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Criminalization of Loitering from a Comparative Perspective: A Reflection of Legal Tradition

Pablo Rando-Casermeiro[1]
University of Seville

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Abstract: This article analyzes the regulatory system's response to loitering in thirteen jurisdictions within the Global North: England and Wales, Finland, France, Germany, Italy, Portugal, Romania, and Spain in Europe; and California, Florida, New York, and Texas in the United States of America. The analysis begins with a descriptive overview of punitive measures against loitering in each of the selected jurisdictions. Second, it delves into the qualitative aspects that may provide key explanations for the results. Among these, one unequivocal trend stands out: only countries with a common law tradition punish loitering and permit police arrest of offenders. Based on this significant finding, the paper discusses the importance of legal tradition as a determining factor in comparative criminal policy and attempts an analysis of the punishment of loitering in practice, using descriptive statistics.

Keywords: *loitering, comparative criminal policy, social exclusion, RIMES instrument*

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1. Introduction.

1.1. General Perspectives on Loitering

The primary objective of this study is to examine the offense of loitering from a comparative perspective across thirteen Western jurisdictions in Europe and North America.

Scholars have noted that the legal terminology of loitering itself serves the purpose of expanding police powers in public spaces. It thus functions as a generic conceptual framework that police can use to remove suspicious individuals from public spaces. Loitering is therefore a punitive mechanism intended to curb disruptions to the ideal of orderly streets (Bland 2022).

From this perspective, the punishment of loitering functions as a preventive measure, even though it is formally defined as an offense, as is typically the case in Anglo-Saxon contexts. There is even a further layer of explanation: the penalization of loitering as a means to eradicate visible symbols of idleness, insofar as the sight of such idleness on the streets caused social anxiety based on a link between poverty and crime (Bland 2022). Loitering is deeply rooted in vagrancy laws and, as such, reached its peak between the nineteenth and early twentieth centuries, although there are, of course, earlier precedents (for the United Kingdom, for example, see Lawrence 2017; Bland 2022; Mead & Calambokidis 2026). In

[1] Correspondence to: pablorando@us.es

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this regard, it is worth noting that not only the loitering offense but, more generally, vagrancy laws functioned to a large extent as a mechanism to repress poverty and, in particular, to manage unemployment itself through instruments of criminal control (Campos 2014, 9).

This phenomenon is nothing more than a corollary of those critical perspectives that view, more generally, the system of criminal control as an instrument for managing poverty—one that either constitutes yet another dimension of social policies or progressively replaces them (Foucault 1975/1977, 300–301; Simon 2007/2011, 41 et seq.; Wacquant 2004/2009, 41; Garland 2001; Baratta 1982/1986, 197–198; García Domínguez 2020, 29; Brandáriz 2019, 54).

1.2. Loitering as an element of social exclusion: its place in the RIMES instrument as a tool for comparing criminal justice systems.

This study originated within the broader context of the RIMES instrument. RIMES is a comparative criminal policy instrument consisting of 39 indicators that measure the social exclusion caused by the functioning of the criminal justice system in Western countries, whereas police arrest for loitering is one of the RIMES's items –specifically, item 2. The methodology used by this instrument has already been described in numerous studies; therefore, there is no need to dwell extensively on this specific aspect of the study, beyond a very basic summary: as previously noted, the RIMES instrument consists of 39 items that reflect social exclusion, organized into nine thematic categories. These 39 items were selected by a panel of more than 100 experts from numerous Western countries as those that most clearly reflected social exclusion, based on scores obtained according to Aiken's V-scale (Díez-Ripollés & García-España 2019; Díez-Ripollés 2024, Arenas-García 2024; García-España 2024).

Once the experts had been selected, the instrument was administered in thirteen Western jurisdictions during successive waves of the RIMES project: England and Wales, Finland, France, Germany, Italy, Portugal, Romania, and Spain in Europe; and California, Florida, New York, and Texas in the United States of America. It should be noted that responses to the items allow only affirmative or negative answers and, consequently, are based on a dichotomous structure: the item either applies or does not apply. The results obtained for the 39 items in each compared jurisdiction allow each one to be placed on a continuum of social exclusion, based on scores ranging from 0 (less social exclusion) to 10 (more social exclusion). The final score for each jurisdiction is determined by multiplying each item answered in the affirmative by its respective coefficient, which is derived from the Aiken V-scale assigned by the experts.

However, it is my view that the RIMES instrument must be supplemented by more in-depth explanations that delve into the details—both descriptive and explanatory—of each indicator. The purpose of the RIMES instrument is to provide a general overview of the degree of social exclusion caused by each jurisdiction when it applies the criminal justice system as a whole—summarized in 39 indicators. It is, however, time to delve deeper into specific indicators to provide a better understanding of the phenomenon of social exclusion caused by criminal justice systems, as well as to open up academic debate on the specific aspects of control that generate social exclusion. This is how the idea arose to produce a

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monograph dedicated to loitering, which is precisely one of the indicators that make up the instrument: more specifically, item 2, located within Pool 1, dedicated to the control of public spaces.

Item 2 is stated in the RIMES instrument as follows:

> *An individual may be arrested for loitering.*

In other words, what causes social exclusion is not only the fact that loitering is defined as a crime, but also that it enables the police to arrest the offender. The statement of this item is followed by a description in the following terms:

> *Loitering means wandering or remaining in public places in a suspicious or unusual manner, and under circumstances that may raise concerns that the person loitering intends to commit illegal or dangerous acts against individuals or public order.*
>
> *The provision does not include loitering involving solicitation, which means that a person is offering others any kind of service or good that might be considered illegal by the authorities.*

This description is intended to make it clear that, for the purposes of this study, only the most clearly exclusionary manifestations of loitering have been selected. The indicator is considered to have received an affirmative response only when police arrest for loitering—even when such conduct has not yet resulted in a subsequent offense—is legally permissible (e.g., loitering in an area where prostitution services are offered). Therefore, for the indicator to be answered affirmatively in each jurisdiction, an arrest for loitering must be based on a suspicion that the offender might commit an offense.

Another key point is that only loitering in public spaces that are open to the public (parks during operating hours, streets, squares, etc.) will be considered loitering. It is common for the law of the countries studied to include offenses that punish remaining in or loitering in private spaces or in public spaces that are closed (for example, loitering in private establishments or business premises in the state of California; the presence of persons in closed areas of stations or other public transportation facilities in Germany (Art. 123 of the Penal Code); or entering or remaining in establishments open to the public or professional offices in Spain (Art. 202 of the Penal Code). These cases fall outside our operational definition of loitering.

Now that we have explained the context of this paper and provided an operational description of what loitering means, it is time to address the methodological aspects of the study.

2. Methodology

The core methodology consists of a qualitative analysis of legal and judicial texts. The primary source material consists of legal texts: laws, codes, and other state, regional, or municipal regulations related to loitering, as well as, where applicable, case law.

Based on the results obtained, a qualitative analysis will be conducted to identify regional trends in responses to loitering and to propose and analyze possible explanatory hypotheses for the differences found among the various jurisdictions in the sample used. Therefore, this research employs an iterative design that makes use of post-hoc analysis. I believe this methodology is well-founded in comparative studies such as this one. Ragin has explained

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the reasons for this much more clearly than I could: the "folklore" of the social sciences seems to demand that researchers formulate hypotheses solely on the basis of theories prior to the start of the study. However, very often, the truly interesting hypotheses are those that emerge after analyzing the data (Ragin 2017, 164–165).

Finally, qualitative methodology is commonly used in comparative criminal policy research, and its use is recommended when quantitative methodologies are not appropriate—namely, in cases where the sample of countries is too small and therefore lacks sufficient statistical power to perform inferential statistics (Lijphart 1971; Lieberson 1991; Becerra-Muñoz 2024, 13–15). This is precisely the case in our analysis, where we have only n = 13 jurisdictions.

3. Results: Review of the regulations, interpretation of the results, and explanatory analysis.

3.1. Regulatory Review.

The following section presents the results obtained from the analysis of each jurisdiction. Although the scope of this article precludes an exhaustive examination of the regulatory framework of each country or state analyzed, it does provide a certain level of detail that adds context and depth to the responses from the RIMES instrument, which, as previously explained, provide only dichotomous yes/no information.

a. England and Wales.

In England and Wales, loitering was punished in a somewhat general manner under the Offenses Against the Person Act of 1861, provided it occurred at night:

Section 66 of that Act provided that:

> *"Any Constable or Peace Officer may take into custody, without a warrant, any person whom he shall find lying or loitering on any highway, in any yard, or in any other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony mentioned in this Act, and shall bring such person as soon as reasonably possible before a justice of the peace to be dealt with according to law."*

Although this provision was repealed by the Criminal Law Act of 1967, the Vagrancy Act of 1824 still criminalizes loitering in Section 4, titled "Persons committing certain offenses to be deemed rogues and vagabonds", thus:

> *"Every person wandering about and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or wagon, who has no visible means of subsistence and cannot give a satisfactory account of himself or herself."*

In 2022, the United Kingdom Parliament passed the Police, Crime, Sentencing, and Courts Act 2022, whose Section 81 repealed the Vagrancy Act. However, the law remains in effect because its final repeal has been postponed, technically, until the spring of 2026. Although that deadline has already passed, the law still remains in effect.

