

# Governing through Crime: Prospects for the 21<sup>st</sup> century

Jonathan Simon

[jssimon@berkeley.edu](mailto:jssimon@berkeley.edu)

# Outline

1. Central theoretical contributions
  - Crime as a political solution to a problem of government
  - Crime as a rationality of government (Foucault's Governmentality)
  - Sources
2. Criminal law logics beyond the criminal legal system
3. Criticisms
4. Evidence of durability
5. Governing through Crime in comparative perspective
6. Sources of change



# POLICING THE CRISIS

Mugging, the State, and Law and Order



Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke, Brian Roberts

# Crime as a solution to a crisis of governance

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- Crisis of “Fordist” governance in the advanced capitalist sector
- Re-disciplining of the labor market
- From welfare to workfare
- The prison system as the “non-state state”

# MICHEL FOUCAULT



SECURITY, TERRITORY,  
POPULATION

LECTURES AT THE COLLÈGE DE FRANCE  
1977-1978

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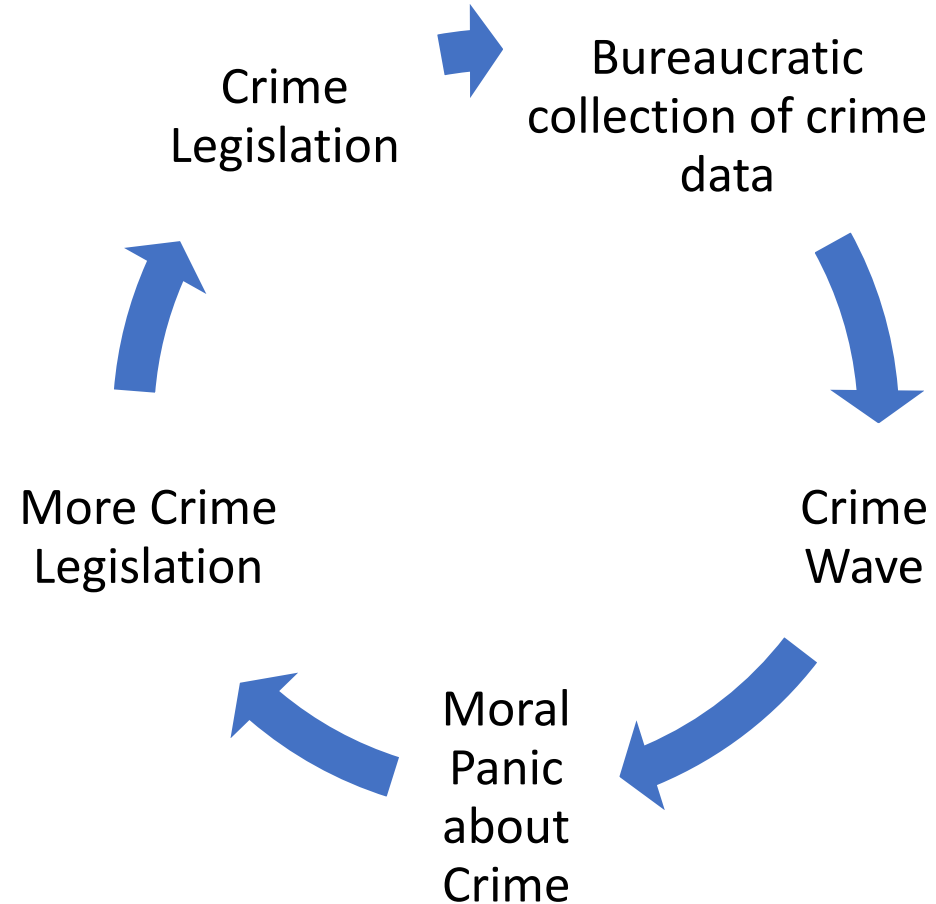
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## Crime as a governmental rationality

