

---

# Criminal Negligence

*The depoliticization of crime*

By Elizabeth Hull

---

Remember “crime”? Not so long ago Republican presidential candidates routinely pummeled their opponents by challenging their “law and order” credentials. In 1964 Barry Goldwater campaigned against “crime in the streets,” and four years later, in the wake of urban riots and the mayhem that accompanied the Democratic National Convention, Richard Nixon won the presidency in part by promising an end to “lawlessness.” Ronald Reagan preached a “non-nonsense” stand on crime and waged an aggressive “war” on drugs. More recently, in 1988, GOP presidential contender George Bush was able to overcome Michael Dukakis’s frontrunner status once he succeeded in tarring his rival as “soft on crime.”

Yet in the 2000 presidential election both major candidates rarely mentioned crime. Twelve years after his father trumped Dukakis, and six years after he himself captured the Texas governorship from popular incumbent Ann Richards, in part by accusing her of being lax on crime, George W. Bush delivered an acceptance speech at the Republican National Convention in which he failed even to mention the “C” word. And while Al Gore did refer to crime in his acceptance speech at the Democratic National Convention, he

---

*Elizabeth Hull is associate professor of political science, Rutgers University.*

did so almost as an afterthought.

The failure to stress “law-and-order” themes makes sense, certainly, because polls taken during the last year indicate that voters were preoccupied with issues other than crime. In past presidential elections, however, candidates often trumpeted “get tough” positions even when polls suggested relative voter indifference. For instance, Barry Goldwater, Richard Nixon, Ronald Reagan, and even George Bush accused their opponents of “coddling criminals” to good effect, notwithstanding the fact that Gallup polls conducted at the time never ranked crime as the MIP—Most Important Problem (a distinction invariably awarded to economic issues, such as unemployment, taxes, or inflation). According to the late Jeff Alderman, then director of polling for ABC News, “Until Fall 1993 no ABC/*Washington Post* poll had ever shown more than 5% of the public naming crime as the most important problem facing the country.”

In 1993, however, even as crime rates began falling, between 9 and 10% of poll respondents identified crime as the nation’s MIP. Then, a scant year later, 37% gave it top ranking. (Criminologist Mark Warr attributes this leap to a confluence of

events, including the well-publicized murder of 12-year-old Polly Klaas and the so-called “Long Island Rail Road massacre,” in which an aggrieved gunman killed several passengers.)

In four national polls taken in the fall of 1994, crime continued to top the list of MIPs, with either 42 or 50% of those interviewed, depending upon the survey, citing crime as the nation’s top problem. By January 1995 the proportion had fallen to 31%—still a significant number, and one high enough to edge out traditional concerns—and in 1996 a *Washington Post* survey ranked crime second among the voters’ top twenty worries. In a mid-1997 *Time/CNN* poll 14% of respondents cited crime as the main problem facing the nation today, tying it with lack of moral values, and putting it just ahead of budget deficits, with 10%.

Yet, surprisingly, in neither the 1996 nor 2000 election did any of the major candidates stress law and order issues. An obvious explanation, of course, is that crime rates



©2000www.arttoday.com

were dramatically down. After reaching an unprecedented high in 1991, crime fell every year since, dropping 4% in 1997 and 5% in 1998. These drops were relatively small, however, compared to 1999, when the Department of Justice reported in its annual Crime Victimization Report that crime had plummeted another 10%. In 1999, 7.3 million people—about 33 out of every 1000 US residents—suffered a violent attack. That represents a decline of 34% since 1993, to the lowest level since the report began in 1973.

There is, however, another reason “crime” was relatively ignored in both the 1996 and 2000 presidential elections: it no longer fulfilled its traditional role as a “wedge” issue with which Republicans could bludgeon Democrats.

