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The Politics of Crime and Punishment

by William Lyons and Stuart Scheingold

The underlying thesis of this paper is that crime control policy is politically constructed. In developing our thesis and its implications, we depart from much of the conventional wisdom in three basic ways. First, in demonstrating the political derivations of crime control policy we reveal how, why, and to what extent criminological knowledge is marginalized in the policymaking process. Second, this paper takes issue with what is largely taken for granted by criminologists, criminal process professionals, and the general public as well: the pervasive attractions of a punitive discourse and punitive approaches to crime control. Finally, our exploration of the politics driving crime control policy reveals more complexity, contingency, and variation within the political process than most observers attribute to the politics of crime and punishment.

Many claim that the widespread drop in crime is directly and causally linked to zero-tolerance policing, to extraordinarily high rates of incarceration, to the increasing length of sentences, to harsh conditions of imprisonment, and to the return of capital punishment. Even if these claims are in part true, our counterclaim is that these putative benefits must be weighed against the oppressive costs of overwhelmingly punitive policies. Punitive policies are destructive in a number of ways that will be discussed in this paper—but principally in that

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they have exacerbated racial cleavage and, in effect, are shattering communities in order to save them. We argue that regardless of whether or not punishment “works”—itself a contested proposition—it diverts attention, energy, and resources from strategic responses that recognize and respond to the complexity of the crime problem as it is revealed by social inquiry in general and criminological knowledge in particular.

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The underlying thesis of this paper is that crime control policy is *politically constituted*: policy choices are driven by, and responsive to, prevailing values and interests rather than criminological knowledge. In developing our thesis and its implications, we depart from much of the conventional wisdom in three basic ways. First, in demonstrating that crime control policy is politically constituted we reveal how, why, and to what extent criminological findings are disregarded in the policymaking process. Second, this paper challenges what is largely taken for granted by criminologists, criminal process professionals, and the general public as well: the pervasive attractions of a punitive discourse and of punitive crime control policies. Finally, our exploration of the politics driving crime control policy reveals more complexity, contingency, and variation within the political process than most observers attribute to the politics of crime and punishment.

Many claim the widespread drop in crime is directly and causally linked to punitive policies—to zero-tolerance policing, to extraordinarily high rates of incarceration, to the increasing length of sentences, to harsh conditions of imprisonment, and to the return of capital punishment. To question, as we do, the advisability of a predominantly punitive policy agenda is not to claim that getting tough with criminals is inappropriate or ineffective. Instead, our objectives are to make the case for a more balanced policy agenda and to explore both the obstacles that stand in the way of balance and the opportunities for it.

Even if the most sweeping claims made on behalf of punitive approaches to crime control are valid, our counterclaim is that these putative benefits must be weighed against the destructive costs of overwhelmingly punitive policies. Punitive policies are destructive in a number of ways that will be discussed in this paper—but principally in that they have exacerbated racial cleavages and contributed to the decomposition of inner-city communities. The manifest costs of the punitive status quo include harming local communities, the broader American polity, and American justice. Less obvious, but equally as telling, are the opportunity costs that are incurred by a fixation on punishment.

For these reasons, we argue at the end of this paper for an approach to crime control that strikes a better balance between punishment and prevention on one hand and that deals with causes as well as symptoms on the other hand. Movement in that direction will be possible only if we understand why punishment has tended to crowd out alternative responses to crime. Perhaps the most telling finding that emerges from our inquiry is that the linkage between crime and the politics of crime and punishment is tenuous and contingent.¹ Research reveals that whether or not punishment works in strictly criminological terms—

Recent experience with the war on drugs, determinate sentencing, three strikes laws, and aggressive order maintenance policing all weaken the persuasiveness of the view that too little punishment is a threat to the social order while the costs of too much punishment are borne only by criminals.

whether or not punishment reduces crime—it serves a mix of other instrumental and expressive purposes. Exploring the configuration of the political, economic, social, and cultural forces that privilege punishment reveals that support for these “other purposes” varies among the relevant constituencies: local, State, and national political leaders; criminal process professionals; and various elements within the general public.

