

Less Crime, More Punishment: Violence, Race, and Criminal Justice in Early Twentieth-Century America

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At first glance, this story seems familiar, if baffling. Patterns of crime and punishment in the United States moved in opposite directions, disrupting social life, distorting political institutions, and roiling race relations. Violent crime surged, and rates of murder and robbery exploded, particularly in large cities, for a quarter century. Criminals seemed more vicious than ever. Unable to respond to the crisis, the American legal system appeared weak and ineffective. Feckless, corrupt policemen proved no match for a new breed of criminal, while gullible jurors, indifferent prosecutors, and clever defense attorneys who exploited legal technicalities rendered the criminal justice system toothless, leaving the public in peril. With few offenders apprehended, let alone convicted, the prison population remained small, and executions were rare, despite the explosion in crime.

But then both trends reversed. Rates of violent crime plummeted, falling to their lowest levels in decades. Like the earlier rise in crime, the drop in violence was most precipitous in the nation's major urban centers, although murder, assault, and robbery fell nearly everywhere. Notwithstanding this plunge in serious crime, legislators embarked on a far-reaching law-and-order crusade. They passed draconian laws, closed legal loopholes, initiated a massive prison-building program, limited the power of juries, and expanded federal law enforcement, all in a frantic "war on crime." At both the local and the national levels, opportunistic politicians seized on the crime panic, manipulating fears of street crime to secure office and expand government power. Conviction rates soared and prison populations skyrocketed, even as crime levels plunged. While the rate of capital crime decreased, the rate of executions increased. At the same time, law and order became racialized, and conviction and incarceration rates for African Americans jumped disproportionately. Legislative reforms and law enforcement strategies that would have previously encountered fierce political opposition enjoyed popular support when cast as crucial weapons in a war on crime—and when implicitly framed in terms of protecting respectable white citizens from African American "predators."

The mismatch between patterns of crime and punishment has commanded particular attention from historians, including many of the contributors to this special issue. This disjuncture, however, occurred not during the closing decades of the twentieth century; rath-

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er, it unfolded between the end of World War I and the start of World War II. During the interwar period policy makers, political leaders, and law enforcers launched a massive, hydra-headed response to a crime wave that quickly crested, justifying more aggressive policing, spearheading a dramatic expansion in federal law enforcement, forging the rise of the federal prison system, producing a sharp increase in prison populations, and establishing the high-water mark for executions in the nation's history. To be sure, the recent increase in incarceration is more pronounced than its interwar counterpart. But the late twentieth-century law-and-order crusade and the ensuing birth of the carceral state are built on the social, legal, and political changes of an earlier, less familiar disjuncture between crime and punishment, when less crime produced more punishment, particularly for African Americans.

Crime and Punishment

The relationship between crime and punishment is complex; trends in the latter are often only loosely connected to the former. This essay explores the curious, counterintuitive connection of U.S. crime and punishment between the two world wars. Historians have produced a rich literature on early twentieth-century violence, particularly on homicide, and the prison. Less is known, however, about the relationship between crime and punishment or the process through which suspects became prisoners during the interwar period. Aggregate-level data, often generated by legislative reports and Progressive Era investigations, provides snapshots of the number of crimes committed, the number of suspects charged, and the number of inmates, though such quantitative evidence fails to reveal which crimes were cleared, which suspects were indicted, tried, convicted, and incarcerated, or how this changed over time, making it difficult to explore the relationship between patterns of crime and trends in punishment. Analyzing this relationship requires an analysis of case-level data, which allows scholars to trace individual suspects through the criminal justice system from arrest to trial.¹

This essay blends aggregate-level data with case-level data and hence links broader patterns of crime and punishment to the trends unearthed by tracking individual cases. The case-level analysis draws particularly from a remarkably rich cache of New Orleans police and court records and traces more than 2,100 homicides from crime to punishment. With its colorful history and Deep South racial and institutional conventions, New Orleans was hardly a typical American city; yet its patterns of crime and punishment mirrored national interwar trends, much as recent changes in violence and incarceration reflect local conditions but still follow national rhythms. New Orleans suffered from high rates of violent crime, though homicide rates rose and fell in virtual lockstep with those of other cities. While historians have not systematically examined conviction data for this period, New Orleans's trends in punishment are also consistent with aggregate-level state and national imprisonment patterns. Thus, shifts in criminal justice in New Orleans suggest how national trends and the changing politics of law and order intersected with the realities of crime and punishment in interwar America.²

¹ Roger Lane, *Murder in America: A History* (Columbus, 1997); Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941* (New York, 2008).

² There were 2,116 homicides in New Orleans between 1920 and 1945. Information on New Orleans homicide numbers for that period comes from my dataset, culled from local manuscript records, including police reports, witness transcripts, coroner's records, autopsy reports, criminal court case files, and local newspapers. The core records are New Orleans (La.) Police Dept. Homicide Reports 1893–1947, Records of Police Departments in New Orleans,

Crime, 1900–1925

The violent-crime spike at the start of the twentieth century reflected a confluence of social and cultural forces, including a surge in the proportion of young men in the population, an increase in racial conflict and ethnic tensions, and shifts in gender roles. Between 1900 and 1925 the nation's homicide rate swelled by nearly 50 percent. The increase was especially large in major cities; Baltimore's homicide rate doubled, New Orleans's and Chicago's tripled, and Cleveland's quadrupled. During the first half of the 1920s alone, lethal violence doubled in Chicago, Detroit, New Orleans, and Rochester, New York.³