For candidate Bill Clinton, and indeed a whole generation of “New Democrats,” the transformative event in their political careers may well have been the “Willie Horton” phenomenon. During Michael Dukakis’s tenure as governor of Massachusetts, state prison officials granted convicted murderer Willie Horton a weekend furlough, during which he raped a Maryland woman. Although Dukakis had nothing to do with the furlough policy—indeed, it had been instituted during the tenure of his GOP predecessor—pollsters for Republican presidential candidate George Bush learned through focus groups that linking the Massachusetts governor with Horton would resonate powerfully with the electorate. Images of Horton, depicted as a huge and menacing black man, soon began appearing on television screens, along with ominous messages suggesting that Dukakis was “a liberal softie,” whose feckless policies endangered the law-abiding at the same time they indulged the rapists and murderers. “The code words were ‘permissiveness’ and ‘lawlessness,’” recalls Andrew Kohut, director of the Pew Research Center. The strategy, with its not-so-subliminal appeal to racism, proved astonishingly effective: in

record time Dukakis’s 17-point lead vanished, and Bush handily won the 1988 election.

“Crime no longer fulfilled its traditional role as a ‘wedge’ issue with which Republicans could bludgeon Democrats.”

As the Democratic candidate for president in 1992, Clinton resolved at all costs to avoid his predecessor’s fate. He would be as unapologetically tough on crime as any potential Republican rival. To emphasize that point, he interrupted his campaigning to fly home to Arkansas to attend the execution of Ricky Rae Rector, a convict so brain-damaged that he told his jailers, just hours before his lethal injection, that he intended to vote for Clinton in the upcoming election. According to a former prosecutor, quoted by *Washington Post* columnist Peter Slevin, if Clinton could kill Rector, “he can kill anyone.” Yet, the prosecutor acknowledged, by doing so Clinton made sure that Bush would not be able to taunt him the way he mocked Dukakis, “as a patsy for every dark-skinned murderer in Massachusetts.”

Democratic candidate Clinton still needed to appeal to his party’s traditional constituency, however, and consequently did not entirely jettison liberal principles: in 1992 he stressed the need for drug prevention and treatment programs, and he urged the slowing of prison construction. As criminology professor Katherine Beckett observed, before and after his victory in 1992 he occasionally even referred to law-break-

ers in compassionate, rather than punitive, terms. Speaking before the Democratic Leadership Council shortly after the Los Angeles uprising, for instance, he characterized looters as people whose “lives and bonds to the larger community had been shredded by the hard knife of experience.” He also criticized the Reagan-Bush administrations for blaming the crime problem on “them”—impoverished people of color.

These sentiments, however, were countered by the harsh policies Clinton pursued. As a candidate he had advocated boot camp for juvenile offenders, “more police on the streets and criminals behind bars,” and greater reliance on the death penalty. As president he signed the 1994 Violent Crime Control Act and the 1996 Anti-Terrorism and Effective Death Penalty Act, which together awarded federal funds to any state that adopted “binding sentencing guideline systems,” and he agreed to mandate life sentences for some three-time offenders. The new statutes authorized 8.8 billion dollars for 57,000 local police officers, 7.9 billion in state prison grants, and made 54 additional offenses eligible for the death penalty.

Other provisions were not only punitive, but gratuitously so: one restricted the scope of court-ordered settlements in lawsuits challenging prison conditions; others allowed some 13-year-olds to be tried as adults, expanded the circumstances in which federal prosecutors could use illegally-obtained evidence, and restricted prisoners’ right to file *habeas corpus* suits. Some measures were as petty as they were punitive, such as the one mandating the deportation of resident aliens for even minor offenses they might have committed years or even decades earlier, or the one limiting inmates’ access to Pell grants, with which they could pursue a college education.

In May 1995, the Federal Sentencing Commission recommended that Congress abandon provisions of the Anti-

---

Drug Abuse Act that imposed substantially harsher penalties on crack offenders—who are disproportionately African American—than on anyone else who violates drug laws. Shortly after the Million Man March, at which Jesse Jackson and others condemned crack sentencing laws for being unjust and racist, Congress voted to ignore the Sentencing Commission’s recommendations and uphold the existing policy. President Clinton lost no time endorsing its action.

