 1993 and 1994, Congress enacted a waiting period for handgun purchases and bans on certain assault-style weapons.³² At the same time, pro-gun forces succeeded with measures in many states that made it easier to carry concealed weapons for self-defense.³³ Evaluations of these measures have been mixed. Gun crime is down along with most other categories, but it is difficult to prove that legislation had much to do with it.³⁴

E. Sentencing

A flurry of mandatory minimum sentences and guidelines that generally raised penalties for street crimes helped create an imprisonment boom. About 200,000 people were serving sentences in federal and state institutions in 1975; by 1999, that figure ballooned to 1.3 million (2 million if local jail prisoners are included).³⁵ The unprecedented growth has slowed in recent years due to the decline in crime and government budget problems.³⁶

29. *Id.* at 129.

30. *Id.* at 272-73.

31. *Anti-Drug Ads Falling on Teens' Deaf Ears*, MEMPHIS COMMERCIAL APPEAL, May 15, 2002.

32. GEST, *supra* note 5, at 148, 240.

33. *Id.* at 151.

34. *Id.* at 153.

35. *Id.* at 203.

36. *Id.* at 217.

F. *Crime Victims*

The ever-growing number of American crime victims formed effective national and state lobbies in an effort to institutionalize the role of victims in the criminal justice process.³⁷ The victims' organizations made considerable progress, sometimes succeeding in curtailing appeals by death-row inmates and generally backing measures to toughen criminal sentences.³⁸ Many states approved constitutional amendments guaranteeing victim rights in the justice process, and the movement has won approval of an amendment to the United States Constitution.

IV. THE CRIME ISSUE IN THE TWENTY-FIRST CENTURY

As the twenty-first century began, crime as a political issue receded from the top of the national agenda. There were three major reasons. One was the dramatic drop in crime totals, which seemed to make the public feel safer.³⁹ Still, the underlying rates remained as high as those in the early 1980s, when a Justice Department task force cited the "fearful toll that serious, violent crime is exacting in our communities" and declared that "millions of our fellow citizens are being held hostage by their fear of crime and violence."⁴⁰ Two decades later, many Americans have grown accustomed to the unceasing stream of crime reports, taking solace in the fact that at least the totals have declined, even if many individual crimes are just as horrific.

The second reason was a shift in the partisan winds on crime policy. In the 1970s and 1980s, the two major political parties were locked in ideological disagreement. Republicans favored "get tough" measures such as stiffer penalties and tougher prosecutorial measures, including more capital punishment and less plea-bargaining.⁴¹ Democrats advocated more attention to crime prevention, drug treatment, gun control, civil liberties protections, and rehabilitation of convicts.⁴² In the 1990s, a generation of centrist Democrats moved to the fore, embracing ideas from both camps. Clinton picked up on community policing, an idea given short shrift by Republicans.⁴³ He also continued a program from the Bush Administration known as "Weed and Seed," a locally based anticrime project run by federal prosecutors.⁴⁴

37. *Id.* at 263.

38. *Id.* at 264.

39. *Id.* at 42; Gallup Organization, *Fear of Conventional Crime at Record Lows* (Oct. 22, 2001), available at <http://www.gallup.com/search/Results.asp> (copy on file with the *McGeorge Law Review*).

40. U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME, FINAL REPORT (Aug. 17, 1981).

41. GEST, *supra* note 5, at 223.

42. *Id.* at 222.

43. *Id.* at 170.

44. *See id.* at 97 (describing the "Weed and Seed" program as focused on "weed[ing] out lawbreakers from inner-city neighborhoods and plant[ing] the seeds leading toward community improvements.").

At the same time, some Republicans edged away from the harsh remedies of the 1980s. Key Senate Judiciary Committee members, Orrin Hatch of Utah and Jefferson Sessions of Alabama, favored reducing the longstanding disparity between mandatory federal sentences for dealing in crack and powder cocaine.⁴⁵ Another issue that produced bipartisan agreement in some places was the death penalty; state leaders from both major political parties favored suspension of executions pending studies of the justice system's fairness in deciding which murderers would go to death row after DNA evidence and appellate reviews of convictions voided dozens of capital sentences.⁴⁶

As a result, street crime largely fell off the list of so-called wedge issues that sharply separated the parties. Partisan divisions remained on some crime issues, gun control prominent among them, but the differences overall had narrowed so much that crime was hardly mentioned in the 2000 presidential contest between George W. Bush and Al Gore.

