



Law, Order, and the End of the New Deal Consensus

Anthony Gregory
Hoover Fellow
Hoover Institution, Stanford University

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HOOVER INSTITUTION
434 GALVEZ MALL
STANFORD UNIVERSITY
STANFORD, CA 94305-6010

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ABSTRACT: In the 2020s, both US political parties have promised law and order while criticizing law enforcement power. This strange politics has coincided with a legitimacy crisis across institutions. Americans have taken for granted the stability that arose with the New Deal’s modernization of the liberal state, including in crime policy. Until the 1930s, the nation endured constant challenges for legitimacy, liberalism, and law and order. Franklin Roosevelt’s multi-pronged war on crime reconciled differences across jurisdictions, institutions, and approaches to incarceration and rehabilitation, while building an unprecedented coalition against lawlessness that transcended party, race, and class. Restoring legitimacy in this century would require a comparably ecumenical triumph in the politics of law and order.

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A quarter of the way into the twenty-first century, Americans can now see that the politics of law and order have become scrambled. Especially since the late 2010s, the familiar partisan commitments have appeared volatile. In 2020, progressive liberals accommodated activist voices outright hostile to law enforcement, indulging talk of “defunding the police” and performatively defending riots as emancipatory acts. But the Democrats won the 2020 election with Joe Biden, the co-architect of the notorious 1994 crime bill, and his running-mate Kamala Harris, a prosecutor whom Tulsi Gabbard undercut in the primaries by calling her out for overzealous prosecution of marijuana offenders. Now, several years later, the Republican Senate has confirmed Gabbard as Trump’s Director of National Intelligence.¹

Trump’s non-consecutive two terms will likely overshadow the cultural importance of the Biden interregnum, and one wonders what role law and order will play in his comeback. The 2024 Republican National Convention boasted “Making America Safe Again” as a key theme, and the party sounds as hawkish as ever on illegal immigration and street crime. On the other hand, Trump signed the First Step Act in December 2018, the first major bipartisan criminal-justice reform effort of the century. In light of Trump’s own legal troubles, including felony convictions, his party is now receptive to the idea that criminal justice powers have become weaponized for purposes of partisan lawfare: The GOP has responded to radical demands to “defund the police” with their own populist demands to “defund the FBI.” In the last electoral contest between two parties with unstable law and order commitments, the criminal defendant

¹ Natasha Korecki, “‘Caught off Guard’: How Tulsi Gabbard’s Big moment with Harris Is Playing into Tuesday’s Debate,” NBCNews.com, 9 September 2024.

Trump decisively defeated the prosecutor Harris, even as he promised to tame lawlessness better than she could.² Such is the irony of American law and order politics.

Meanwhile, Americans across the spectrum have registered distrust in their political and legal institutions, including and beyond law enforcement and the intelligence community, in ways that defy earlier political loyalties. There has also been, at least for decades, a pronounced tendency of Americans to cast their political opponents' election victories as illegitimate. The politics of law and order are clearly intertwined with the very question of political legitimacy, all coinciding with a larger ideological crisis on left and right. On both sides we detect loud and impatient flirtations with illiberal alternatives to the consensus politics that have guided political discourse since the 1940s.

For as long as the vast majority of Americans can remember, both parties paid homage to the key values claimed by national institutions—the hope that liberal democracy would triumph over reactionary and communist competition abroad; the view that even an expanding domestic government should embrace the market economy and international trade; the assumption that national leadership should be tightly constrained by political norms, the formalities of the rule of law, and standards of professionalism; and the presumption that leaders not wield the security state as a personalist or partisan tool of their own ruling party. Of course, American government quite often fell far short of these ideals in practice, but Americans broadly took for granted the expectation that these ideals were worth pursuing.³

² Jennifer Cobbina-Dungy, Soma Chaudhuri, Ashleigh LaCourse, and Christina DeJong, “‘Defund the police’: Perceptions among Protesters in the 2020 March on Washington,” *Criminology & Public Policy* 21, no. 1 (2022): 147-174; Zachary B. Wolf, “How Republicans turned on the FBI,” CNN.com, 25 May 2023.