The character of violent crime changed as much as the level of crime. Al Capone's exploits notwithstanding, Prohibition, organized crime, and bootlegging contributed only modestly to the surge in lethal violence during the 1920s, and city dwellers expressed little concern that turf wars between rival gangsters would affect them. Although many policy makers worried that immigrants and African Americans were "naturally" prone to crime, officials typically viewed such violence as an internal problem largely confined to insular ethnic enclaves and African American neighborhoods. The urban violence of the 1920s, however, was another matter and included an explosion in robberies and robbery-homicides. A new breed of criminal seemed more calculating and more predatory, as holdup men and bank robbers, armed with Thompson submachine guns and fast getaway cars, invaded business districts, targeted respectable citizens, and evaded law enforcers. By the early 1920s Chicago's robbery rate swelled to one hundred times the rate for London. A series of sensational violent crimes, including the 1920 Wall Street bombing, the 1920 case of Nicola Sacco and Bartolomeo Vanzetti in South Braintree, Massachusetts, and the 1924 murder trial of Nathan Leopold and Richard Loeb in Chicago, contributed to a crime panic. "Unless something is done, and done soon, to check the rising tide of crime," a prominent reformer warned in 1926, "the very foundation of the country itself will be threatened."⁴

Punishment, 1900–1925

The nation's criminal justice system appeared paralyzed as violent crime soared while incarceration and execution rates remained nearly flat. The failure of legal institutions became a political scandal during the 1920s and the subject of intense scrutiny as public and private groups, applying the social-scientific methods characteristic of Progressive

City Archives, Louisiana Division (New Orleans Public Library, New Orleans, La.); and Orleans Parish Criminal Courts records, City Archives, Louisiana Division (New Orleans Public Library).

³ Jeffrey S. Adler, *First in Violence, Deepest in Dirt: Homicide in Chicago, 1875–1920* (Cambridge, Mass., 2006); Lane, *Murder in America*, 214–42. Douglas Eckberg, "Crime, Law Enforcement, and Justice," in *Historical Statistics of the United States: Earliest Times to the Present*, vol. V: *Governance and International Relations*, by Susan B. Carter et al. (New York, 2006), 239. Frederick L. Hoffman, "The Homicide Record for 1925," *Spectator: An American Weekly Review of Insurance*, April 1, 1926, pp. 37–38.

⁴ In rum-running centers at the peak of organized-crime violence, Prohibition-related killings accounted for roughly one-sixth of homicides. See Arthur V. Lashly, "Homicide (in Cook County)," in *The Illinois Crime Survey*, ed. John H. Wigmore (Chicago, 1929), 594–640, esp. 594, 637; and James Boudouris, "A Classification of Homicides," *Criminology*, 11 (Feb. 1974), 525–40, esp. 532. "'Mafia' Death Victim Found on Woman's Tip," *Chicago Tribune*, Oct. 28, 1916, p. 13; Lashly, "Homicide (in Cook County)," 629; Adler, *First in Violence, Deepest in Dirt*, 120–99; Robert M. Lombardo, *Organized Crime in Chicago: Beyond the Mafia* (Urbana, 2013), 15–35. Claire Bond Potter, *War on Crime: Bandits, G-Men, and the Politics of Mass Culture* (New Brunswick, 1998), 71. Lawrence Veiller,

Era research, launched statistical investigations, or “crime surveys.” Their widely circulated conclusions confirmed the public’s worst fears.⁵

Report after report revealed that the criminal justice system neither punished offenders nor protected the public. In American cities, four out of every five killers went unpunished. At the peak of Chicago’s crime wave in the mid-1920s, local prosecutors secured convictions in 22 percent of homicide cases. Law enforcers in New Orleans, New York, and St. Louis fared worse, convicting 14 percent, 19.5 percent, and 20 percent of killers, respectively. Nor were homicide cases an aberration; data on other felonies painted an equally bleak picture of criminal justice in 1920s urban America. Prosecutors in Chicago won convictions in 20 percent of felony cases, compared to 21 percent in New York City and 25 percent in Cincinnati. Simply put, the overwhelming majority of violent offenders went free.⁶

Contemporary experts attributed the failure to incompetence and inefficiency at every level of the criminal justice system, but they heaped particular criticism on the police. “The chief factor in the increase in crime,” the influential New York reformer Lawrence Veiller concluded in 1925, “is unquestionably the lack of law enforcement.” Police in Cleveland and Baltimore failed to make arrests in two-thirds of felony cases, whereas Buffalo law enforcers apprehended no suspects in 97 percent of local robberies, leading the National Crime Commission to quip that crime “would appear to be the safest business in which one could engage.”⁷

Other critics held jurors responsible for the breakdown of law and order. The “popular impression,” the Wickersham Commission reported in 1931, was “that the jury is the weak spot in the administration” of justice. Prosecutors and judges especially blamed befuddled jurors—and the unscrupulous defense attorneys who confused them—for the low conviction rate in felony cases. One Cleveland judge responded to a “surprising verdict of acquittal” by suggesting that “it is now apparently lawful to attack a man with an axe, provided the blunt side only is used.”⁸

There was some truth to these charges. Popular justice trumped the rule of law for early twentieth-century jurors who embraced expansive notions of self-defense and typically

⁵ “The Rising Tide of Crime,” *World’s Work*, 51 (Dec. 1925), 133–47; Adler, *First in Violence, Deepest in Dirt*, 236–71. Lawrence Veiller, “The Way to War on Crime,” *World’s Work*, 51 (April 1926), 609.

