Why Are U.S. Incarceration Rates So High?

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Most explanations of the unprecedented increase in American incarceration rates are inadequate. Crime rate increases, more punitive public attitudes, postmodernist angst, and cynical politics are all only part of the explanation. Those things characterize all Western countries; in some of these countries, imprisonment rates have long been stable or declining, and, where they are rising, absolute levels and rates of increase are dwarfed by those in America. The scale of the phenomenon is distinctly American. It arises partly from American moralism and partly from structural characteristics of American government that provide little insulation from emotions generated by moral panics and long-term cycles of tolerance and intolerance.

American imprisonment rates, 668 per 100,000 residents behind bars in mid-1998, have reached unprecedented levels compared with other times in United States history or with current times in other Western democracies. In other Western countries, between 50 and 135 residents per 100,000 are in prison or jail on an average day. In Sweden, 1 resident per 2,000 is locked up; that is the lowest rate. In England, where the rate is the highest, 1 resident per 800 is imprisoned. By contrast, in the United States, 1 resident per 150 is imprisoned; that is 6 to 12 times the rate in other Western countries (Bureau of Justice Statistics 1999; Kuhn 1998).

American punishment policies are especially severe in respects other than imprisonment rates. Only in the United States are constitutional and other safeguards of criminal defendants systematically being reduced; throughout Europe, under the influence of the European Human Rights Convention and Court, defendants’ procedural protections have steadily been expanding for the last 20 years (Kurki forthcoming). Among advanced Western countries, only the United States retains and uses the death penalty, and the United States does so with increasing frequency. Only the United States has adopted three-strikes and extensive mandatory minimum-sentencing laws. Only in the United States is the civil service job category prison gerontologist imaginable. Only the United States uses life-without-possibility-of-parole sentences; elsewhere, even murderers sentenced to life terms are eligible for parole or executive-branch commutation, and they are typically released after...
8 to 12 years. Only in the United States are prison sentences longer than 1 or 2 years common; in most countries, fewer than 5 percent of sentences are for a year or longer. In the United States, in 1994, the average sentence among people sent to state prisons for felonies was 71 months. Among those in prison, more than half were serving terms exceeding 10 years (Bureau of Justice Statistics 1998, table 1.3:9).

All of this is a drastic change from earlier times. In the 1930s, for example, the United States had incarceration rates comparable to or lower than European countries such as England, France, Switzerland, and Finland (Tonry and Hatlestad 1997, chap. 3).

More recently, in the 1960s, the United States was in the mainstream. The death penalty was withering away, the incarceration rate was dropping and comparable to those in other Western countries (Blumstein and Cohen 1973; Zimring and Hawkins 1991), the courts were establishing and refining defendants’ procedural protections, and crime control was not generally viewed as a partisan or ideological issue.

Now, of course, the United States is unique. The aim of this article is to offer and assess alternate explanations for why American policies have diverged so far from our own past practices and from the practices of other Western countries. To avoid having to use longer-winded phrases repeatedly, I refer to this in shorthand as the problem of “American exceptionalism.” I discuss five explanations of increasing complexity for American exceptionalism, and conclude a bit pessimistically that we know why our policies are as they are, but that acting on that knowledge requires qualities of political maturity and public civility that do not now characterize U.S. politics.

The first of the five explanations is crudely empirical. American crime rates are higher or have increased more than other countries’, and punishment patterns and policies are no more than a reflection of that reality. The second is psephological. No matter what the crime rates and trends, opinion surveys show that the public has demanded tougher penalties, and elected officials have bowed to that demand. The third is journalistic. Conservative politicians have cynically used crime, as they have used welfare, immigration, and affirmative action, as wedge issues designed to separate White working-class voters from the Democratic Party, and current policies are the result. The fourth is political. American social developments in the past quarter century have fragmented the electorate into a mélange of single-issue political groups, and politicians have had to seek broad-based support around emotional issues like crime, welfare, and immigration that would offend no politically powerful groups. The fifth is historical. Complex and regularly recurring, but poorly understood, interactions among crime trends, public attitudes, and
policy making shape our thoughts, our policy debates, and our policies, and current policies are a predictable result.