³ Jeffrey M. Jones, “Confidence in U.S. Institutions Down; Average at New Low,” Gallup.com, 5 July 2022; Michael W. Sances, “Legitimate Questions: Public Perceptions of the Legitimacy of US Presidential Election Outcomes,” *Research & Politics* 10, no. 4 (2023); Thomas J. Main, *The Rise of Illiberalism*, Brookings Institution Press, 2022.

In diagnosing the widespread cynicism and growing distrust toward the institutions of law and order and democratic liberalism, we must ask how the confidence and trust were built in the first place. State power has lost its reputation of neutrality and indifference toward partisan and social divisions, but this reputation did not always exist. The golden age of faith in institutions, today romanticized across the political spectrum, arose alongside what some historians call the “New Deal order,” developing from the 1930s Depression-era politics and dominating until its first major stumbles in the late 1960s and early 1970s. Indeed, some convincingly interpret the relative stability of mid-century consensus politics as an aberration in US history, with distrust and fracture as the norm before the New Deal.

One neglected problem in this earlier history was lawlessness. In an overlooked but tangibly real sense, the New Deal state *created* American law and order. It was the New Deal state that both narrowly revamped criminal justice and more broadly stabilized the political order itself. To understand this historical development, we must consider the conceptual stakes in such ideas as political legitimacy, the ideological contours of modern liberalism, and the meaning of law and order—and to see how fraught these questions were until the New Deal built the nation as most of us have known it.⁴

Legitimacy, Liberalism, and Law and Order before the New Deal

Theorists of *political legitimacy* tend to emphasize both the objective condition of institutional capacity and the subjective condition of widespread popular support of the ruling government. In ideological terms, Americans have traditionally looked upon government power with ambivalence and often distrust. Yet, in institutional terms, Americans ultimately built the

⁴ Steve Fraser and Gary Gerstle, editors, *The Rise and Fall of the New Deal Order, 1930–1980* (Princeton University Press, 1989).

most powerful state in the world. This irony became clearest after World War II, but the postwar reality invites the question of how the groundwork became laid for such a powerful state built by such a skeptical people.

Even limiting our analysis to the seven decades after the Civil War, the period of industrialization and the dynamic rise of modern America, we can identify the 1860s through the 1920s as marked by a multigenerational crisis of political legitimacy. The national government's institutional capacity could not sustainably maintain itself even after each major rationale for expansion. The government mobilized in the Civil War, Reconstruction, Plains Wars, clashes with organized labor, World War I and alcohol Prohibition—but each expansion of state capacity ratcheted back largely because Americans, across factions, did not trust government, particularly national government and its enforcers.⁵

This brings us to *liberalism*, a somewhat slippery and overworked term used to describe the various ideological and political programs that have historically dominated American politics. In the political history from the Civil War era to the New Deal, the prevailing ideological tale is the transformation of liberalism. Despite the many disagreements and ruptures within American liberalism, it has generally remained legibly liberal when compared to many alternative political programs across time and globe. Scholars disagree on how to define liberalism, but across all varieties we see certain family resemblances—a commitment to a politics that serves the common good, state power constrained by democratic voice and the rule of law, an equality

⁵ Benno Nietelenbos, *Political Legitimacy beyond Weber: An Analytical Framework*, (Springer, 2016); Eric W. Schoon, “Operationalizing legitimacy,” *American Sociological Review* 87, no. 3 (2022): 478-503.

before the law that views people as individuals, a distribution of jurisdictional authority, and a robustly protected space for commercial and civil society to flourish.⁶

To be sure, there are stark tensions among these liberal values, and every generation of liberals has prioritized them differently. We can tell the story of the transformation of liberalism in terms of the shifting priorities. Modern liberalism, with its roots in both classical liberalism and Progressive-era politics, is often understood as the twentieth-century prioritization of the social state and the need to face international authoritarianism and its threats to peace. This modern liberalism became legibly and self-consciously formed by the Franklin Roosevelt administration during the New Deal, then later consummated in World War II and the Cold War.

