



# Expendable Lives: Race and Segmented Representation in the Politics of Crime and Criminal Justice in the United States

Sappho Xenakis<sup>1</sup> · Leonidas K. Cheliotis<sup>2</sup>

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## Abstract

One of the most enduring debates in the study of the evolution of criminal justice policy in the United States concerns the role of public opinion. Two viewpoints have thus far dominated pertinent scholarship, with one claiming that criminal justice policy has been genuinely responsive to changes in public opinion, and the other suggesting that incumbent administrations have simulated responsiveness to public attitudes toward criminal justice which they strategically molded themselves. Drawing in part on political science literature that has as yet been little used within criminology, this article seeks to advance an alternative viewpoint. We argue that, in the context of American criminal justice policy since the 1970s, political responsiveness to public opinion has been neither genuine nor so much simulated as it has been what political scientists describe as “segmented”—that is, geared toward specific subgroups whose views are privileged for electoral reasons. Our analysis singles out for scrutiny the crucial period between the mid-1980s and mid-1990s and the alignment of criminal justice policymaking during those years with preferences held and promoted by lobby groups with strong financial incentives at the expense of disadvantaged minorities. In so doing, we combine foci and insights that have typically been accorded discrete consideration in prior critical scholarship, which allows us to demonstrate the aggregate effect that different lobbying activities can have on criminal justice, whether directly and by design or indirectly and by default.

## Introduction

One of the most enduring debates in the study of the evolution of criminal justice policy hinges on the role of public opinion. The bulk of pertinent research has been focused on developments in the United States (US) over the last fifty years. This is unsurprising, given

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✉ Leonidas K. Cheliotis  
L.Cheliotis@lse.ac.uk

Sappho Xenakis  
S.Xenakis@bbk.ac.uk

<sup>1</sup> Birkbeck, University of London, London, UK

<sup>2</sup> London School of Economics and Political Science, London, UK

that during this timeframe, the US not only experienced a dramatic expansion in the use of tough criminal justice measures—in particular, “stop-and-frisk,” “three-strikes,” “truth-in-sentencing,” and life-without-parole laws—but also grew to become the world’s leading incarcerator, with African Americans of lower socio-economic status being particularly affected in this regard (Travis et al. 2014).

Two viewpoints have thus far dominated the ongoing debate about the US case: one claims that criminal justice policy has been genuinely responsive to changes in public opinion; the other suggests that incumbent presidential administrations have tended to simulate responsiveness to public opinion which they have, in fact, strategically molded themselves. Drawing on political science literature that has been little used in criminology, this article seeks to advance an alternative viewpoint. We argue that, in the context of American criminal justice policy since the 1970s, political responsiveness to public opinion has been neither genuine nor so much simulated as it has been what political scientists describe as “segmented”—that is, geared toward specific subgroups whose views are privileged for electoral reasons. Although political scientists have charted a steady increase in the prevalence and institutionalization of segmented representation in American politics (Jacobs and Shapiro 2000; Parker and Parker 2018), consideration of the disproportionate influence of the preferences of particular segments of the citizenry has thus far remained relatively scant in relevant criminological scholarship.

Our analysis pays particular attention to the crucial period between the mid-1980s and mid-1990s, when the so-called “War on Drugs” was being waged and criminal justice policymaking was aligned with preferences held and promoted by lobby groups with strong financial incentives. In so doing, we spotlight the efforts made successfully by entrepreneurially-minded law enforcement bureaucrats to pursue the “War on Drugs” in such a way as to fuel arrests. This development impacted on disadvantaged African American youth in particular, contributing decisively to a vast increase in the use of imprisonment against them. In addition, we draw attention to the success of National Rifle Association (NRA) lobbying for relaxed handgun controls, as the attendant rise in handgun homicide among young African American men was invoked in mainstream political discourse at the time to lend retrospective legitimacy to harsh criminal justice interventions against African American communities themselves. In the process, we combine foci and insights that have typically been accorded discrete consideration in prior scholarship to demonstrate the aggregate effect that different lobbying activities can have on criminal justice, whether directly and by design or indirectly and by default.

We begin by addressing key trends in crime and criminal justice during the period at issue, establishing the context within which we proceed to explore the principal viewpoints regarding the role of public opinion in the development of criminal justice policy. We then reflect on the influence of financially-motivated special interest groups.

## **Race, Crime and Criminal Justice Policy**

There is widespread acknowledgment that a series of punitive legislative reforms introduced between the late 1970s and mid-1990s paved the way for the explosion in the use of imprisonment in the US, insofar as they increased the likelihood of arrest and custodial punishment after arrest, raised the length of prison sentences, and extended the actual time served behind bars (Hinton 2016; Simon 2007; Tonry 2016; Travis et al. 2014). The prime foci of the stiffer laws passed during this timeframe were drug and violent offenses. In

turn, the increased use of custodial sentences in response to drug offenses led to the rapid upward trajectory of prison rates in the 1980s, while long sentences for violent crimes accounted for the rise of imprisonment in the 1990s and 2000s (Travis et al. 2014).