The third reason for crime policy's absence from the most debated public issues was the terrorist attacks of September 11, 2001. Not only did the hijackings dominate news reports and politicians' attention, but many officials who normally dealt with street crime were required to shift their attention to terrorism. Terrorism will likely have an impact on crime-fighting budgets as law enforcement agencies at all levels are being forced to prepare themselves for a wide variety of attacks, many without much additional personnel.

At the same time, the focus on terrorism may reverse a trend of "federalizing" crime that has been building steadily over many decades. Crimes ranging from pharmacy robberies to carjacking had been declared federal offenses, and federal agents were being assigned to a variety of task forces aimed at cracking down on violent street crime in localities.⁴⁷ Starting with the FBI, it seemed in 2002 that federal law enforcement agencies would return to emphasizing intelligence gathering and terrorism prevention, leaving most street crime once again to local police departments and other segments of the justice system apparatus.

One major question at the federal level was how much of the Justice Department's five billion-dollar spending on state and local anticrime programs would be shifted to the Federal Emergency Management Agency and other units dealing with anti-terrorism concerns, such as the Department of Homeland Security. Governors and mayors had in many ways become dependent on federal aid to create special or innovative programs beyond providing basic services. So, they tried to persuade Congress to continue COPS and other elements of the annual five billion-dollar federal contribution.

45. U.S. Sentencing Commission, *In Federal Cocaine Sentencing Policy Recommended Findings to be Submitted to Congress*, at <http://www.ussc.gov/PRESS/rel0402.htm> (copy on file with the *McGeorge Law Review*).

46. *Maryland's Governor Issues Death Penalty Moratorium*, CNN.com (May 14, 2002), at <http://www.cnn.com/2002/LAW/05/09/maryland.death.penalty> (copy on file with the *McGeorge Law Review*).

47. GEST, *supra* note 5, at 80.

The absence of crime from the top of the public agenda left policy-making in the hands of groups whose composition varied from place to place. In some states, lawmakers controlled the appropriations process. In others, a combination of practitioners such as police chiefs, prosecutors, judges, and corrections officials decide key policies.

In some jurisdictions, fiscal conditions are forcing changes. The harsh sentencing schemes enacted in previous decades were made possible partly because states and localities were relatively flush with cash.⁴⁸ Now that government at all levels is facing money shortages, some states have slowed prison building and have turned to emphasizing sanctions that minimize or eliminate time behind bars.⁴⁹ Liberals hail this turn of events. "People are asking about costs vis-à-vis benefits," says Scott Wallace of the National Legal Aid and Defender Association, "[and] [t]hat has been missing from the debate."⁵⁰ Barry Krisberg of the National Council on Crime and Delinquency also welcomes the trend, but he wonders what will happen when "crime insinuates itself back into the headlines."⁵¹

It does not seem that any sweeping rollback in prison sentences is imminent. For one thing, crime victim advocates are persistent in demanding accountability for offenders. Another important force is those with an economic stake in prison operations: residents in rural areas that built institutions during the incarceration boom, unions that represent prison workers, and private firms that invested in lockups. They point to evidence that all the incarceration did have an impact on the crime-rate decrease, perhaps accounting for about one-fourth of the decline in the 1990s.⁵²

The relative absence of the crime issue from the headlines and the lawmaking binge has given more breathing room to what Gwen Holden, former director of the National Criminal Justice Association, calls "interdisciplinary" approaches to the crime problem that typically transcend the justice system.⁵³ This transcendence has occurred on at least six fronts: crime by the mentally ill, violence in schools, development of better information systems for criminal records, drug treatment alternatives, prisoner re-entry into society, and "community justice," in which justice agencies involve private citizens in more of their operations. In each area, criminal justice system officials have worked without much public rancor to build

48. RYAN S. KING & MARC MAUER, THE SENTENCING PROJECT, STATE SENTENCING AND CORRECTIONS POLICY IN AN ERA OF FISCAL RESTRAINT I (Feb. 2002), available at <http://www.sentencingproject.org/news/rkmm-fnl.pdf> (copy on file with the *McGeorge Law Review*).

49. *Id.*

50. Telephone Interview with Scott Wallace, National Legal Aid and Defender Association's Director of Defender Legal Services (Spring 2002) (notes on file with the *McGeorge Law Review*).