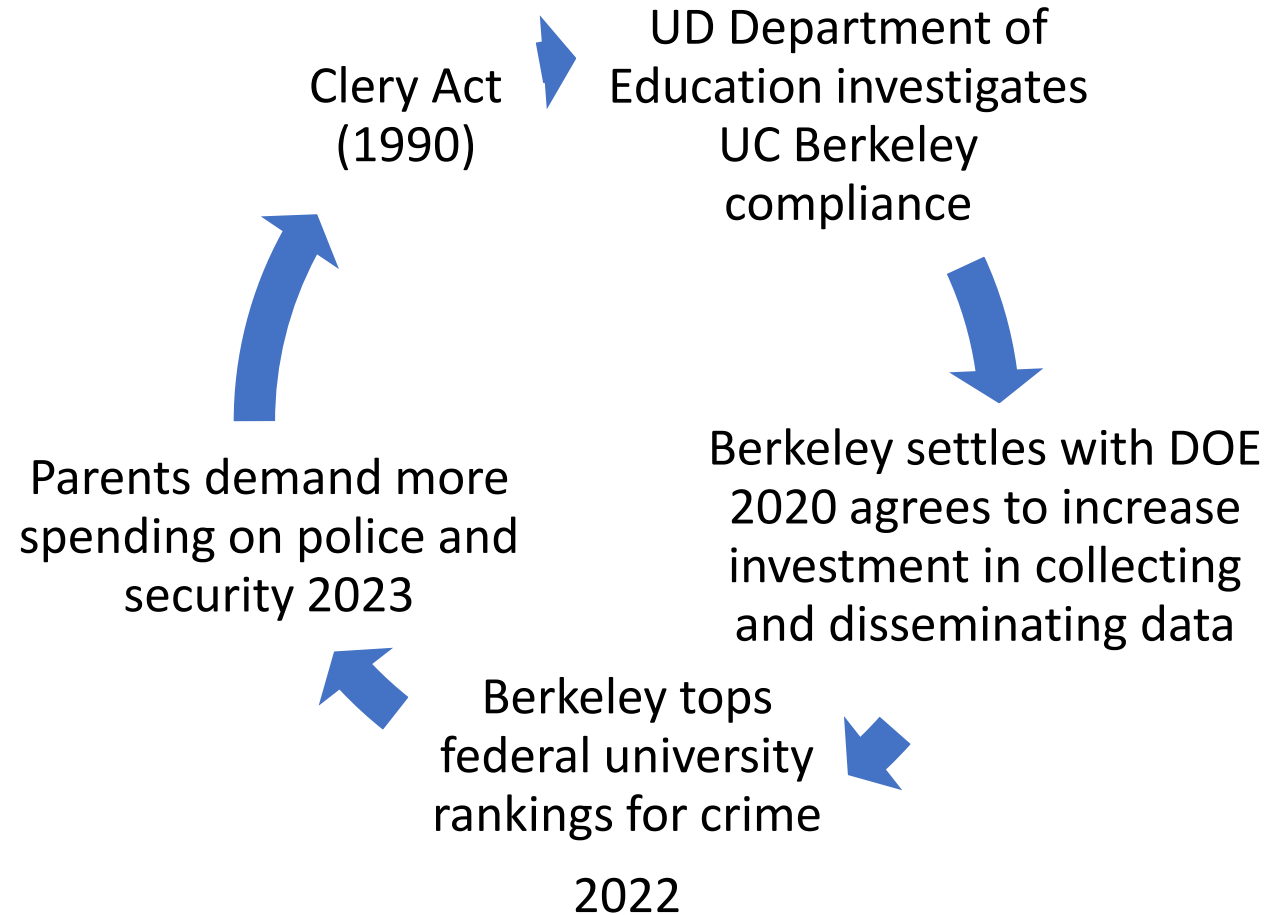
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- Crime as a basis for “action on the action of others”
- Crime legislation as a power/knowledge feed back loop

# Governing through crime feedback loop



# UC Berkeley GTC Feedback Loop



# UC's explanation

“The Clery Act is based on the premise that current and prospective students and employees are entitled to accurate, complete, and transparent disclosures about campus crime and threats to their personal safety, allowing them to make well-informed decisions about where to study, work, and live. As a campus, we wholeheartedly agree with that charge and have taken numerous steps to improve our compliance efforts. Since the review began, we have updated and purchased new emergency alert systems and records management technologies, created a new campus Clery coordinator position, convened a campus-wide Clery Compliance Committee, created more robust training opportunities, increased staffing levels, strengthened policies and procedures to address sexual violence and sexual harassment on campus, and streamlined campus safety policies and procedures.

(UC Berkeley webpage on Clery Act settlement)

# Manifestations of crime governance

- Crime legislation
- Executive identification with prosecution of crime
- Judicial withdrawal in the face of penal populism
- Expansion of administrative discretion





# “We the victims” (the people as interpellated through violent crime risk)



The screenshot shows the top navigation bar of the National Sex Offender Public Website. It includes the Department of Justice logo, the name DRU SJODIN, and the title NATIONAL SEX OFFENDER PUBLIC WEBSITE. A search bar is located in the top right corner. Below the navigation bar, there is a main heading "Search Public Sex Offender Registries" and a sub-heading "Search by Name and/or Zip Code" with instructions: "Please enter a first and last name OR a zip code into the required fields." There is also a sub-heading "Search by Address Radius" with instructions: "Please fill in address and City/Town into the required fields."

