

# MASS INCARCERATION AND RETRIBUTIVE JUSTICE

## THE POLITICIZATION OF U.S. CRIME POLICIES OVER THREE ERAS

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### Summary

The U.S. incarcerates more people per capita than any other nation in the world and is unique in its vast disparity between criminal justice practices and constitutional liberal government. Mass incarceration, a form of social control and repression, aligns with the retributive values of a crime control model often used by authoritarian regimes. Although U.S. crime policies in the 1970s to 1990s accelerated mass incarceration, the actual politicization of crime policymaking began a century earlier. In this paper, I explore three eras of gradually politicized crime policies, how legislation pushed the justice system toward crime control, the impact of three-strikes laws, and how political framing has evolved to maintain crime control in the modern era.

*Keywords: retributive, restorative justice, crime control model, crime policy, mass incarceration, three-strikes law*

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## 1. Introduction

### 1.1 Key models of the criminal justice process

**Restorative justice** and **retributive justice** are distinct concepts or approaches to criminal justice. These closely align with values defined in the two models of the criminal justice process: the **due process model** and **crime control model**.

**Restorative justice** aims to reintegrate offenders into society using rehabilitative measures. These measures include education programs such as trade-skill classes and job-search assistance, mental health resources or counseling, and supportive living environments (such as halfway houses) assist with reintegration into society. A key restorative value is

the connection of offenders with victims and the community toward mutual trust, goals, and healing (Roberts and Stalans, 2004). This process requires considerable efforts between all involved parties, as offenders and victims must achieve mutual understanding and acceptance through dialogue.

**Retributive justice**, on the other hand, is designed to punish an offender with sanctions matching the committed offense(s). The punishments act as a deterrent to both the offender and to potential offenders. This type of justice addresses the act of wrongdoing, rather than individual circumstances,

and does not address societal or systemic issues that may cause crime.

Retributive features are core components of the **crime control model** (Packer, 1964). This model focuses on social control, public order, and efficient crime repression. To deter crime, it must “produce a high rate of apprehension and conviction”, and assumes that “probably innocent” and “probably guilty” individuals will accordingly be filtered out or convicted (Packer 1964, 11). This “conveyor belt” system deters crime by quickly removing individual sources of crime.

Rather than focusing on efficiency, the **due process model** stresses protecting the defendant’s rights throughout the legal process and presumes innocence until proven guilty. Numerous procedural safeguards exist for fair treatment, such as credible evidence requirements and the rights to legal counsel. Studies note a consistent trend between increased liberal or “democratic” politics and a decline in “the punitiveness of criminal sanctions against convicted offenders”, and increased services (Sung 2006, 327).

While criminal justice systems cannot solely be categorized into two models, the U.S. is still unique in the significant disparity between its democratic government (constitutional liberalism) and its retributive justice process. Policies that drove mass incarceration in the 1980s are definitively retributive and match extensive social regulation measures defined in the crime control model. As Sung further notes, the probability of bringing an individual into the legal process and convicting them is much higher in authoritarian societies, whereas other “democratic countries... appeared more devoted to the screening out of legally innocent suspects” (Sung 2006, 326).

Despite the current U.S. criminal justice process, restorative and rehabilitative measures historically held great potential. To regrow toward a restorative system, it is critical to understand the strategies that influence the criminal justice process and consider how to counter or mitigate them.

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## 1.2 Mass incarceration

Mass incarceration is one implementation of social and crime control, functioning as a dragnet policy to sweep offenders off the streets as quickly as possible. To do so, crime policies use reasonable suspicion clauses, mirroring “routine stereotyped procedures” of the crime control model, which are essential in being able to handle large numbers (Packer 1964). Later steps in the process are used to verify facts and reach a “successful conclusion” as quickly as possible.

In practice, reasonable cause is used to obtain and process large quantities of the probably-guilty, operating under assumptions that the screening from law enforcement and legal procedures “are reliable indicators of probable guilt” (Packer 1964). This also relies on law enforcement operating fairly and impartially.

Within prisons, a number of rehabilitative service deficiencies, including a lack of education and work-skill programs, job-seeking help, and social and mental health resources deepens the penal nature of imprisonment. The absence of proper social medical, and mental support most negatively impact marginalized populations (Widra and Herring 2021; Sawyer and Wagner 2022).

In the U.S., mass incarceration is a direct result of crime control policies implemented in the 1970s through the 1990s. Over three decades, more than two million Black people were incarcerated due to these policies. This number exceeds the U.S. prison population in 2022 (Sawyer and Wagner 2022).