No single factor could cause so massive a change in policy (Garland 1990). The five explanations do not exhaust the possibilities. Other explanations include widespread public anxieties associated with economic restructuring, the civil rights and feminist movements and increased population diversity, ubiquitous violence in the mass media, the angst associated with postmodernism, and other major social changes (Caplow and Simon 1999; Garland forthcoming). However, all of these, in various forms, affect every Western country and therefore cannot explain why U.S. policies have become so much more severe than elsewhere.

**CRUDE EMPIRICISM**

The first explanation for why so many Americans are in prison, that our crime rates are higher or faster rising than other countries’, has virtually no validity. Crime rates in the United States in the 1990s are, for the most part, no higher than in other Western countries. We know this from the International Crime Victimization Survey, which has been conducted by national governments in most major Western countries since 1989 (e.g., Mayhew and van Dijk 1997). For property crimes, the United States is in the middle of the pack. Chances of being burglarized, having your pocket picked, or having your car stolen are considerably higher in England and several other European countries. For most violent crimes, American rates are among the highest, along with Australia, Canada, Spain, and France, but not the highest. Chances of being robbed, being assaulted, or being a victim of a stranger rape are higher in several other Western countries. Where the United States stands out is in gun violence; our rates of robberies and assaults involving guns, and of gun homicides, are substantially higher than elsewhere (Zimring and Hawkins 1997). Gun violence is important; however, fewer than a fourth of those sentenced to prison are convicted of violent crimes of any type, so this cannot be why U.S. prison patterns and penal policies are so different.

If higher crime rates do not explain American exceptionalism, perhaps crime trends do. Perhaps there is a necessary connection between crime rates and imprisonment rates. When crime rates rise, imprisonment rates follow, and that is why the number of people locked up has increased by five times in the past quarter century, from about 300,000 in 1972 to 1,802,496 in mid-1998.
Figure 1 shows trends in American imprisonment, homicide, and violent crime rates from 1960 to 1993, and the patterns suggest that violent crime and imprisonment at least initially rose together (more recently, however, imprisonment rates have continued their steep climb whereas violence rates have dropped sharply). However, Figure 2 and Figure 3, which show comparable data for Finland and Germany during the same period, indicate that there is no such necessary connection. Other countries could have been used for the comparison, but the United States would still be an exceptional case (Kuhn 1997). Although the homicide and violent crime curves in Finland and Germany rose as steeply as the U.S. curves shown in Figure 1, the imprisonment rate in Germany fell throughout the 1960s and remained roughly level thereafter, and the incarceration rate in Finland fell sharply and steadily throughout the entire period. The reasons for those two countries’ patterns are somewhat different (Lappi-Seppälä forthcoming; Weigend forthcoming), but the important point is that they reflect policy decisions that are based on the belief that increased incarceration is neither an appropriate nor an effective response to rising crime rates. American politicians decided otherwise. American imprisonment rates did not rise simply because crime rates rose. They rose because American politicians wanted them to rise.

Something was not working, and deterrence and incapacitation were chosen as strategies to lower crime rates. The only problem with this is that the most drastic such strategies were adopted long after crime rates began to fall. As Figure 4 shows, crime rates for most crimes peaked around 1980, fell through the mid-1980s, rose for awhile for reasons largely associated with the crack cocaine epidemic, and have since fallen sharply. However, the first three-strikes law was enacted in 1993, and the federal truth-in-sentencing law, which authorized $8 billion for state prison construction, was passed in 1994. The meanings of these data are complex, but whatever else they show, they do not show any simple interaction between crime trends and imprisonment patterns.