- Penal populism
- “Fear of crime”
- Biannual Federal crime laws
- Clery Act
- Sexual offender notification laws
- Hate crime legislation

# The prosecution complex

- Dominance of crime in Presidential elections 1968 - 2008, 2016-
- Executive intervention in high publicity criminal trials
- Executive interference with prosecutors



Rudolph Giuliani, US Attorney, SDNY, circa 1980s

# The “scandal” of judicial objectivity



Rose Bird, first woman appointed California's Chief Justice, non-retained 1986, d. 1999

- Mass defiance of Supreme Court decision annulling death penalty (Furman v. Georgia)
- Non-retention of 3 California Supreme Court justices 1986
- Payne v. Tennessee 1991 (Supreme Court reverses itself on victim impact testimony)

# The lawless administrative state

- Massive growth in the numbers, power and political influence of Federal law enforcement agencies.
- Explosion of immigration detention and deportation powers.
- Expansion of police discretion to “stop and frisk”



NYPD Stop and Frisk program 1990s

# Mistakes

- A historical in seeing governing through crime as a exclusively a phenomenon of the social crises of the 1960s and 1970s
- Failed to focus on the significant role of anti-Black politics in foregrounding crime.
- Treated the US as a national experience (state level political processes are significant)



# DEATH BY PRISON

THE EMERGENCE OF LIFE WITHOUT PAROLE  
AND PERPETUAL CONFINEMENT



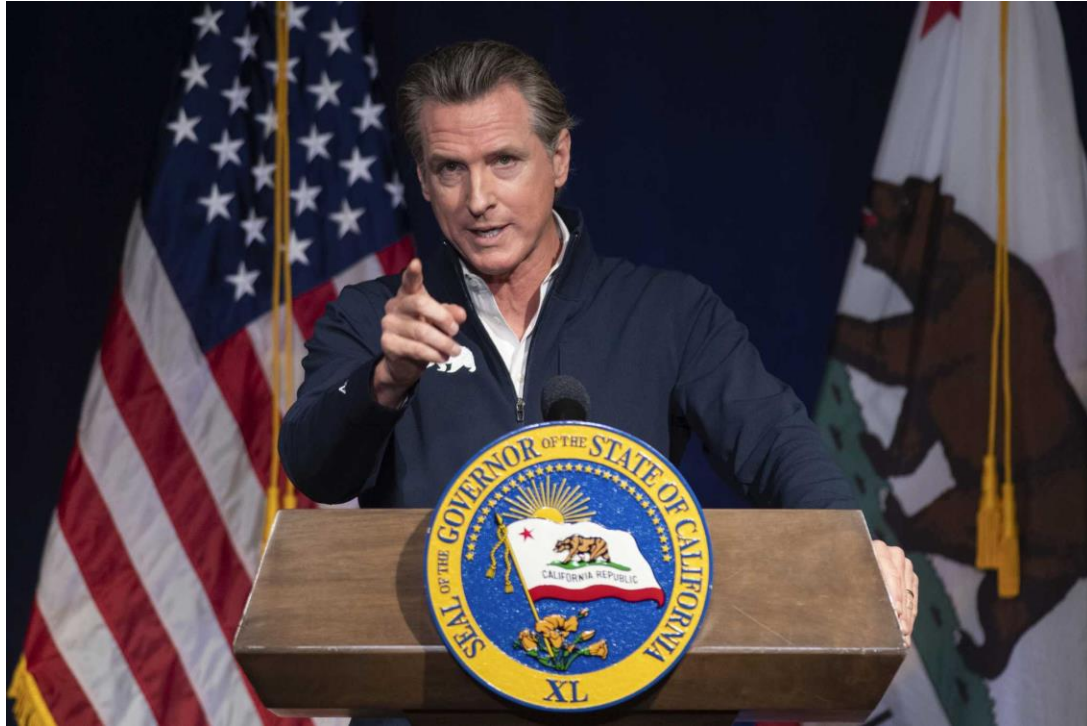
CHRISTOPHER SEEDS

Still useful in understanding  
the evolution of penal forms

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- New penal forms emerge in large part out of the re-configuration of the governing logics around crime.
  - Life without Parole
  - Solitary confinement
  - Proliferation of new crimes
  - Anti-gang civil injunctions
  - Civil measures against the unhoused population

# On going relevance: Meet the new war on drugs, just like the old war on drugs



Liberal California Governor (and future or present Presidential candidate) Gavin Newsom

“[The war on drugs] has worked in the past” he said, though he said he didn’t support a complete returns to past efforts to step up penalties for dealers without also increasing access to medical treatment for users. “That’s the old war on drugs, of which I have a long-standing record of opposing.”