Columnist Peter Slevin observed that the 1994 Violent Crime Control Act represented a victory for the Democrats by enabling them “to wrest the crime issue from the Republicans and make it their own.” According to this logic, by signing the draconian Anti-Terrorism Act and defying the Sentencing Commission, Clinton secured a substantial payoff both for himself and his party: in 1996 he was endorsed by the national Fraternal Order of Police—a powerful union that rarely aligned itself with Democrats. During his re-election campaign, moreover, many influential figures celebrated his “no-nonsense” approach to crime. In one particularly effective testimonial, Marc Klaas, whose twelve-year-old daughter had been kidnapped and murdered in 1993, applauded Clinton for having forced Congress to pass a tough crime bill “that mandated life in prison for dangerous repeat offenders, and an expanded death penalty.”

Although Clinton’s “tough-on-crime” agenda was reinforced by the Willie Horton debacle, it had first been adopted years earlier under the influence of the Democratic Leadership Council (DLC), an association of moderate Democrats, primarily from the South, who organized as a counterweight to the minorities, unions, and feminists whose “left-wing” sway over party policy, its members believed, was alienating its core constituents and preventing it from recapturing the presi-

dency. Accordingly, even as crime rates began falling DLC members began supporting muscular “anti-crime” policies. As GOP strategist Ed Rogers observed, “the Democrats got tired of letting us beat them with that club.”

When Clinton ran for the presidency in 1992, and again in 1996, his so-called “triangulation” campaigns clearly bore the DLC’s imprint. Like other “New Democrats” running at the same time, he promoted measures in addition to crime—particularly relating to taxes and welfare—that were indistinguishable from ones traditionally advocated by the Republicans. As a result, observed conservative strategist Don Devine, “Bill Clinton has moved the Democratic Party dramatically to the right.” When that happens, he added, “it makes it harder for the other party, which calls itself the conservative party, to say what it represents.... Now it’s hard for us to say how we are different from them.”

Al From, President of the DLC, agrees with Devine: “In the nineties, there has been only one successful philosophy for electing and governing in advanced western democracies—the Third Way.” Just as successful Democrats raided the GOP’s arsenal in the last two presidential elections, From says, to be successful in 2000 the Republicans had to “steal our policies”: “They [had] to become credible on compassion issues, just as in 1992 we had to become credible on fiscal discipline, toughness on crime, and welfare.”

As the 2000 race illustrated, From says, to be successful candidates had to sound pretty much alike: there was “no left-liberal in the race—no Jesse Jackson or Paul Wellstone—not even a labor liberal like Richard Gephardt or Tom Harkin, who ran in 1988 and 1992, respectively.” Among the Republicans, there was “no conservative supply-side libertarian—no Jack Kemp or Phil Gramm or Steve Forbes.” There was a Steven Forbes running, to be

sure, but not the same one who ran in 1996; “this one [was] a religious activist.” Those likely to succeed tended to be, like the Democrats, Third Wayers—“free trade and globalists, foreign-policy activists, defense hawks, and people who believe in practical compassion or conservative idealism.”

By their firm adherence to “Third Way” principles, both Gore and Bush muted their differences on the two issues most closely related to crime-in-the-streets themes: gun control and capital punishment. As a result of their pusillanimity, the electorate was denied the education that substantive debate could have provided, and robbed of any meaningful policy options from which to choose.

In principle, the two candidates endorsed substantially different policies on gun control. As the campaign progressed, however, they began downplaying their differences, lest they alienate prospective supporters. Pollster Terry Madonna observed, “There is caution on both sides about getting too deeply into this because it cuts both ways.... They will both talk about [guns] if asked, but you won’t see guns as a major campaign issue.” In Bush’s case, emphasizing his positions could have bolstered his popularity among males, but would have jeopardized some female support. Gore, on the other hand, knew that while his gun-control policies appealed to many women, they might alienate voters who feel passionately about gun ownership, in particular union members in the all-important “swing” states. During the third debate, in fact, Gore stressed his support for gun owners’ rights.

