

# Barack Obama: changing American criminal justice?

Michael Teague is cautiously optimistic about prospects for positive change under the Obama administration.

*Barack Obama's election as the USA's 44th president signalled the end of an era of entrenched conservatism in American government. Following his inauguration on 20 January 2009, one fundamental question confronts anyone concerned with the state of American criminal justice. Energised by a wave of popular support, will the new president go down in history as someone who radically reformed America's overloaded criminal justice system?*

President Obama has to address a series of longstanding criminal justice issues, including imprisonment, rehabilitation, capital punishment, and the 'war on drugs'.

In these economically straitened times, the bloated US mass incarceration project soaks up considerable human and fiscal resources. The nation's second biggest employer (after General Motors) is the prisons industry; around three-quarters of a million people work in correctional facilities. The annual national cost for what is accurately labelled as the penal industrial complex is over \$67 billion.

America leads the world in incarceration, locking up a quarter of the planet's prison population. The nation's 5,000+ jails and prisons hold over 2.3 million inmates. Imprisonment rates have consistently risen since the early 1970s, and comfortably surpass those of other developed nations. The US Department of Justice estimates that, at current incarceration rates, 1 in 15 Americans will serve time in prison

at some point in their lives. Racial disparities in imprisonment are highlighted by the reality that 1 in 3 black males will enter state or federal prison during their lifetime. On the campaign trail, Obama frequently referred to the disproportionately large number of African-American men behind bars. In mid-2008, there were a staggering 4,777 black male inmates per 100,000 black males in state and federal prisons and local jails. This compares with 1,760 Hispanic male inmates per 100,000 Hispanic males, and 727 white male inmates per 100,000 white males.

This headlong rush to imprison is not constrained by party politics. Republicans are customarily viewed as tough on crime, but the Democrats, too, have effectively rubber-stamped the expansion of the carceral state. The prison population doubled during President Clinton's eight years in office (the biggest rise in imprisonment of any president). Clinton was (as Obama surely is) well aware of the political price of failing to appear tough on crime. Just before leaving office, Clinton ruefully acknowledged that competing political pressures meant that he 'ran out of time' before he could conduct a full re-examination of America's policy on imprisonment. If Obama is to successfully negotiate the immense political pressures surrounding the formulation of US penal policy and reform the criminal justice system, he must act now, lest – like his Democratic predecessor – he 'runs out of time'.

Any potential voter perusing Obama's *Blueprint for Change* (2008) prior to the election would have been hard pushed to find detailed

policy proposals on offending and offenders in its 84 pages. Crime was clearly not a key issue. This key document explicitly addressed 15 wide ranging policies, from the economy to health, at length, but lacked detailed coverage of planned criminal justice initiatives. Discreetly tucked away under the heading of 'Poverty' could be found the plan to:

*... work to ensure that ex-offenders have access to job training, substance abuse and mental health counselling, and employment opportunities.*  
(Obama, 2008)

Obama's commitment to ban racial profiling by federal law enforcement agencies, and to provide federal incentives to ensure the police follow suit, was listed under the rubric of 'Civil Rights'. He also promised measures to improve employment opportunities for ex-prisoners, and pledged to offer first-time, non-violent offenders.

Interestingly, Obama's reluctance to engage in populist sloganeering on offenders, and his commitment to take a measured view based on the evidence, do not appear to have damaged him in electoral terms. His cautiously framed policies indicate there is clear blue water between Obama's understanding of offenders and offending and that of his immediate presidential predecessor George W Bush. Bush's longstanding perspective on criminal justice was aptly summarised by his electoral slogan during a Texas gubernatorial campaign: '*Incarceration is Rehabilitation*'.