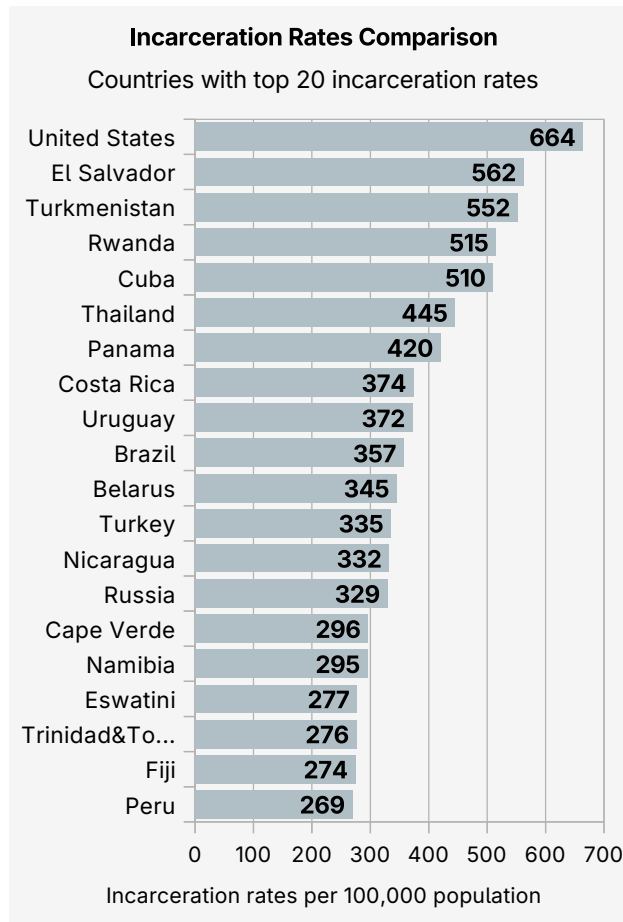
A look at incarceration rates around the world sets important context on how mass incarceration and crime policies in the U.S. created significant deviations from expected societal norms. With this context, we can then review the history of crime policies, and how specific social and political messaging set the foundation of crime control as we see in modern U.S. policies.

## 2. Incarceration rates

### 2.1 World countries compared to the U.S.

A comparison of incarceration rates around the world indicates that the U.S. far exceeds the average incarceration rate of any nation in the world, making it an exception compared to other democratic nations.

The *Prison Policy Initiative* analyzed worldwide incarceration rates in 2021, finding that the U.S. had the highest incarceration rate at 664 incarcerations per 100,000 people. Very few countries came within a comparable range (Widra and Herring 2021).

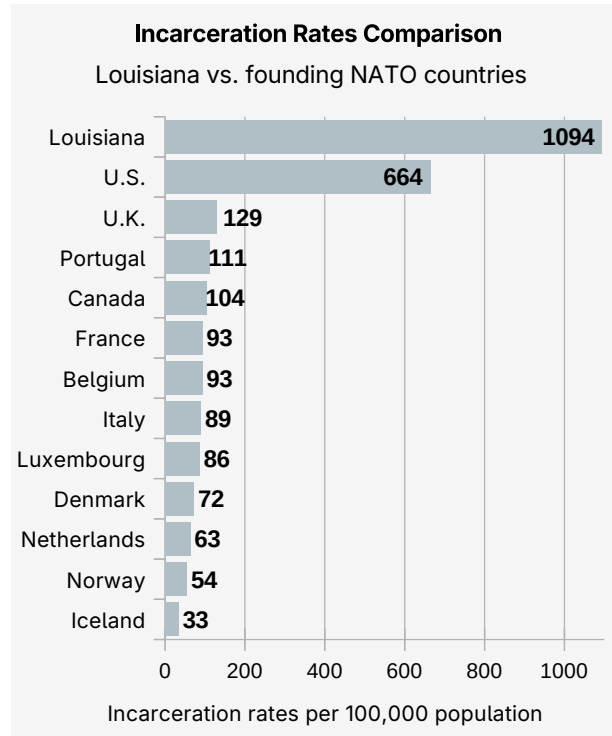


**Figure 1:** Countries with top 20 incarceration rates. Data: States of incarceration: the global context 2021. Prison Policy Initiative. [prisonpolicy.org/global/2021.html](https://prisonpolicy.org/global/2021.html)

Per an [updated 2024 global context report](#), the average incarceration rates increased across countries such as El Salvador (1,086), Cuba (794), and Rwanda (637). The U.S. averaged 614 per 100,000 (Widra 2024).

In addition, almost half of the individual states in the U.S. incarcerate more people per capita at rates significantly higher than the national average, and therefore higher than entire nations. Even states with the lowest incarceration rates, such as Massachusetts (275) and Vermont (288), would still rank at 17th and 15th highest in the world, respectively (Widra and Herring 2021).

The state of Louisiana alone incarcerates 1,094 people per 100,000, ranging from around eight to 30 times more than rates in founding NATO countries. The U.S. national average is also five times that of the U.K., the second highest among NATO allies.



**Figure 2:** Louisiana vs. NATO incarceration rates, Data: States of incarceration: the global context 2021. Prison Policy Initiative. [prisonpolicy.org/global/2021.html](https://prisonpolicy.org/global/2021.html)

## 2.2 U.S. Incarcerated populations by race

2010 U.S. Census data reveals that incarceration rates differ vastly between White, non-Hispanic populations and minority groups. Non-Hispanic Whites were incarcerated 450 times per 100,000 people. BIPOC individuals typically had about twice the incarceration rate of Whites, but Black people had five times the rate (Sawyer 2020).

- Hispanics incarcerated almost 2x more often
- Blacks incarcerated 5x more often
- Pacific Islanders and Native Americans were incarcerated over 2x as often
- Asians incarcerated at one-fourth the rate

U.S. Prison populations by Race/Ethnicity			
Race/ Ethnicity	Total pop. %	Prison pop. %	National rate (per 100,000)
White (non-Hisp.)	64%	39%	450
Hispanic	16%	19%	831
Black	13%	40%	2,306
Native Hawai'ian, Pacific Islander	0.17%	0.24%	1,017
American Indian, Alaska Native	0.95%	1.67%	1,291
Asian	4.75%	0.75%	115

**Table 1:** Incarcerations by race. Source: U.S. Census 2010 Summary File 1. [prisonpolicy.org/graphs/raceinc.html](http://prisonpolicy.org/graphs/raceinc.html)

The racial disparity in modern prison populations is only partly explained by higher conviction rates for

certain races and ethnicities.