In this article, we single out for analysis the period between the mid-1980s and mid-1990s, when drug enforcement activities rose dramatically. The major growth in drug convictions during this period, and especially during the 1980s, rose principally from an increase in the conviction rates for young African Americans. This increase, however, cannot be attributed to changing levels of drug abuse or dealing (Travis et al. 2014). Rather, it was due to developments in the law that targeted punishment against the use of and trade in those particular intoxicants whose prevalence was greater in disadvantaged minority communities (Blumstein 1993). Nothing encapsulates this point more clearly than the “100-to-1” rule introduced by the Anti-Drug Abuse Acts of 1986 and 1988. This legislation provided that the sale of crack cocaine be punished as severely as the sale one hundred times its size of powder cocaine, based on an unsubstantiated and inaccurate assessment of the former’s relative harmfulness. Cocaine powder was mostly used by Whites, whereas crack was, at that point, a relatively cheap new form of cocaine whose primary market was African American youth in deprived urban areas (see Tonry 1995).

At that juncture, drug policy was all too often portrayed in mainstream political discourse as an indirect effort to tackle a growth in violent crime (see, e.g., Stuntz 2011). Police-recorded data, as transmitted to the Federal Bureau of Investigation (FBI) and published in its Uniform Crime Reports (UCR), have appeared to validate the argument that the increase in the use of custodial sentences for drug offenses was a “proxy” response to ascending rates of violent crime (but see Tonry 1998, 1999; Zimring and Hawkins 1991). In significant part, however, the rise in the police-recorded rate of violent crime at the time reflected the growing willingness of victims to report crimes to the police and the increased recording of such reports by local police agencies—that is, biases known to have plagued UCR figures since the mid-1960s (Weaver 2007).

A very different and comparatively more accurate picture emerges once one measures crime with reference to self-report victimization data (Blumstein 2000; Ruth and Reitz 2003). Standing in dramatic contrast to UCR data, for instance, the National Crime Victimization Survey (NCVS) reveals that violent crime fell steadily between the early 1980s and early 1990s, after having risen only modestly before then (see Beale 1997; Lauritsen et al. 2016).

Even if we focus specifically on homicide, an offense for which UCR does provide fairly trustworthy data, the picture is not substantively dissimilar. As Blumstein (2000: 15) demonstrates, US homicide rates displayed a “generally flat trend” between 1970 and 1991, before declining steadily thereafter. If we take a closer look at patterns of homicide, however, we find that a stark shift took place between the mid-1980s and mid-1990s in the demographic make-up of perpetrators. During this period, homicides came increasingly to be perpetrated by young African American males with guns; indeed, between 1984 and 1993, handgun homicides by young African American men tripled (Blumstein et al. 2000; see also Baumer et al. 2018). This development followed a rise in gun ownership among young African American men and a parallel increase in violence associated with the growth of the crack cocaine trade (Blumstein 2000; see also Blumstein and Cork 1996; Cork 1999).

Rather than the homicide rate per se, the fact that a growing proportion of those responsible for lethal violence were young African American men better helps to explain the expansion of punitive sentencing and the ensuing ascent of imprisonment rates during this period, even while that same demographic group constituted the foremost victims

of handgun homicide at the time (Blumstein et al. 2000).<sup>1</sup> Below, we show how both the increasing numbers of young African American male perpetrators of handgun homicide and the harsh criminal justice policies and practices that disproportionately targeted African American communities related to the electoral politics of the era. We begin by exploring the debate surrounding the ways in which politicians have engaged with public attitudes toward criminal justice and the function they have played in the evolution of criminal justice in the US.

## The Politics of Crime and Criminal Justice: Democratic Responsiveness or Elite Manipulation?

In accounting for the role of public opinion in the emergence of increasingly harsh criminal justice policies that boosted the rise in the use of imprisonment in the US from the 1970s onwards, two viewpoints have been most influential. While both contend that levels of public support for tougher criminal justice policies increased significantly during the period in question, they disagree on the causes and political effects of this shift.

The first viewpoint considers the harshening of criminal justice policy as a reflection of increasing public punitiveness that was, itself, predominantly the outcome of *elite manipulation*. In promoting stricter criminal justice policies, that is, incumbent presidential administrations feigned adaptation to a growth in public punitiveness that they had themselves played a large part in inflaming. According to this perspective, manipulation of public sentiment about issues of crime and punishment was a strategy meant to divert attention from politically vexing issues and cultivate a self-serving “tough-on-crime” image—all in order to satisfy personal or party-political interests (see, e.g., Beckett 1997; Miller 1996; Quinney 2002).

In contrast, the second viewpoint treats the harshening of criminal justice policy as an outcome of *democratic responsiveness*. Here, sitting politicians are argued to have acted in a democratically responsive manner in the sense that knowledge of growing public support for stricter criminal justice measures, combined with their fear of negative electoral repercussions if they failed to heed popular preferences, drove them to design their policymaking accordingly. The starkest expression of the democratic responsiveness viewpoint can be found in political scientist Peter Enns’ book, *Incarceration Nation: How the United States Became the Most Punitive Democracy in the World*, which has attracted considerable attention in pertinent criminological scholarship since its publication in 2016. “If the public had not become so punitive,” Enns (2016: 156) writes, “there is no reason to expect that the United States would have become the world’s most aggressive imprisoner.”<sup>2</sup>

If Enns is correct, the immediate question is why Americans should have become so punitive in the first place. Enns points to what he describes as significant increases in crime

<sup>1</sup> Their higher risk of victimization stemmed not from race, but—as with all adolescents across the US, regardless of race or ethnicity—from various sources that served as proxies of social and economic disadvantage (Tonry 2011; see also Beckett and Sasson 2004).