⁶ Margaret Werner Cahalan, *Historical Corrections Statistics in the United States, 1850–1984* (Washington, 1986), 30; M. Watt Espy, Howard Allen, and Jerome M. Clubb, “Executions in the United States, 1608–1940: The ESPY File—Summary Data of Executions Collected by M. Watt Espy between 1986 and 1996,” *National Archive of Criminal Justice Data*, www.icpsr.umich.edu/icpsrweb/NACJD/studies/23900/.

⁷ Lashly, “Homicide (in Cook County),” 629; Jeffrey S. Adler, “‘It Is His First Offense. We Might As Well Let Him Go’: Homicide and Criminal Justice in Chicago, 1875–1920,” *Journal of Social History*, 40 (Fall 2006), 5–24. Conviction rates are calculated as the proportion of crimes ending with a conviction. New Orleans figures were corroborated in “Safe Business Is Law Breaking, So Record Shows,” *New Orleans Times-Picayune*, June 19, 1924, pp. 1, 6; and Tennie Erwin Daugee, “Homicide in New Orleans” (master’s thesis, Tulane University, 1931), 10. For conviction rates for other cities, see Louis N. Robinson and the National Crime Commission, *The Relation of the Police and the Courts to the Crime Problem: A Report Submitted to the National Crime Commission* (New York, 1928), 8; H. C. Brearley, *Homicide in the United States* (Chapel Hill, 1932), 132; and Raymond B. Fosdick, *American Police Systems* (New York, 1920), 32. C. E. Gehlke, “Recorded Felonies: An Analysis and General Survey,” in *The Illinois Crime Survey* (1929; Montclair, 1963), 31–107, esp. 63; “No. 4: Report on Prosecution” in *Reports*, by National Commission on Law Observance and Enforcement (6 vols., Washington, 1931), I, 62, <https://www.ncjrs.gov/pdffiles1/Digitization/44542NCJRS.pdf>.

⁸ Veiller, “Rising Tide of Crime,” 136. Lawrence Veiller, “The Menace of Paroled Convicts,” *World’s Work*, 51 (Feb. 1926), 364; Robinson and the National Crime Commission, *Relation of the Police and the Courts to the Crime Problem*, 7.

⁹ “No. 4: Report on Prosecution,” 63. On the low conviction rates attributed to defense attorneys, see “Unscrupulous Criminal Lawyers,” *Chicago Tribune*, Sept. 29, 1930, p. 14. Reginald Heber Smith and Herbert B. Ehrmann, “The Criminal Courts,” in *Criminal Justice in Cleveland: Reports of the Cleveland Foundation Survey of the Administration of Criminal Justice in Cleveland, Ohio*, ed. Roscoe Pound and Felix Frankfurter (Cleveland, 1922), 229–374, esp. 340.

acquitted white men who had killed to affirm masculine privilege. Jurors across the nation endorsed informal means of resolving disputes and refused to interfere with manly rituals for defending personal reputation, family honor, and community values. Some state constitutions, such as those of Illinois and Louisiana, even included provisions that allowed jurors to be “judges of the law as well as of the facts,” thus explicitly permitting jury nullification and contributing to anemic conviction rates. Jurors acquitted husbands who killed their wives’ lovers, and drunken brawlers who engaged in “fair fights,” and they returned not guilty verdicts for men who participated in mob violence, including lynching. Southern law enforcers (disingenuously) insisted that jurors—still all-white—would not convict African Americans charged with intraracial violence. According to a New Orleans official, “it is almost impossible to get a jury who will convict a negro for killing another negro.” During the early 1920s jurors acquitted roughly half of all felony defendants, yet this accounted for less than one-tenth of the cases that ended without a conviction.⁹

Instead, the judges and prosecutors who discharged the lion’s share of felony cases deserved most of the blame. In mid-1920s Chicago, judges dismissed charges in 24 percent of felony cases, and prosecutors “eliminated” 38 percent of felony cases before any defendants went to trial. In New York City, 58 percent of felony cases were dismissed or discharged before they reached grand juries, and that figure approached three-fourths in homicide cases. Inadequate police work sometimes compelled district attorneys to dismiss charges. More often, however, even with murders, prosecutors dropped cases they deemed unimportant. Southern district attorneys, for example, routinely eliminated cases involving black-on-black violence. “So long as they [African American assailants] do not kill white men,” a Louisiana African American newspaper editor explained, “everything is all right. But it is ‘just another nigger gone’ when a colored man is killed.” In New Orleans during the early 1920s, African Americans were two-thirds of homicide victims, 86 percent of whom died at the hands of other African Americans. Yet prosecutors secured convictions in only 6 percent of African American intraracial homicide cases. Northern prosecutors employed a similar approach with immigrant crime, anticipating intransigence from foreign-born witnesses, believing such violence inevitable, and hence casually dismissing cases.¹⁰

Nonetheless, changes in violent crime, combined with mid-1920s exposés, generated panic about the failure of the criminal justice system. Even if middle-class city dwellers cared little about black-on-black or immigrant-on-immigrant crime, they expressed alarm that violence seemed to be bleeding into respectable neighborhoods, particularly as robbery and robbery-homicide rates mounted and as crime surveys exposed the impotence of legal institutions. At the same time, popular ideas about the role of government shifted. Americans increasingly expected legal institutions to preserve social order, gradually privileging the rule of law over popular justice.¹¹

⁹ Elizabeth Dale, *Criminal Justice in the United States, 1789–1939* (New York, 2011), 90–96. *People v. Bruner*, 343 Ill. 146 (1931); *State v. Hayes*, 162 La. 922 (1927). Adler, “It Is His First Offense,” 5–24. “Hanging Only Cure for Homicides, Says Molony,” *New Orleans Item*, July 6, 1924, p. 3. “No. 4: Report on Prosecution,” 64–65.