PUBLIC OPINION

The second explanation for the high imprisonment rate is that public opinion survey results sometimes show that crime and drugs come in first as America’s most pressing problem, that large majorities often express the view that sentencing is too lenient, and that people demand that criminal punishment be made tougher. On this account, elected officials have merely respected the public will, and imprisonment rates have risen as a result.
Figure 1: Imprisonment, Violent Crime, and Murder Rates per 100,000 Population, United States, 1960 to 1993


NOTE: Violent crime and murder rates are calculated somewhat differently than in Finland and Germany; imprisonment rates do not include jail inmates.

Figure 2: Imprisonment, Violent Crime, and Murder Rates per 100,000 Population, Finland, 1965 to 1994


NOTE: Violent crime and murder rates are calculated somewhat differently than in the United States; imprisonment rate includes pretrial detainees.
There are two serious deficiencies in this story. The first is that a mountain of public-opinion scholarship and research shows that the findings I have reported are fundamentally misleading (Roberts 1992; Roberts and Stalans 1997). We know that ordinary citizens base their opinions on what they know about crime from the mass media. Consequently, they regard heinous crimes and bizarre sentences as the norms, they believe sentences are much softer than they are, and they believe crime rates are rising when they are falling. As a result, majorities nearly always report that judges’ sentences are too lenient; yet, when they are asked to propose sentences appropriate for individual cases, they generally propose sentences that are shorter than those actually imposed (Hough and Roberts 1997). A different body of public opinion research, using more complex methods than telephone calls at dinnertime, shows that ordinary people have the same complex and ambivalent attitudes to criminals that judges and lawyers do—simultaneously wanting offenders punished and rehabilitated, willing to see taxes increased to pay for treatment programs but not for prison building, and being insistent on prison sentences only for the most violent crimes (Roberts and Stalans 1997). Thus, the opin-

Figure 3: Imprisonment, Violent Crime, and Murder Rates per 100,000 Population, Germany, 1961-1992
NOTE: Violent crime and murder rates are calculated somewhat differently than in the United States; imprisonment rate excludes pretrial detainees.
ion research findings do not actually support policies of unyielding and ever harsher severity.

The second point is more important. Public nomination of crime as the nation’s most pressing problem and public support for harsh laws typically follow, not precede, media and political preoccupation with crime. Although politicians who attempt to win favor by demonstrating their toughness nearly always say that they are honoring citizens’ wishes, the evidence is that harping by politicians and the media on crime issues is what causes citizens to become concerned. This is best shown in a recent book by Katherine Beckett (1997), who analyzed interactions among media attention to crime and drug issues, politicians’ relative emphasis on those issues, and the results of opinion surveys. She did this in relation to crime policy in the 1970s and drug policy in the 1980s. Content analyses of newspaper and television coverage, when compared with public opinion survey results, showed a recurring pattern: politicians focus on crime policy, or the media increase their crime coverage, or both, and afterward, opinion surveys begin to show heightened public concern about crime or drugs, and heightened support for tough policies.

So public support for harsh policies has coincided with their adoption. However, it is not public opinion per se that leads to harsher policies, but politicians’ proposals and posturing that lead to changes in public opinion. This leads to the third explanation for American exceptionalism—politicians for partisan advantage have persistently banked the fires of public fear of crime, and then offered harsh policies to dampen those fires. Assessing that explanation requires a look back at how and why crime control became a focal issue in American politics.

PARTISAN POLITICS

Crime and punishment have been high on American political agendas since the late 1960s. Before Republican presidential candidate Barry Goldwater raised crime in the streets as a partisan issue in his unsuccessful 1964 campaign, public safety was generally seen as one among several important, but unglamorous, core functions of government, like public health, public transit, and public education. Public officials were expected to do their work conscientiously and well, and systematic knowledge was widely seen as relevant to the formulation of policies and the improvement of institutions and practices. Reasonable people differed over the best approaches for addressing particular problems, but the debates were seldom partisan or ideological. Criminal justice policy was a subject for practitioners and technocrats, and
Figure 4: Offenses Known to Police, Rates per 100,000 Inhabitants, 1971-1997
NOTE: Murder rates are multiplied by 10 and burglary, theft, and motor vehicle theft rates are divided by 10 for purposes of presentation.
sentencing was the specialized case-by-case business of judges and corrections officials.