Because Democrats and left-liberals had an outsized influence over these transformative moments, we can easily underestimate the bipartisan scope of their transformative impact. The rise of modern liberalism guided and shaped the postwar Republican presidencies of Dwight Eisenhower and Richard Nixon, and even constrained the contours of seemingly dissident strains such as fusionist conservatism and the New Left, both of which were more accommodated by the politics of the New Deal order than their adherents liked to believe. On questions of the social state and national security, enforcement of civil rights and constitutional liberties, New Deal liberalism and its Cold War corollaries long determined what was possible and practical across almost all of the American political spectrum.⁷

In addition to issues like welfare and warfare, however, there was another cluster of relevant policy issues: the program of *law and order*. To understand this, we should consider both the

⁶ Helena Rosenblatt, *The Lost History of Liberalism: from Ancient Rome to the Twenty-First Century* (Princeton University Press, 2018); Eric Alterman, *The Cause: The Fight for American Liberalism from Franklin Roosevelt to Barack Obama* (Penguin, 2013).

⁷ Jefferson Cowie, *The Great Exception: The New Deal and the Limits of American Politics* (Princeton University Press, 2017).

institutional capacity of the state to enforce the law and the related willingness of people to accept that law enforcement as legitimate. At its core, a modern state's stability implies something resembling a monopoly on legitimate, legal force. In the United States, the constitutional separation of powers between national and state governments meant that enormous issues such as slavery and secession were not resolved until the Civil War settled them by force. But the settlement remained ideologically contested, and the particulars of which institutions had legitimacy in enforcing the law remained highly controversial long after the Civil War.⁸

The main challenge for law and order was lawlessness. From the 1860s through the 1920s, each generation of liberals could not legitimate national power as they could not tame lawlessness—in the industrializing cities, the New South, the Wild West. Distrust of law enforcement obstructed coalition building. The Reconstructionists struggled to overcome the criminal jurisdiction of the Southern states, their Black Codes, and other forms of oppression. The Justice Department, created in 1870, could not withstand the racial terror that effectively ended Reconstruction. The Gilded Age's classical liberals had competing commitments to class-neutral political economy, restrained government, and the need to maintain order for the rising capitalist state. Labor unrest from the 1870s through the turn of the century tested their ability to maintain political alliances with Americans sympathetic to striking workers and to stop class warfare without resorting to unconstitutional and scandalous measures.

By the end of the century, distrust of law enforcement obstructed coalition building. Black Americans, white Southerners, and the working class—three particularly politically important groups to twentieth-century liberalism—especially distrusted the promises of law and order. The

⁸ Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* (Princeton University Press, 2018).

politics of Reconstruction and its aftermath made black Americans and white southerners distrustful, and the strikebreaking state alienated the labor movement.⁹

The Progressive-era reformers tried to remake society from the top down and bottom up, but constitutional traditions constrained their ability to enforce the law. The Treasury agents, military, and private Pinkertons used in Gilded Age labor disputes were reined in after abuses and scandals, and the Bureau of Investigation, created in 1908, was weak and controversial. World War I, the Red Scare, and Prohibition expanded the federal government enormously, seemingly fulfilling the Progressives' dreams, but their reliance on unpopular and unsustainable vigilantes and uneven interjurisdictional cooperation proved unsustainable. Prohibition especially revealed the contradictions, as the Republican presidencies enforcing the law did not want to rely heavily on federal power, and the Democrats had their own deeply historical reasons for disrespecting the law's temperance goals. After the stock market crash of 1929, a surge in racketeering, and kidnappings provoked President Herbert Hoover to wage his own "war on crime," but it was not very convincing and could not mobilize Americans across factions and institutions.¹⁰

New Deal Law and Order

Then came the New Deal. The Americans who elected Franklin Roosevelt in 1932 struggled in the face of not just the Depression but lawlessness. In February 1933, Roosevelt survived an assassination attempt in Miami that took the life of the crime-fighting Chicago mayor. Americans cheered the film *Gabriel over the White House*, whose fictional president suspends Congress, declares martial law, and summarily executes gangsters. While many Americans still distrusted

⁹ Anthony Gregory, *New Deal Law and Order: How the War on Crime Built the Modern Liberal State* (Cambridge, MA: Harvard University Press, 2024), ch. 1.