¹⁰ Gehlke, “Recorded Felonies,” 56, 63; “No. 4: Report on Prosecution,” 64–65, 190, 203. Daugette, “Homicide in New Orleans,” 15; “Check the Criminal,” *Louisiana Weekly*, April 13, 1929, p. 6. “Gun Toting,” *ibid.*, June 25, 1927, p. 6. Adler, *First in Violence, Deepest in Dirt*, 189–91.

¹¹ Dale, *Criminal Justice in the United States*, 97–135. For related shifts in expectations for government, see Amy Louise Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890–1940* (Chapel Hill, 2009); and Lizabeth Cohen, *Making a New Deal: Industrial Workers in Chicago, 1919–1939* (New York, 1990).

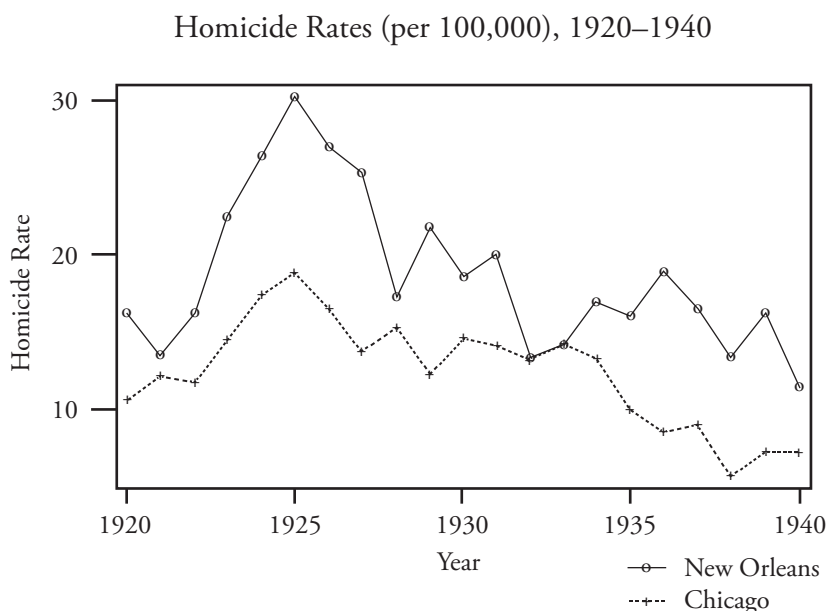


Figure 1. This graph shows the homicide rates (per 100,000 people) in Chicago and New Orleans between 1920 and 1940. SOURCE: Forrest E. Linder and Robert D. Grove, *Vital Statistics Rates in the United States, 1900–1940* (Washington, 1947), 998–1026.

Crime, 1925–1940

During the mid-1920s the crime wave abruptly crested in most cities, and rates of violence plummeted for the next fifteen years. Between 1924 and 1927, homicide rates peaked in Boston, New Orleans, Chicago, Los Angeles, Pittsburgh, Philadelphia, and Detroit. From 1925 to 1929 rates of lethal violence tumbled by 20 percent in Boston, 28 percent in New Orleans, 31 percent in New York City, 32 percent in Chicago, and 37 percent in St. Louis. The decrease continued through the 1930s, even as poverty mushroomed. Between 1925 and 1940, homicide rates plunged by three-fourths in Detroit, by nearly two-thirds in New Orleans, Chicago, Buffalo, and Pittsburgh, and by more than 50 percent in Cincinnati, Cleveland, and Memphis. (See figure 1.) In some cities (and states), the decrease began slightly later, though this trend extended to every corner of the nation. From the mid-1920s until 1940, the homicide rate dipped by one-third nationally. Nonlethal violence followed a comparable trajectory; rates of aggravated assault fell by 23 percent and robbery by 47 percent between 1931 and 1940.¹²

Nearly every kind of lethal violence plummeted, though the dip in male-on-male intraracial crime accounted for the overwhelming majority of the decrease. In New Orleans, the African American rate dropped by 64 percent and the white rate by 55 percent. Robbery-homicide rates fell by one-third, street homicide by one-half, and gun homicide by three-quarters. State-level data reveal similar trends. In Louisiana the homicide rate

¹² For urban rates of homicide, see Frederick L. Hoffman's annual compilations in the insurance-industry periodical the *Spectator*. Nationally, the homicide rate peaked in 1933. Eckberg, "Crime, Law Enforcement, and Justice," 239. *Uniform Crime Reports for the United States and Its Possessions* (68 vols., Washington, 1940), XI, no. 1, pp. 6–7.

dipped by 46 percent among African American residents and by 45 percent among white residents. Illinois experienced a parallel reduction, with the African American rate shrinking by 67 percent and the white rate by 48 percent. In spite of the ravages of the Great Depression, on the eve of World War II the United States was the least violent it had been for at least four decades, confounding long-held (and enduring) assumptions about the relation of poverty and violence. Although demographic factors, such as the leveling of sex ratios and the aging of the population, probably contributed to the decrease, neither historians nor criminologists have fully explained the sharp drop in violent crime that occurred during the 1930s.¹³

Punishment, 1925–1940

The steep drop in violent crime, however, had little effect on the crime panic. During the mid-1920s, policy makers launched a war on crime—a crusade that assumed a life of its own, increasingly detached from actual crime. As violence became a white-hot political issue, and as Americans looked to criminal justice institutions to reestablish law and order, draconian laws flooded state legislatures, municipal officials declared a “war on bandits,” patrolmen adopted more aggressive tactics, and prosecutors embraced new strategies for winning convictions. Long after the crime wave of the early 1920s had ended, the war on crime persisted. And like most wars, this one enhanced the authority of the state and provided myriad opportunities for political leaders to pursue other agendas, often concealed within anticrime measures.