Thus, although the Nation has not stumbled into the punitive mode by accident—but rather in response to a complex convergence of values and interests—the arena in which the politics of crime and punishment play out is neither immutable nor uniform, and the punitive status quo is neither inevitable nor irretrievable. Historically, more enlightened policies have certainly been deployed and even today there are signs of more progressive penology—especially at the local level. If we can clarify the circumstances that sustain alternatives to punishment, the chances for reform will be enhanced—albeit hardly assured.

Punishment, Criminology, and Crime Control

Stated simply, prevailing justifications hold that imprisonment rates rise because crime rates rise and that rising prison rates will mean lower crime rates (Wilson 1985, 1991). This view contains two discrete, but not necessarily congruent, propositions—one political and the other criminological. The criminological claim is that punishment will actually reduce crime, whereas the political claim is that the punitive crime control policies are first and foremost a response to rising crime rates. Our reading of the available data raises serious questions about both of these generalizations and about the way they tend to be inextricably linked in so much of the public discourse about crime.

We will review the relevant data and decouple the criminological case for punishment from the largely separate question of why this polity has so enthusiastically embraced punitive policies. In sum, our criminological arguments, presented in this section of the paper, are that the crime control case for punishment is built on emphatically disputed terrain and should be balanced

against the heavy collateral damage that has been inflicted by a predominantly punitive approach to crime control. In the next section, we will turn more directly to the politics of punishment and argue that the choice to punish is driven by an extensive array of political, social, economic, and cultural forces that transcend, and are arguably unrelated to, the crime rate and criminal victimization.

The purpose of our review of the criminological findings in this section of the paper is, we repeat, *not* to claim that they conclusively demonstrate that punishment is ineffective or counterproductive. As we read these data, they do, however, cast grave doubt on what, in our judgment, amounts to an excessive reliance on punishment in recent years.

Many years ago, James Q. Wilson gave partial voice to a widely shared view that it is probably better to err on the side of too much, rather than too little, punishment: "If we try to make the penalties for crime swifter and more certain, and it should turn out that deterrence does not work, then all we have done is increase the risks facing persons who commit a crime" (1985, 144).

We strongly disagree. To err in the direction of too much punishment is to incur serious costs that extend beyond the burdens imposed on "persons who commit a crime." Recent experience with the war on drugs, determinate sentencing, three strikes laws, and aggressive order maintenance policing all weaken the persuasiveness of the view that too little punishment is a threat to the social order while the costs of too much punishment are borne only by criminals.² It is to the broader costs of punishment that we now turn.

Punishment as contested criminological terrain

The criminological community is, with some exceptions (Currie 1998),³ increasingly willing to acknowledge a substantial, even a dramatic, reduction in violent crime throughout the course of the 1990s. LaFree, for example, presents data that reveal marked decreases in both violent crimes and property crimes during the current decade (1998, 19–25). There is also general agreement that insofar as punishment has contributed to a reduction in crime, that contribution has come through deterrence and/or incapacitation. Punishment is said to deter crime by increasing its costs and, in this way, reducing the temptation to break the law. Clearly the success of deterrence is dependent, as is widely acknowledged, on offenders and would-be offenders making rational cost-benefit calculations before deciding to commit a crime. Incapacitation, it might be said, picks up where deterrence stops: For the nonrational and incorrigible, incarceration is the only way to prevent them from committing crimes. It is probably

also fair to say that criminologists would agree that the fear of punishment does deter some people from committing crimes and that incarceration does prevent some crimes from being committed.

This criminological consensus tends to break down, however, over what relationship, if any, there is between the punitive trajectory of crime control policies and the dramatic decrease in crime in the 1990s. James Q. Wilson, one of the leading proponents of punishment, recently claimed in the *New York Times* that “putting people in prison has been the single most important thing we’ve done to reduce crime” (Egan 1999). When Wilson published the first edition of *Thinking About Crime*, he saw deterrence as the primary mechanism through which punishment reduced crime. He stressed that deterrence was not dependent on the severity of the sanction, but rather on its certainty—and could indeed include both carrots and sticks (Wilson 1977, 194–204). In the revised edition of *Thinking About Crime*, published almost a decade later, Wilson incorporated incapacitation into his crime control policy agenda and made a strong case for the multiplier effect of incarcerating those likely to commit multiple offenses (Wilson 1985, 145–46). Because incapacitation is premised on keeping repeat offenders off of the streets for as long as possible, severity becomes the key to success—albeit as imposed solely on those who are, or are predicted to be, multiple offenders.