In recent decades, however, crime control has been at the center of partisan politics, and policies have been shaped more by symbols and rhetoric than by substance and knowledge. Political scientists and journalists tell the story of how that happened. Until the 1960s, in most of the South, the Democratic Party had dominated electoral politics since the end of Reconstruction. Although many southern voters held conservative views on social and racial issues, policy differences were fought out within a state’s Democratic Party rather than between parties. The civil rights movement, however, created a fissure within the Democratic Party between racial and social policy liberals and racial and social policy conservatives. This occurred initially in the South, and eventually nationwide. Republican strategists seized the opportunity to appeal to Nixon (later Reagan) Democrats by defining sharp differences between the parties on three wedge issues: crime control, welfare, and affirmative action. On crime control, conservatives blamed rising crime rates on lenient judges and soft punishments, and demanded toughness. On welfare, conservatives blamed rising welfare rolls on welfare cheats and laziness, and demanded budget cuts. On affirmative action, conservatives blamed White unemployment and underemployment on quotas, and urged elimination of affirmative action (Applebome 1996; Edsall and Edsall 1991).

Crime’s role as a wedge issue has had important consequences. Issues that are debated on television and examined in 15- and 30-second commercials necessarily are presented in simplistic and emotional terms. Matters judges and prosecutors agonize over in individual cases are addressed in slogans and symbols, which often leads to the adoption of ham-fisted and poorly considered policies. Notable recent examples include widespread adoption of broadly defined three-strikes laws, mandatory minimum-sentence laws, sexual psychopath laws, and the federal sentencing guidelines. Few corrections executives, judges, or informed scholars support such laws in the forms that are typically adopted, principally for practical reasons: They are too rigid and often result in unjustly harsh penalties, they result in circumvention by judges and lawyers who believe that their application is inappropriate in individual cases, and they are often redundant because serious cases nearly always result in severe penalties anyway (Tonry 1996, chap. 4). Many more practitioners and scholars would support such laws if they were narrowly drawn and carefully crafted to encompass only genuinely serious crimes and genuinely threatening offenders. However, in a “sound-bite politics” era, few politicians are prepared to act as voices of moderation and parsimony, and, as a result, new sentencing laws often lack those qualities.
As important, when crime control became one of the central issues in American politics, it ceased being a specialized policy subject, and became instead a symbol or metaphor for broad concepts like personal responsibility and vindication of victims’ interests and for more focused ideas such as criminals’ immorality and irresponsibility. A broadly defined sexual psychopath law, three-strikes law, or mandatory minimum-sentence law may be ineffective, cruel, or costly, but none of that may matter. If the law’s proponents and voters view it as a symbol of revulsion with crime and outrage toward criminals, whether it works or achieves just results in individual cases is often politically irrelevant. When issues are defined in polar terms of morality and immorality, or responsibility and irresponsibility, few elected officials are prepared to be found at the wrong pole.

Few informed people will disagree with the broad outlines of this account. Many liberals might say that the conservative emphasis on toughness was cynical and intellectually dishonest. Many conservatives might respond that they believe that tougher penalties reduce crime rates and, through public opinion polls and electoral support for tough-on-crime candidates, citizens have shown that they support such policies. What better basis for policy making can there be?

In any case, the Right won, and many Democratic politicians have concluded that the only way to defend against sound-bite law-and-order politics, as Bill Clinton is often complimented for having done, is to “get to the right of the Republicans” (Friedman 1993; Walker 1998).