According to a 2016 research report by the Brennan Center for a Justice, a nonpartisan organization that analyzes law and policy, almost 40% of the U.S. prison population, about 576,000 people, includes those who “are behind bars with no compelling public safety reason” (Austin et al. 2016).

A portion of the current prison population includes those who were convicted during the peak of tough-on-crime laws and are still serving the remainder of their sentences. At the end of the 1980s, 39 states had such severe prison overcrowding issues that they received court orders to reduce their prison population or increase capacity (Shichor 1997).

In California, the state prison system was overburdened to the point the U.S. Supreme Court ruled that the prison conditions were a violation of the Eighth Amendment. California was ordered to drastically reduce its prison population in 2011 (Newman and Scott 2012).

What is important to note is that the extreme targeting of minorities – through strategic framing and extreme punitive sanctions – was not a behavior introduced in the 1970s and 1980s, nor even in the 1960s.

The politicization of crime policies and the justice system started well before the 20th century. By analyzing the trends of crime policy over different eras, we can better understand how the U.S. justice process evolved through both legislative and political framing efforts.

## 3. The eras of U.S. crime policy

### 3.1 Political development era (1840-1910)

Major historical events, bipartisan legislation, public perception, and framing strategies shaped crime policies over three eras:

- **Political development era** (1840 – 1910)
- **Progressive era** (1920 – 1970)
- **Crime control era** (1980 – present day)

In the **political development era**, crime policies were increasingly used as a political tool to gain public favor and develop the fear of crime. Policies in this era set the foundations for the strategic association of criminal behavior with immigrants and minorities.

The late 1800s introduced many new crime policies, namely federal regulations on drug use such as the **Smoking Opium Exclusion Act of 1909** and the **Harrison Narcotics Act of 1914** (Bacon 1909; Public Law 223, 1914). Recreational drug use and addiction from overprescribed opioids were common among middle-to-upper class Whites, but negative perceptions about drug use gradually shifted to immigrants and minorities. In particular, opium use and opium dens became negatively associated with the “Chinese, gamblers, and prostitutes” in the 1880s and 1890s (Ruane 2021; Chasin 2016).

The **Harrison Narcotics Act** was later co-opted by “law enforcement moral entrepreneurs” to shift the focus of taxation to that of punishing the source of criminal violence. Thus marijuana and heroin were associated with hippies and Black people (Hagan 2012).

Of notable influence starting in this era is Harry Anslinger, who was the director of the Bureau of Narcotics established in the 1930s during the age of alcohol Prohibition. Anslinger is credited for pushing the selective narrative that marijuana caused violent crime. He argued for total prohibition of drugs and demonized racial minorities. Through his influence, conservative politicians took concerted efforts to associate these “newly criminalized behaviors with immigrants and internal minorities” (Hagan 2012; Hari 2016).

### 3.2 Progressive era (1920-1970)

The **progressive era** (also known as the Roosevelt or New Deal era) included historical events such as the Great Depression, Prohibition, and World War II. The Civil Rights movement was among critical momentum behind social and economic reforms.

A more liberal government adjusted crime policies to limit law enforcement powers, such as the size of police forces. New Deal legislation included measures to combat financial crime by restricting corporations and regulating the stock market.

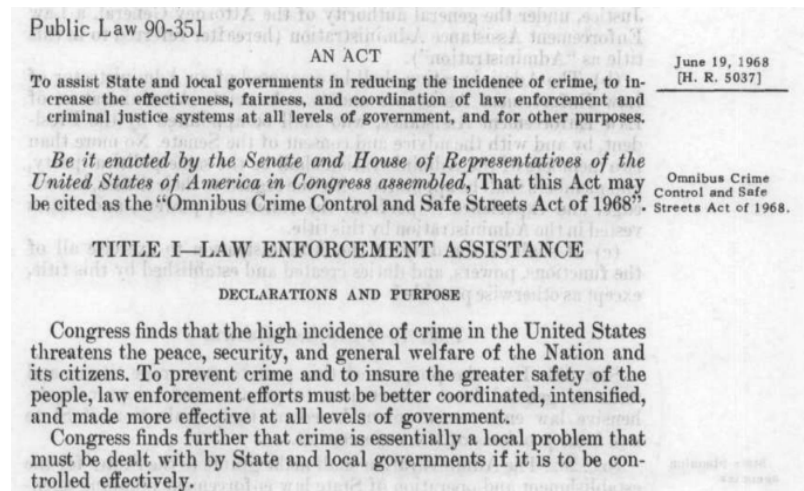
Most importantly, reforms to the criminal justice system tried to preserve defendants’ rights to due

process. The 1960s, in particular, had bipartisan efforts to implement a more rehabilitative justice system. These initiatives were driven largely by liberal politicians such as President John F. Kennedy, whose proposal for the **Civil Rights Act of 1964** passed after his assassination in 1963.