SF Chronicle November 30, 2023

# Beyond the US



Former Philippine President Rodrigo Duterte

- Penal populism, Global
- Extreme expression in extra judicial killings and mass arrests, Central America
- Merged with anxiety about immigration, European Union
- Undermined efforts at reconciliation in countries undergoing transitional justice, e.g., Colombia



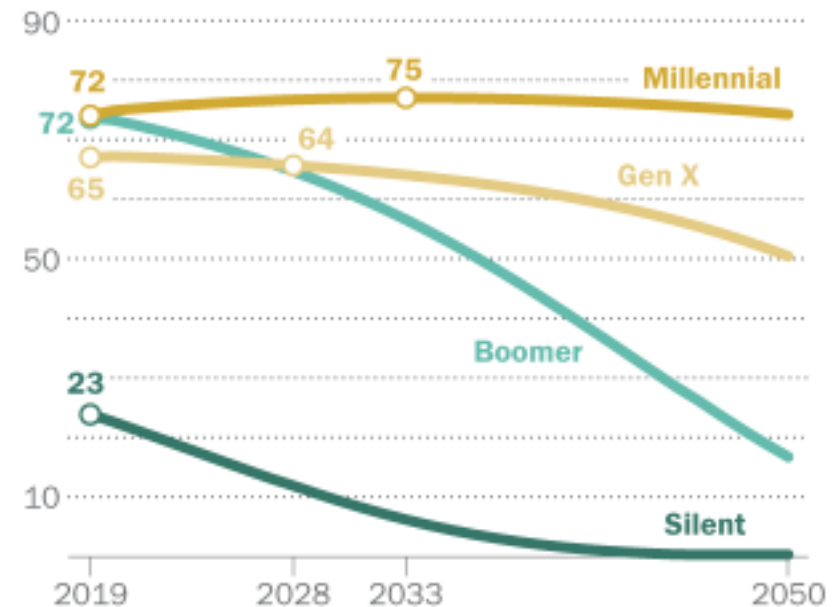
# Sources of change

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- New risks
  - climate change
  - pandemics
- New generations (GTC as a Boomer/Gen X phenomenon)
- Intolerance of racism
- New models of social solidarity

