
What the Future Holds for Crime and Justice in the U.S. under President Biden

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Despite facing an extremely deadly, costly, and poorly managed pandemic in a challenged economy, and inheriting a criminal legal system (CLS) fraught with extreme blows to justice made by President Donald Trump, President Joseph Biden is likely able to make a significant and positive impact on crime and justice in the U.S. First, it is necessary to summarize Trump's decision-making related to crime and justice, including its likely legacy. Second, the recent attempted coup and domestic terrorism by white supremacists and Trump supporters, egged on by Trump, speaks to the deep-seated racism in the U.S. It is important to recognize that the U.S. CLS, including incarceration, has been built and developed by colonization and slavery, so the highly punitive and racist U.S. CLS by no means started with Trump and it will not end with Biden. Stated alternatively, the racist, marginalizing, and criminalizing origins of slavery and colonization in what is now the U.S., were extreme with a strong legacy that cannot be easily disrupted (Hernández, 2017; Wilkerson, 2020). Although President Biden cannot end the highly punitive U.S. CLS fraught with racism, classism, sexism and other forms of intersectional oppression, he can and has promised to make some very concrete and meaningful changes. But like all colonizing countries, and even more so in a country also founded on massive enslavement, extraordinary reckoning and structural changes need to occur (e.g., Wilkerson, 2020).

Trump's Racist Criminalizing Legacy

Arguably, the most significant change President Barack Obama made in the criminal legal system (CLS) was on his way out of his second term, in August 2016, when his administration announced that the Department of Justice (DOJ) must phase out private prisons. Stock values for the two major private contractors, GEO and Core Civic, immediately plunged (Lauren-Brooke 2018). The following month, "once

election results showed an almost certain presidential victory for Donald Trump, private prison stock values increased” (Collingwood, Morin, and El-Khatib, 2018: 275). Sixteen months later, following extensive promulgating of falsehoods that the U.S. was facing increases in violent crimes, President Donald Trump and his administration cancelled the Obama administration’s phasing out of private prisons. Moreover, Trump called for “\$1.2 billion in new spending on detention, transportation and deportation of undocumented immigrants to expand detention capacity to more than 48,000 beds a day” in his 2018 fiscal year budget proposal...delivering the private prison industry its biggest victory yet” (Lauren-Brooke, 2018). Of course, Trump had already merged crime and immigration from the Southern border (primarily Central America) while running for president, in his horrifically racist and inaccurate statement about Mexican immigrants being rapists and bringing drugs and crime (Lee, 2015).

There is an abundance of evidence documenting the Trump administration’s devastating impact on escalating harshness and racism in the CLS, particularly in terms of incarceration, and overwhelmingly so regarding detention in ICE (the U.S. Immigration Customs Enforcement). Although the U.S. has a long history of criminalizing immigrants from Latin America (e.g., Hernández, 2017), this became exponentially worse under the Trump administration with extremely harsh enforcement policies, denial of these immigrants’ legal entry and the more recent expulsion of asylum seekers to Mexico (even in cases with well-documented asylum needs with extraordinary victimization, including torture, in their native countries), and extremely lucrative government contracts between ICE and GEO and Core Civic (e.g., Collingwood, Morin and El-Khatib, 2018). Collingwood and colleagues (2018: 275) describe how the Trump administration’s rhetoric calling for “harsh enforcement policies” were “cheered on by right-wing nativists”, and expanded “a marketplace whereby private companies stand to increase their bottom line. They do so by lobbying to expand the carceral state into immigration policy”.

Nowhere has the extreme and racist detention in the Trump presidency been more apparent than in ICE. Trump and his administration will be remembered for their ‘zero tolerance’ policy that caged unauthorized immigrants from Central America, including families, and accompanied minors (Shear, Benner and Schmidt, 2020). Family separations were intended to keep migrants from entering the U.S. (ibid). Alarminglly,

the parents of 545 children separated from their families in 2017 have yet to be reunited with their parents due to the U.S. Department of Health and Human Services workers' failure to keep track of parental contact information (Dickerson, 2020). Furthermore, 362 of these children cannot be located due to changes in sponsors' contact information. It is assumed that most of these children remain in the U.S., although some may have returned to their country of origin (ibid).