Both Bush and Gore are strong proponents of capital punishment. During his five years as governor of Texas Bush presided over the execution of 143 people—considerably more than any other state since the Supreme Court reinstated capital punishment in 1976. In 1995 he

signed a state law—the so-called “speed up the juice” law—that streamlined the appeals process, and he successfully militated against a bill that would have prohibited the execution of people who are mentally retarded. Critics have charged that of all 38 states that have a death penalty, Texas is the most unfair—so unfair, in fact, that Amnesty International has accused it of violating international human rights.

During the third debate between the candidates, a member of the audience questioned Bush about his record on capital punishment. Gore could have seized this opportunity, during his rebuttal, to point out that his opponent’s record scarcely illustrated the “compassionate conservatism” he claimed to embody; but as someone who had himself supported capital punishment since he was first elected to Congress in 1976, and as a candidate intimately aware of public opinion, he declined to offer even a mild criticism of Bush’s performance.

And asked if, as President, he might follow the lead of the Republican Governor of Illinois, George Ryan, who imposed a moratorium on executions in his state until reforms could render the system less error-prone, Gore’s response was immediate and emphatic: No, he would not.

To the extent Gore mentioned crime at all, he stuck to politically safe platitudes similar to—and often indistinguishable from—ones advocated by Bush: he would fight for a crime victims’ bill of rights, including a constitutional amendment to ensure that victims, and not just criminals, are guaranteed protections. He would seek more federal funds to hire prosecutors and police officers, longer sentences for anyone who victimized the elderly, and tougher penalties for anyone who misused the internet to “prey on our children and violate our privacy.” He also wanted a national law against hate crimes

(here differing from Bush, who thought such a law was unnecessary and even mischievous).

“Neither candidate so much as whispered those liberal code words ‘root causes,’ or referred to the almost quaint-sounding notion that racism and family disintegration and chronic poverty might contribute to lawlessness.”

Victims’ rights and internet scams are important issues, of course. But they pale in magnitude alongside other crime-related problems that afflict this country; and never was the need for thorough debate more urgent than in the 2000 presidential election. Yet in deference to the public’s apparent punitiveness, neither candidate even alluded to these problems. Imprisonment rates are sky-high: two million people languish in US prisons—a rate six times that of Canada and Australia, and five times that of any country in the European Union—but neither Gore nor Bush questioned the need for or propriety of incarcerating so many people. Expenditures for this country’s “war on drugs” have gone from one billion dollars in 1980 to a whopping 35 billion in 1999, at the same time the amount spent on law enforcement, in general, topped 93 billion dollars.

Neither candidate asked if such outlays were cost-effective, or whether some percentage of these funds might be better spent on education, say, or other social needs. Neither Bush nor Gore seemed troubled by the devastation wreaked on minority neighborhoods when so many of their young men are behind bars, or by the skewed priorities adopted by rural communities as they become dependent upon prison construction and maintenance for their economic survival.

In apparent thrall to the triangulation politics mastered by Bill Clinton, both Gore and Bush advanced crime-related platforms that represented the triumph of the conservative agenda. Neither candidate so much as whispered those liberal code words “root causes,” or referred to the almost quaint-sounding notion that racism and family disintegration and chronic poverty might contribute to lawlessness.

The unrivaled hegemony of the “tough on crime” discourse, however, may have represented less a capitulation to a harsh-minded public—since studies show that in many circumstances the public is considerably less punitive than politicians perceive it to be—than a failure of liberals to articulate and defend an alternative agenda. Brent Staples, writing in *The New York Times*, suggests that the conservative narrative has prevailed not because the much ballyhooed “Third Way” policies are inherently superior or even appropriate, but because liberals themselves have no clear vision of who they are or what they should be seeking to accomplish. As a consequence they have been unable to articulate values that resonate with Americans—in contrast to conservatives, whose law and order rhetoric complements the public’s deep-seated commitment to individual responsibility. Until liberals reconnect with their time-honored values, the conservatives will continue winning—if only by default. ●