<sup>2</sup> Quoting Stimson and colleagues (1995: 559), Enns (2016: 50) asserts that “politicians are keen to pick up the faintest signals in their political environment. Like antelope in an open field, they cock their ears and focus their full attention on the slightest sign of danger.” Yet, the “politicians-as-antelopes” perspective has been subject to intense criticism by prominent scholars in the field of political science (see, e.g., Jacobs and Shapiro 2002) and is actually challenged by research Enns cites in an effort to illustrate politicians’ alleged antelope-like responsiveness (see Druckman and Jacobs 2011).

rates and corresponding upward trends in news coverage of crime. Such coverage, Enns adds, has all too often been distortive, insofar, for example, as violent crime has received excessive attention and the share of non-Whites among perpetrators has been exaggerated. In this context, Enns (2016) argues, the American public grew increasingly anxious and, ultimately, more punitive.<sup>3</sup>

There are three main problems with Enns' argument. First, he relies on UCR data to chart the trajectory of crime, which is what allows him to assert that crime rates underwent a significant rise. Second, he explores news coverage by reference to the annual number of newspaper articles mentioning the word "crime," which is inherently unreliable in terms of determining how crime and related matters were actually framed and with what precise effects. And third, public punitiveness does not axiomatically increase either with the risk of criminal victimization or with alarmist crime reporting by the mass media.

To illustrate, it will be helpful to expand our discussion of the (real) rise in the prevalence of handgun homicide by young African American males between the mid-1980s and mid-1990s. Enns' argument would suggest a parallel growth in pertinent media reporting, including exaggerated and racially biased messaging on the subject. This, in its turn, should have worked to fuel fear of crime and punitive attitudes, especially among more affluent and predominantly White segments of the public. A rise in distortive media coverage would seem to be vital here, as such homicides typically took place within the geographical confines of deprived inner-city areas that were increasingly segregated from more affluent districts, hence also the fact that poor young African American men themselves were overwhelmingly the victims of handgun homicide (Beckett and Sasson 2004; Blumstein et al. 2000; Skogan 2006).

The empirical reality, however, was that while crime stories in the news did multiply over this period, handgun homicides committed by young African American males were significantly under-reported in the media. The reason for this was the mundanity of "Black-on-Black" homicide in the eyes of mainstream White society (Gruenewald et al. 2009; Sorenson et al. 1998; Squires 2014). On the other hand, the media gave disproportionately high coverage to comparatively rare homicides that occurred in more privileged areas and involved White victims while, at the same time, disseminating alarmist police-recorded data depicting year-on-year increases in crime rates (Gruenewald et al. 2009). But even if such media coverage were deemed to have contributed to an undue rise in fear of crime among Whites—and there is some evidence that fear of crime among Whites did undergo a noticeable increase during the period at issue (Wright et al. 2012)—punitive public attitudes did not necessarily rise in line.

Enns, himself, concludes from an analysis of longer-term quantitative data on attitudes to criminal justice that punitive sentiment rose among the general public in the decades during which harsher criminal justice policies were introduced. Indeed, as concerns specifically the period between the mid-1980s and mid-1990s, Enns' analysis suggests not just that public punitiveness underwent an overall increase, but also that it reached an historic high in 1995. Given, moreover, his acceptance of the idea known in political science as "parallel publics," according to which different sections of the general population tend to change their attitudes in the same broad direction and roughly in tandem, it is safe to

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<sup>3</sup> The elite manipulation viewpoint also, of course, treats media misrepresentations of crime as being relevant to the rise of public punitiveness. Their role in this regard, however, is typically thought to have been secondary to the influence of political rhetoric and often also connected to political interests as such.

deduce that Enns (2016: 25–27) takes both Whites and African Americans to have grown more punitive over the years in question.

Enns' composite measure of punitive sentiment, however, has been duly criticized for serving to inflate findings, insofar, for example, as it excludes responses to survey questions that are known to elicit significantly less punitive views (see, e.g., Wozniak 2017). It would, in fact, be wrong to infer that all indicators Enns does include in his composite measure point invariably in the direction of increased punitiveness. To take public support for the death penalty for persons convicted of murder—itsself not only one of the most commonly used indicators of public punitiveness but also one of manifest relevance to our discussion—various studies have shown that levels of support among Whites effectively remained stagnant between 1985 and 1995, while still standing higher than the respective levels of support among African Americans (see, e.g., Hanley 2008; Barkan and Cohn 2010; Dotson and Scott Carter 2012; Shirley and Gelman 2015).<sup>4</sup>

Insofar as both the risk of homicide victimization and levels of punitiveness remained essentially stable among Whites over the years at issue, it might be tempting to identify a correlation between the two variables as such. But the same trend does not appear to hold for African Americans. While homicide victimization rates for African Americans increased significantly in real terms, their level of support for the death penalty actually continued on the downward trajectory on which it had been at least since the mid-1950s (Shirley and Gelman 2015).<sup>5</sup> It is not that the preferences held by African Americans could have driven or even influenced criminal justice policy anyway; African Americans remained politically marginalized, the gains of the Civil Rights era notwithstanding (King 2007; Singh 1998; see also Eubank and Fresh 2022; Hutchinson 2018; Murch 2015; Parry 2015; Weaver 2017).