Historically, reports from within detention facilities reveal horrific conditions and treatment of immigrants, ranging from physical, verbal, sexual, mental, and medical abuse (Hernández, 2013; Ordaz 2019; Ordaz, 2020; Portillos, 2018). In 2018 and 2019, Trump placed migrant families and unaccompanied minors in “chain-link facilities” which were “overcrowded, [had] dirty conditions... freezing... [and had them] sleeping on concrete” (Jordan, 2020). In addition to caging children, the Trump administration will be remembered for the medical neglect and abuse in ICE. In 2018 Roxana Hernández, a transgender woman from Honduras, arrived at the U.S. border pleading for asylum. While in immigration custody, she died from medical neglect after access to medical resources was too late. Roxana “died of a heart attack after suffering ‘with symptoms of pneumonia, dehydration, and complications associated with HIV’” (Cook, 2018; Lalwer, 2018). There have been recent allegations of forced sterilizations on immigrant women at the Irwin County Detention Center in Georgia (Ordaz, 2020). Activists and scholars have both called out the lack of safety procedures amidst the coronavirus pandemic, including failure to correctly socially distance detainees, inconsistent usage of masks, and insufficient COVID-19 testing (Ordaz, 2020; León, 2020). Medical neglect has led to outbreaks within detention facilities and hospitalizations (Ordaz, 2019). As Ordaz convincingly argues, abuses, particularly around medical care and safety, have had severe consequences for detained immigrants more recently, as well as historically (ibid).

In addition to the horrific processing, detention, separating families, caging children, and denying asylum to very deserving immigrants attempting to enter the U.S. Trump has made other decisions that result in more criminalization and less justice. For example, Trump’s numerous conservative appointments to the courts (including 3 U.S. Supreme Court Justices), does not bode well for harsh and racist criminalization and an expanded criminalizing of abortion (Sherman, Freking and Daly, 2020). Finally,

Trump's use of the death penalty is extreme, including using it in the final days of his presidency. On January 15, 2020: "The Trump administration...carried out its 13th federal execution since July, an unprecedented run that concluded just five days before the inauguration of President-elect Joe Biden — an opponent of the federal death penalty" (Associated Press 2021).

Significant Incarceration and Racist Criminalizing Did Not Start with Trump

Although Trump's presidency has had a devastating impact on crime and justice during his presidency and will for decades to come with his judicial appointments, it is crucial to remember that the US federal and state governments have a long history of promulgating harsh and racist criminalization and incarceration (Alexander, 2020; Hernández, 2017). Kelly Lytle Hernández's (2017) extensively researched and award-winning book, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965*, provides an unprecedented examination of the history of incarceration in the U.S. Hernández (2017:1) focused on Los Angeles as, "a hub of incarceration, imprisoning more people than any other city in the United States, which incarcerates more people than any other nation on earth". She documents how incarceration began with primarily criminalizing and incarcerating Native Americans/Indigenous peoples, followed by white hobos, then Latinx, and then African Americans (with the Great Migration), and how these all involved easily identifiable class, economic, homophobic, and often racist, reasoning.

Incarceration and the palpable racism in incarceration and the larger CLS in the U.S., began with colonization and slavery, and expanded to mass incarceration in the 1980s and since (although there has been some decrease in recent years) (e.g., Alexander, 2020; Collingwood, Morin and El-Khatib, 2018). Numerous scholars have documented the troubling roles that not only President Ronald Reagan started with his harsher CLS laws, policies, and practices, particularly through his 'War on Drugs', that resulted in mass incarceration, but Democratic President Bill Clinton and his administration contributed to the expansion of mass incarceration, particularly of African Americans (Forman, 2017; Garrison, 2020; Middlemass, 2017).

Although President Obama did not carry out any federal executions and he was the first president since 2001 to spare someone the death penalty, he noticeably commuted only two of 62 death penalty sentences, and did so on his way out of office knowing Trump was the next president (How Obama Disappointed on the Death Penalty, 2017). Notably, Obama has never come out publicly against the death penalty other than saying it is “deeply troubling”.