## Projected population by generation

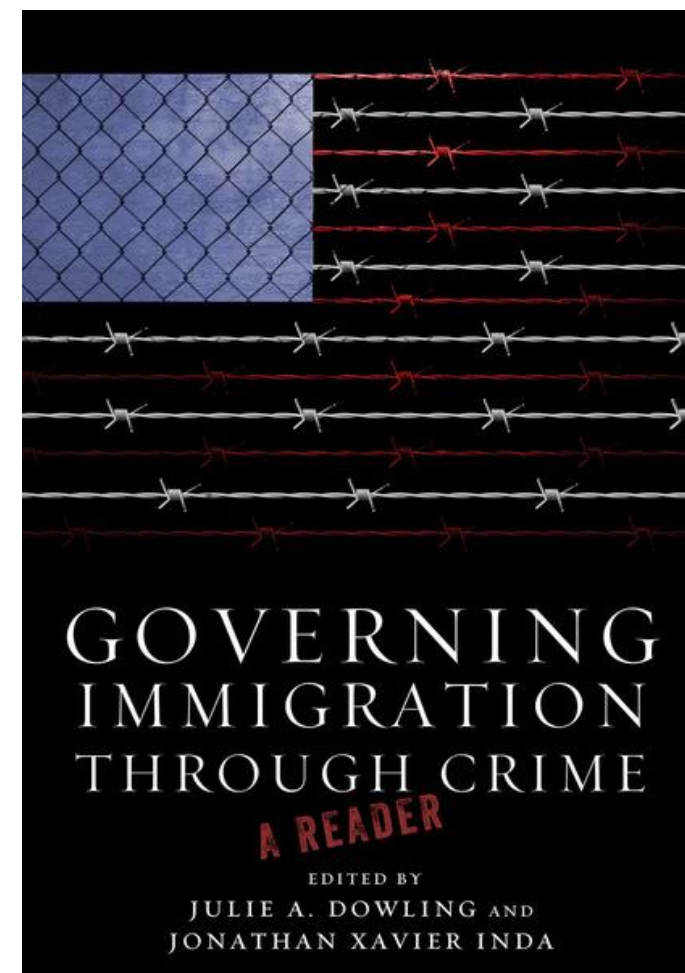
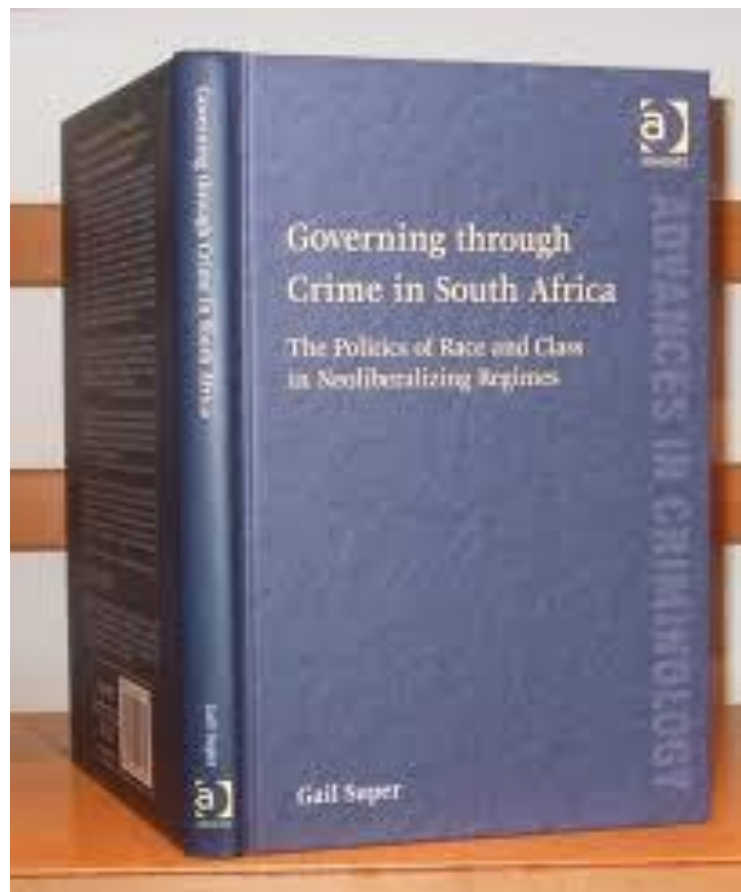
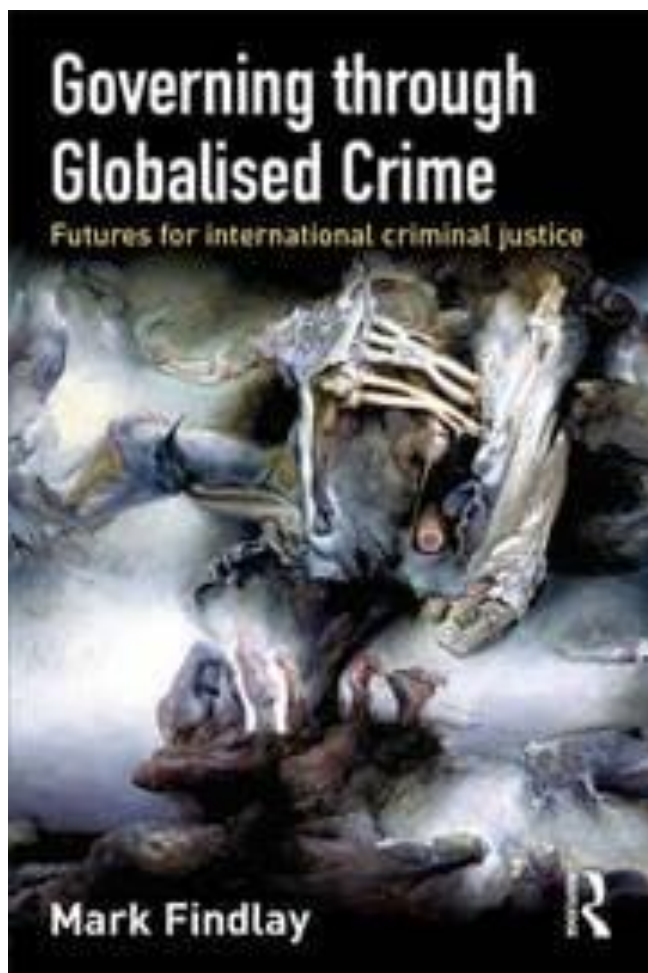
*In millions*



Note: Millennials refer to the population ages 23 to 38 as of 2019.

Source: Pew Research Center tabulations of U.S. Census Bureau population estimates released April 2020 and population projections released December 2017.

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THANK YOU!