¹⁰ *Ibid.*, ch. 2. See also Kathleen J. Frydl, "Kidnapping and State Development in the United States," *Studies in American Political Development* 20 (Spring 2006).

law enforcement, many letters inundated the White House with demands that Roosevelt adopt dictatorial powers to stop lawlessness.

Amid the upheaval, Roosevelt's liberalism sought a balance between authoritarianism and chaos. Starting in 1933, Roosevelt and his Attorney General Homer Cummings finally delivered law enforcement legitimacy by building new relations across society and the different levels of government. They created a war on crime coalition that transcended previous divisions—uniting social scientists and law enforcement, Treasury officials and Justice officials, the FBI and local police, conservatives and progressives. While winding down alcohol prohibition the administration achieved history's largest expansion of the federal criminal code: a ban on automatic weapons, new police powers furthered in service of interstate commerce regulation, and a massive expansion of the Bureau of Investigation's investigatory and arrest capacity. While aggrandizing its own power the New Deal federal government also encouraged state governments to expand.¹¹

Thus did the New Deal achieve a new constitutional settlement in the war on crime, with significant implications for policy. In the story of federalism since Reconstruction, the federal and state governments were seen as generally competing over authority. The zero-sum game of power in law-enforcement federalism became a negative sum game during Prohibition. The Eighteenth Amendment, authorizing Prohibition, called for “concurrent” enforcement by federal and state governments. The national and state authorities blamed each other for the lawlessness and corruption and failures of Prohibition. The New Dealers addressed this, building a war-on-

¹¹ Gregory, *New Deal Law and Order*; chs. 3–4. See also Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (WW Norton & Company, 2013).

crime federalism in which national and state authority could expand in complementary rather than rivalrous ways.¹²

The new understanding of the constitutional role of federal and state law and order allowed for new consensus-building across institutions, jurisdictions, and national politics. The American Bar Association's critics of New Deal political economy nevertheless largely agreed with New Deal liberals on the need to expand government power at all levels to pursue crime.

Constitutional strategy also brought together the New Deal Democrats and the Republican leader of the Narcotics Bureau Harry Anslinger. The federal government was limited by the Constitution as to what it could do directly—alcohol Prohibition had required a constitutional amendment. At first the strategy was to encourage state governments to expand their narcotics powers in the name of international agreements, namely the Geneva Convention of 1931. However, by the late 1930s, new constitutional reasoning allowed for a larger direct federal role in the drug war. In 1937 the Marijuana Tax Act, modeled after New Deal firearms legislation, established a national marijuana ban and brought new security to Anslinger and his controversial agency.¹³

The new war-on-crime federalism also modernized the security state. Roosevelt and Cummings found great use for J. Edgar Hoover and his Bureau of Investigation, broadening its mission beyond what Hoover had anticipated. In 1935, the FBI opened a training school, bringing it closer to police departments nationwide. It also built a huge forensics infrastructure, especially a large fingerprinting database, and gave access to this intelligence to local enforcers, buying the loyalty of police and sheriffs' departments to the federal government, to the FBI, and

¹² See Mary M. Stolberg, "Policing the Twilight Zone: Federalizing Crime Fighting During the New Deal," *Journal of Policy History* 7, no. 4 (1995): 393-415.

¹³ Gregory, *New Deal Law and Order*; ch. 5 and 6.

to the New Deal state. After Cumming’s retirement in the late 1930s, his successor Attorney General Frank Murphy called for enough funding for the FBI to wage a two-front war—against foreign threats and domestic criminals. The FBI, meanwhile, became one of the three main intelligence agencies, along with the Office of Naval Intelligence and the Army’s Military Intelligence Division, linking the defense establishment to local enforcement. In World War II the fingerprinting database swelled.¹⁴

What we might call the “War on Crime Constitution” nurtured developments in federal penology. The federal prison system had arisen from practically nothing in the early 20th century. Under the New Deal the prison system expanded in both quantitative and qualitative terms. Combining federal and state detentions, the per capita incarceration rate reached a peak in 1939 not seen again until 1979. The New Deal state assisted state governments, and the Works Progress Administration built or renovated 760 penal institutions around the country. In qualitative terms, the New Dealers advanced unforgiving punishment at Alcatraz, the first federal maximum-security prison. Homer Cummings advocated this model for prisoners beyond redemption. Simultaneously, the federal government put unprecedented support behind rehabilitation.