Early in the crime wave the federal government entered the fray, beginning with Prohibition, but then governmental power assumed new crime-fighting forms. Justice Department officials leveled scathing criticism at municipal policemen and proposed to fill the crime-fighting void. In 1922 an assistant U.S. attorney general announced that “local authorities were not doing their full duty in the matters of law enforcement, and that as a result ‘the great masses of the people were clamoring for the Federal Government to do that which the State Governments had failed to do, and more.’” The federal government expanded its role in crime fighting by extending its authority to include, for example, wiretapping and intervention in some kidnapping cases. By the early 1930s the Hoover administration had established a federal prison system and the Federal Bureau of Narcotics. For Franklin D. Roosevelt, the crime panic necessitated federal action but also provided another vehicle for broadening the power of the federal government. In his 1934 State of the Union address, Roosevelt asserted that “crimes of organized banditry, cold-blooded shooting, lynching, and kidnaping have threatened our security,” adding that “these violations of ethics and law call on the strong arm of government for their immediate suppression.” J. Edgar Hoover proved to be a master at manipulating public anxiety about crime. At the same time that the Federal Bureau of Investigation (FBI)’s *Uniform Crime Reports for the United States and Its Pos-*

¹³ My dataset indicates that, particularly after 1930, rates of domestic homicide and lethal violence committed by women changed modestly. For male-on-male violence data, see Randolph Roth, *American Homicide* (Cambridge, Mass., 2009). Forrest E. Linder and Robert D. Grove, *Vital Statistics Rates in the United States 1900–1940* (Washington, 1947), 375, 379. Eckberg, “Crime, Law Enforcement, and Justice,” 239. While numerous historians have noted this drop in violence, it has not been systematically analyzed, and there is no overarching explanation for the counterintuitive pattern. See Eric H. Monkkenon, *Murder in New York City* (Berkeley, 2001), 17; Lane, *Murder in America*, 248; and Roth, *American Homicide*, 439–41. For a criminologist’s perspective, see Barry Latzer, “Do Hard Times Spark More Crime?,” *Los Angeles Times*, Jan. 24, 2014, p. A21.

sessions charted the drop in robberies, Hoover unleashed a public relations campaign that transformed bank robbers into “public enemies” and transformed himself into a celebrity.¹⁴

State lawmakers responded as well, spearheading a legislative assault on lenient judges and naïve jurors. In 1926 New York enacted the Baumes Laws, which limited the rights of defendants, mandated extended prison terms for recidivists, and lengthened the sentences of those convicted of felonies using firearms. New York officials claimed credit when crime rates fell, and the law became a model for other states; within two years, California, Kansas, New Jersey, North Dakota, South Dakota, Oregon, Vermont, and Michigan copied New York’s get-tough-on-crime legislation.¹⁵

Municipal law enforcers faced intense pressure to join the war on crime and reaped great rewards for doing so. Buoyed by mayors’ vows “to put an end promptly to this reign of lawlessness,” the New Orleans police secured a new arsenal for its war on crime. Police expenditures tripled during the 1920s, and the department purchased “high-powered automobiles” and armed local law enforcers with Thompson submachine guns and a contraption dubbed the “death-dealing weapon”—two submachine guns mounted on a motorcycle. At a time when the city provided no training for new policemen, New Orleans officials mandated that patrolmen learn “how to kill bandits.”¹⁶

Reinventing themselves as crime fighters, the hitherto bumbling municipal police became increasingly aggressive with suspects. In addition to “shooting to kill,” patrolmen and detectives adopted more coercive interrogation tactics, justifying their behavior by invoking the war on crime. Police brutality was hardly new, but it became more systematic. The Wickersham Commission, headed by former attorney general George Wickersham, released *Report on Lawlessness in Law Enforcement* in 1931, offering a blistering indictment of police behavior. The report found that in many cities policemen routinely tortured suspects; in Chicago, “it was an exception when a suspect was not subjected to personal violence.” Detectives beat suspects with rubber hoses, held guns to the heads of suspects who refused to confess, applied electric currents to the genitals of suspects who would not admit their guilt, and occasionally murdered noncompliant suspects. Chicago was not unique. Across the nation police officials adopted these tactics against “brutal ruffians,” confident that “the public are less inclined to blame the police for beating up such men than for letting them get away scotfree.” Although the commission’s report ignited a public outcry, such practices continued unabated in many cities. Through the 1930s

¹⁴ “Officials Organize to Check Rising Wave of Crime,” *New York Times*, Jan. 12, 1922, p. 4. Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (New York, 2006), 42, 65. Franklin Delano Roosevelt, “State of the Union,” Jan. 3, 1934, www.let.rug.nl/usa/presidents/franklin-delano-roosevelt/state-of-the-union-1934.php. For a fuller discussion of the politics of crime in interwar America, see Potter, *War on Crime*; and Kenneth O’Reilly, “A New Deal for the FBI: The Roosevelt Administration, Crime Control, and National Security,” *Journal of American History*, 69 (Dec. 1982), 638–58.