In any case, loitering is also explicitly punishable in the specific context of prostitution. Section 1(1) of the Street Offenses Act of 1959 states the following:

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> *"It shall be an offense for a person aged 18 or over (whether male or female) to persistently loiter or solicit in a street or public place for the purpose of prostitution."*

As for what constitutes "persistent," Section 1(4)(a) of the Act states that

> *"conduct is persistent if it takes place on two or more occasions within any three-month period."*

It is clear that the Street Offenses Act penalizes both loitering and soliciting; that is, it does not require that the person have actually offered sexual services—the mere act of loitering that raises a police officer's suspicion that the person might engage in soliciting is sufficient.

The penalties prescribed for violations of the Street Offenses Act are fines. Previously, a prison sentence was provided for, but the Criminal Justice Act of 1982 abolished that penalty. However, the fine may be replaced by an order requiring the offender to attend three sessions with a supervisor, intended to prevent the person from engaging in criminal behavior in the future:

> *"The court may deal with a person convicted of an offense under this section by making an order requiring the offender to attend three meetings with the person for the time being specified in the order ("the supervisor") or with such other person as the supervisor may direct."*

The question remains, however, as to whether the police may arrest the offender. Under the original Street Offenses Act, Section 3 provided as follows:

> *"A constable may arrest without a warrant anyone he finds in a street or public place and suspects, with reasonable cause, of committing an offense under this section."*

This provision was repealed by the Serious Organized Crime and Police Act of 2005, but, paradoxically, not to prevent the arrest of a person engaging in loitering. The reason for this repeal was simply to bring arrests for this offense under the general police arrest regime introduced by the Police and Criminal Evidence Act of 1984, following the 2005 reform. The general arrest regime is set forth in Section 24 of the Act:

> *"(1) A constable may arrest without a warrant*
>
> *(a) anyone who is about to commit an offense;*
>
> *(b) anyone who is in the act of committing an offense;*
>
> *(c) anyone whom he has reasonable grounds to suspect is about to commit an offense;*
>
> *(d) anyone whom he has reasonable grounds to suspect of committing an offense."*

However, in order to proceed with the arrest, certain requirements set forth in Article 24(5) must be met, such as ascertaining the offender's name or address or, in general, preventing harm to persons or property. One of the grounds on which a police officer may arrest an offender is

> *"To prevent the person in question […] (iv) from committing an offense against public decency…"*

Section 24(6) establishes when an arrest for an offense against public decency is appropriate:

> *"Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question."*

This means that, in effect, a person can currently be arrested for loitering as defined in the Street Offenses Act, although the arrest is subject to certain conditions.

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This legal framework does not ignore the fact that successive police practice guidelines in England and Wales advise against prosecuting loitering offenses. Thus, according to the National Police Chiefs' Council (2025):

> *"Although many aspects of commercial sexual exchange are lawful, offenses related to soliciting and loitering remain applicable to on-street sex work. Where officers suspect and/or have evidence of loitering, offenses should still be recorded proportionately and evidence retained; however, it will not be common practice to seek to prosecute those who sell sex. Instead, every effort should be made to refer these individuals to partner agencies and seek diversion wherever possible."*

Similarly, the Prosecution Guidance: Sexual Offenses, Violence Against Women and Girls, and Child Abuse (Crown Prosecution Service, 2024) reiterates the discretion granted to the police to, in such cases "not to arrest or to take no further action."

In short, and regardless of whether the practice of arresting offenders for loitering for the purpose of prostitution has decreased—as we will see in more detail later—it is also true that the police can, currently and under certain conditions, arrest the offender.

b. Finland

Loitering itself is not a criminal offense in Finland, although the police may intervene if an activity is considered disruptive or a threat to public safety (Housing Rights Watch, 2012). Section 3 of the Finnish Public Order Act 612/2003, titled "Disturbing public order and endangering public security," prohibits certain forms of disorderly conduct, including:

> *"1) making noise or causing other similar disturbances;*
>
> *2) making repeated threatening gestures, aggressive movements, verbal threats, or other similar threatening behavior likely to cause fear;*
>
> *3) shooting or throwing objects, or acting in any other similar manner."*

Both Sections 4 and 7 of the aforementioned Act prohibit other forms of disorderly conduct, such as drinking in certain public places, defecating, urinating, or purchasing and offering sexual services in public places. However, no specific act of loitering, as described above, is penalized under the Public Order Act.

It is worth noting that, prior to the 2003 Public Order Act, a so-called Local Government Act from 1995 permitted local governments to establish regulations concerning public safety and public order. However, following the 2003 Public Order Act, this authority was removed, so that local governments can no longer regulate these matters. The aim of this change was to eliminate unequal treatment caused by local ordinances by introducing uniform practices throughout the country (Housing Rights Watch, 2012; Törrönen-Karlsson, 2005: 94–95, 108–109). It is also worth noting that, since 1937, Finland had a Vagrancy Act that authorized the police to take into custody individuals classified as "vagrants," typically prostitutes and beggars. However, this regulation was abolished in 1986 (Toivanen, Schipaanbord & van Tongeren 2025).

c. France

Currently, loitering is not a criminal offense in France. The former French Penal Code punished the crime of "wandering" with a prison sentence of three to six months. A "wanderer" was defined as an individual having no permanent residence, means of support,

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or permanent job (Articles 269–272 of the former French Penal Code). However, these provisions were repealed in 1994 (Housing Rights Watch, 2012b).

Even though loitering is no longer a criminal offense, France has recently seen the proliferation of major decrees (*arrêtés* in French) sanctioning a number of behaviors considered disorderly. One of the punitive measures employed by local authorities consists of imposing temporary curfews targeting minors, drug users, or groups of people in general (De Maillard 2009, 88). These curfews are imposed for a limited period of the year—for instance, during the summer months—and involve prohibitions on gathering at certain times of the day, typically at night. This has been the case in cities such as Nice, Bordeaux, Béziers, and other municipalities, especially in southern France (Gayet-Viaud 2017, 83; Henshell 2024).

Curfews are not technically, as such, offenses of loitering, although we may say that curfews encompass the specific prohibition of loitering, since they are broader in scope and nature than loitering. From this perspective, we may argue that loitering is prohibited in a number of municipalities in France where curfews are in effect.

On other occasions, municipal decrees prohibit simply being on the streets. This is the case, for instance, with a 2002 decree issued by the then mayor of Bordeaux, Alain Juppé, which penalizes "any abusive and prolonged occupation of the streets (...) likely to hinder the free movement of people or to undermine peace and public order." It should be noted that such regulations are, in fact, aimed at homeless people, even though homelessness or begging is not, as such, prohibited; however, they are worded in a way that, in practice, appears to prohibit loitering.

It is important to note that some of these bylaws were declared unconstitutional by the French Council of State. For example, the Council of State's ruling of June 6, 2018 (No. 410774), annulled the Béziers bylaw of April 25, 2014, on the following grounds:

> *"The legality of measures that restrict minors' freedom of movement for this purpose is subject to the condition that they are justified by the existence of specific risks of a breach of public order to which such minors would be exposed or which they might cause in the areas for which the measures were enacted, that they are appropriate to the objective pursued, and that they are proportionate."*

However, the Béziers ordinance was overturned, not because it is unconstitutional to impose curfews, but because, in this case, the Béziers city council failed to provide sufficient evidence of an increase in juvenile crime linked to the presence of minors on the streets. For this reason, in other cases, such bylaws have been deemed legal, as was the case with the Prefectural Order of April 20, 2024, in Guadeloupe. In this regard, the Council of State's ruling of May 10, 2024 (No. 493935) stated:

> *"Taking into account the factors mentioned in the previous point, the measure temporarily prohibiting minors from being out between 8:00 p.m. and 5:00 a.m. in certain neighborhoods of Pointe-à-Pitre and Les Abymes on minors not accompanied by a parent or an adult exercising parental authority appears justified in light of the public order disturbances resulting from the rise in crime and the dangers that such an increase poses to the minors involved in it, even though the proportion of crimes committed at night is not higher in Guadeloupe than in mainland France."*

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The best proof of this is that the City Council of Béziers itself has issued successive ordinances establishing curfews, such as the one of March 31, 2025, which was, in fact, upheld by the June 20, 2025, ruling of the Montpellier Administrative Court.