In any case, trends in public punitiveness cannot, in themselves, corroborate either the contention that political elites of the era toughened criminal justice policies in response to popular will, or the notion that political elites simulated responsiveness to public opinion after having previously brought it to align with their own self-serving policy preferences. To evaluate these arguments, it is necessary to determine whether political elites actively engaged in deliberate efforts to follow or manipulate public attitudes toward crime and criminal justice. This is a task which requires breaking into what Druckman and Jacobs (2015: 125) refer to as the “black box” of political calculations. Although Enns seeks to do exactly that through archival research into the way in which key political figures engaged with relevant opinion polls in the mid- to late 1960s, evidence is not provided in support of the democratic responsiveness viewpoint. To the contrary, and as also indicated by research Enns, himself, discusses, the motivation behind political engagement with opinion polls on issues of crime and criminal justice at the time was usually to *manipulate* the public, not to follow it.

Before all else, it should be noted that the polling data which, according to Enns' archival research, led political elites to promote the greater use of incarceration, do not actually

<sup>4</sup> Using a composite measure (that is, in fact, very similar in its bias to that of Enns', in that it, too, relies heavily on survey responses that effectively work to exaggerate support for punitive measures), Duxbury (2021) has recently concluded that, during the period 1970–2015, punitiveness among African Americans was more than fifteen percentage points lower than punitiveness among Whites.

<sup>5</sup> There is a broader body of research showing that neither personal experience of crime nor fear of criminal victimization necessarily predict attitudes toward criminal justice (Jackson and Gerber 2016; Johnson 2010; Maruna and King 2009; van Kesteren et al. 2000).

address specific criminal justice policy views. Rather, they almost exclusively address levels of concern about crime—namely, the degree of importance citizens attribute to crime as a problem. This indicator, as Enns himself acknowledges elsewhere in his book, neither reflects the public’s criminal justice policy preferences, nor correlates with trends in imprisonment. Indeed, systematic analyses of Gallup polling data for the period in question demonstrate that public concern about crime remained consistently low and was far out-ranked by a host of other issues, from economic problems to the Vietnam War (Chambliss 1994; Cheliotis 2020; Loo and Grimes 2004). Some of Enns’ own archival data suggest this, too, although his interpretation of them is otherwise.<sup>6</sup>

In a similar vein, Enns conflates criminal justice policy adjustment to public opinion with mere discursive shifts initiated by politicians in conformity with public views about crime and related matters. Indeed, in Enns’ archival analysis, the problem is compounded by his choice to confine his examination of the rhetorical variant of political responsiveness predominantly to the context of election campaigning by politicians aspiring to presidential office. This focus evidently precludes testing the claim that “[p]ublic opinion matters” when it comes to criminal justice policy itself (Enns 2016: 49).

But even the notion of rhetorical responsiveness to public opinion appears to lack evidentiary basis. As mentioned above, crime’s public salience was low during the period under examination. Therefore, if politicians engaged with public opinion about crime in a democratically responsive manner, the issue would have received far less

<sup>6</sup> In discussing Barry Goldwater’s presidential campaign in 1964, for example, Enns (2016: 58) claims that there was a “reasonably high level of public concern about crime” at the time. The evidence he cites in this regard is a poll that asked respondents to identify “the most important problems the government should try to take care of when the new President and Congress take office.” In that poll, however, crime was “the twelfth most likely mentioned issue” (Enns 2016: 54). As can be gleaned from figure 3.1 in Enns’ (2016: 53) book, a mere 3 in 100 respondents used one of the multiple responses available to them to name crime as the most important problem. In making the claim that public concern about crime stood at a “reasonably high level,” Enns also disaggregates the response data, excluding international issues to focus on domestic problems while, in effect, inflating the ranking of crime among the latter. In particular, he writes that “in terms of domestic policies, concern for crime ranked behind civil rights, poverty, and Social Security/Medicare, but ahead of taxes, fiscal policy, and education” (Enns 2016: 54). (Enns’ blanket use of the term “policies” is more or less acceptable, given the way the question was phrased. But not all responses listed, and certainly not “Crime,” indicated respondents’ views as to what general direction or specific form pertinent policy should take.) The problem is that the ranking Enns now attributes to “Crime” is contradicted by the poll data themselves, as these are visualized in figure 3.1 of his book. There, one sees, first, that “Crime” also ranked well behind “Unemployment” (itself the third most likely mentioned issue overall); second, that the pollster actually differentiated between three types of “Civil Rights” answers (i.e., answers in favor of Civil Rights reforms, answers against such reforms, and answers that made general or vague reference to “race problems” without specifying the respondent’s personal perspective on the matter), all of which outranked “Crime” in terms of their respective prevalence; and third, that “Social Security” and “Medicare” were coded by the pollster as distinct response categories, with both of them ranking higher than “Crime” as well. By leaving “Unemployment” out of his account, while at the same time condensing “Civil Rights” categories into one and lumping “Social Security” together with “Medicare,” Enns ends up reducing by more than half the number of “domestic” response categories that figure 3.1 shows to have outranked “Crime.” On a relevant point, although Enns’ apparent treatment of “Vietnam,” “War-Peace” and “Cold War” (all of which also featured above “Crime,” with the first topping the overall list of respondents’ concerns) as issues of an international nature stands in accord with the pollster’s own coding, it would be legitimate to query whether these response categories necessarily fit the description attached to them, given that their substantive meaning is arguably ambiguous. For example, citing “Vietnam” as the most important problem could have been linked to personal worries or considerations, such as anxiety over losing loved ones in the battlefield, opposition to conscription, and fear of punishment for dodging the draft. Similarly, “Cold War” responses might well have incorporated disquiet about the continuing effects of McCarthyism at home.



attention, if any, in their public statements than it actually did. In fact, the degree to which politicians focused their discourse on crime despite the latter not having attracted much public salience is strongly suggestive of an effort to influence the electorate.