¹⁵ “Look for Your Answers Here,” *Cleveland Plain Dealer*, May 9, 1928, p. 20. “Says Baumes Law Cut Crime 25 P.C.,” *Boston Herald*, Feb. 9, 1927, p. 19; “Good Laws for Bad Men,” *Trenton (NJ) Evening Times*, July 19, 1928, p. 6; “Questions and Answers,” *New Orleans Times-Picayune*, Aug. 19, 1928, p. 22; “Baumes Laws for Ohio,” *Cleveland Plain Dealer*, May 31, 1928, p. 20; “Police Chiefs Meet in Asheville,” *Greensboro (NC) Daily News*, Sept. 11, 1928, p. 6. For more information about the Baumes Laws, see Michael Willrich, “Criminal Justice in the United States,” in *The Cambridge History of Law in America*, vol. III: *The Twentieth Century and After (1920)*, ed. Michael Grossberg and Christopher Tomlins (New York, 2008), 205.

¹⁶ “End Crime or Quit, Healy Tells Police,” *New Orleans Item*, May 14, 1925, p. 6. Louis Vyhnanek, *Unorganized Crime: New Orleans in the 1920s* (Lafayette, 1998), 29; Editorial cartoon, *New Orleans Item*, Nov. 20, 1922, p. 6; “Bandits Beware,” *ibid.*, July 10, 1929, p. 1. “How to Kill Bandits to Be Taught Police,” *ibid.*, Oct. 28, 1925, p. 1.

municipal law enforcers defended “rough” interrogation procedures as a crucial tool in the war on crime.¹⁷

Prosecutors also explored new ways to fight crime and satisfy skittish voters. District attorneys pursued cases more aggressively and prosecuted suspects for crimes that previously had been casually dismissed. Prosecutors, like policemen, encouraged suspects to confess, often reducing charges on criminals who pled guilty. Far more often than before, district attorneys threatened to file capital charges in homicide cases and then accepted plea bargains that mandated life sentences.

Race and Criminal Justice

In New Orleans a confluence of factors diverted the war on crime into a crusade against African American suspects. Changing patterns of crime contributed to this shift, though local officials responded selectively to new trends. As municipal rates of violence plunged, white residents increasingly associated predatory crime with African American residents. In fact, the numbers of violent crimes committed by African Americans fell more sharply than that committed by whites, and the proportion of robberies and murders committed by African Americans changed little after 1925. Black-on-white violence did not increase, but shifts in popular perception and law enforcement tactics transformed African Americans residents into the new predators, especially as the crime panic outlasted the crime wave. Bank robberies, the symbol of early 1920s urban violence and middle-class vulnerability, became uncommon by the late 1920s. Ironically, as the city became safer, prosaic forms of public violence, such as small-scale robberies, became newsworthy.¹⁸

African American lethal violence became less common but more public. While the rate fell, the proportion of African American homicides taking place on the streets and in local shops and bars rose from just over half in the early 1920s to more than four-fifths by the early 1940s. Thus, African American violence became more visible to white New Orleanians at a time when the crime panic persisted, when high-profile bank heists no longer garnered press attention, and when white criminals seemed less visible.¹⁹

New cracks in the local racial hierarchy influenced the operation of interwar legal institutions. As in other American cities, the Great Migration sharply increased New Orleans's African American population, which grew twice as fast as the white population during the 1920s and three times as fast during the 1930s. The Supreme Court also struck down New Orleans's race-based zoning law, leading white residents to fear that their neighborhoods were being invaded. Pressure from the federal government to open New Deal relief programs to African American residents only reinforced their sense of besiegement. In 1935 the local district attorney announced in newspaper advertisements that “at no time in the history of our State has White Supremacy been in greater danger.” The war on crime coincided with new threats to racial stability. Furthermore, targeting African

¹⁷ Ernest Jerome Hopkins, *Our Lawless Police: A Study of the Unlawful Enforcement of the Law* (New York, 1931), 319. “No. 11: Report on Lawlessness in Law Enforcement,” in *Reports*, by National Commission of Law Observance and Enforcement (6 vols., Washington, 1931), IV, 125, 130. Hopkins, *Our Lawless Police*, 319.

¹⁸ For an analysis of the link between race and crime in early twentieth-century America, see Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, Mass., 2010).

¹⁹ My dataset indicates that ethnicity was not a significant factor in lethal violence. By the early 1920s, native-born Americans accounted for over 90% of those involved in local homicides.

Americans came at little political cost, for the disfranchisement of nonwhite residents was nearly complete. By making African American predators the new face of public disorder and the new focus of the beefed-up criminal justice system, city officials pandered to jittery voters, affirmed their commitment to white supremacy, and demonstrated their crime-fighting zeal.²⁰

Race control became embedded in the crime-control crusade, shifting the enforcement of a racialized definition of law and order from popular justice and white mobs to legal institutions and the police. Largely shielded from white criticism because they brutalized African American residents, law enforcers employed coercive interrogation methods to veil rough justice. In the process, the locus of police violence shifted from the street (and the arrest) to the precinct house (and the interrogation session). While the rate of police homicide changed little, the proportion of suspects killed while in custody and the number of confessions obtained spiked.

Beginning in the late 1920s, police officials launched dragnets in response to reports of black-on-white crime. After a 1929 holdup, for example, the police chief “ordered that ‘all suspicious negroes’ be apprehended and searched for concealed weapons.” Similarly, following the 1932 robbery-homicide of a white grocer, policemen detained, finger printed, and photographed more than nine hundred African American suspects—or one out of every sixty African American men in the city. New Orleans police officials repeatedly employed this strategy, which reached its apogee in 1943, with the late-night on-street murder of the shipyard worker John Sansone. No one witnessed the shooting of Sansone, but a white nurse heard the gunshot, peered out a second-floor window, and saw “a man who appeared to be a colored man” near the fallen worker. The police superintendent “ordered the arrest of all Negroes found prowling the streets late at night.” Although the police failed to apprehend Sansone’s killer, they detained one thousand African American men, filed weapons charges against those carrying concealed dirks and revolvers, filed loitering or vagrancy charges against those without “legitimate occupations,” and held those who failed “to carry with them their draft cards” for federal authorities. All at once the dragnets demonstrated the crime-fighting resolve of the police, calmed white fears of social disorder, and funneled African American men into police stations and penal facilities.²¹