Furthermore, the reasoning of the French Council of State itself conclusively proves that the rationale behind the prohibitions lies in the suspicion that the individuals affected by the curfew may commit crimes. It is precisely this suspicion that lends legitimacy to the prohibitions established in municipal bylaws. In this regard, the bans align more closely with the traditional conception of loitering as a preventive measure than with actually causing any specific harm or danger.

In addition to the relatively recent persistence of bylaws prohibiting the presence of people—often minors—on the streets, there is a trend toward a rather broad application of the 1995 National Emergency Act, which, under Article 5, empowers prefects to prohibit the presence of people on the streets under certain circumstances (Champeil-Desplats 2017, 207; Cerdá Guzmán 2017). This phenomenon has been particularly evident since the terrorist attacks in Paris on November 13, 2015. President Hollande declared a state of emergency the following day, November 14, and within just two years, it was extended six times. To find such prolonged declarations of a state of emergency, one must go back to 1961 (Champeil-Desplats 2017, 208; Cerdá Guzmán 2017). However, it is also true that, after the state of emergency ended in 2017, the measure was not reinstated until 2020, in response to the COVID-19 pandemic.

Notwithstanding that fact, arrest is not an option for such infractions: Section R610-5 of the French Penal Code states that

> *"Violation of the prohibitions or failure to comply with the obligations set forth in police decrees and orders is punishable by a second-class fine."*

Thus, such an infraction is considered a contravention, punishable not by imprisonment but by a fine.

According to Section 62.2 of the French Code of Criminal Procedure:

> *"Police custody is a coercive measure ordered by a judicial police officer, under the supervision of the judicial authority, by which a person against whom there are one or more plausible grounds to suspect that he or she has committed or attempted to commit a crime or an offense punishable by imprisonment is held at the disposal of investigators."*

Since municipal violations penalizing loitering do not carry prison sentences, the police may not detain offenders.

d. Germany.

In Germany, there is no ban on loitering. In 1974, the offense of vagrancy—which originally stemmed from the 1871 Penal Code, whose Section 361.3 punished anyone who wandered aimlessly like a vagrant—was repealed. This offense had been in effect in West Germany since 1949 (Martin 2025). It is true that, in recent years, there has been a proliferation of initiatives by some municipal governments to prohibit wandering or being on the street at certain hours, particularly at night. However, all such initiatives have been rejected to date by the courts. This fact can be explained, in part, by a very broad interpretation of the right to liberty under Article 2 of the German Basic Law, especially following the German

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Constitutional Court's expansive interpretation of that fundamental right in its ruling of January 16, 1957.

In this regard, the case of the ban on loitering at Brüsseler Platz in Cologne is very illustrative. On February 5, 2025, Cologne City Council banned people from being present at Brüsseler Platz during nighttime hours—a location known as a popular gathering spot for young people's nightlife—on the grounds that nighttime noise was disturbing residents. The curfew was in effect from 10:00 p.m. to 6:00 a.m., excluding weekends. However, Ruling 404/2025, dated April 23, issued by the Cologne Administrative Court, provisionally suspended the ordinance, determining that the establishment of a curfew offense was clearly disproportionate. The reasoning is based on the fact that, although the right to freedom under Article 2 of the Basic Law should not justify infringing upon the right to protection from excessive noise, there are less disproportionate means to protect the health of residents. Furthermore, the court held that, in urban environments such as the controversial square, residents must tolerate a certain reasonable level of noise, which is set at 45 decibels.

What is most interesting about this case, from our comparative perspective, is that public order or the prevention of disorderly conduct is not at stake. It was a problem of noise pollution. That is, under no circumstances is wandering or remaining in a public place prohibited as a means of clearing suspicious individuals from the area. Among other suggestions that were less intrusive than imposing a curfew, the Court recommended banning alcohol consumption, which the City Council of Cologne accepted, limiting itself to the ban on alcohol consumption but without imposing curfews (Baumanns 2025).

Apart from this specific attempt to impose curfews (the only one I am aware of, setting aside the exceptional cases motivated by the COVID-19 pandemic), loitering is therefore not punishable in Germany, either criminally or administratively. It is true that Section 118 of the German Administrative Infractions Act (*Ordnungswidrigkeitengesetz*) can generally punish disturbances in public spaces that cause inconvenience to people, but more is required than simply wandering around somewhere in a suspicious manner for authorities to intervene and penalize the individual in question. The same can be said of other regional or local laws that penalize similar conduct (for example, Section 15 of the Düsseldorf Street Order, which regulates causing a nuisance or obstructing pedestrian traffic, along with other types of conduct, in a manner similar to that in other German cities such as Hamburg, Bremen, or Munich).

e. Italy

In Italy, there is also no legal concept of loitering, neither in the criminal code nor in other state provisions. The bylaws of major Italian municipalities such as Rome or Milan also do not contain specific prohibitions on loitering, at least not unless it is accompanied by other harmful conduct (Housing Rights Watch 2012c). On this point, it is worth citing Italian Constitutional Court Ruling 115/2011, dated April 7, which declared unconstitutional the authority of mayors to regulate matters related to urban security, except in cases of urgent necessity. This significant power had been granted to mayors in 2008 through an amendment to Italian local government legislation that implemented the so-called "security packages," which had already been proposed in previous years (Selmini 2005). The Italian Constitutional

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Court expressed its concern regarding the limitation of fundamental rights that such legislation could entail, as it made possible

> *"(…) numerous bans on 'begging,' or a wide variety of regulations devised 'around' the practice of prostitution, or even in relation to gatherings of people potentially capable of causing disturbances or disorder. In short, punitive regulations of indefinite duration and restricted territorial scope, capable of rendering unlawful (…) conduct that would otherwise be lawful, and which, potentially, may limit fundamental freedoms (such as freedom of movement, freedom of assembly in public places, etc.)"*

The veto on mayors' regulatory authority in these matters therefore precludes loitering bans, insofar as they would affect the right to freedom of movement established in Article 16 of the Italian Constitution. The only way to prohibit loitering would be through state legislation, which has not been the case to date.

f. Poland

In Poland, loitering is not punishable. As in most European countries, there were specific offenses that punished vagrants. Vagrancy—defined as the behavior of an unemployed person wandering aimlessly—was covered by Article 3 of the Resolution of the President of the Republic of October 14, 1927, on Combating Begging and Vagrancy. The prescribed punishment included detention and forced labor. In 1971, the Decree was replaced by a Code of Petty Offenses. Although loitering was no longer expressly listed as a crime, the communist period was characterized by practices aimed at eliminating the presence of beggars and other socially excluded individuals (Staszkiewicz-Grabarczyk 2023, 196). However, as in the rest of continental Europe, there was a gradual phasing out of vagrancy laws and, with it, the decriminalization of loitering or vagrancy.

g. Portugal

Chapter V of Title IV of the Portuguese Penal Code deals with "Crimes against public order and tranquility." Section I even regulates the so-called "Crimes of dangerous antisocial behavior." However, loitering is not criminalized. Article 256 of the old Penal Code of 1886, in force during the Salazar dictatorship, punished

> *"Any person who does not have a fixed residence, nor means of subsistence, nor habitually engages in any profession, trade, or other activity by which to earn a living."*

Trovão (2017) documents that, during the country's fascist period, between 1933 and 1974, there were establishments called "mitras" where vagrants and beggars were confined, often indefinitely and without a prior trial. In Lisbon alone, as many as 30,000 people were detained.

This offense was abolished with the enactment of the democratic Penal Code of 1982. Since then, loitering has not been regulated either in Portugal's law on administrative offenses or in municipal ordinances.

h. Romania

Loitering is not considered a crime in Romania today. Previously, the 1936 Romanian Criminal Code (hereinafter, RCC) defined the crime of vagrancy in Sections 338 and following. The now-repealed Section 338 established that:

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> *"A person who has no fixed abode and no means of livelihood, and who does not habitually exercise a profession or trade, even though he is able or has the means to do so, commits the crime of vagrancy."*

This offense remained largely unchanged in Section 337 of the 1968 RCC. However, Law No. 278 of July 4, 2006, repealed the crime of vagrancy. The current RCC, dating from 2009, does not provide for such an offense. Thus, vagrancy has not been a crime in Romania since 2006.

It is worth noting that this offense does not exactly correspond to the concept of loitering addressed in our study. However, the offense of vagrancy is a broad category of crime that encompasses certain instances of loitering, as strictly defined in this study. In any case, no specific infractions regarding loitering or related conduct were found in the RCC.