Generally speaking, as Druckman and Jacobs (2015) explain, instances where politicians attach significance to issues of low public salience tend to arise in the context of attempts to manipulate public opinion to politicians' own advantage, such as when a political leader prioritizes an issue of low importance with a view to distracting attention from unfavorable situations and projecting a positive self-image. Pointing in the same direction is research on which Enns himself draws in seeking to substantiate the democratic responsiveness perspective.

More specifically, Enns cites Michael Flamm's (2005) historical analysis of Barry Goldwater's emphasis on law and order during his 1964 presidential campaign as a likely illustration of political responsiveness to public opinion. Flamm's own research, however, suggests that what Goldwater followed—in terms of both the tone and substance of his public communications—was advice to construct a crisis about crime and violence so as to persuade a wide cross-section of the American public to vote for him. To sustain the claim that “Goldwater may have strategically followed the public,” Enns (2016: 58) cites from Flamm's (2005: 41) research a confidential memo of the Goldwater campaign showing Goldwater's Democratic opponent—Vice President Lyndon B. Johnson—to be “vulnerable in only one area: law and order.” Nonetheless, as Flamm (2005: 42) reports, the very same memo proceeds to note that, just as “[President John F.] Kennedy had turned a virtual non-issue, the alleged missile gap, into the decisive issue of the 1960 campaign by hammering away at it constantly,” so, too, Goldwater should “do the same with law and order regardless of whether the strategy yielded immediate results.”

Enns is correct in treating Goldwater's electoral disaster in 1964 as proof that the electorate was not influenced by the latter's “law-and-order” rhetoric. Nevertheless, he does not acknowledge that Goldwater engaged actively in a conscious effort to shape public opinion according to his own personal agenda. A failed attempt at manipulation is instead portrayed as an unproductive case of responsiveness. (Given that Goldwater was unsuccessful in his election effort, his case is all the less relevant for an attempt to substantiate the argument that “[p]ublic opinion matters” (Enns 2016: 49) when it comes to criminal justice *policy*.)

There are several historical accounts of major political figures from the mid-1960s onwards who sought to lure the American public into lending what we may term “confirmatory” support to politically predetermined shifts toward harsher criminal justice policy, so as eventually to serve narrow interests (see, e.g., Baum 1996; Epstein 1977; Hinton 2016; Musto and Kormsmeier 2002). This strand of literature demonstrates that manipulation efforts have often entailed an attempt to exploit the “race card” through the use of subtly coded references to minority populations (e.g., as “violent *inner city* criminals”) that are the intended targets of tougher criminal justice policies, and thereby appeal to racial resentments commonly found among the White majority (Hurwitz and Peffley 2005; Mendelberg 2008).

It is important to recognize, however, that attempts to manipulate do not necessarily *succeed*, as Goldwater's case indeed indicates. The factors that condition the outcomes of manipulation efforts is an important question in its own right. Although not in relation specifically to issues of crime and criminal justice, prior research has concluded that successful manipulation is more likely when political discourse taps into existing attitudes or addresses gaps in public knowledge. There are also certain contextual conditions that are favorable for impact: the absence of competing messages from other elites or the mass



media; high approval ratings for the politician who seeks to manipulate the public; and real-world contingencies that may bestow credibility on such a politician's communications (Druckman and Jacobs 2015).

A more pressing question for present purposes, however, is what accounts for the persistence politicians have demonstrated in pursuing a harshening of criminal justice policy regardless of whether the public's views moved in this direction—and even during years when crime itself was a matter of low salience among the electorate. Relevant literature suggests that lobbying by select interest groups is a significant factor to be considered in this regard. It is thus to interest group politics and the underlying structures of political inequality that we now turn our focus.

## **Segmented Representation, Crime and Criminal Justice: The Role of Public- and Private-Sector Lobbies**

There has been an array of political science research that has shown government policy in the US to be influenced disproportionately by specific segments of the population. This phenomenon, which political scientists refer to as “segmented representation,” entails sitting politicians modifying their policy decisions to cater to the preferences of subgroups they target for electoral reasons while disfavoring less strategically important sections of the voting public (Druckman and Jacobs 2015; Jacobs and Shapiro 2000).

In the US, “segmented representation” has been facilitated by certain elements of the political system. For instance, the filibuster in the Senate or the practices that grant considerable power to the party that controls the Senate or the House of Representatives have allowed defenders of the status quo to prevent policy changes supported by large majorities of Americans. The combination of staggered elections (with Americans voting for Senators every six years, a President every four years, and Representatives every two years) and the separation of powers (between the three branches of government) has meanwhile allowed the possibility of divided government, whereby one party might control the presidency while the other might control the House and/or the Senate. In this context, the parties that control different branches are likely to be incentivized to pursue policies that appeal to their own respective supporters (Page and Gilens 2017).