Although Wilson may well be the most prominent figure in the criminological debate, other leading criminologists challenged his claims. They question both the effectiveness of deterrence and incapacitation as tools of crime control and, more generally, the companion claim that incarceration explains the reductions in crime that have been recorded during the 1990s.

Michael Tonry traces the case *against* deterrence to the 1960s and 1970s. The 1967 President’s Commission on Law Enforcement and Administration of Justice, he tells us, failed to support deterrence, and the 1978 National Academy of Sciences Panel on Research on Deterrent and Incapacitative Effects concluded that they could not “assert that the evidence warrants an affirmative conclusion regarding deterrence” (Tonry 1995, 19). Additionally, Tonry stated:

[I]n 1993, after the most exhaustive and ambitious analysis of the subject ever undertaken, the National Academy of Sciences Panel on the Understanding and Control of Violent Behavior concluded that greatly increased use of imprisonment has had little effect on violent crime rates. . . . The clear weight of the evidence in every Western country indicates that tough penalties have little effect on crime rates. (1995, 19)⁴

Consider also Jeffrey Fagan’s study of recidivism among 6,800 individuals arrested on drug charges in New York City from 1983 to 1986. He found that “neither the prevalence nor the rates of recidivism were associated with sanction severity” (1994, 188). Instead, he argued that to the extent that there is a deterrent effect, it would vary with the labor market generally. His bottom-line finding is that “the marginal reduction in rearrest rates for those imprisoned, compared to probationers or those not sanctioned at all, suggests little utility in the widespread use of incarceration as a crime control measure for drug offenders” (1994, 205) (see exhibit 1).⁵

Zimring and Hawkins’ research in California leads them to be equally skeptical about the impact of incapacitation—particularly its effect on the *violent* crimes of homicide, assault, and robbery (1995, 126). Zimring and Hawkins also make a technical point that is particularly relevant to this era of escalating sentences. They explain that, assuming initial predictions about which offenders are likely

Exhibit 1. Percentage of those rearrested for five offense types by sanction severity (1 or more years at risk)

Sanction	Rearrest offense type				
	Drug sale	Drug possession	Felony violence	Felony property	All offenses
Incarceration >1 year (N=156)	14.1	15.4	10.3	9.0	41.0
Incarceration <1 year (N=1,389)	18.4	26.3	12.4	22.3	56.0
Probation (N=551)	15.6	14.0	6.4	9.6	39.0
Fine continuation (N=2,293)	18.8	30.3	10.0	16.4	52.2
Dismissed/discharged (N=418)	23.4	23.4	9.8	17.0	49.5
Statistics					
X^2	13.47	46.26	16.53	56.76	91.32
P	.097	.000	.035	.000	.000
Γ	.069	-.0002	-.059	-.047	-.006

Source: Fagan 1994, 202.

to commit multiple crimes are correct, the more or less indiscriminate incarceration of more and more offenders will be subject to the law of diminishing marginal utility (p. 50).⁶ It follows, as Currie argues, that at some point increasing incarceration will do more harm than good. "Our failure to match the increasing rates of imprisonment with corresponding increases in programs to reintegrate offenders into productive lives means that we are steadily producing ever-larger armies of ex-offenders whose chances of success in the legitimate world have been diminished by their prison experience. . . ." (1998, 30). Nor can incapacitation prevent the nearly immediate replacement of incarcerated drug dealers by other dealers on the street.⁷

It might seem, at least at first glance, that national data belie these arguments against punishment. After all, the prison population in the United States doubled from 1982 to 1992, while the Bureau of Justice Statistics reported that in 1992 victimization continued a decade-long decline and personal crime dropped 26 percent from 1973 to 1990. Savelsberg (1994, 919–920), however, claims that this linkage is more apparent than real:

[W]hile increasing punishment in combination with stabilizing crime rates could be perceived as a rational deterrence response, such an interpretation prompts considerable doubt. First, the steepest and steadiest increase in incarceration rates began in 1980, when the crime rate had already been leveling out during the preceding four years. Second, the incarceration rate increased by more than 50 inmates per 100,000 population between 1980 and 1984 without resulting in any change in the crime rate. In the following years (1984–1989) the incarceration rate grew by an additional 50 again without achieving any change in crime rates. Since 1989 the increase in incarceration rate has again been 50, as in the two preceding five-year periods, without changing the trend in crime rates but at considerable expense in times of a sluggish economy, declining budgets, and an eroding public infrastructure.

Thus there are many reasons to be dubious about the privileging of punishment in U.S. crime control policy.

Of late, even longtime conservative supporters of punishment as crime control seem to be reconsidering their position (see Davey 1998, 107). Tonry (1995, 119) tells us that Wilson himself seems to be persuaded that, at least with respect to drugs, we have reached the point of diminishing returns:

After surveying research and experience through 1990, James Q. Wilson, for two decades the country's leading conservative scholar of crime control policy and research, concluded that "significant reductions in drug use will come only from reducing demand for those drugs . . . the marginal product

of further investment in supply reduction is likely to be small.” He reports “that I know of no serious law-enforcement official who disagrees with this conclusion. Typically, police officials tell interviewers that they are fighting a losing war or, at best, a holding action.”

According to an article in the *New York Times*, national drug czar Gen. Barry McCaffrey has come to much the same conclusion—namely that “we can’t incarcerate our way out of the problem” and that drug treatment programs would be more effective and would save a great deal of money (Egan 1999). Note similarly that Margaret Thatcher’s conservative government, in a 1990 white paper, concluded that although deterrence was “a principle with much immediate appeal,” it was “unrealistic” to assume criminals were rational calculators when the evidence showed that crime was more impulsive. Canada, under the conservative government of Brian Mulroney, in a 1993 report proposed moving away from deterrence and toward prevention (Tonry 1995, 19).

Although there are, in sum, good reasons to be dubious about the effect of punishment on crime, our core claim is that, whether or not punishment actually works as an instrument of crime control, the Nation pays a heavy price for privileging punitive crime control policies. It is to these costs that we now turn.⁸

The costs of punishment

To fully appreciate the costs of punitive policies, it is necessary to factor in some aspects of the prevailing policy matrix that are not, strictly speaking, punitive. Feeley and Simon (1992) call attention to a “new penology” with an extensive impact on politics and culture in the United States. As they see it, the key is not just that sentences are getting longer and punishment practices are becoming harsher and more unforgiving; more insidiously, the United States is confronting crime by an array of public-sector and private-sector *risk reduction* policies. This approach, which Diana Gordon (1994) has dubbed “the return of the dangerous classes” and Mike Davis (1990) has portrayed in his exposé of “fortress LA,” puts the emphasis on managing crime by using risk profiles to insulate the law-abiding from the lawbreakers.

This new penology thus fuels, and is fueled by, suspicion and stereotyping that are turning Americans against one another. Among the relevant policies is target hardening, which ranges from putting identification numbers on personal property and creating neighborhood watch groups through using a bewildering variety of home, office, automobile, and personal security devices to building gated communities that literally wall off portions of society from one another. There are also more proactive versions of the new penology. These include offender profiling by street cops, highway patrolmen, and officials monitoring

airports or border crossings. Then there are the street cameras, zero-tolerance policing, and the ever-more pervasive presence of metal detectors.

The impact of these policies, while falling most heavily on the marginalized, is diffuse and indiscriminate—altering the nature of society for everyone (Cohen 1985; Feeley and Simon 1992). The energy and resources of the new penology are introduced preemptively and premised on a sense of imminent danger from a criminal element beyond redemption and rehabilitation. Further, the state enlists the citizenry to participate actively in law enforcement (neighborhood watch) and in risk reduction (home security) and to accept without question intrusive interference (e.g., metal detectors) with everyday activities.