One of President Kennedy’s brothers, U.S. senator (and 64th U.S. attorney general) Robert Kennedy, used a social science-oriented approach to crime policy. He sought significant reforms to juvenile justice and the bail system. His vision “reflected an optimistic rehabilitative approach quite different from the focus on juvenile criminals today”, and also criticized the bail system for making it “likely that the poorest, rather than the guiltiest, would be convicted” (Simon 2009).

Robert Kennedy’s rehabilitative mindset was also reflected in court cases such as the 1962 Supreme Court decision in *Robinson v. California* (1962). The decision was notable in its holding that “drug addiction warranted treatment rather than punishment” and that it was unconstitutional to punish a defendant for a status such as addiction, which was not an act.

His assassination in 1968 during the presidential elections was a significant blow to rehabilitative reforms for the justice process. That same year, the **Omnibus Crime Control and Safe Streets Act of 1968** (H.R.5037) was signed into public law by President Lyndon B. Johnson (Simon 2009).



**Figure 3:** Figure 3: H.R.5037 - 90th Congress (1967-1968): Omnibus Crime Control and Safe Streets Act of 1968.

This omnibus act was considered Johnson's greatest accomplishment on the war on crime, which garnered more and more public attention near the end of the progressive era. It authorized over \$400 million for direct federal investment into local and state law enforcement, correctional facilities, and courts; it is also infamous for allowing local police to wiretap without court orders in some circumstances.

Despite liberal approaches to crime policy during this era, this mindset was not shared by everyone. Political framing became especially targeted on Black communities as rates of violent crime surged.

The war on crime and the war on drugs grew more pervasive as conservative politics took marked efforts to link crime with civil rights protests. This was exacerbated through Ronald Reagan's California gubernatorial campaign in 1966, again in his 1968 presidential campaign, and even affected how moderate politicians approached their campaign issues (Hagan 2012; Simon 2009).

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### 3.3 Crime control era (1980-present)

The **crime control era** spans from the 1980s to present day, and is most well-known for the popularized "tough on crime" rhetoric, the war on crimes, and the war on drugs. This shift seems drastic, but was a cumulative effort over the past several decades to reinforce the public's association of minorities to drugs, crime, and violence. Harry Anslinger's efforts in the 1930s set the key frameworks to accelerate crime control in this era.

In the 1970s, The U.S. Justice Department had first attempted to prevent crack cocaine trade and narcoterrorism in Latin America. When this failed, they turned to punish crack cocaine offenders within U.S. borders instead (Hagan 2012).

In 1971, Nixon publicly declared the war on drugs. **The Controlled Substances Act of 1970** and the Drug Enforcement Administration (est. 1973) were significant federal efforts to control crime through drug regulations (Lampe 2025).

Reforms to crime policy in this era reduced the defendants' rights to due process and established sentencing standards that disproportionately punished and traumatized Black communities (Hagan 2012, Simon 2009). Over two million Black people were incarcerated due to Reagan's policies against "ghetto street crime".

The Reagan administration's spree of financial deregulations also victimized poor citizens, caused a housing market collapse, and resulted in trillions of dollars in government debt. It was an abrupt departure from progressive era policies that had strengthened guardrails to protect the poor class.

Mid-1980s policies accelerated crime control efforts, snowballing from the disproportionate impact that the crack cocaine epidemic had on Black neighborhoods. Politicians saw this as opportunity to publicly condemn and implicate Black people as aggressors predisposed to crime (Hagan 2012). Inciting the public's fear of crime, and thus the desire for safety, would generate support for "tough on crime" policies.

These policies emerged in the form of three landmark pieces of legislation from 1984 and 1986. This bipartisan effort was the first major reform of the U.S. criminal code since the early 1900s.

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#### 3.3.1 Comprehensive Crime Control Act (1984)

**The Comprehensive Crime Control Act of 1984** was a collection of extensive reforms to the federal bail system, judge sentencing power and sentencing discretion, insanity defense requirements, and increases to law enforcement funding (S.1762).

- Elimination of federal parole (effective 1991).
- Requiring defendants to prove their insanity (burden of proof) for insanity defense claims.
- Emphasizing victims' rights over the defendants' rights.
- Limiting federal judge sentencing power with standardized penalty requirements.

**The Sentencing Reform Act of 1984** (S.668) was a part of the **Comprehensive Crime Control Act**

(S.1762). It established the U.S. Sentencing Commission (USSC), which in turn determined the **Federal Sentencing Guidelines**.

The legislation attempted to reduce the disparity in prison sentences by limiting judge discretion. This supposedly would prevent the misuse of “flexible” sentencing that could result in reduced sentences, while ensuring that everyone would receive equal sentences for the same crime.

However, the rigid sentencing structure did the opposite of equalizing sentences. Removing a layer of deliberation and discretion from the judge was the removal of a step in due process. Standardization resulted not in sentence equality, but instead in the expedition of sentencing.

Individualized sentencing allowed meaningful adjustments to a penalty to match a defendant’s circumstances. An individual appointed to the USSC noted that the passing of these sentencing reforms indicated a broader “rejection of the rehabilitative model” in favor of punishing and demonstrating the power of law (Nagel 1990). Under the new restrictions:

- Judges were required to strictly follow the Federal Sentencing Guidelines.
- Judges could no longer apply “individualized sentencing” often used as rehabilitative measures.
- A portion of federal judges’ sentencing power was transferred to prosecutors and legislators.