¹⁴ On the FBI also see Beverly Gage, *G-man: J. Edgar Hoover and the Making of the American Century* (Simon and Schuster, 2023). On World War II, liberalism, and policing, see Emily Brooks, *Gotham’s War within a War: Policing and the Birth of Law-and-Order Liberalism in World War II-era New York City* (UNC Press Books, 2023).



Combined federal and state prisoners per 100,000 population, 1925–1982

Data Source: Historical Corrections Statistics in the United States, 1850–1984, Table 3-7, 35

This graph uses more inclusive figures from 1976 onward, which may slightly exaggerate the later prison surge compared to the 1930s. This graph originally appeared in *New Deal Law and Order* (Harvard University Press, 2024).

The Works Progress Administration not only helped build jails and prisons but worked with the Justice Department to conduct the Survey of Release Procedures, a massive attempt to survey state probation and parole processes and defend them against a conservative backlash. The undertaking revealed tensions within New Deal liberalism: Justice Department directors emphasized academic expertise while the WPA prioritized white-collar employment. Nevertheless, the Survey studied data from 1928 to 1935 and WPA officials personally visited 82 state prisons. In the process the federal government and state governments gave a new sense of legitimacy to each other.¹⁵

The simultaneous support for discipline and reform speaks to the core quality of the New Dealers’ carceral liberalism and the leveraging of all levers of state power—the welfare state and

¹⁵ Gregory, *New Deal Law and Order*, ch. 8. Also see Matthew G.T. Denney, “‘To Wage a War’: Crime, Race, and State Making in the Age of FDR,” *Studies in American Political Development* 35, no. 1 (2021): 16-56.

prisons, technocratic expertise and policing— to address lawlessness in holistic terms, as a threat to America’s security and its way of life. While today’s reformers often see incarceration and rehabilitation as mutually exclusive, the New Dealers strongly believed in both repressive and progressive approaches to crime. Roosevelt’s team also elevated criminological expertise like no administration before it. We see this in the criminological surveys undertaken by Raymond Moley, the architect of the Brain Trust. He famously split with Roosevelt’s New Deal, especially over Roosevelt’s 1937 court-packing scheme. But he continued to be proud of Cummings’s work in expanding the FBI’s powers and took credit for some of this in his 1939 book, *After Seven Years*.¹⁶ The criminological expertise persisted in the work of Justin Miller, a special assistant to Homer Cummings, who sent out 1,800 letters to every conceivable social institution and authority relevant to the question of “crime prevention.” This idea of crime prevention began as a preventive social work strategy, focusing on juveniles. But this idea, under the New Deal, became both more progressive and more repressive at the same time. One proposal was to bring the prisons under a new Department of Welfare. This nightmare scenario was never realized.¹⁷

¹⁶ Raymond Moley, *After Seven Years* (Harper, 1939), 274–75.

¹⁷ Gregory, *New Deal Law and Order*, ch. 9.

Expanding the Coalition

The combination of punitive and reformist elements within modern liberalism had serious implications for the greater political realignment and the creation of the New Deal coalition. One puzzle in the coalition concerns the simultaneous enthusiasm of the most racially reactionary white southerners and black Americans. White southerners had been loyal Democrats since the Civil War era, whereas it was during the 1930s that most black voters switched from the Party of Lincoln to the Party of FDR. In other words, the New Dealers achieved the unlikely feat of maintaining the spirit of national reunion alongside a revitalized promise of Reconstruction. Historians define “national reunion” as the Progressive-era détente between North and South, facilitated by a new revisionism that downplayed the racial importance of the Civil War and Reconstruction, a cross-regional support for imperialism and eugenics, and the rise of the Southern segregationist Democrat Woodrow Wilson to become a significant progressive president.¹⁸

The New Deal maintained this spirit of reunion while rekindling the promise of Reconstruction. Historians often argue that labor and welfare policies won over both black and white Americans. The missing piece in most histories is law and order. Because federalism and the politics of law enforcement were in such radical transition, the 1930s offered an anomalous opportunity to build on conflicting hopes that factions projected onto the future of the New Deal state.