Notwithstanding this fact, in the administrative sphere, Law No. 61 of September 27, 1991, on the Punishment of Offenses against the Rules of Social Coexistence, Public Order, and Public Peace, regulates certain administrative infractions related to vagrancy. Pursuant to Section 2 (33):

> *"It constitutes a contravention to commit any of the following acts, provided they are not committed under circumstances in which, under criminal law, they are considered crimes:*
>
> *failure by parents or persons entrusted with the upbringing and education of a minor under 16 years of age, or who have under their care a person with developmental disabilities or intellectual disabilities, to take the necessary measures to* ***prevent that person from vagrancy****, begging, or prostitution (...)"*

This regulation does not alter the conclusion that, in Romania, the police may not arrest an individual for loitering. The above-cited passage of the Public Order Law establishes an infraction targeting parents who fail to prevent minors from engaging in vagrancy, but vagrancy itself is not classified as an infraction, not even an administrative one.

i. Spain

In Spain, loitering is also not punishable since, as is customary in other European countries, its vagrancy laws were repealed. In Spain's case, there was a Vagrancy and Delinquency Act of 1933 which, rather than focusing on offenses and penalties, emphasized security measures based on certain categories defined as "dangerous conditions," including being a habitual vagrant, frequenting certain suspicious places such as gambling houses or betting establishments, or associating with criminals. This law was retained during Franco's dictatorship and later replaced by the Law on Dangerousness and Social Rehabilitation in 1970, which had already been abandoned by the 1980s and was definitively repealed with the Spanish Penal Code of 1995.

Wandering through public spaces in a suspicious manner is therefore neither a crime nor an administrative offense, provided it is not accompanied by other conduct, such as obstructing public spaces or other anti-social behavior (for example, Art. 36.3 of Organic Law 4/2015, of March 30, on the Protection of Public Safety).

However, there are some nuances worth noting. For example, Barcelona's Public Order Ordinance prohibits sleeping—day or night—in public spaces (Art. 58). This conduct is punishable by a fine of up to 500 €, except in the case of homeless individuals (Arts. 59 and 60). Therefore, under certain conditions—specifically, while asleep—it is prohibited to

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simply be in a place, as opposed to merely wandering through it, although it does not appear that the prohibition on being in a place is linked, in this case, to suspicion of future dangerous conduct. In any case, these are tough times for outdoor naps.

It is important to emphasize that the offenses in question are administrative in nature, meaning that the police cannot arrest the person involved, as this is not a criminal offense (Articles 489 et seq. of the Spanish Criminal Procedure Act).

j. California

According to California Penal Law, an individual may be arrested for loitering in public spaces: for the purpose of engaging in a prostitution offense (653.22); in public places where children attend or normally congregate (653b); in restrooms open to the public (647d). Thus, loitering is punishable, and the offender is subject to arrest by the police.

k. Florida

Loitering is a misdemeanor in the State of Florida. Police may arrest a person suspected of loitering unless she or he provides an explanation for her or his conduct.

According to Section 856.021 of the Florida Statutes:

> *(1) It is unlawful for any person to loiter or prowl in a place, at a time, or in a manner not customary for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.*
>
> *(2) Among the circumstances that may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person flees upon the appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly attempts to conceal himself or herself or any object. Unless the person's flight or other circumstances make it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern that would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.*
>
> *(3) Any person violating the provisions of this section shall be guilty of a second-degree misdemeanor (…)*

l. New York

Sections 240.35, 204.36, and 240.37 of the New York State Penal Code (NYSPC) regulate loitering, which means that police may arrest a person for that offense. It is important to note that Section 240.35 is a violation, while the other sections mentioned are misdemeanors. Loitering offenses are typically specific-intent offenses—that is, offenses that require the *actus reus* element of the crime plus a specific intent to commit an act beyond the actus reus.

Section 240.35.2 of the NYSPC, for instance, finds a person guilty of loitering when he or she**:**

> *"Loiters or remains in a public place for the purpose of gambling with cards, dice, or other gambling paraphernalia."*

As well as section 240.35.6, which punishes anyone who

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> *"Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade, or commercial transactions— —involving the sale of merchandise or services, or for the purpose of entertaining persons by singing, dancing, or playing any musical instrument."*

Despite this, some provisions of Section 240.35 were declared unconstitutional in the case of *Loper v. New York City Police Department* (concerning loitering for the purpose of begging), although most of them remain in effect. The Second Circuit Court of Appeals ruled that prohibiting begging constitutes a violation of the First Amendment's protection of free speech.

Additionally, it is an infraction to wander or remain in public places *"for the purpose of unlawfully using or possessing a controlled* substance" (240.36 NYSPC).

The same applies to loitering with the intent to engage in prostitution, as regulated in 240.37. This section penalizes wandering or remaining in public places *"for the purpose of* prostitution" (240.37.2); *"for the purpose of patronizing a person for* prostitution" (240.37.3); and *"for the purpose of promoting* prostitution" (240.37.4). However, the offense of loitering for prostitution was decriminalized in 2021 (Urban Justice Center, 2023).

Additionally, there are a few general-intent loitering offenses:

For example, section 240.35.5 of the NYSPC punishes anyone who

> *"loiters or remains on or near school grounds, a college or university building or grounds, or a children's overnight camp (…), or loiters, remains on, or enters a school (…), without having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and does not have written permission from anyone authorized to grant such permission, or loiters or remains in or about such a children's overnight camp or summer day camp in violation of conspicuously posted rules or regulations governing entry and use thereof."*

Or, section 240.35.4 of the NYSPC, which states that a person is guilty of loitering when he or she:

> *"While masked or disguised in any manner by unusual or unnatural attire or facial alteration, loiters, remains, or congregates in a public place with other persons so masked or disguised, or knowingly permits or aids persons so masked or disguised to congregate in a public place; except that such conduct is not unlawful when it occurs in connection with a masquerade party or similar entertainment if, when such entertainment is held in a city that has promulgated regulations in connection with such affairs, permission is first obtained from the police or other appropriate authorities."*

As can be seen, loitering is widely penalized in the state of New York.

m. Texas

The Texas Penal Code does not currently penalize loitering. However, there are several provisions in various city ordinances that criminalize such conduct.

We used a mixed sample of city ordinances. Given that Texas is such a large state, the number of municipal ordinances reviewed was limited. We selected the six most populous cities in the State of Texas for analysis, to cover at least 25% of the population. Secondly, we searched for ordinances from other Texas cities using several keywords (including "Texas," "loitering," and "ordinances") in the Google search engine, in order to gather additional evidence. In doing so, we found two additional cities where loitering was classified as a

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criminal offense (Sweeny, a very small town with a population of , and Burleston, with a population of roughly 40,000), both of which were added to the final sample.

Since we cannot go into great detail regarding municipal regulations due to space constraints, we summarize our results in Table 1. We have provided references to specific sections of municipal regulations where the conduct is defined as an offense. In all cases, the sections refer to the corresponding Code of Municipal Ordinances for each city.

Table 1. Sample of Texas cities.

City	% of Texas population	Loitering Offenses
Houston	7.6	-Loitering near the scene of a collision (Sec. 45-288) -Loitering with the intent to engage in prostitution (Sec. 28-484)
San Antonio	4.9	Loitering in public markets (Sec. 32-57, 32-92)
Dallas	4.3	-Loitering as disorderly conduct (Sec. 24-7 b (3) (16)) -Loitering by minors during curfew hours (Sec. 24-13)
Austin	3.2	-Loitering with the intent to engage in prostitution (Sec. 9-4-16) -Loitering with the intent to sell a controlled substance (Sec. 9-5-62)
Fort Worth	3.1	-Loitering for the purpose of prostitution (Sec. 23-11)
El Paso	2.2	-Loitering for the purpose of prostitution -Loitering for the purpose of selling a controlled substance (Sec. 10-12-030)
Burleston	0.16	-Loitering (general prohibition) (Sec. 54-31)
Sweeny	0.01	-Loitering (general prohibition) (Sec. 130-03)
Total Sample	25.47	X

Source: Pablo Rando and Carmen Rodríguez, based on data from the U.S. Census Bureau and various municipal ordinances.

It is therefore clear that loitering is prohibited, either under certain circumstances or more generally, in Texas's major cities. Finally, we must remember that the police have the authority to arrest any person for engaging in criminal conduct, in accordance with Section 14.03 of the Texas Code of Criminal Procedure.

n. Summary.

Below, we summarize the results of our research in Table 2.

Table 2. Loitering Regulations

Loitering regulations	No loitering regulations
California, England* and Wales, Florida, New York, Texas, France**	Germany, Finland, Italy, Poland, Portugal, Romania, Spain

*No prison sentence available. **No arrest, no prison sentence available.

The comparison reveals a very clear trend. Currently, loitering is punished almost exclusively in common law jurisdictions. Civil law countries do not punish loitering, with the exception of France, where it is common for municipalities—especially in the south—to have ordinances prohibiting people, particularly young ones, from being on the streets through intermittent curfews during nighttime hours, aimed at preventing disorderly

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conduct, among other reasons. However, there is one significant difference between France and common law jurisdictions: in France, the police cannot arrest offenders.