Of all the explanations offered so far, this is the most plausible. It is possible that current American imprisonment policies, and the avoidable damage that they do to prisoners, their families, and their communities; and the fiscal and opportunity costs that they impose on governments (Hagan and Dinovitzer 1999), are merely by-products of an effective political strategy for winning elections. However, that the Right won, whether cynically or honestly motivated, does not fully explain American exceptionalism. It does not explain why such policies were adopted here and not in other countries, and now and not at other times.

POLITICAL FRAGMENTATION

What is needed is an explanation for why crime and punishment served so nicely as a wedge issue, and why so many elected officials were prepared, in recent decades, to behave in ways that their opponents and many observers often perceived as demagogic. Social scientists have offered analyses of political and governmental trends of recent decades that attempt to explain
why crime has received so much more sustained attention from governments and politicians than other equally important public policy issues.

Sociologists Theodore Caplow and Jonathan Simon (1999) offer two interconnected reasons (among others) for why U.S. crime policy developed as it did during the past quarter century. One relates to the anomaly that the role of government, particularly the federal government, has broadened greatly in the last 30 years at a time when public confidence in the capacity of government to achieve public purposes has declined. The second relates to the decline of broad-based political coalitions and the development of single-issue politics.

The scope of federal government activity has expanded greatly. For example, the following subjects were largely outside the reach of federal law before the 1960s but are within it today (these are not controversial in principle but very controversial in detail): health care; education; street crime; consumer protection; occupational safety; employment practices; infant and child care; environmental protection; sponsorship of the arts and humanities; and discrimination on grounds of age, race, sex, and disability. Whatever the merits of these changes, they have transformed American politics.

The result, Caplow and Simon (1999) argue, has been a spiral of governmental failure. A whole series of related social problems from disorderly schools to illegitimacy have come to be seen as products of failed governmental programs and as sources of crime. The most visible evidence that they cite is the massive escalation of costs for virtually all major federal government programs without corresponding increases in benefits. Between 1970 and 1995, federal expenditures for health care outpaced inflation by 5 to 1, for education by 3.5 to 1, for Aid to Families with Dependent Children (AFDC) by 3 to 1, and for criminal justice by 6 to 1. Although none of these systems is widely regarded as conspicuously successful, they are interconnected in many ways, and their defects are mutually reinforcing. The extraordinary costs of the health care system prevent any serious effort to alleviate poverty. The deficiencies of the antipoverty programs undermine the public schools. The failures of the schools pour into the criminal justice system.

All of this has led to a remarkable collapse of confidence in government. In response to the survey question, “How much of the time do you trust the government in Washington to do the right thing,” Caplow and Simon (1999) reported that 75 percent of a representative national sample in 1964 answered “just about always” or “most of the time.” When the same question was put to a similar sample in 1995, only 25 percent gave those answers.

Caplow and Simon’s (1999) second observation is that, for unrelated reasons, American politics have moved away from traditional class and regional divisions, and toward a range of single-issue movements. Political cam-
Paigns are won by means of overriding themes that link minorities with strong value-based identities. Public discourse is dominated by culture wars, including controversies over abortion, affirmative action, gun control, school prayer, gay rights, capital punishment, animal rights, and assisted suicide.

These controversies, Caplow and Simon (1999) note, do not lend themselves to the log-rolling and bargaining characteristic of traditional American politics. New political movements invite people to join the side of good against evil. To antiabortion activists, abortion is cold-blooded murder. To their adversaries, the right to abortion secures women’s ownership of their own bodies. To advocates of strict gun control, the private possession of firearms is foolish and dangerous; to their adversaries, it is the keystone of liberty. The well-organized pressure groups that represent such interests have few means of achieving their goals outside of federal courts, Congress, and the state legislatures. These groups do not have many incentives to cooperate in making government more effective. This makes coalition building difficult and effective implementation of policies even harder.