In December 1934 Cummings hosted a major crime conference that covered law and order in very broad terms. Conspicuous by its absence was much talk of lynching, which provoked the NAACP to picket the conference. The organization had regarded extra-legal racist violence, both

¹⁸ David W. Blight, *Race and Reunion: The Civil War in American Memory* (Harvard University Press, 2001).

within and outside official institutions, as the most pressing examples of lawlessness. The picketers were especially moved by the horrific lynching of Claude Neal in October. Neal was accused of rape and murder in Florida and, to protect him, the sheriff moved him to Alabama, where a mob of a hundred white men seized him and dragged him back to Florida. He was brutally tortured for around twelve hours. The chaos of the lynching was so extreme it disturbed even proponents of rough justice. As if to suggest a distinction between lawless and orderly lynching, a *Baltimore Sun* headline read: “Lynching Put Off for Fear of Disorder: Mob Asks Crowd to Depart So It Might Kill Negro in Peace.”¹⁹ Even many opponents of a federal lynching law now demanded one. The Cummings Justice Department continued seeing it as an issue of states’ rights. The NAACP was unsatisfied by the argument, given all the other ways the New Deal expanded federal criminal power into the states. Indeed, the NAACP argued that interstate lynchings were already a federal crime under existing interstate kidnapping statutes. But the New Deal continued to spotlight Southern politicians such as Hugo Black, even as they blocked federal lynching legislation. Roosevelt even put Black on the Supreme Court. The spirit of national reunion was alive and well.

On the other hand, the New Deal revitalized the promise of Reconstruction, giving some indications that law and order could aspire to be colorblind. In 1936 the Justice Department cooperated with Arkansas officials to indict Paul Peacher for the crime of slavery. Peacher had tricked the local government into believing he had a peonage agreement that allowed him to force black laborers to work his land. His conviction was hailed by Cummings as a “victory for law and order.” Indeed, not only did it secure civil rights but it affirmed the authority of Arkansas’s local government and its monopoly on crime and punishment. Eventually the FBI

¹⁹ “Lynching Put off For Fear of Disorder,” *Baltimore Sun*, 27 October 1934.

would do more to investigate lynchings and police misconduct, and in the longer term the New Deal coalition would collapse. But it is hard to imagine the mid-century energy behind state-building without the simultaneous involvement of different factions who in the short term could work together while in the long term they had opposing goals.²⁰

Outside of Southern politics, another key political development concerned the labor movement. Roger Baldwin, founder of the American Civil Liberties Union, had distrusted the New Deal for its corporatist political economy, and more than the welfare agencies of the New Deal, it was the security state that won him over to Roosevelt's coalition. He was impressed that J. Edgar Hoover and Attorney General Robert Murphy seemed to embrace a true liberalism supporting civil liberties and opposing vigilante violence. The FBI's spokesmen came out strongly against vigilantism, depicting it as a lawless evil and threat to the republic along with fascism, communism, and everyday criminality. During World War II, Baldwin was impressed by the liberalism of the administration's conduct compared to Wilson's in World War I. The main exception he offered was Japanese internment. But internment, as unjust and illiberal as it was in practice, had also demonstrated how much the security state had transformed. It required the smooth coordination of welfare agencies, immigration officials, local police, the FBI, and the military. It was not jurisdictionally chaotic, and it was not characterized by the vigilantism that thrived during World War I. After World War II the security state did not fall into disrepute as it had after World War I and the Red Scare, and the consensus belief that freedom and law and order were henceforth compatible would rein for the next several decades.²¹

²⁰ Gregory, *New Deal Law and Order*, ch. 7.