3.2. Interpretation of the Results: The Importance of Legal Culture.

Comparative criminal policy is a useful tool for identifying trends and patterns in countries' punitive strategies. In light of the results, the observation made by Brandáriz (2016, 37–38) takes on particular importance: Until not too long ago, "studies on punitiveness tended to overlook the influence of legal and political frameworks that differ from the prevailing paradigm in Anglo-Saxon states" (see also Becerra-Muñoz 2024, 7–8). What we discovered when we broadened our scope to include seven continental European countries is noteworthy: the punishment of loitering is truly a singularity—an *outlier,* if you will—found almost exclusively in the United States and in England and Wales.

These results suggest that, at least in the case of loitering, legal culture lies at the root of the differing levels of punishment across comparative criminal justice systems. A significant number of studies on comparative criminal policy—especially those comparing incarceration rates in Western countries—consistently find a correlation between the severity of the criminal justice system and social inequalities. Greater punitive severity is associated with higher overall poverty or a less developed welfare state (as discussed at length and with numerous references in Lappi-Seppälä 2008 and Sozzo 2026). However, when examining an indicator of criminal social exclusion other than the per capita incarceration rate—that is, when analyzing loitering—we find that legal culture might be the truly decisive factor. Academics have also cited the influence of legal culture as a relevant factor in the intensity of the punitive response. Lappi-Seppälä (2008, 380–382) points out some of the implications of legal culture that have the potential to explain differences between the two blocks of Western countries (common law versus civil law): the different understanding of the principle of separation of powers; the greater or lesser sensitivity of judicial processes to populist political pressures (greater in the United States than in European countries); the greater discretion granted to the judiciary in civil law countries compared to common law countries; and even the level of criminological training among the judiciary.

In my opinion, principle of separation of powers might explain why infractors may be arrested for loitering in common law countries, but for reasons different from those suggested by Lappi-Seppälä, who, in his study, primarily focuses on the variable of the incarceration rate per capita. This author notes that the fact that, in continental Europe, judicial and prosecutorial positions are not subject to election restrains judicial action against punitive impulses, favoring—as I interpret the author—more moderate criminal interventions. Indeed, access to the profession of judge or prosecutor in continental countries—without electoral processes involved—shields the administration of justice from populist approaches that favor harsher punishment. This may, in fact, explain why the rate of inmates per capita is higher in the United States than in Europe. However, that argument would not apply—at least not directly—to the issue of whether or not to criminalize loitering.

I believe the explanation lies elsewhere. Traditionally, in common law countries, administrative sanctions have had virtually no impact. Generally, all offenses are handled in the criminal justice system, including minor offenses against public order. In contrast, in

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continental European countries, administrative offenses are typically used for less serious matters, with varying degrees of implementation depending on the case (Sozzo, 2026, 137, with references). In fact, in continental European countries, it is very common for administrative sanctions to specifically address offenses that cause "public disorder" in municipal ordinances or in more general laws on administrative offenses (notable examples include Spain and Italy in the former category, and Germany and Portugal in the latter).

This formal aspect is much more significant than it might seem at first glance: since in continental Europe, less serious offenses against public order are not classified as a criminal offense—at least not as a general rule—two things occur: 1) no prison sentence or any other custodial sentence is imposed for administrative offenses (the most notable exception being Austria); 2) the police cannot arrest the offender, since that authority is reserved for offenses formally classified as crimes. This results in an undeniably lower level of severity in common law countries compared to civil law countries.

There is a curious phenomenon that adds to what has already been discussed: England and Wales have no tradition of administrative sanctions. However, they have attempted to emulate continental European countries precisely in the area of disorderly conduct, establishing a mixed criminal-civil system to address incivility. Disorderly conduct, through the ASBO system, is first heard in a civil court, where orders are issued requiring the individual in question to behave in a certain manner or to stay away from certain places. However, when these orders are violated, criminal law is invoked, meaning that the offender can go to jail—and, in fact, this has occurred with some frequency (Millie 2013, 5–6). Thus, it can be concluded that this emulation is, so to speak, imperfect.

This situation gives rise to a curious paradox: the more strictly the principle of separation of powers is interpreted—that is, in such a way that only criminal judges may hear cases involving infractions—the more severe the intervention becomes. It can be said, in fact, that Anglo-Saxon countries have a stricter understanding of the principle of separation of powers than civil law countries with regard to the body that adjudicates offenses. Thus, generally speaking and with some exceptions, in Anglo-Saxon countries, only the judiciary adjudicates offenses. In contrast, in continental European countries, administrative authorities—which are neither judges nor criminal, civil, nor any other kind of court—are permitted to impose sanctions. This is, moreover, already the case within the European Union, which lacks the power to impose criminal sanctions but does have the power to impose administrative sanctions.

However, in this study we have found something that goes beyond the issue of severity: it is not merely that, in continental European countries, the police may not arrest offenders for loitering or curfew violations, or that no prison sentence is available in these cases. What we have also verified is that, with the exception of France, continental European countries do not even punish loitering or impose curfews to begin with. It is not a matter of severity or the intensity of intervention. Rather, in civil law countries, there is generally no intervention when it comes to loitering.

Why is loitering not even punished in the vast majority of civil law countries? To answer this question, we must first take into account a relevant fact: the prohibition and punishment of loitering is by no means exclusive to common law countries. In fact, the punishment of

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loitering reached its peak in vagrancy laws, which were present not only in Anglo-Saxon countries but also, and with equal prominence, in European countries, as we have already seen. However, European countries gradually abandoned vagrancy laws, while Anglo-Saxon countries largely kept them in force. This can be seen more clearly in Table 3.

Table 3. Life Cycle of Vagrancy Laws

Country	Vagrancy Law (last version)	Repeal	Event
England & Wales	Vagrancy Act of 1824	2026*	Social Approach
Finland	Vagrancy Act of 1937	1986	Social Approach: Addiction Treatment Act
France	Penal Code of 1810	1994	New Penal Code
Germany	Penal Code of 1871	1974	Amendment to the Penal Code
Italy	Penal Code of 1930	1999	Repealed by the Constitutional Court
Poland	Decree on Combating Begging and Vagrancy 1927	1971	New Code of Minor Offenses
Portugal	Penal Code of 1886	1982	New Penal Code
Romania	Penal Code of 1936	2006	Repeals prior to the New Penal Code
Spain	Dangerousness and Social Rehabilitation Act of 1970	1996	New Penal Code
California	Penal Code of 1872	N/A	N/A
Florida	Penal Code 1971	N/A	N/A
New York	Penal Code 1965	N/A	N/A
Texas	Penal Code 1925	1969	Repealed prior to the New Penal Code

*Still to be implemented

Although Table 3 lists the dates on which laws or offenses related to vagrancy were formally repealed, it is true that, in many cases, their provisions were no longer being enforced or had been declared unconstitutional years earlier. This is the case, for example, in Spain (Constitutional Court Ruling 21/1987, dated February 19; Constitutional Court Ruling 23/1986, dated February 14; Instruction No. 3/1991, dated May 13, from the State Attorney General's Office, on pre-criminal security measures) and Finland (Kinnunen 2019).

In the case of the U.S. states analyzed, it should be noted that some loitering offenses were declared unconstitutional. Sometimes, the ruling of unconstitutionality came from the U.S. Supreme Court and was therefore applicable to all states (for example, *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972)), and at other times, the rulings applied to the criminal codes of individual states, as in the well-known *Loper* case in New York mentioned above. However, the fact is that this body of rulings managed, at most, to limit the punishment for loitering to certain cases, but did not eliminate it. In the specific case of Texas, the repeal of the loitering offense in the penal code has not prevented it from being prohibited in numerous ordinances, as we already know, so the conduct continues to be criminally prosecuted.

Added to all this is the impact of the 2024 Supreme Court ruling in *City of Grant Pass v. Johnson*. That ruling held that the criminalization of sleeping on the street did not violate the Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishment

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(Mead & Calambokidis 2026). Following this decision, Texas, Florida, and other states have enacted, just a couple of years ago, new offenses prohibiting sleeping on the street. Although it is true that loitering and curfews are not expressly punished there (and to that extent, they fall outside the scope of our study), it is also true that one cannot say that, in both states, vagrancy laws are a historical relic. Rather, the opposite seems to be the case. Vagrancy laws remain more prevalent than ever in the United States: it's just that they no longer focus, technically speaking, on loitering, but rather on sleeping on the street. A peculiar shift or change in focus has taken place: it is no longer so important to clear the streets of people loitering suspiciously, but rather of homeless people sleeping on the street.

Summarizing the above considerations, the following becomes clear: vagrancy laws, or vagrancy offenses, have disappeared in continental Europe following changes to criminal codes, never to return. Since then, it is true that there have been various initiatives to impose curfews in some municipalities in France and Germany, with varying degrees of success in the courts. However, it is clear, in general, that the elimination of vagrancy provisions and/or laws has led to the abandonment of criminal intervention against loitering to date.