Retreat from criminal justice and the rule of law

Elements of this new penology are clearly at odds with the core values embodied in American justice. Gordon (1990, 16–35) notes the weakening of *Miranda* protections and the exclusionary rule, the expanding use of preventive detention, and the enormous increases in spending on criminal justice hastened by the punitive response to crack cocaine. For Gordon, these protections define our longstanding commitment to limited government, a commitment that is quietly eroding in the face of an expanding and interventionist “justice juggernaut.” These trends ought to concern us, she says:

[B]ecause the procedural protections of criminal law are emblematic of this society’s commitment to limits in the state’s authority over the citizen. . . . The rights of defendants are also the rights of students, employees, tenants, and everyone else who is ever in a position to be coerced by the exercise of government power over individuals. (p. 35)

It might be argued that Gordon and those who share her views of current developments are simply disappointed liberals complaining about the conservative shift in law enforcement—but there is more to the story than that.

Such developments seriously erode the common ground of criminal *justice* in the United States—common ground that, as Herbert Packer wrote many years ago, has united “due process” liberals and “crime control” conservatives. At the heart of this common ground are *ex post facto* restrictions requiring that law enforcement and the criminal process begin with a clear delineation of the conduct proscribed as criminal. In other words, “the criminal process ordinarily ought to be invoked by those charged with the responsibility for doing so, only when it appears that a crime has been committed and when there is a reasonable prospect of apprehending and convicting its perpetrator” (Packer 1968, 155).⁹ All of this is put at risk by a new penology that anticipates criminal activity, acts on the probability that it is forthcoming, and targets *groups* of people. Although

the state is implicated in, and influenced by, these repressive developments, these developments also play out at other sites of social control—the family, the workplace, and the community (Cohen 1985; Gilliom 1996; Garland 1996).

Weakening of inner-city families and communities

Christopher Stone of the Vera Institute noted that prisons are “factories for crime” (as cited in Schlosser 1998); increases in gang violence in our cities can be linked to the networking, recruiting, and leadership opportunities provided to gangs by incarceration. Blumstein, as we noted earlier, makes the same point in calling attention to the postrelease downside of incapacitation (1998, 133). But Stone’s argument goes beyond the specifically criminogenic drawbacks of extensive incarceration. “[T]he culture of the prisons, he claims, is rapidly becoming the culture of the streets” (as cited in Schlosser 1998, 77). Michael Tonry (1995, 6–7) puts this broader point as follows:

Particularly since 1980, the effects of crime control policies have been a major contributor to declining levels of lawful employment by young black males. The extraordinary levels of black male involvement with the justice system . . . are a serious impediment to the achievement of welfare policy goals. . . . No solution to the problems of the urban underclass . . . can succeed if young men are not part of it. The crime problem is no longer simply a criminal justice concern. Unless America can devise ways to make its crime control policies less destructive of poor black males and poor black communities, there can be no solution to the problems of the black underclass.

Meares and Kahan make a similar point about the impact of proactive policing that focuses on “the incarceration of geographically concentrated, low-level dealers inevitably lead[ing] to family disruption, unemployment, and low economic status—all of which create social *disorganization*” (1998, 813; italics in original). The underlying point is that there is a mutually reinforcing relationship between the incarceration of so large a proportion of African-American

In addition to the social and fiscal burdens of a largely punitive and risk-averse crime control regime, these policies and practices also have had a corrupting, albeit difficult to measure, impact on how we think about the nature of crime and crime control, and on political discourse more generally. The result is to impoverish public debate not only over crime and crime control but over the nature and condition of the social contract.

males, the declining formal and informal control in communities, and the rise of “no-go” areas that has been noted in the inner city (Dahrendorf 1985).

Contemporary prison construction and sentencing reform reveal a parallel problem of the *opportunity* costs of punitive policies. “Today the United States has approximately 1.8 million people behind bars . . . more people than any other country in the world” at a cost of approximately \$35 billion a year (Schlosser 1998, 53–54). This reflects a choice to invest in a redistribution of resources not only from other segments of the criminal justice system but also from inner-city schools to rural prisons (Schlosser 1998). Beckett (1997, 106) stated:

Between 1976 and 1989, the percentage of state budgets allocated to education and welfare programs declined dramatically—the former by 12% and the latter by 41%. Across the states, the average monthly welfare benefit shrank from \$714 to \$394 (in 1995 dollars) between 1979 and 1993. . . . Meanwhile, state and federal “correctional” expenditures grew by 95% and 114% (respectively) between 1976 and 1989 and continue to increase dramatically.