The Transformative Impact of #BlackLivesMatter

It is almost impossible to capture the transformative impact of the #BlackLivesMatter movement this past summer, on radicalizing a far wider and whiter number of supporters following the May 25, 2020 police killing of George Floyd. Around the globe people viewed the life go out of Mr. Floyd by a white police officer’s knee on his neck. Worldwide, people with access to the news viewed protests across the US and many other countries in support of #BlackLivesMatter. While Officer Derek Chauvin killed Floyd with his knee for allegedly using a counterfeit \$20 bill, President Trump and others were still chastising National Football League (NFL) athlete Colin Kaepernick for ‘taking a knee’ in support of #BlackLivesMatter during the national anthem at professional football games. (Trump threatened other NFL and athletes if they ‘took a knee’, and there is considerable evidence that this led to Kaepernick’s NFL career ending).

Even in a highly contagious pandemic, protesters across racial identities and ages took to the streets in remarkable numbers. Some white police officers and police chiefs started ‘taking a knee’ at the peaceful #BlackLivesMatter protests they were sent to monitor, and a continually expanding number of professional sports and athletes, as white and seemingly conservative as car racers and ice hockey (NASCAR and NHL), started supporting #BlackLivesMatter. Sadly, the #BlackLivesMatter movement also grew over the summer due to new police killings or almost killings or maiming of Black and Brown people (e.g., Jacob Blake, Justin Howell, Tnika Tate, and Mia Write), and the lack of attention to the March 2020 police killing of Breonna Taylor who had no criminal record or charges, while she slept (Belknap and Grant, 2021). In the wake of these protests, ‘criminal justice reform’ has become a frequent position adopted by

many politicians and organizations, in stark contrast to the previous ‘tough on crime’ rhetoric so common since the 1980s.

The Biden Administration’s Early Commitments, Likely Successes, and Challenges to Impact Crime and Justice

If asked to recall the most memorable moment among the many contenders and the many debates for the Democratic nomination to the U.S. 2020 presidency, it would likely be when Senator Kamala Harris ‘schooled’ Joe Biden about school bussing (to improve access to education for primarily African American kindergarten through high school students), from the perspective of someone who was bussed (rather than pontificating about it as Biden had done). The exchange, showcasing Senator Harris and seemingly embarrassing Senator Biden, was rightly and continuously replayed in the news.

Joe Biden was the third person to pick a woman vice presidential running mate. The first was Democrat Walter Mondale in 1984 and the second was Republican John McCain in 2008, both of whom chose white women and lost in the presidential election. Senator Biden was the only male candidate who committed to picking a woman vice presidential running mate should he win the Democratic primary. Many were surprised and impressed by his choice of Senator Harris, a biracial Black and Asian American woman, primarily because she had so vividly confronted him about his stance on school bussing during the debates. Additionally, Senator Harris had her own seeming hypocrisies to face given her record of convicting especially Black and Brown people in her role as a prosecutor (Betts, 2020). Remarkably, Senator Harris is the first BIPOC (Black, Indigenous, or Person of Color) person (regardless of gender), to be chosen as a vice presidential running mate by any serious Democratic or Republican contender for the US presidency.

No doubt, the Biden-Harris (Democratic) ticket won the election in large part due to the anyone-but-Trump vote (#VoteBlueNoMatterWho). But the extraordinary #BlackLivesMatter movement not only advanced the likelihood of a Democratic president but Biden and Harris also supported many of the tenets of this movement. Certainly the #DefundPolice rhetoric has been somewhat fraught and

complicated, but the general consensus by most is that less money needs to be spent to arrest and incarcerate and more spent on resources for and responding to mental illness and the other structural problems placing people unfairly at a higher risk of being criminalized (e.g., race, class, access to quality education, etc.). Biden and Harris are fully aware of and praise the incredibly strategic and successful organizing and advocacy of African American women (e.g., Stacey Abrams) and the significant backing by African American U.S. Representative James Clyburn, representing South Carolina. Without these key supporters and their activism Biden and Harris would be unlikely to be headed to the White House. In addition to the incredibly successful #BlackLivesMatter movement and the support of key African American politicians and activists/organizers, Harris's contentious record as a prosecutor (noted above) undeniably holds her to a higher standard of advancing justice and decreasing criminalization, particularly for BIPOC.