3.3. Analyzing the Exceptions: The United States, England, and Wales.

Now, how can we explain the continued punishment of loitering in Anglo-Saxon legal systems? And what exactly does legal culture have to do with this? I believe that the aforementioned factor related to the principle of separation of powers has limited scope. It does, in fact, explain why loitering prohibitions are so severe in Anglo-Saxon countries: a) it is formally defined as a crime; b) the police may, therefore, arrest the offender; c) a prison sentence may be imposed—as is currently the case in the U.S. and, in the past, in England and Wales. However, the different understanding of the principle of separation of powers does not, in and of itself, explain why, in the five Anglo-Saxon jurisdictions studied, loitering continues to be punished.

I believe there are two plausible explanations for this phenomenon from the perspective of legal culture. The first lies in policing models. In the United States, as well as in England and Wales, the police are fundamentally decentralized. In contrast, in continental European countries, the police are mostly centralized, and their strategies for dealing with crime are decided "from the center." This means that, in Anglo-Saxon countries, local police investigate crimes, unlike in continental European countries, where state or regional police forces conduct criminal investigations; as a result, local police—which are under the direct command of the mayor—play a less prominent role in crime response than they do in Anglo-Saxon countries. Added to this is the fact that, at least in the United States, mayors can not only directly oversee police strategies for crime prosecution but also have the power to enact municipal ordinances that impose criminal penalties for violations.

A second possible explanation could lie in the principle of discretionary prosecution. Most common-law countries grant the police broad discretion to prosecute—or not to prosecute—misdemeanors, which, in short, means that police may witness a minor offense and decide to let the matter go or, at least, not to arrest the offender. In contrast, most civil law countries are governed by the principle of legality in police conduct, which means that, in principle, the police must prosecute a crime if they witness it or are made aware of it

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(Rando-Casermeiro 2019). From this perspective, it is easier for common law countries to continue the "inertia" of punishing loitering, even if the conduct is no longer prosecuted, leaving criminal codes or municipal ordinances as "dead letters."

In other words, in Anglo-Saxon countries, loitering may be formally classified as a crime but not actually prosecuted in practice. In fact, there are reasons to believe that the bulk of police intervention in most countries consists of "move on" orders issued to loiterers, without the need to resort to arrest. In contrast, in most civil law countries, introducing loitering as a crime implies, in principle, a clear intention on the part of the legislative to prosecute it. In other words, the reintroduction of a loitering offense in continental European countries would most likely entail decisive action by national or regional police forces, which would no longer have as broad a margin of discretion as in Anglo-Saxon countries to "let go" of such minor offenses. This argument, however, has some logical limitations, since the principle of prosecutorial discretion is also recognized in some continental European countries. It is true that, when this occurs, it is the prosecutor's office—and not the police—that decides whether or not to "let go" of a minor offense (as is the case in Germany). However, it is not plausible for the police to arrest someone if they know that the prosecutor's office will not subsequently prosecute the conduct. Although the argument holds weight for a significant number of European countries, it does not apply to the entire sample of continental European countries.

Even with this limitation, the argument gains strength due to the fact that, currently, in continental Europe, the enforcement of public order is largely reserved for administrative offenses rather than criminal offenses. Furthermore, it is in this sphere that local police forces can operate in a "decentralized" manner, under the authority of mayors who, although they do not have the direct responsibility to prosecute crimes, are held accountable by their citizens for doing so (Selmini 2005, De Maillard 2009). We will not find many crimes related to disorder apart from the really serious ones (and certainly none related to loitering) in the penal codes of European countries. However, in those countries, we do find quite a few municipal ordinances or national and regional public order laws that impose administrative penalties for "incivilities" or "breaches of peaceful coexistence." This is what has happened in some municipalities in France regarding curfews.

In this curious balance, there seems to be an implicit agreement: local police—and sometimes national or regional police as well—have greater discretion when prosecuting administrative violations than when prosecuting crimes (for example, letting an offense go if the offender "clears the area") but, in return, they are not entitled to arrest the offender since it is not a criminal offense, nor is the violation punishable by imprisonment.

We should not dwell on the theoretical framework outlined above, due to space constraints. To greatly summarize all of the above, I offer two hypothetical observations:

1) Civil law countries have not reintroduced criminal penalties for loitering due to the rigidity of their criminal prosecution model and their own policing models, unlike what occurs in Anglo-Saxon countries.

2) Anglo-Saxon countries maintain loitering offenses merely out of historical inertia, but in reality they are not prosecuting this offense in practice—likely because their police forces, as well as their mayors and other officials at the state level, have greater discretion and have

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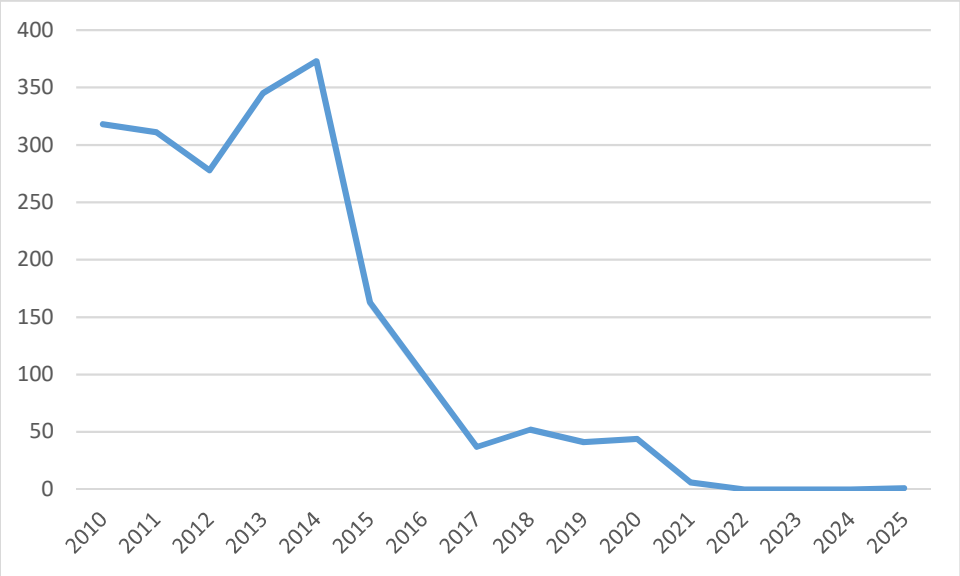
decided that loitering, strictly speaking, is no longer a priority. There is some empirical evidence supporting this hypothesis. For instance, a study conducted by ABC analyzed loitering arrests across some 10,000 police departments in the U.S. between 2016 and 2018. In the vast majority of them, there were zero arrests for loitering or curfew violations. The exception, however, appeared to be Philadelphia, a city where no fewer than 15,000 arrests were reported. The fact that a quarter of all arrests for loitering or curfew violations across the sample of cities selected for the study took place in Philadelphia demonstrates that Philadelphia is an outlier. Racial bias in policing is also evident from the study's findings: 85% of those arrested for loitering or curfew violations in the city were African American, even though that ethnic group accounted for 42% of the total population (Kelly & Madden 2020).

The first hypothesis would require a highly specialized design that, for reasons of space, we cannot undertake at this time. For now, then, we will have to settle for speculation. The second hypothesis, however, is more viable, as we can use the data at our disposal to examine trends in the enforcement of loitering laws and, where applicable, curfews in the United States, England, and Wales, beyond the scope of the aforementioned ABC study.

So, ultimately, it remains to be seen what the police actually do in practice in countries where loitering or violations of curfews are still punishable.