Until the 1960s, the federal government took no position on most of these issues. Since then, as the result of political balkanization, the balance of power in close elections is likely to be held by single-issue constituencies. Consequently, Congress has increasingly placed the federal government in favor of minority positions on many contested issues. Faced with voters who split on so many issues and who are profoundly skeptical about the ability of government to improve their lives, policy initiatives that command the broadest support—such as harsh crime, welfare, and immigration policies—are understandably important to elected politicians. The important point is that harsh policies on crime and welfare can be debated in moral terms, respond to broad-based anxieties and empathies, and affront no powerful constituency.

By this point, the explanation for American exceptionalism has gotten complicated. Crime rate levels and changes do not have much explanatory power by themselves. Rising crime rates do provide a plausible basis for heightened public concern about crime, but the best evidence is that ordinary people’s views are much more complex, ambivalent, and temperate than is widely recognized. Frightening stereotypes and valid fears provide an intelligible reason why voters respond to tough-on-crime rhetoric and appeals, but they do not explain why politicians in our time choose to campaign on those issues rather than others. The account of structural changes in American politics is part of the explanation—there is little support in the late 1990s for ambitious broad-based policy initiatives by government, and it is often easier to mobilize support against something than for something. All of these things provide points of understanding like the dots in a pointillist painting, but they
lack a pattern that provides an intelligible picture. That pattern comes from the work of historian David Musto (1987), which suggests that crime policies, political sensibilities, and the nature of public attitudes about crime are determined by cyclical trends in criminality and responses to it.

**HISTORICAL CYCLES**

Historians have long known that crime rates rise and fall over extended periods for reasons that have little to do with crime control policies. The three most influential scholars of the subject—historian Roger Lane (1989, 1992, 1999) and political scientists Ted Robert Gurr (1989) and James Q. Wilson (Wilson and Herrnstein 1985)—concur in the view that crime rates in the United States, England, Germany, France, and other Western countries have followed a U-shaped or a backwards J-shaped curve, falling from the second quarter of the nineteenth century through the middle of the twentieth century and rising until late in the twentieth century. They disagree as to why that happened. Gurr and Lane argue that the century-long decline is primarily associated with the emergence of the industrial economy and the development of bureaucratic institutions like schools, factories, and the military, which socialized people into patterns of behavioral conformity, rule observance, and deference to authority. Wilson assigns a major role to religious revivalism in the nineteenth century and a related moral awakening that enhanced character-building processes and law-abiding characteristics. However, none of them attributes the decline primarily to changes in criminal justice system agencies or policies. Many of the major institutions of modern criminal justice systems—professional police, the penitentiary, probation, parole, the reformatory, and the juvenile court—were first established during the long period when crime rates were falling, but neither then nor now has the fall been attributed to them (e.g., Friedman 1993; Walker 1998).

More recently, there is evidence that crime rates in Western countries may be in another long-term decline. In the United States, for example, data from the National Crime Victimization Survey show that rates for many crimes fell steadily from 1973 to the 1980s, after which, they increased or stabilized for a few years and resumed a downward path (Kurki 1999). Police data from the Federal Bureau of Investigation’s Uniform Crime Reports show a somewhat different (but reconcilable) pattern of crime rates that rose through 1981, fell through 1986, rose again through 1991, and have plummeted since then to levels that, for some crimes, have not been seen since the 1960s. English (Home Office 1998), Dutch (Tak forthcoming), Swedish (Kyvsgaard 1998), and
Norwegian (Larsson 1999) data likewise show significant victimization-rate declines in the 1990s as do data from many countries that participate in the International Crime Victimization Survey (Mayhew and van Dijk 1997).