51. Telephone Interview with Barry Krisberg, President of the National Council on Crime and Delinquency (Spring 2002) (notes on file with the *McGeorge Law Review*).

52. William Spelman, *The Limited Importance of Prison Expansion*, in *THE CRIME DROP IN AMERICA* 97, 107-08 (Alfred Blumstein & Joel Wallman eds., 2000).

53. Telephone Interview with Gwen Holden, private consultant and former Executive Director, National Criminal Justice Association (Spring 2002) (notes on file with the *McGeorge Law Review*).

the capabilities of both government agencies and the private sector in areas that had been relatively overlooked in previous years.

The danger remains that promising programs will falter economically in the face of rising concern about terrorism. Three decades ago, the influx of federal money to deal with the then rapidly increasing crime problem provided law enforcement agencies with more money than they could spend responsibly on equipment.⁵⁴ A rush in 2002 to purchase “boots and suits” for those who would respond to terrorism incidents could prevent some worthwhile anticrime efforts from getting the resources they need.

Except on the anti-terrorism front, the early twenty-first century is not shaping up to be a time of sweeping changes in policy on dealing with street crime. Some liberals are pointing to declining crime rates and government fiscal woes in an effort to reduce incarceration levels. “[T]here is now reason to believe that the ‘get-tough’ movement may have peaked and that a reversal in public policy may be in order,” says Marc Mauer of The Sentencing Project, a Washington-based organization that works against excessive incarceration.⁵⁵ One indication of this reversal was the passage of Arizona and California initiatives, funded partly by financier George Soros, which diverted more low-level drug offenders into treatment.⁵⁶ Soros’s Open Society Institute sponsored an opinion survey in early 2002 that showed the “public now endorses a balanced, multifaceted solution” to the crime problem that “focuses on prevention and rehabilitation.”⁵⁷ Other surveys reflected such attitudes in earlier years.⁵⁸

V. CONCLUSION

Why do policymakers ignore public support for an anticrime approach balanced between prevention and law enforcement? One reason could be that the strong support for preventive measures may not be reflected in the voting population. National Rifle Association members, for example, who tend to take a conservative approach to crime, probably exert more voting power than most others in the general population. A similar analysis might apply to elderly and suburban voters.

Despite indications of moderating public views, most politicians seem unwilling to risk changing views that work well for them at the ballot box. A prime example is

54. GEST, *supra* note 5, at 24.

55. Marc Mauer, *State Sentencing Reforms: Is the “Get-Tough” Era Coming to a Close?*, FEDERAL SENTENCING REPORTER 2 (forthcoming Fall 2002) (manuscript on file with the *McGeorge Law Review*).

56. Don Thompson, *Billionaires Set to Push Drug Reform*, ASSOCIATED PRESS, Nov. 9, 2002, at <http://www.mapinc.org/drugnews/v00/n1686/a10.html> (copy on file with the *McGeorge Law Review*).

57. Peter D. Hart Research Associates, Inc., The Open Society Institute, *Changing Public Attitudes toward the Criminal Justice System* 1 (Feb. 2002), available at <http://www.soros.org> (copy on file with the *McGeorge Law Review*).

58. Ted Gest, Donald Baer & Dorian Friedman, *Attorney General Janet Reno Rough Rider—Bill Clinton’s Top Crime Fighter Brings a New Brand of Justice to Washington, and She’s the Star of the Clinton Cabinet*, U.S. NEWS & WORLD REP., June 7, 1993.

California's "three strikes and you're out" sentencing scheme for repeat offenders. Democratic Governor Gray Davis and other leaders from both parties supported the law even though the State will be required to pay the high costs of incarcerating some offenders until long past their probable crime-committing ages.⁵⁹

Even with debates over how to combat crime in the streets mostly off the front pages for now, the hard-line policies of the last decade seem likely to predominate in the coming years. A growth in the youth population, a decline in the economy, and the Bush Administration's harsh rhetoric against terrorism may contribute to rises in the crime rate and a resurgence of interest in crime policy as a political issue. The best hope for more rational anticrime practices may lie in the next generation of criminal justice leaders. If they support thorough evaluations that prove the worth of recent policy initiatives, whether setting up drug courts, identifying and treating troubled youth, or expanding community justice, cash-strapped public agencies could adopt more effective ways to combat street crime.

59. *A Softer Side to Davis' Hard-as-Nails Crime Stance?*, ASSOCIATED PRESS, Oct. 6, 2002.