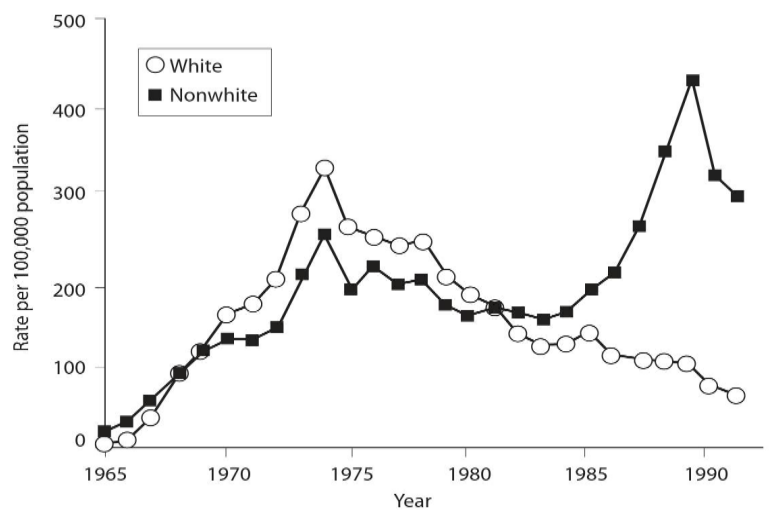
As Nagel noted, the sentencing guidelines prevented individualized sentencing (Nagel 1990). While it was sometimes misused to reduce sentences, it could also implement rehabilitative measures, such as state-funded mental health counseling, substance use intervention programs, and other social resource that align with restorative justice (Stith and Koh 1993). Rigid sentences substantially reduced the due process a defendant could receive, and aligned instead with the efficiency of crime control-oriented systems.

### 3.3.2 Anti-Drug Abuse Act (1986)

The **Anti-Drug Abuse Act of 1986** allocated a substantial \$1.7 billion to the war on drugs effort and established mandatory minimum prison sentences for drug-related offenses. The steep increase in incarcerations for non-violent Black offenders was a direct consequence of the imbalanced 1 to 100 rule (Hagan 2012; Evans et. al 2018).

Crack, a smokeable form of cocaine, could be sold in smaller amounts and produced fast, intense highs. This form of the drug spread rapidly through Black communities. In contrast, powder cocaine was more expensive, less addictive in small quantities, and was a common party drug for more privileged users.

- Possession of five grams of crack cocaine resulted in an automatic five-year sentence.
- Possession of 500 grams of powder cocaine resulted in a five-year sentence.



**Figure 2.6** Arrest rates for drug offenses among juveniles, by race, 1965–1991. After Blumstein (1993:3).

**Figure 4:** Drug offense arrest among juveniles, by race, 1965–1991. Source: Hagan, J. (2012). p. 62

Almost a decade after the **Anti-Drug Abuse Act** became law, the U.S. Sentencing Commission published the 1995 **Special Report to the Congress: Cocaine and Federal Sentencing Policy**, which contained analysis on the racial impact of cocaine sentencing requirements. “Chapter 5: Cocaine and Crime” of the report

revealed a damning statistic: of all individuals serving mandatory minimum sentences for crack cocaine in 1993, 88.3% of them were Black (USSC 1995). Despite the significance of this finding in disproportionate impact on racial minorities, as well as the USSC's recommendations to reconsider the crack cocaine sentencing criteria, Congress refused to make any changes to the law.

At the end of the 1980s "imprisonment binge", so many citizens had been incarcerated that "39 states

were under court order to 'cap' their prison populations" unless the max capacity was increased (Shichor 1997).

Later on, conservative scholars admitted that severe punishments such as mandatory minimum prison sentences had minimal to no effect on reducing crime rates, and also came at an excessive financial cost. From 1993 to 2001, overall crime rates only decreased by five percent (Hagan 2012).

#### 4. Three-strikes laws, crime control, and McDonaldization

After the **Federal Crime Bill**, or the **Violent Crime Control and Law Enforcement Act of 1994**, was enacted, individual states passed their own versions of this law. The federal law mandated "life in prison for criminals convicted of three violent felonies or drug offenses if the third conviction is a federal crime" (Shichor 1997).

Washington state created the first three-strikes state law as **Initiative Measure 593**. It passed with an overwhelming majority of 75.20% of the votes in favor, and only 25.80% votes against the measure.

Inspiration from tough-on-crime rhetoric was reflected plainly in the initiative's statement: "It's time to get tougher on violent criminals" (Lacourse 1997).

As of 2012, 28 of the 50 states have passed a three-strikes law, with some states going further with a two-strikes law and mandatory life sentences for violent crimes. As individual states passed alike measures, no other state has measures as sweeping as the ones implemented in California state.

##### 4.1 California Proposition 184

The second state to pass a three-strikes law was California. **Proposition 184**, "Increased Sentences. Repeat Offenders. Initiative Statue" (Reynolds et. Al 1994) counted prior convictions received as a juvenile, including non-serious and/or non-violent offenses. Of all states' three-strikes laws, California had the most sweeping and punitive measures with its de facto life sentence.

- For the second offense, the offender would receive double the usual sentence.
- For the third offense, the penalty was the greater between 3x the normal sentence, 25 years, or a life sentence.