In 2008, 37 prisoners were executed in the USA (almost half of them in George W Bush's home state of Texas). A president's political standpoint on the death penalty is essential in clarifying their broader perspective on crime and punishment. Many attributed Democratic candidate Michael Dukakis' loss in the 1988 presidential election to his opposition to capital punishment. The electoral viability of presidential candidates may be jeopardised if they do not state their explicit support for the death penalty. Obama

is no different. He wrote in his memoir *The Audacity of Hope* that:

*... there are some crimes – mass murder, the rape and murder of a child – so heinous that the community is justified in expressing the full measure of its outrage by meting out the ultimate punishment.*  
(Obama, 2007)

However, his subsequent observation that the death penalty 'does little to deter crime' (ibid) is hardly a ringing endorsement of capital punishment. Obama implicitly acknowledged that the application of the death penalty in the USA may be a product of the race and class of the murderer (and also the victim). His past experience as Illinois state senator has provided him with a brutal education in the flaws inherent in the system of capital punishment. In the 1970s and 1980s, Chicago police tortured a number of defendants (who were mainly African-American) into confessing to murder. Obama witnessed the ex-Governor of Illinois granting pardons and releasing innocent death row inmates. Obama has qualified his support of capital punishment by noting that:

*... the way capital cases were (then) tried in Illinois ... was so rife with error, questionable police tactics, racial bias, and shoddy lawyering, that 13 death row inmates had been exonerated.*  
(Obama, 2007)

*Blueprint for Change* noted that as state senator for Illinois, 'Obama ... helped reform a broken death penalty system' (Obama, 2008). The death penalty, then, is viewed as requiring reform, not abolition. While no US President, not even a Democratic one who supports the death penalty for particularly 'heinous' crimes, is likely to move towards abolition, Obama now has the power to nominate federal judges who may be unburdened by a pro capital punishment mindset.

What do these carefully constructed position statements mean for those awaiting the death

penalty – some 3,220 inmates at the start of 2008? Mike Lambrix, who has been languishing on Florida's death row for some 25 years, blogged the following observation from his cell after Obama's victory:

*... what will this mean to those of us on death row? Maybe it won't mean anything as when it comes down to it the death penalty is about politics and especially in the southern states, where the death penalty is particularly popular, even those in the Democratic Party fanatically support capital punishment.*  
(Lambrix, 2008)

The 'War on Drugs', initiated by President Nixon over 40 years ago, has been a substantial contributor to the bloated prison system; around half a million people are behind bars for drug offences. In 2007, over 775,000 Americans entered the criminal justice system following an arrest for marijuana possession. Obama regards the lengthy incarceration of a multitude of non-violent drug offenders as ultimately unhelpful in comparison to the alternatives of community intervention and rehabilitative measures. While fiscal pressures may contribute to the case against building more prison cells, politically Obama recognises the centrality of rehabilitation.

The Obama administration's appointment of former Seattle police chief Gil Kerlikowske as director of the Office of National Drug Control Policy indicates that the 'war on drugs', supported by presidents from Nixon to George W Bush (including Clinton), may be ending. This is indicative of a paradigm shift in government; the policy of the Obama administration is aimed at prevention and 'harm reduction', rather than a war of attrition with users.

In addition, Obama supports ending the disparity between sentences for offences involving crack cocaine and sentences for cocaine in powder form. This disparity reflects a disproportional and discriminatory targeting of

minority ethnic communities. He has also voiced his opposition to the ban on federal funding for syringe exchange programmes, which help reduce HIV/AIDS.

However, the speed and scale of reform is by no means certain. Kerlikowske has underlined his opposition to the legalisation of drugs, stating that the 'legalisation vocabulary... doesn't exist in President Obama's vocabulary' (Fields, 2009). Ever the consummate politician, Obama has chosen an ex-law enforcement chief rather than a public health expert as his 'drug czar'. However, there are already indications of some flexibility and a more nuanced stance on illicit drugs which suggest that public health considerations may be prioritised over issues of crime and punishment.

Can we now be cautiously optimistic that, rather than going down the hackneyed road of punitive posturing for populist gain – like his predecessors of all political complexions – America has at last elected a president who will genuinely engage with some of the underpinning causes of crime, and is determined to balance punishment with a commitment to expanding rehabilitation? Or will the imperative to change be dissipated by the entrenched and institutionalised penal culture underpinning the US system? That is the question. ■

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