Since the 1970s, moreover, “segmented representation” has been on the rise in the US. Numerous developments have supported this trajectory, of which two deserve particular attention here. First, ideological polarization between Democrats and Republicans has deepened, contributing to the increasing frequency of divided government and political gridlock. Second, political parties have experienced significant shifts in their structure and balance of power, most notably with the elevation of party activists and single-issue pressure groups in the process of selecting and promoting congressional and presidential candidates. This has encouraged politicians to align their policy plans more with the preferences held by activists and other valued allies than with broad public opinion (Druckman and Jacobs 2015; Jacobs and Shapiro 2000, 2002; Parker and Parker 2018). Indeed, the political significance attached to select interest groups has grown so much since Gerald Ford's administration in the mid-1970s that their regular contact with the White House has become institutionalized. This, as Loomis (2009) explains, has meant that presidents and their top advisers communicate systematically with, and are therefore more likely to be influenced by, high-level representatives of organized interests.

Research on “segmented representation” has thus far paid considerable attention to the role of affluent actors in shaping policy agendas in the US—for example, through financial contributions to parties and electoral campaigns, or through carefully orchestrated efforts to modify the views of citizens, pundits, and policymakers themselves. As this scholarship has demonstrated, the major expense of media advertising and the hiring of political consultants functions to increase the receptibility of electorally-motivated politicians to the influence of financially powerful individuals and groups when designing and promoting policy (Jacobs and Shapiro, 2002; Page and Gilens, 2017). Furthermore, as Gilens and Page (2014) explain, increasing wealth inequalities in the US since the 1970s have intensified the sway of economic elites and organized business interests over policy, while mass-based interest groups and average citizens have had little or no impact (see also Ferguson 1995; Gilens 2012; Mayer 2016; Page and Gilens 2017; Page et al. 2019; Skocpol and Hertel-Fernandez 2016).

It is by now well established in the study of punishment that penal outcomes are mediated by the structure of political institutions—and especially the degree to which political structures leave pertinent policymaking subject to public opinion pressures (see Lacey 2008). “Segmented representation” and the institutional structures underpinning it nevertheless remain a relatively under-researched dimension of the politics of criminal justice in the US (and elsewhere, too). Thus far, US-focused studies on this theme have tended to highlight how punitive turns in criminal justice policy were supported or otherwise facilitated by conservative groups, such as the NRA, for-profit prison firms, or the victims’ rights movement (see, e.g., Dubber 2002; Gottschalk 2006; Gruber 2021).

We propose that the important advances made by such research can be further developed in at least two ways: first, by exploring the possibility that the role lobbying groups play in the expansion, harshening and selectivity of criminal justice interventions may (although it does not have to) extend to contributing to racial and other disparities in *crime and victimization*, as these can, in turn, be invoked strategically in political discourse to lend retrospective legitimacy to the interventions in question;<sup>7</sup> and, second, by paying closer consideration to lobbying efforts by financially-motivated *state* groups in favor of such interventions in the first instance. Below, with a view to illustrating these lines of analysis, we expand our discussion of the politics of crime and criminal justice in the US during the 1980s and 1990s. We begin by focusing on the connection that can be drawn between the NRA and the rise of handgun homicide among young African American men, before turning to examine the role of law enforcement bureaucrats in the pursuit of the “War on Drugs.”

As described above, rather than a rise in homicide, it was the growing proportion of young African American men among those committing lethal violence with handguns that underpinned the introduction of more punitive sentences which drove up imprisonment in the second half of the 1980s and the first half of the 1990s. The increased involvement of young African American men in such crime was, itself, a development that reflected both an escalation in their levels of gun ownership and a shift in the way in which they engaged in conflict in the context of the then burgeoning crack cocaine market.

<sup>7</sup> A broadly similar analytic goal is pursued by Lacey and Soskice (2015) in their thesis on the role played in local political arenas by the so-called “homevoters”—decisive voters of a relatively privileged background, whose main concern is the value of their home—in supporting policies that effectively contributed to violent crime in disadvantaged neighborhoods in the 1970s and 1980s. In particular, Lacey and Soskice focus on what they describe as homevoters’ preference for residential and de facto educational segregation, as well as their opposition to investment in serious foot patrols or “community” policing in poor areas.

The rising proportion of young African American men among perpetrators of handgun homicide in turn extended opportunities for sitting parties to solicit White votes with a racialized agenda constructed around drug crime. This point is well documented in critical criminological and cognate scholarship (see, e.g., Alexander 2010; Beckett and Godoy 2008; Gottschalk 2006; Hinton 2016; Tonry 2011; Wacquant 2009; Weaver 2007). Here, we argue that the very way in which more guns found their way into the hands of young African American males is also telling of the racialized and opportunistic governance of crime by elites in office during this timeframe.

By the early 1990s, the US gun market had become dominated by relatively inexpensive and easily concealable handguns with sub-machine firepower (McClurg et al. 2002). The guns in question were produced by a Miami-based firm whose marketing strategy attracted notoriety for seemingly appealing to those with criminal intent. Several state legislatures responded with bans of named versions of the gun, but these were easily circumvented by the manufacturer's re-issue of the product under a different name (Pitre 1996; Vinzant 2015).

At the same time, more than a dozen major gun manufacturers in the country were knowingly directing gun sales to over-saturated states with loose regulations, from where guns would be distributed via unregulated sales networks to customers in states with tighter controls. Although it was well known that licit market seepage was a far more significant source of weapons used in crime than theft, state efforts to redress this practice were limited at best (Vinzant 2015; see generally Braga et al. 2012).