#### **Increased Sentences. Repeat Offenders. Initiative Statue.**

Official Title and Summary Prepared by the Attorney General

##### **INCREASED SENTENCES. REPEAT OFFENDERS. INITIATIVE STATUTE.**

- Increases sentences for defendants convicted of any felony who have prior convictions for violent or serious felonies such as rape, robbery or burglary.
- Convicted felons with one such prior conviction would receive twice the normal sentence for the new offense. Convicted felons with two or more such prior convictions would receive a life sentence with a minimum term three times the normal sentence or 25 years, whichever is greater.
- Includes as prior convictions certain felonies committed by juveniles 16 years of age, or older.
- Reduces sentence reduction credit which may be earned by these convicted felons.

*Figure 5: The official title page and summary of Prop 184. Source: California Proposition 184 (1994).*

**Prop 184** also reduced the maximum amount of "credits" that offenders in state prisons could earn to reduce the length of their state prison sentence. The maximum was slashed from one-half to one-fifth the sentence length (Reynolds et. al 1994).

The votes in favor won by a landslide.

<b>Proposition 184 (1994), voting results</b>		
<b>Result</b>	<b>Votes</b>	<b>Percentage</b>
<b>Yes</b>	5,906,268	71.85%
No	2,314,548	28.15%

*Table 2: California Proposition 184, Three Strikes Sentencing Initiative (November 8, 1994), voting results. A "yes" vote supported creating a three-strikes sentencing model to increase prison sentences for repeat offenders.*

The combination of **Prop 184** and the **Anti-Drug Abuse Act of 1986** had a devastating toll on Black communities. Any third-time offender had a de facto life sentence of 25 years minimum, even if the offense was a non-violent one like drug possession (Reynolds et. Al 1994). In comparison, white-collar crimes, also classified as non-violent crimes, received minimal penalties (Shichor 1997).

Since its implementation, **Prop 184** has been amended twice. Voting results across three separate initiatives show a trend in public opinion away from harsh punishments:

**Prop 36 (2000)**, Probation and Treatment for Drug-Related Offenses Initiative:

- Those convicted with drug possession, use, or transportation (except sale or manufacturing) would receive probation and drug treatment, instead of incarceration.
- Permitted additional probation conditions, and dismissal of charges when the drug treatment is completed.
- Not applied retroactively.

Changes in 2000 were not applied retroactively and would apply to offenses after the measures passed.

**Prop 36 (2012)**, Changes to Three Strikes Sentencing Initiative:

- Life sentences are imposed only when new felony convictions are serious or violent.
- Those serving life sentences could be resentenced if their third offense was non-serious and/or non-violent (excepting cases of rape, murder, child molestation, etc.).
- The judge must consider whether a re-sentencing poses a threat to public safety.
- “Repeat offenders” for non-violent and non-serious crimes would continue to receive twice the usual sentence, instead of a life term.

**Prop 66** was applied retroactively and allowed approximately 3,000 offenders serving life terms to petition for reduced sentences, out of the 8,800 individuals serving life terms at the time.

Amendment initiatives for California Prop 184			
	Result	Votes	Percentage (%)
<b>Prop 36 (2000)</b>	Yes	6,233,422	60.85
	No	4,009,508	39.14
Prop 66 (2004)	Yes	5,604,060	47.32
	No	6,238,060	52.68
<b>Prop 36 (2012)</b>	Yes	8,575,619	69.30
	No	3,798,218	30.70

*Table 3: Voting results of Prop 36 (2000), 66 (2004), and 36 (2012) to amend the 1994 Three-Strikes Initiative.*

#### 4.1.1 *Brown v. Plata* (2011)

From 1994 to 2011, mass incarceration under **Prop 184**'s measures quickly filled California's prison facilities past the max capacity of 85,000 inmates. Due to the mandatory life sentence required by the third strike, the number of offenders into prison systems was much greater than those leaving.

In 2011, the prison population was approximately double the capacity at around 156,000 inmates, and severe deficiencies in medical and mental health care resulted in needless deaths. In addition, facilities could not retain competent physicians and psychiatrists due to the overwhelming caseload and violent conditions.

In *Brown v. Plata* (2011), the U.S. Supreme Court ruled that California's prison system violated the Eighth Amendment, as the dire state of overcrowding was cruel or unusual punishment. It held the appellate-court decision that the population reduction was necessary to remedy constitutional violations, requiring the state to decrease its prison population by 46,000 inmates (down to 137.5% of max capacity).

**Prop 36** (2012) was one such measure that addressed the problem of prison overcrowding. Two years later, **Prop 47** also introduced changes to improve the prison system through a more proactive approach to crime prevention.

**4.1.2 Safe Neighborhoods and Schools Act (2014)**

This measure was not an amendment to the three-strikes law, but instead reclassified six different non-violent offenses from felonies to misdemeanors (under a certain threshold). The tax savings were then used to fund community services such as “drug and mental health treatment, homelessness prevention, and victim services centers” (Vera Institute 2024).

Among the reclassifications included changing “wobbler” offenses to misdemeanors, as long as the costs did not exceed the threshold of \$950.

- **Grand theft** – regardless of property (ie. cars).
- **Shoplifting**
- **Receiving stolen property**
- **Writing bad checks** – formerly a “wobbler” at any amount.
- **Check forgery** – former threshold \$450
- **Drug possession** – for personal use, including cocaine and heroin.

These reforms were a considerable victory for criminal justice reform in the state, especially due to the reduction in prison population. One of its major successes include reducing the prison population by about 13,000 inmates through retroactive resentencing.