Drug use and drug policies also exhibit long-term trends with periods of prohibitionism in the 1850s, 1890 to 1930, and 1980 to the present alternating with periods of greater tolerance. Yale historian David Musto (1987) has shown that antidrug policies interact in predictable ways with patterns of drug use. Seemingly perverse but, on reflection understandable, the harshest policies are adopted and the most vigorous prosecutions are carried out after drug use has begun to decline. In our era, for example, self-reported use of marijuana, heroin, and amphetamines peaked for every age group in 1979 to 1980 (for cocaine, in 1984 to 1985) and fell steadily thereafter (Tonry 1996, chap. 3), but the harshest federal antidrug laws were not enacted until 1986 and 1988, and the first federal drug czar was not named until 1989. If reduced drug use was its aim, the war was being won a decade before it was declared.

The reason all this is understandable is that recreational drug use during prohibitionistic periods is widely seen as immoral and socially destructive. Such attitudes explain why an increasing number of people stop using and experimenting with drugs and why, after drug use begins falling, comparatively few voices are raised in opposition to harsh policies. Few people, especially elected public officials, are comfortable speaking out on behalf of immorality. After a while, psychological processes well understood as cognitive dissonance cause many people, perhaps most, to decide that drug use is immoral and threatening and that there is little to be said in favor of classical liberal values of tolerance. In more tolerant periods, by contrast, many more people celebrate Enlightenment ideals of moral autonomy and individuals’ rights to make choices about their own lives, and comfortably oppose harsh laws and policies on those grounds.

I mention the recurrent interaction between drug-use patterns and drug-abuse policy because similar patterns may characterize interactions between contemporary crime patterns and crime-control policies. Three similarities stand out. First, the harshest crime control policies—three-strikes laws; lengthy mandatory minimum sentence laws; truth-in-sentencing laws; and increased use of the death penalty—date from the early and mid-1990s, long after crime rates began their steep decline.

Second, few elected officials have been prepared to oppose proposals for harsher laws. Few politicians happily risk being labeled “soft on crime” or “for criminals” rather than for victims. But that is a disparaging account—cowardly, pusillanimous, unprincipled politicians who are unwilling to stand
up for what they believe in the face of cynical and demagogic appeals by their political opponents. Some of that disparagement may be warranted, but it is equally likely that, in periods just after crime rates have peaked and begun falling, many more people come to believe that harsh measures are called for and will be effective, even if a few years earlier, their beliefs were very different.

Moreover, enhancing people’s predisposition to believe that harsh measures work, harsh laws are often enacted when crime rates are already falling. People who want to make year-to-year comparisons can easily show that the new, tougher policies have worked, because crime rates have fallen in the years immediately after the change when compared with the year immediately before. This happened in relation to New York City’s adoption in the early 1990s of zero-tolerance policing, California’s adoption in 1994 of a broadly defined three-strikes law, and many states’ passage in the mid 1990s of truth-in-sentencing laws. These may be plausible claims on the part of people who are unaware of long-term crime trends, but for people who are, they are disingenuous. The year-to-year crime-rate declines are at least as likely merely to be a continuation of long-term trends as they are to be effects of policy changes. Nonetheless, such patterns bedevil efforts to devise rational and humane public policies for crime (and for drugs), because they provide plausible support for claims that harsh policies work.

Scholars have, in recent years, been trying to make sense of the seeming anomaly that public receptivity to proposals for harsh crime and drug policies remained high in the late 1990s, even in the face of substantial and long-term drops in crime rates and drug use (e.g., Caplow and Simon 1999; Garland forthcoming). A cynical explanation mentioned earlier, and for which there is some evidence, is that conservative politicians found it in their interest to keep voters’ attention focused on an issue about which liberals are reluctant to disagree, and public attitudes are simply a predictable response in an era of declining crime rates and moralized policies.

A related explanation is that the mass media have learned that crime pays because of the mass public fascination with the darker sides of life, and that the fears vicariously enjoyed in front of the television or the movie screen are generalized to life outside the home.