To account for the inadequacy of state responses to the gun industry's practices during this period, it is necessary to consider the strength of the relationship between the largely White pro-gun lobby and Republican politicians. In the aftermath of the 1968 Gun Control Act, which had been introduced by Lyndon B. Johnson's Democratic administration with a view to reigning in armed Black militancy (Johnson 2013; see generally Camp 2016), connections between the gun lobby and Republicans intensified. By 1980, the level of reciprocity between them was already so high that the NRA offered its first-ever presidential endorsement to Republican nominee and known gun ownership supporter Ronald Reagan. In 1983, Reagan himself gave an address at the NRA's annual convention while seeking re-election to the presidency (Jacobs 2002; Lacombe 2021; see also Waldman 2014).

Reagan's second term in office saw the passage of the 1986 Firearm Owners' Protection Act (known as "FOPA" or the "McClure-Volkmer Act," after its sponsors), which served to roll back many provisions of the Gun Control Act of 1968, and was notably weak in relation to handgun regulation. Although both pro-gun and pro-gun control groups increased their contributions to members of Congress in the lead-up to the passage of the FOPA, the NRA outspent its nearest gun control lobby competitor (Handgun Control) by 6:1. Indeed, contributions from the NRA had a substantial impact on the passage of FOPA, more than doubling the probability of a vote in favor of the proposed legislation (Langbein and Lotwis 1990). In 1993, a Democratic administration enacted a major piece of gun control legislation, the Brady Handgun Control and Violence Prevention Act, albeit not without loopholes in it (Squires 2014).

While successive Republican administrations tended to take a soft approach to handgun regulation, they promoted and sustained harsh sentencing reforms for violent crime. In effect, then, Republican administrations escalated punishment for crimes that they themselves were reluctant to tackle at their root. With young African American men the primary victims as well as the predominant perpetrators of handgun homicide, their economic and political marginality made the combination of lax gun control and harsher punishment easier policy options for sitting politicians to pursue. Equally, while loose gun controls would pander to an influential industry, intensifying carceral control over African American

communities would play well to swathes of the White electorate among whom racial resentment was embedded deeply. There were, to be sure, intersections to be found across such electoral concerns. For instance, the NRA lobbied not only for lax gun control, but also for harsh criminal justice interventions (see, e.g., Jones and Newburn 2006).

In addition to considering the influence of business-sector advocacy, it is important to recognize the role that financially-motivated state-sector groups have played in the development of relevant policies. In the US, state-sector lobbies have, over recent decades, grown at a far faster pace than advocacy groups representing civil society and corporate actors (Gray et al. 2012). Across the same timeframe, criminal justice and law enforcement agencies and related unions have pushed for “law-and-order” reforms, especially harsher sentencing laws, which have contributed significantly to the expansion of imprisonment. The professional capital of police, prosecutors, judges and prison officials affords them a particular license to influence policy agendas, whether by participating as experts in legislative hearings, endorsing candidates for political office, or affecting public debate through news media (see Dripps 1993; Miller 2010; Page 2011).

One of the starkest illustrations of the impact of financially-motivated state-sector lobbying on criminal justice reforms in the US is its role in the massive increase in the use of imprisonment witnessed during the crucial decade of the 1980s. In an immediate sense, as mentioned above, this increase was driven by a steep rise in the caseload of prisoners convicted on drug charges. This latter development, however, was itself linked closely to the lobbying undertaken by entrepreneurially-minded law enforcement officials for the pursuit of drug interdiction in such a way as to expand drug-related arrests. Although drug-related crime did not feature highly among public concerns at the time (Benson et al. 1995), law enforcement bodies exerted considerable pressure on key political actors for the introduction of the Comprehensive Crime Control Act of 1984 (the “CCCA”), while providing them, as well as the mass media and other interest groups, with information that misleadingly associated drugs with a range of criminal offenses.

Law enforcement clearly stood to gain financially from the CCCA. In particular, the CCCA allowed local and state-level forces to finally be able to take a share of the proceeds of assets seized during drug arrests which, until that point, had been available only to federal law enforcement. These proceeds rapidly became a major new source of discretionary funding for police forces, enabling spending sprees on anything from vehicles and equipment to animals and even banqueting. The CCCA thereby incentivized the police to make drug-related crime the focus of their activity, at the same time as drawing their attention away from tackling other types of crime (see Benson and Rasmussen 1996; Benson et al. 1995; Blumenson and Nilsen 1998; Chambliss 1994; Levy 1996; Parenti 1999; Rasmussen and Benson 1994).

The Anti-Drug Abuse Act of 1986 and the Anti-Drug Abuse Act of 1988 served to extend federal assets forfeiture provisions, the proceeds of which played an important part in covering the mounting costs of non-federal prison construction (see Beckett 1997). Beyond the federal level, moreover, forty-nine states and the District of Columbia had, by 1990, introduced statutes that provided for the forfeiture of assets presumed to be connected to illegal drug activity. These state-level reforms were supported by the Republican administration of George H. W. Bush (the former Vice President for President Reagan), whose re-election campaign was subsequently endorsed by the Fraternal Order of Police. The reforms produced a dramatic increase in asset forfeiture receipts, which rose by 1,589 percent between 1985 and 1990 alone, from US\$27.2 million to US\$459.6 million. In 1990, more than 90 percent of police and sheriff’s departments serving a population of

50,000 people or more received money or goods from a drug asset forfeiture programme (see Jensen and Gerber, 1996; see also Kraska 2018).<sup>8</sup>

## Conclusion

Our analysis indicates that the attribution of increased punitiveness in American criminal justice policy to political responsiveness to the preferences of the public downplays the regularity and extensiveness of politicians' endeavors to direct public attitudes in such a way as to serve their own objectives. This, however, does not mean that efforts to manufacture public support for tougher criminal justice policies so as to satisfy narrow agendas necessarily succeed.