In January 2015, it was found that almost one-million Californians would be eligible to amend their felony convictions under **Prop 47** reclassifications (Ross 2015). It was also estimated that 40,000 less Californians would be convicted with low-level felonies every year (Prop 47).

According to Vera Institute, the prison population “dropped 28 percent with reduced racial disparities” and reduced cases of recidivism (Vera Institute 2024).

However, a decade later, corporations, prison lobbyists, and right-wing organizations pushed efforts to overturn elements of **Prop 47**, claiming that the changes in classifications increased crime instead. This narrative was driven by conservative politicians and local law enforcement officials.

**Proposition 20**, “Criminal Sentencing, Parole, and DNA Collection Initiative” was a civilian-initiated ballot measure that was defeated. It aimed to repeal the offense reclassification measures from **Prop 47**, as well as significantly impede an offender’s potential application for parole, both through additional procedures and redefining other offenses as violent or serious.

- Serial crimes and shoplifting were “wobblers” that could be considered either a felony or misdemeanor. (Under Prop 47, these are misdemeanors up to \$950 value).
- Require parole review programs to consider additional factors, and allow prosecutorial review of decisions.
- Would redefine 51 offenses, removing those groups entirely from parole eligibility.

Prop 20 (2020) vs. Prop 36 (2024)			
	Result	Votes	Percentage (%)
2020	Yes	6,385,839	38.28
	No	10,294,058	61.72
2024	Yes	10,307,296	68.42
	No	4,756,612	31.58

*Table 4: Voting results of Prop 20 (2020) and Prop 36 (2024), both of which would repeal measures of Prop 47.*

While the attempt to repeal parts of Prop 47 were defeated in 2020, they were successful in a subsequent ballot election. The 2024 measure of **Prop 36**, “Allows Felony Changes and Increases Sentences for Certain Drug and Theft Crimes” was passed by a significant majority, with 68.42% in favor, and 31.58% not in favor.

These new measures return to the increased penalties for drug-related offenses similar to Prop 184’s sentencing criteria that worsened California’s prison system. A broad look at the policies within the past decade indicated a shift toward rehabilitative measures within 2000 to 2020. The step back into increased punitive sanctions may correlate with the general right-ward shift of public opinion, especially in the lead up to the 2024 presidential election.

## 4.2 The McDonaldization of punishment

McDonaldization is a term first coined by sociologist George Ritzer in his 1993 book, "The McDonaldization of Society". Ritzer described McDonalds as the representation of overall societal trends toward efficiency, predictability, calculability, and control over uncertainty. These principles were applied through McDonaldization, or "the process by which the principles of fast-food restaurant are coming to dominate more and more sectors of American society" (Ritzer, 1993).

This phenomenon could be applied to various parts of American society. Applied to U.S. crime policies, three-strikes laws are the McDonaldization of punishment.

Three-strikes laws operate along the characteristics of efficiency, calculability, predictability, and control, following the increasing social control policies influenced by McDonaldization (Shichor 1997). Interestingly, all aspects of the McDonaldized approach very closely follow values of Packer's crime control model of justice.

**Efficiency**, in a McDonaldized context, focuses on incarcerating or processing as many people through the criminal justice process as possible. Quickly incapacitating as many offenders as possible means there are less to pose a danger on the streets, thus deterring crime.

**Calculability** and **predictability** in crime policy pertain to prison sentencing guidelines, or the specific punishment given to the offender. In abiding by the Federal Sentencing Guidelines from 1984, judges were given much less sentencing discretion, reducing the variability in penal sanctions. Shichor also notes that calculability "implies that quantity becomes the indicator of quality", leading politicians and the public to believe that longer prison sentences were a higher "quality" of justice (Shichor 1997:477).

**Control**, in addition to utilizing technology to replace human services, emerges as how three-strikes laws give more control to legislators and prosecutors. The changes from the Federal Sentencing Guidelines posed "a major shift in the

power structure of the criminal justice system" that curtailed judicial discretion (Shichor 1997:479).

One of Shichor's biggest criticisms of the three-strikes approach is the observation that three-strikes laws do not put "a major emphasis on dealing with the material consequences of its implementation" (Shichor 1997:475). The classification of certain crimes as less serious in particular also allowed many white-collar criminals to avoid punishment. By focusing on changing offense categories to categorize specific offenses as worse thus disproportionately affected the poor.

Legal structures that made financial crime "lawful but awful" built off the deregulation of financial institutions in during the Reagan presidency (Passas 2013). This also connected more U.S. white-collar crime cross national borders and allowed global control.

## 4.3 Mass incarceration as McDonaldized policy

Shichor notes that trend of mass incarceration had evolved into a shift "away from concern with punishing individuals to managing aggregates of dangerous groups" (Shichor 1997). It also indicated societal adoption of new penology, or the philosophy of crime repressing strategies.

Where the old penology of U.S. crime policy focused on the individual, the new focus was now on groups sorted by dangerousness. The politicized framing of marginalized and racial groups was a slow way of orienting public perception and opinion on a "permanently dangerous population" (Shichor 1997). Historically, these were considered the urban poor, but a review of drug and crime policies through the 1900s adds intersections.