²¹ See Laura Weinrib, *The Taming of Free Speech: America's Civil Liberties Compromise* (Harvard University Press, 2016).

The 1960s indeed mounted major challenges to this consensus. But even after the famous disruptions from 1968 through Watergate, Americans were still primed to rebuild the war-on-crime coalition—long after the New Deal coalition was fraying. The bipartisan war on crime from Ronald Reagan to Bill Clinton demonstrated that law and order was still one of the most popular sites for American state-building. Even with strong disagreements in the culture war and over political economy, the law-and-order consensus sustained American political legitimacy up into the 21st century.

The Question Today

There were always threats to the consensus—from the federal law enforcement overreach at Waco that alienated the 1990s populist right to the expansive prison system and militarized policing that alienated the radical and progressive left. These different dissenting factions never cohered into a credible and enduring reform movement. After the Cold War, and especially after the war on terror and 2008 global financial crisis, Americans have again confronted multiple crises—of legitimacy, for liberalism, and in law and order. In seeking to address these crises, Americans must ask how legitimacy and law and order were first constructed. Perhaps the more troubling and relevant analogy for us is not the disorder of the 1960s—nor the civil war of the 1860s, as the more alarmist commentators suggest—but that long crisis of legitimacy from Reconstruction through the 1920s, when there existed no broad coalition for liberalism or law and order. Those decades before New Deal law and order left a lot to be desired when it comes to public safety or equality under the law.

Trump's stunning comeback in part marks a broad distrust with the institutional consensus of which the left-liberals have appeared to become the more establishmentarian guardians. Part of

this distrust has a partisan flavor, and expresses itself in the form of accusing progressives of hypocrisy—about the need to enforce pandemic lockdowns by prohibiting church services but not mass anti-police protests; about criticisms of the carceral state and intelligence agencies alongside opportunistic reliance on them to check the ambitions of Trump and his allies; about vacillating from demands to decriminalize illegal border crossings to supporting nearly the kind of deportation and asylum policies Republicans favored; about Biden’s platitudes about the rule of law alongside his broken promise not to pardon his son Hunter. Crucial to the New Dealers’ triumphs in law and order was the perception that the partisanship and unfairness of law enforcement were giving way to a law-and-order regime that was neutrally administered across race, class, and interest group. A sizable portion of the electorate, at the least, does not appear to trust the Democrats with such neutral administration.

The Trump administration will also struggle to realign politics around law and order nearly as well as Roosevelt. After Biden ended his presidency with polarizing pardons and commutations, Trump began his second term with his own provocative acts of mercy. His blanket pardon of January 6 rioters and protestors, his pardon of libertarian activist Ross Ulbricht and former Democratic congressman Rod Blagojevich, and his Justice Department’s controversial dismissal of the corruption charges against New York’s Democratic mayor Eric Adams, all suggest that the era of New Deal law and order politics is over. The interpretation that Trump is undoing the partisanship of the Justice Department and FBI will have trouble winning over the median American if he directs agents to investigate his political opponents. The intelligence agencies and security state do warrant serious reform, however, and it is possible that today’s disruptive politics yield at least some positive changes with bipartisan support. On other issues Trump may have an easier time, given perceptions of Republican biases, striking a balance between combatting

lawlessness and keeping state power in check. As Americans have begun to sour on drug reform and lenient prosecutors, Trump has an opportunity to continue efforts toward more criminal justice reform, harm reduction, and marijuana decriminalization, without playing into narratives that he is allowing anarchy or hedonism. On immigration, some of his instincts are almost unprecedented in their hawkishness, but it would probably be easier for Republicans to enact a partial amnesty than it would be for Democrats.

Although some suggest that Trump's return could signal an enduring transformation of American politics, other 21st-century presidential elections generally fell short of their anticipated long-term legacies. Looking back at the truly consequential presidencies, the clearest lesson is that for any realignment to last, political leaders must confront not just the hard problems of political economy and national security, but also those of law and order. This means inspiring a lasting majority of Americans to trust the enforcers of the state, from top to bottom, in both their goals and their practices. If the next administration does not prove up to that daunting task, it will fall on a future generation to rebuild American law and order.

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