At the same time, our analysis suggests that the political privileging of opinions held or demands made by specific subgroups of the population—what political scientists call “segmented representation”—requires greater recognition in the study of criminal justice policymaking in the US than it has received to date. As Druckman and Jacobs (2015) explain, the practice of “segmented representation” does not imply that politicians ignore completely the “median voter”; they cannot afford electorally to do so, which is why they are compelled to try to shape “centrist” public opinion. Yet, the effort to ensure that the “median voter” judges their policies to be appealing tends not to override politicians' commitment to ensuring that policies remain essentially attuned to the preferences of narrower segments of the electorate (see also Jacobs and Shapiro 2000).

Our focus on the politics of crime and criminal justice in the US during the 1980s and 1990s provides an illustration of just these tensions. It was ostensibly with a view to tackling drug and related violent offenses that poor African American neighborhoods became the primary target of the so-called “War on Drugs” within the country. Over the 1980s, the increased concentration of poverty in such neighborhoods contributed to growing abuse of crack cocaine and involvement in associated criminal violence by some of those living there. In their turn, alongside continuing practices of residential segregation, these developments heightened the risk of criminal victimization within disadvantaged African American communities. The “War on Drugs” pursued in this context, however, subjected the communities in question to rising rates of arrest, prosecution, conviction and imprisonment, thereby exacerbating the hardships they already typically experienced. At stake were broader political objectives. By dint of their very marginality, that is, disadvantaged African Americans found themselves used, as Tonry (1995: 123) aptly puts it, “as a means to the achievement of politicians' electoral ends.”

As documented widely, over the 1980s and 1990s, a range of electorally-motivated politicians sought to exploit racial resentment in the context of trying to fire up public anxiety about crime with the ultimate aim to elicit support for predetermined punitive shifts in criminal justice policy that would proceed to disproportionately impact marginalized African American communities. Greater analytical attention, however, needs to be paid to the political configurations and dynamics that produced such policy shifts in the first instance,

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<sup>8</sup> For a long-term historical account of the rising political power of police lobby groups with a profiteering outlook, see Schrader (2019). As shown in a recent analysis of local, county, state and federal campaign records by the British broadsheet *The Guardian* (Perkins 2020), police lobbying continues to exert immense pressure on criminal justice, with police unions spending “tens of millions of dollars annually to influence law enforcement policy and thwart pushes for reform.”

especially insofar as these policy shifts were still propelled by politicians without the broad alignment of public opinion.

With this in mind, we have focused particularly on the role that lobby groups with strong financial incentives played in the reproduction of disparities in the criminal justice system. We have addressed, more specifically, how law enforcement lobbyists during the 1980s exploited, on one hand, the institutional openness of the policymaking process to powerful interest groups, and, on the other hand, the desire of politicians and political parties to secure campaign contributions and broaden their electoral support. This concatenation of forces enabled the pursuit of the “War on Drugs” in a way that would exacerbate the disproportionate representation of already disadvantaged urban African Americans in the various stages of the criminal justice process. While law enforcement would derive significant material benefits from the expansion of the “War on Drugs,” these were effectively secured at the expense of African American communities.

It is clear, however, that the relationship between financially-motivated lobby groups and criminal justice policymaking—including in relation to lobbying carried out by state actors and, even more so, by the police—is a subject that has much potential for further study. Moreover, as indicated by our analysis of NRA’s successful lobbying efforts in favor of relaxed handgun controls in the 1980s, the pernicious impact influential actors can exert in terms of crime and victimization is another area ripe for further critical scrutiny by criminologists. Indeed, future research in this area would ideally seek to delve deeper into the detrimental implications such lobbying, too, can have for criminal justice, thus ultimately advancing knowledge of the combined effect that different lobbying activities can have on criminal justice, whether directly and by design or indirectly and by default.

Recognizing the importance of interest groups to policy formulation is not to imply that such groups are always effective in their lobbying, nor that politicians are simply reactive to their pressures, nor, indeed, that distinctions between interest groups and politicians can always or easily be made. Furthermore, while politicians are inevitably steered in their policy determinations by their inner prejudices and not solely by those held by interest groups or the public at large, they are also bound to evaluate and navigate an environment of competing and multi-scalar risks to the maintenance of their position in office, upon which the efficacy of interest group and broader public pressures is also contingent. Evidently, nonetheless, electorally-motivated politicians have found satisfying select interest groups an attractive option when formulating criminal justice and cognate policy, insofar as such appeasement helps secure financial backing and votes from within those groups, and attracts voters from the broader public as a result of group endorsement.

As calls continue to mount for the rollback or, indeed, abolition of the harshest manifestations of the American criminal justice system (see, e.g., Coyle and Schept 2018), greater and sustained critical attention will need to be paid to the intimate and reciprocal financial ties that bind politicians and political parties to special interest groups across both public and private sectors.

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