This matches the association of various immigrant and minority groups to criminal activity, the narrative pushed by Harry Anslinger in the 1930s. Associations of opium dens to Chinese immigrants, narcotics with hippies, and Black people with heroin were repeated throughout conservative politics from the 1930s through the 1980s.

Shichor's perspective from 1997 encompasses the aftermath of the worst policies from the 1980s and

1990s. His explanation of McDonaldization adds a layer of rationale behind crime policies through the war on drugs era, which compliment the political influences Packer noted in his two models of justice.

Both share the theme of social control that depend on the appeal of increased and “just” punishment for offenders – critical points of the public eye. As public awareness grows around justice policies and justice equality, it is necessary to observe the trends of politicians and policymakers in how they discuss certain crime policies.

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#### 4.4 Evolving political framing strategies

Of the three amendment attempts to California’s Prop 184, **Prop 66 (2004)**, “Changes to Three Strikes Criminal Sentencing Law” did not pass. This proposition would have:

- Redefined violent and serious felonies.
- Required increased sentences only if the offense was a serious and/or violent felony.
- Allowed the resentencing for those who were convicted under an offense no longer considered serious and/or violent.

While **Prop 66** was defeated, its presence on the voting ballot, and the close margin of its loss, still indicated the building momentum of the 2000s to overturn the most punitive parts of the state’s law.

The decisions made by high-profile Supreme Court cases have substantial impact on the legal landscape in terms of civil rights. This meaningful shift in legal opinion can also be seen in two cases argued 13 years apart.

In *Harmelin v. Michigan* (1991), the petitioner was convicted with possession of 650 grams of cocaine. Harmelin was given a mandatory life sentence without the possibility of parole. While “mandatory penalties may be cruel,” U.S. Supreme Court decided, “they [were] not unusual”.

Over a decade later, in *United States v. Booker* (2005), a close 5-4 court majority declared that the federal sentencing guidelines were a violation of

the Sixth Amendment, the right to fair trial by jury.

The attempts from **Prop 66** in 2004, as well as the decision in *United States v. Booker* (2005), signified an important shift in public opinion on the need for punitive sanctions. Though the court decision in 2005 did not completely remove the sentencing guidelines, the “advisory” nature returned some sentencing power to judges, instead of allowing prosecutors and legislators to have the final say.

In 2007, USSC took independent initiative and amended the sentencing guidelines for crack-related offenses with reduced sentences. The included retroactive effect allowed around 20,000 inmates with drug-related convictions to request sentence reductions (Hagan 2012). All these initiatives were from efforts to address court orders, community advocacy and activist movements, and shifts in the narrative that exposed the horrific impact of mass incarceration.

Victims’ rights groups, such as the Crime Victims United of California, opposed **Prop 36** in 2012 and advocate against reduced sentences and sentence reduction credits. They successfully lobbied and helped pass **Prop 36** (2024), which repealed a sizeable amount of **Prop 47**. Justice equality activists have warned of potential regression to practices that caused unneeded overcrowding of prisons, and mistreatment of incarcerated (Vera Institute 2024).

Importantly, political framing of these punitive sanction initiatives has changed. During the 1970s to 1990s, the war on drugs and crime were easy justifications for severe penalties. This followed the logic of a crime control model, where punishment was meant to deter criminal behavior.

Conservative politicians have used a different approach in modern day policies, which can be seen plainly in the differences of initiative titles.

- **Prop 184** (1994) – “Increased Sentences. Repeat Offenders. Initiative Statute.”
- **Prop 36** (2024) – “The Homelessness, Drug Addiction, and Theft Reduction Act.”

**Prop 184**'s title posed a solution to punish real, individual sources of rampant crime: repeat offenders. In comparison, **Prop 36** (2024) implied actions to reduce homelessness, but did not contain any measures addressing the issue directly. Instead, the provisions pushed false, unbased claims that **Prop 47** was "directly connected" to the increase in homelessness and crime (Kendall and Yu 2024).

**Prop 36**'s ballot initiative appears less punitive, disguised as a well-intentioned policy to help individuals affected by homelessness and drug addiction. The deliberate titling may cause voters skimming the titles to inadvertently vote for policies they would otherwise not support.

The attempt to maintain the U.S. criminal justice system within the crime control model, instead of punishing criminals as its main proponent, focuses on public benefit and targeting "real" criminals. This criteria relies on violence, however, and does not account for non-violent crimes (white-collar crimes) that have measurably larger impact on communities (Shichor 1997).

Going forward, activists and advocacy groups must remain conscious of the ways conservative groups and politicians frame crime policies. As public sentiment for punitive sanctions for the war on drugs is no longer as popular as it used to be, framing has evolved to misleadingly name harmful crime policies and catch voters unaware.

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*\*Sections 5 and 6 omitted in this example.*

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## 4.5 Behind the scenes

Whether or not the war on drugs had ulterior racial motives has been debated by justice equality activists, criminologists, as well as scholars of history and law. While some may argue that the drug and crime policies of this era were genuine efforts to positively reform the justice system, the imbalanced results are difficult to reconcile.

In the April 2016 issue of the Harper's magazine, Dan Baum published his report "Legalize It All: How to win the war on drugs". Within, he recounted an 1994 interview with John Ehrlichman, who had been Nixon's adviser on domestic policy.

Ehrlichman bluntly revealed the true motivation behind the war on drugs:

"The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying?"

"We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news.

"Did we know we were lying about the drugs? Of course we did" (Baum 2016).

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