Prosecutors also focused on African American suspects. Eager to buoy their conviction rates, district attorneys vowed “that Negro slayers of Negroes will be thoroughly prosecuted” and made particular use of plea bargains. In black-on-black homicide cases, they frequently threatened to file capital charges and then accepted guilty pleas that mandated life imprisonment. The Supreme Court decision in *Norris v. Alabama*, a 1935 retrial of the Scottsboro boys that declared the exclusion of African Americans from juries un-

²⁰ U.S. Department of Commerce, Bureau of the Census, *Fifteenth Census of the United States: 1930; Population*, vol. II: *General Report—Statistics by Subjects* (Washington, 1932), 70. *Harmon v. Tyler*, 273 U.S. 668 (1927). Alan Maclachlan, “Up from Paternalism: The New Deal and Race Relations in New Orleans” (Ph.D. diss., University of New Orleans, 1998), 137. *New Orleans Times-Picayune*, May 17, 1935, advertisement, 6. Riley E. Baker, “Negro Voter Registration in Louisiana,” *Louisiana Studies*, 4 (Winter 1965), 332–49, esp. 338–39.

²¹ “Found Shot; May Be Bandit,” *New Orleans Item*, April 27, 1929, p. 1. “Bringing Things to Light,” *Louisiana Weekly*, April 2, 1932, p. 6. “Report of Homicide of Peter Sansone,” Aug. 18, 1943, vol. 46: 1943, Homicide Reports 1893–1947, Records of Police Departments in New Orleans. “Gang Is Hunted in Slaying Here,” *New Orleans Times-Picayune*, Aug. 19, 1943, p. 1; “Hunt for Killers Yields Weapons,” *ibid.*, Aug. 20, 1943, p. 5; “Indiscriminate Arrests,” *Louisiana Weekly*, Aug. 28, 1943, p. 10; “Police Arrest 20 Loiterers, Suspects,” *New Orleans Times-Picayune*, Sept. 3, 1943, p. 2.

constitutional, reinforced prosecutors' efforts to avoid criminal trials by securing pretrial pleas.²²

Between the early 1920s and the early 1930s New Orleans homicide conviction rates more than doubled. The execution rate also mushroomed, giving prosecutors additional leverage when they bargained with homicide suspects. The reinvigorated criminal justice system, however, mainly convicted African American residents. The conviction rate for white homicide suspects inched upward by 1 percent while the rate for African American suspects more than tripled. In African American intraracial homicide cases, the conviction rate nearly quadrupled.²³

Between 1925 and 1940 Louisiana's prison population ballooned despite the decrease in violent crime. The state incarceration rate swelled by more than 50 percent, and twice as many inmates entered state correctional facilities in low-crime 1940 as in high-crime 1925. The inmate population at Louisiana's maximum-security institution, Angola State Penal Farm, doubled during the 1930s. The prison's white population rose by 39 percent while the African American inmate population increased by 143 percent.²⁴

National data suggests that a similar set of forces operated outside of New Orleans and Louisiana. The U.S. homicide rate fell by 35 percent between 1933 and 1940, including a 48 percent drop for whites and a 20 percent reduction for African Americans. During the same period, the homicide arrest rate decreased by 8 percent for whites but increased by 25 percent for African Americans. The disparity for robbery arrests was more pronounced, with the white rate dipping by 42 percent and the African American rate rising by 23 percent.²⁵

Similarly, the U.S. incarceration rate surged by 67 percent between 1926 and 1940, and the proportion of African American inmates increased by one-third. (See figure 2.) Capital punishment changed in comparable ways. Nearly 50 percent more prisoners were executed during the 1930s than during the 1920s, and more Americans were executed in 1935 than during any other year. Furthermore, the racial composition of those executed shifted. In 1930 whites made up nearly 60 percent of those executed. A decade later, African Americans were 60 percent of the executions.²⁶

In short, during the low-crime 1930s, the U.S. incarceration rate surged to its highest level until the last quarter of the twentieth century, executions peaked in U.S. history, and

²² "Murders Must Stop," *Louisiana Weekly*, April 15, 1939, p. 8. *Norris v. Alabama*, 294 U.S. 587 (1935). In Louisiana, racial exclusion persisted for another decade.

²³ My dataset indicates that during the 1920–1934 period the execution rate rose from .6 percent to 3.3 percent.

²⁴ Patrick A. Langan et al., "Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925–1986," May 1988, in *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925–1986: [United States]*, by Interuniversity Consortium for Political and Social Research (Ann Arbor, 1989), appendix C, p. 107, www.bjs.gov/content/pub/pdf/hspsfhy2586.pdf; Cahalan, *Historical Corrections Statistics in the United States*, 30. For Angola, Louisiana, data, see U.S. Department of Commerce, Bureau of the Census, *Fifteenth Census, 1930: Louisiana* (microfilm, 45 reels, National Archives and Records Administration, 1933), reel 826: West Feliciana; and U.S. Department of Commerce, Bureau of the Census, *Sixteenth Census of the United States, 1940. Population* (17 vols., Washington, 1942–1943), IV, pt. 2 Alabama–Louisiana.

²⁵ *Uniform Crime Reports for the United States and Its Possessions* (68 vols., Washington, 1933), IV, no. 4, p. 21; *Uniform Crime Reports for the United States and Its Possessions* (68 vols., Washington, 1940), XI, no. 4, p. 225.