A third explanation, consistent with Musto’s account of drug policy history and its extension to crime, is that, in the 1990s, people do not really care about the effectiveness of crime and drug-abuse policies but, instead, support harsh policies for expressive reasons. The argument, for which there is some confirmatory public-opinion survey evidence (Doob and Marinos 1995; Tyler and Boeckmann 1997), is that people in our time value the denunciatory qualities of harsh laws.
UNDERSTANDING THE FUTURE

As a hypothesis, Musto’s paradigm provides a richer account of American exceptionalism in the past quarter century than do any of the other accounts that I have attempted. It explains why public attitudes are harsher when crime rates are falling than when they are rising and, consequently, why law-and-order appeals fell on fertile electoral ground. It explains why politicians feel comfortable appealing to base instincts and proposing policies that, in other times, would have seemed demagogic and cruel. It explains not only why so few voices were raised in opposition to those policies but also why few people felt a need to speak out in opposition. It explains why people were inclined to believe that declining crime and drug-use rates showed that harsh policies worked.

There is really nothing unusual about Musto’s account of drug policy history and my extension of it to crime policy generally. Historian John Boswell’s celebrated history of homosexuality (1980) shows similar cycles of live-and-let-live tolerance and lethal intolerance of homosexuality, and historians of religion and of the arts have documented similarly cyclical patterns. Grant Gilmore (1974) has written of the alternation of classical and romantic periods in the arts:

During classical periods, which are, typically, of short duration, everything is neat, tidy, and logical; theorists and critics reign supreme; formal rules of structure and composition are stated to the general acclaim. .. But the classical period, once it has been formulated, regularly breaks down in a protracted agony. The romantics spurn the exquisitely stated rules of the preceding period; they experiment, they improvise; they deny the existence of any rules; they churn around in an ecstasy of self-expression .. then, the romantic energy having spent itself—there is a new classical formulation—and so the rhythms continue. (P. 112)

Nor is there anything unusual in the claim that where we stand, and when, influence what we think and what we believe. The where we stand part is something we all recognize in day-to-day life. Wealthy people are more likely to favor low taxes and Republicans than are poor people, who are more likely to favor generous social welfare programs and Democrats. Usually, however, we convince ourselves that we have good reasons other than our self-interest for believing what we believe.

The when we stand part is the same. People in intolerant times are more likely to believe that drug use is immoral and threatening, or that homosexuality is decadent and dangerous, than in tolerant times. Likewise in the arts: during classical periods, people believe that they like tradition, regularity, and formalism; and in romantic times, they do not.
Here, again, historians have things to teach us. Yale’s Jaroslav Pelikan (1985), the greatest church historian of our time, in a wonderful book called *Jesus Through the Centuries*, showed how each era reinvents or reinterprets the historical Jesus. Sometimes he is the messianic figure, sometimes the social and political reformer, sometimes the founder of the church, sometimes the charismatic leader, and sometimes the spiritual ascetic whom St. Francis might have imagined. The historic Jesus was who he was, but people in different times saw what they wanted or needed to see.

What has any of this to do with understanding American exceptionalism? Everything, for it shows that America’s unprecedented and unmatched taste for imprisonment and harsh criminal justice policies has little to do with them—the offenders who get dealt with one way or another—and everything to do with us.

If we took the historical lessons to heart, we might be less quick to adopt harsh crime policies. In our private lives, we know these things, and our folk wisdom celebrates it—do not strike in anger; sit down and count to 10; do not take your frustrations out on your child, your spouse, or your employee; and write the angry letter, but put it aside until tomorrow and see if you still want to send it. Whether those private insights will soon shape our public policies remains to be seen.

So, actually, we do know a good bit about why our prisons are so full and our policies are so harsh. Unfortunately, it is always easier to see clearly with hindsight to other times, or from afar to other places. Only time will tell whether American crime policies can be made more effective and more humane, more like those of America in other times or those of other Western countries today, or whether the United States will long remain trapped in Musto’s paradigm. Until fundamental policy changes are made, the seemingly inexorable increases in incarceration will continue, and American penal policy will retain a severity unknown in other Western countries.

**REFERENCES**