In the case of England and Wales, we do not have data on arrests for loitering, but we do have, at least, data on convictions. Figure 1 presents the time series from 2010 to 2025, with data on individuals prosecuted and convicted under the Street Offenses Act:

Figure 1. Convictions for Loitering/Soliciting Prostitution in England & Wales, 2010–2025



Source: Author's own analysis based on data from Criminal Justice Statistics (gov.uk)

It is clear that, in England and Wales, the offense of loitering is now prosecuted only symbolically, with numbers dropping sharply since 2014. If we look at the data from the last

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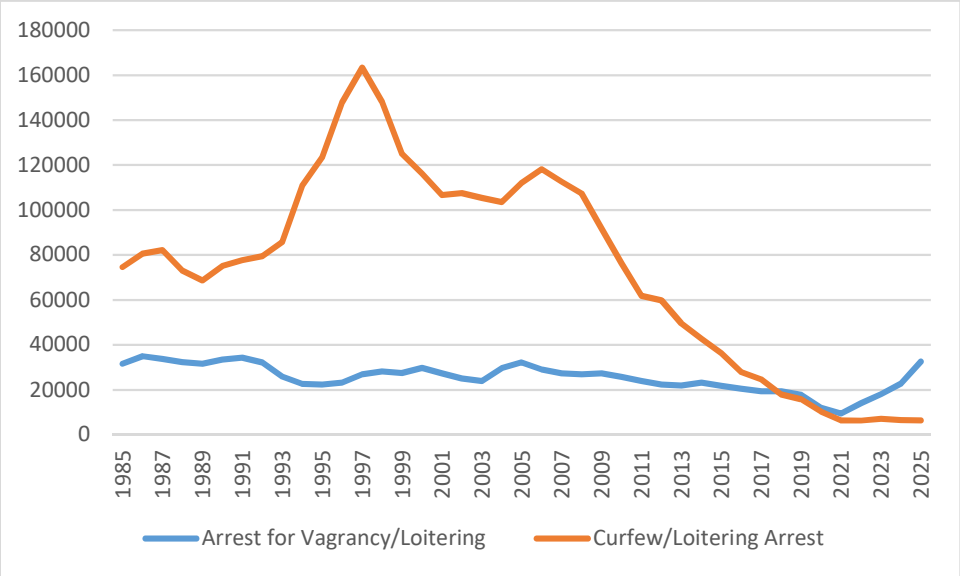
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four years (2022–2025), there has been exactly one conviction for this offense. Therefore, while loitering is technically punishable, for all practical purposes, it is as if it were not punished at all.

The analysis of the U.S. data does allow for a specific examination of police arrests for loitering and curfews. In general, the arrest data presented below was obtained from the *Crime Data Explorer* application provided by the FBI. However, two preliminary clarifications are necessary: first, the FBI has traditionally used the SRS (*Summary Reporting System*) when compiling the UCR (*Uniform Crime Reporting*). Starting in 2020, the FBI began supplementing the UCR with data *from the National Incident-Based Reporting System* (NIBRS). The current system is more detailed and reliable and provides a more accurate picture of arrests on a case-by-case basis. The SRS system had the problem of not properly counting all cases, thereby underestimating the actual figures. (Pattavina, Carkin & Tracy 2017, with multiple references). Thus, creating a time series that combines the two systems could give the misleading impression that arrests for loitering or curfew violations have risen in recent years, when in fact the increase is due to the new counting system.

Second, it is not easy to pinpoint the trend in arrests for loitering and curfew violations with great precision. The FBI data compiled in the traditional UCR system includes two entries in the list of criminal categories of interest to us: the first refers to "Loitering Law/Curfew"—which essentially covers arrests for juvenile curfew violations, given that 99% of those arrested are minors—and the second to "Vagrancy," which includes cases of loitering under the label "Vagrancy/Loitering," but where arrests for loitering cannot be disaggregated from those for other vagrancy offenses (involving individuals who wander from place to place without means of subsistence). Next, we examine the trend in the number of arrests for loitering and curfew violations across the United States over an extensive time series (between 1985 and 2025), as shown in Figure 2.

Figure 2. Curfew and Loitering Law Arrests in the U.S. (1985–2025).



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Source: Author's own analysis based on FBI data

The data yield two very clear conclusions: first, that police arrests for curfew violations have indeed dropped dramatically across the United States, to the point that, in recent years, the numbers are truly negligible (about 6,000 arrests per year in a country of 350 million people). However, the number of arrests for vagrancy offenses has remained more or less stable, except, precisely, in the most recent years, which is highly likely due to the transition from the SRS to the NIBRS, as we explained earlier. Trends—both upward and downward—in arrests for vagrancy/loitering between 2020 and 2024 should be interpreted with great caution, for three reasons: first, because it is well known that, in the early stages of the NIBRS system's implementation, many police departments (including those in Los Angeles, Oakland, San Francisco, New York, and a large number of cities in Florida) did not submit their data to the FBI (Grawert & Kim 2022; Asher 2024). It is estimated that in 2021, the population covered by arrest reports fell from 95% to 65% as a result of the transition from the SRS system to the NIBRS system, only to return to 94% by 2023 (Lauritsen & Lopez 2025; Asher 2024). This would explain why there was a decline in arrests in 2020 and 2021 in vagrancy/loitering offenses; second, this is compounded by the possible effects of mobility restrictions in 2020 and 2021 due to COVID-19, which would presumably be linked to fewer people on the streets; third, the notable increase in arrests for vagrancy/loitering between 2022 and 2025 is likely due, as previously anticipated, to improved data collection resulting from the system change (underestimated under the SRS system and estimated more realistically under the NIBRS system).

Finally, minors have not received as much attention from the police in recent years as adults, which is likely due to the gradual phasing out of curfews in the United States.

In light of this trend, it can be said that our hypothesis—that loitering and curfews are being enforced less and less in the United States—could hold true only with regard to curfews. Vagrancy and loitering offenses have traditionally been enforced infrequently in the United States, but it is not true that they are being enforced less than before nowadays.

Second, the rise of the "broken windows" theory during the 1990s led to a resurgence in the enforcement of curfews, but not in the prosecution of vagrancy/loitering offenses. This undoubtedly occurred because the presence of young people in public spaces outside "normal" hours began to be viewed as a sign of disorder, which, according to the broken windows theory (Wilson & Kelling 1982), would ultimately lead to crime (Mead & Calambokidis 2026, 1063). From this perspective, the loitering of young people—and loitering in general—began, from the mid-1990s onward, to take on a significance beyond that of mere nuisances. During this period of the rise of zero-tolerance policies, curfew bans sought to prevent nothing less than urban decline and crime (Muñiz 2015). Indeed, the peak in arrests for curfew violations occurred in the second half of the 1990s, at the height of the implementation of the broken windows theory.

Furthermore, U.S. statistics on curfews can help us identify some additional descriptive patterns.

If we take as an example the years with the highest peaks in arrests for curfew violations in the time series (from 1996 to 1998), we observe a massive disproportion in the arrest of

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African Americans relative to their share of the population. To illustrate this bias, a contingency analysis was conducted to calculate the odds ratio of being arrested for a curfew violation based on racial profile. The data from Table 4 clearly show that, at the height of the "broken windows" era, the African American population was more than twice as likely to be arrested for a curfew violation as the white population (which, incidentally, includes Hispanics in the statistical count), with the odds ratio reaching 2.65 in the year with the highest number of arrests—that is, 1997. These results, consistent with those of the aforementioned ABC study—which covers much later years (2016–2018)—suggest that police arrests for loitering were unquestionably selective and racially motivated.

Table 4. Contingency analysis of arrests for loitering/curfew violations. USA.

Year	Odds Ratio Black vs. White	95% Confidence Interval	p-value
1996	2.16	[2.14–2.19]	<.001
1997	2.65	[2.63–2.68]	<.001
1998	2.51	[2.48–2.54]	<.001

Source: Author's own calculations based on population data from the Statistical Abstract of the USA. Arrest data obtained from the FBI Crime Data Explorer.

Coincidentally—or perhaps not so coincidentally—the strategy of targeting minors from racial minorities simply for being on the street is precisely the one being replicated by the current curfews imposed in some French municipalities.

In contrast, loitering citations issued to adults did not increase during the "broken windows" era. Although this result may seem surprising, academic research has already shown that, during the height of the "broken windows" theory's popularity, certain "public disorder" offenses were not prioritized by the police. Zimring, in an insightful analysis of New York City, shows that during the height of "broken windows" policies, arrests for marijuana possession increased tenfold, and arrests for illegal gambling increased substantially between 1991 and 1997, nearly tripling compared to arrest figures from the years prior to the zero-tolerance policies, only to drop sharply in the 2000s. However, arrests for prostitution did not increase compared to previous years in New York City, and the number of police arrests for that offense remained stable (Zimring 2012, 126). We now see this pattern repeated in the broader U.S. context regarding vagrancy/loitering offenses.