As Biden transitions into power as President of the US, he inherits many injustices that require correction. In November 2020, Biden promised to withdraw funding from Trump's notorious border wall and reverse Trump's asylum procedures (Jordan, 2020). In December 2020 he stated that "he will cut funding used to detain migrants and instead rely on programs that track them after they are released into the United States to ensure they appear in court" (Kanno-Youngs, 2020). On January 17, 2021, a few days before taking office, he unveiled a 'flurry of executive orders' and 'aggressive legislation' for his first 10 days in office that include addressing the current immigration crisis by prioritizing organizing efforts to reunite separated families and passing comprehensive legislation that would provide a pathway to citizenship for undocumented immigrants currently living in the U.S. (Shear and Baker, 2021). *New York Times* journalists report that Biden will "not try and win support from Republicans" by surrendering to negotiations that would increase federal spending to strengthen border security (Shear and Baker, 2021), a promise that must be kept to prevent unintended consequences made in the previous passages of immigration legislation. For example, the passage of the Immigration Reform and Control Act of 1986 (IRCA), which simultaneously granted a pathway to citizenship for certain undocumented immigrants while increasing federal aid to militarize the border (De León, 2015; Minan, 2018). Consequently, the increased militarization made it more difficult for individuals to cross the border, migrants had to rely on more dangerous routes that led to many

deaths (De León, 2015; Minan, 2018). Additionally, Biden has committed to ending for-profit detention centers while ensuring that temporary detention facilities have the “highest standards of care and prioritize the safety and dignity of families above all” (joe Biden.com/immigration). This is undoubtedly a move in the right direction, considering the horrific historical and contemporary experiences within detention centers.

Notably, by providing immediate and significant economic relief and greater access to healthcare in his planned first ten days “roll out” (Shear and Baker, 2021), Biden is providing concrete assistance that will very likely result in far fewer people being forced to turn to crime for their most basic needs, such as food, housing, money, employment, and healthcare. Indeed, much of the best research by criminologists on the needs of those leaving jails and prisons for their successful (non-recidivating) ‘re-entry’ into their communities are consistent with these identical needs (e.g., housing, money, employment, and healthcare) (e.g., Middlemass, 2017).

As noted previously, Biden has stated being against the death penalty, which is sadly rare among presidents and presidential contenders in the U.S., but encouraging for deterring this most extreme punishment, at least while he is president and possibly, thereafter. Although many progressives are disappointed (or angry) with Biden’s appointments of more middle-of-the-road and Washington, D.C. experienced individuals, others agree this is necessary in the current state of acquiring a presidency during a very poorly handled pandemic that includes an economic crisis, a previous president who refuses to concede and has supported an insurrection largely by white supremacists, and a widely supported public outcry to address racism, particularly at the hands of the CLS who should be doling out justice (Shear & Baker, 2021). Additionally, although President Biden will likely similarly choose more middle-of-the-road than progressive judges for the court system, they will undoubtedly be far more progressive than Trump’s selected judges.

Conclusion

President Joe Biden’s administration reflects a massive change to the Trump presidency which is very encouraging in terms of decreasing criminalization and crime

and improving justice in the US. It is vital to remember, however, that Trump has left the country in terrible shape in terms of the CLS, the economy, the COVID-19 pandemic, the massive expansion of white supremacists and domestic terrorism, and trust in elections/democracy. President Biden will have his hands full, but he has already committed to and 'rolled out' strategies that are far more progressive than anyone before him in terms of issues tackling structural problems indirectly related to crime and justice (e.g., forgiving or decreasing student loans, expanding healthcare), as well as directly, such being publicly against the death penalty, improving immigrant rights particularly in ICE, and committing to advancing justice through CLS reform.

The enslavement of African Americans and the colonization of Indigenous peoples in the U.S., however, is intricately tied to a very racist society and racist and punitive CLS. Colonization and slavery is poorly and insufficiently taught in most U.S. schools. We are ignorant about much of our worst history while glorifying ourselves as being the leaders of democracy where all people are treated equally/fairly. This has never been true and it is unlikely to be true anytime in the near future. President Biden cannot erase and cure the centuries-old racism and inequalities (see Wilkerson, 2020), which will require a significant reckoning and overhaul, but he and Vice President Harris and a Democratic Senate and House will be an important start.

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