²⁶ Langan et al., "Historical Statistics on Prisoners in State and Federal Institutions," 10–21; Cahalan, *Historical Corrections Statistics in the United States*, 35; Eckberg, "Crime, Law Enforcement, and Justice," 258. While Prohibition contributed to the rise in incarceration, the increase in admissions continued long after the Eighteenth Amendment's repeal. Cahalan, *Historical Corrections Statistics in the United States*, 18, 217; M. Watt Espy, Howard Allen, and Jerome M. Clubb, "Executions in the United States, 1608–1940," Eckberg, "Crime, Law Enforcement, and Justice," 262.

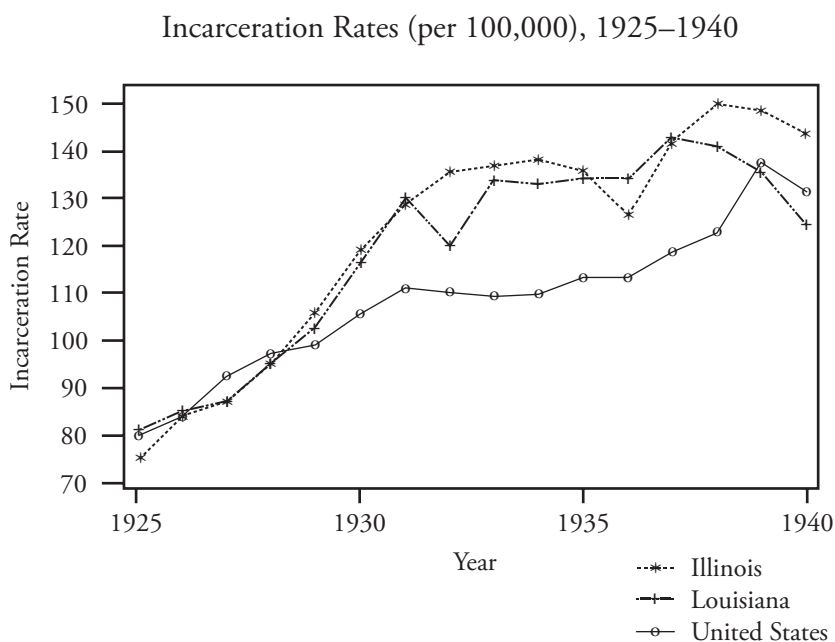


Figure 2. This graph shows the incarceration rates (per 100,000 people) for Illinois, Louisiana, and the United States between 1925 and 1940. SOURCE: Patrick A. Langan et al., “Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925–1986,” May 1988, in *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925–1986: [United States]*, by Interuniversity Consortium for Political and Social Research (Ann Arbor, 1989), appendix C, pp. 10–21.

arrest rates for violent crime, incarceration rates, and executions rose disproportionately for African Americans. Police tactics became more aggressive and focused more squarely on African American suspects while prosecutors flexed their discretionary muscles, inflating conviction rates largely by securing guilty pleas from African American suspects. Crime and punishment moved in opposite directions, with race mediating the disjuncture.

There is scant evidence that the increase in punishment accounted for the decrease in violent crime during the late 1920s and 1930s. Even after the surge in conviction rates, law enforcers failed to convict the majority of killers and robbers. Moreover, very few murderers during this period were recidivists. Finally, at least in New Orleans (and Louisiana), the law-and-order crusade focused almost entirely on African American suspects and hence could not have accounted for the sharp drop in white violent crime. Rather, the increase in early twentieth-century punishment, at best, only loosely and modestly contributed to the decrease in violence.

The crime panic waned during the late 1930s. National defense supplanted street violence as a political issue, and conviction rates flagged, though racial disparities persisted. The law-and-order frenzy ended, but the bulked-up criminal justice machinery remained, including draconian laws, federal involvement in law enforcement, and largely unchecked prosecutorial discretion.

Conclusion

Responses to the early 1920s crime wave enabled government officials to enhance federal law enforcement authority, construct the federal prison system, and build the FBI into a major crime-fighting and surveillance institution. State and local legislators invoked the war on crime to launch the “big-house” era of prisons, reduce the power of judges and juries, fend off criticism of police brutality, and shore up a shaky racial hierarchy. Racially focused police dragnets became commonplace, and prosecutors, under the guise of crime fighting, expanded their discretion and sharply increased convictions of defendants, a growing proportion of whom were African American. Thus, while violent crime fell during the 1930s, prison populations rose, and the proportion of African American inmates swelled. Capital punishment followed a similar trajectory, ballooning during the early 1930s and increasingly aimed at African Americans.

The interwar spike in incarceration was modest in comparison with recent trends. The early twenty-first-century imprisonment rate, for example, is nearly six times the pre-World War II level. But early twentieth-century trends in crime and punishment eerily presaged late-century developments, particularly in the way a crime panic fueled the explosive development of penal institutions, generated a surge in imprisonment, and contributed to racial disparities in punishment. Moreover, early twentieth-century criminal justice suggests crime rates exerted far less influence on incarceration rates than did the politics of crime, and especially the priorities of prosecutors. In modern America, over 95 percent of felony convictions are secured from guilty pleas, typically from poor and African American suspects. Pre-World War II prosecutors used similar strategies with comparable results. The late twentieth-century law-and-order crusade was more pronounced, but the recent disjuncture between crime and punishment echoes the 1930s shifts, when less crime also produced more punishment.²⁷

²⁷ William J. Stuntz, *The Collapse of Criminal Justice* (Cambridge, Mass., 2011), 264.