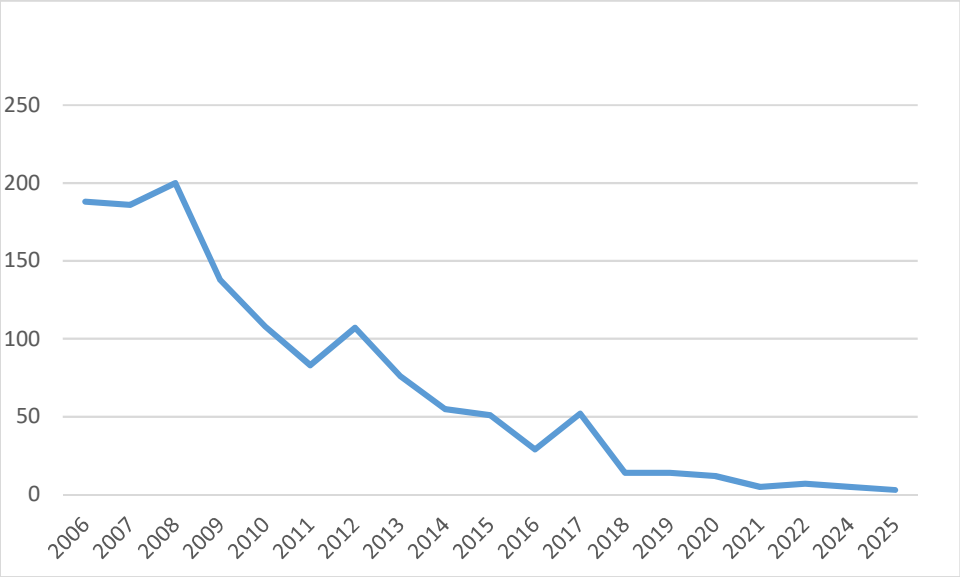
Having described this national picture of the United States, it might be useful to break down the situation in the four U.S. jurisdictions that make up our sample, in search of a pattern that could be helpful to us. However, this endeavor encountered a problem: there are no clear or reliable time series of arrests for loitering in either Florida or New York based on FBI data. In the case of Florida, the arrest statistics compiled by the state itself do not include specific data on curfews or loitering.

However, we do have data on loitering arrests in New York City, at least dating back to 2006, as shown in Figure 3.

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Figure 3. Loitering Arrests in NYC 2006–2025.



Source: Author's own analysis based on NYC Open Data.

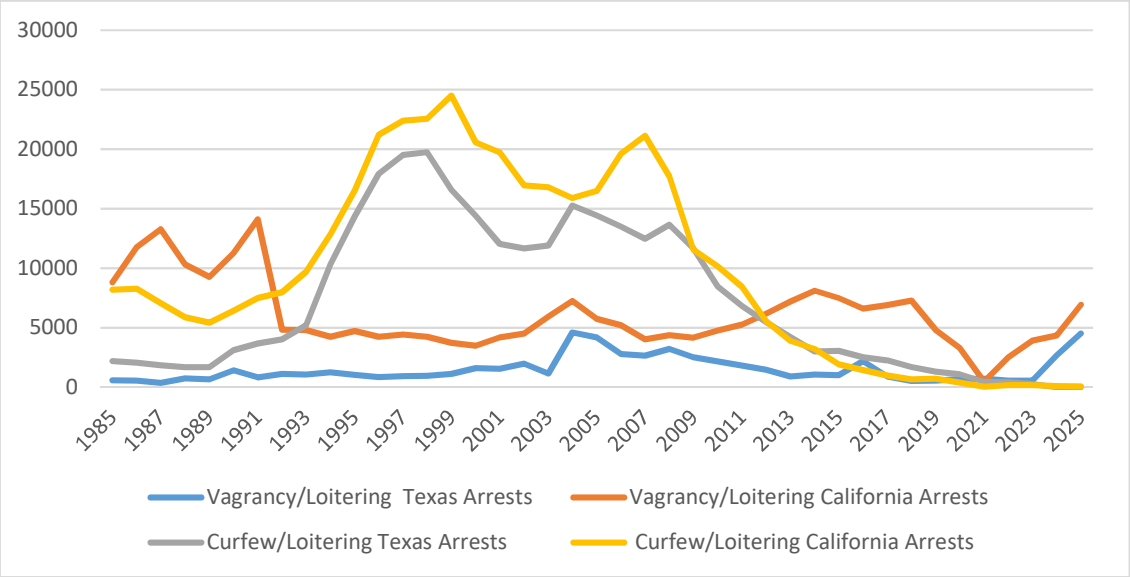
We can see that, in NYC, arrests for loitering have dropped dramatically over the past 20 years. In 2025, exactly three people were arrested for loitering offenses, compared to approximately 200 arrests in the first three years of the data series. It should be noted that, in the case of New York City, there are no violations related to curfews; therefore, only arrests for loitering have been counted, aggregating each applicable category under the New York Penal Code.

It is time to briefly examine the cases of California and Texas, where we observe a pattern similar to that seen nationwide.

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Figure 4. Curfew and Loitering Arrests in Both NY and TX. 1985–2025. FBI Crime Data Explorer.



Source: Author's own analysis based on FBI: Crime Data Explorer.

Arrests for curfew violations in California and Texas are increasingly becoming a relic that peaked during the 1990s and 2000s, following a trend similar to that of the rest of the country. As for arrests for loitering violations stemming from vagrancy laws, the trend remains more stable in Texas than in California. Undoubtedly, arrests for loitering do occur, though they are relatively rare compared to other offenses, especially disorderly conduct offenses.

In conclusion: the trend in the Anglo-Saxon world is clear: England and Wales are on the verge of definitively repealing their Vagrancy Act, while the Street Offenses Act is no longer enforced. New York City has stopped making arrests for loitering. The United States—and, more specifically, California and Texas—has shifted toward a token enforcement of curfews and has not seen many new developments regarding loitering. In France, however, the opposite is true: while loitering in the strict sense is not punished, curfews have been introduced since the mid-2000s. In this regard, France stands out as the true exception. It is the only country in the sample where it can be said that the old curfews have been revived—with a distinct flavor of vagrancy laws—insofar as French municipal authorities cast an undisguised atmosphere of criminal suspicion over minors found on the streets at certain hours of the night.

4. Discussion.

This study aimed to conduct an in-depth comparative analysis of the offense of loitering. As previously noted, loitering has been used as an indicator in the RIMES instrument, a comprehensive tool for comparative criminal policy consisting of 39 indicators designed to measure social exclusion caused by criminal enforcement in Western countries. This instrument allows only for a general, dichotomous view of loitering: under the law of each

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country in the sample, the police either can or cannot make an arrest for the offense of loitering. This is the crux of the matter. If the answer is affirmative, the country receives "one point" on its social exclusion score. However, focusing on a detailed analysis of one of the indicators in each selected jurisdiction allows for the addition of a qualitative dimension to the dichotomous response and greater contextual depth. In this case, it has been revealed that the underlying explanation for the greater or lesser severity of intervention against loitering likely lies in legal culture. This is a variable that, however, has traditionally received little consideration in comparative analyses of criminal justice systems. While social or political factors (inequality, poverty, the extent to which welfare policies are implemented, etc.) tend to be given significant explanatory weight in such analyses, we have just seen that differences between legal cultures (common law versus civil law) can be just as important—or even more so—than other explanatory factors.

An analysis of practices in countries that criminalize loitering has shown, however, that the differences between these two legal cultures are certainly nuanced when we take into account that police intervention for curfew has declined dramatically, especially in recent years. The same may be said concerning loitering in both England and Wales and New York City. Nevertheless, it is true that these old offenses continue to be used—albeit only rarely—more frequently in the United States than in England and Wales.

Perhaps, faced with a reality like this, the greatest disappointment stems from the limited room that the weight of legal culture leaves for transformative potential. If loitering is socially exclusionary, what can we do to eradicate its prosecution once and for all? Well, the short answer is that, since legal culture is the determining factor in its prosecution, we would have to change the legal culture of Anglo-Saxon countries—something that seems neither plausible nor advisable. However, there may indeed be room for specific and realistic legal reforms that go beyond the practice of less selective prosecution of loitering in Anglo-Saxon countries. In this regard, England and Wales undoubtedly chart a very specific course with transformative potential: the abolition of their Vagrancy Act. Repealing all loitering provisions in the U.S. (along with the forms of loitering that had already been declared unconstitutional) is a plausible short-term goal without the need to alter the legal culture. In this regard, it is possible that the downward trend in data regarding curfew-related arrests is due not only to police inaction in the face of a shift in priorities, but precisely to the fact that quite a few municipal ordinances have eliminated this offense throughout the United States. Further research on this particular issue would be highly desirable, although it goes beyond the more limited scope of this paper. Conversely, the revival of vagrancy laws in the U.S. following the *Grant Pass v. Johnson* case appears to run counter to the historical trend predominantly seen in continental Europe: vagrancy legislation remains in force in the U.S., though it no longer seems to focus specifically on loitering, but rather on sleeping on the street.

The study clearly has a number of significant limitations. In particular, the small sample of jurisdictions has made a quantitative approach to the phenomenon unfeasible. Even if differences in legal traditions may be capable of explaining the phenomenon of the legal and police response to loitering, we should not rule out the existence of other explanatory variables commonly found in comparative criminal policy studies that, due to a lack of

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statistical power in the sample, have not been considered. Although a comparative criminal policy study limited to Western countries has little room for expansion—since the study population will always be very small—future studies are recommended that, with a broader selection of countries, can analyze the potential impact of other variables using quantitative methodologies.

In conclusion, we believe it is necessary to continue conducting similar studies using other indicators from the RIMES instrument, adding to the descriptive analysis potential explanatory hypotheses regarding the differential response of criminal justice interventions in specific areas.

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