The budgetary impacts of these investment decisions were also apparent at the Federal level as a result of the Reagan administration’s war on drugs. From 1981 to 1991, Federal Bureau of Investigation antidrug funding increased from \$8 million to \$181 million, Drug Enforcement Administration funding increased from \$86 million to \$1,026 million, and Department of Defense antidrug funding grew from \$33 million to \$1,042 million (Beckett 1997, 123, note 36). At the same time, funding for the National Institute on Drug Abuse was cut from \$274 million to \$57 million (1981–84) and Department of Education antidrug funding dropped from only \$14 million to a mere \$3 million (Beckett 1997, 53).

Deterioration of political discourse

In addition to the social and fiscal burdens of a largely punitive and risk-averse crime control regime, these policies and practices also have had a corrupting, albeit difficult to measure, impact on how we think about the nature of crime and crime control, and on political discourse more generally. The result is to impoverish public debate not only over crime and crime control but over the nature and condition of the social contract.

Thus, current patterns for investing public dollars seem to reflect what Tonry (1995) tellingly refers to as “malign neglect”: political indifference and/or obliviousness to the decimation of a generation and to the centrifugal forces that are dividing the Nation against itself. Similarly, Sampson and Bartusch (1998) argue that our current law enforcement practices are part of a broader range of social policies that add to the disproportionate burdens borne by those who live in

neighborhoods of concentrated disadvantage. As they see it, escalating imprisonment rates, more intensive surveillance, less available health care, deteriorating inner-city schools, and more aggressive police practices all add to the ordeal of families and communities already most victimized by crime.

Currie (1998, 6) calls attention to the failure of political leaders to address these broader issues and, in so doing, to settle for, and contribute to, an impoverished political discourse:

Neither presidential candidate in 1996 spoke to the issues raised by the mushrooming of America's prisons or offered an articulate response to the crisis of violence among American youth. Instead, the candidates reached for the most symbolic and least consequential issues: both Clinton and Dole, for example, supported the extension of the death penalty, along with a vague call for "victims' rights," boot camps, and school uniforms. . . . The political debate, such as it is, has become increasingly primitive and detached from what we know about the roots of crime and the uses and limits of punishment.

In other words, candidates tend to ignore crime prevention and job creation while their fixation with punishment leaves people confused and "continually bombarded with the myths, misconceptions, and half-truths that dominate public discussion, while the real story is often buried in a specialized technical literature" (Currie 1998, 6-7) or obscured by circumlocutions central to law enforcement (Klockars 1988).

The history of crack is one example of how disinformation impoverishes public debate and has a destructive impact on those communities most victimized by crime. According to a *New York Times* article, crack struck fear in American society, but crack use fell long before harsh penalties were imposed, leaving a legacy of continued drug use, harsh penalties, crowded prisons, aggressive policing of minor disorders, and diminished respect for fairness in the criminal justice system. "Crack prompted the nation to rewrite its drug laws, lock up a record number of people and shift money from schools to prisons. It transformed police work, hospitals, parental rights, and courts. Crack also changed the racial makeup of American prisons. . . . But the harsh laws responding to crack have not reduced overall drug use" (Egan 1999).

Taken together, the costs of our punitive and preemptive campaign against crime are socially and politically disabling. Even if the crime control case for these policies was stronger than we believe it to be, this would be dubious public policy at best. How then is the dogged adherence to a punitive policy agenda to be explained? For us, as the title of this article clearly suggests, the explanation is political.

The Political Construction of Crime and Punishment

A substantial, and in our view convincing, body of data indicates that the politics of crime and punishment are a classic instance of what Murray Edelman (1977) refers to as “words that succeed and policies that fail.” Winning and holding public office, not crime control, are driving the policymaking process. And in politics, as Katherine Beckett (1997) has put it, “crime pays”—at least insofar as it becomes the occasion for a punitive political discourse and for punitive policy initiatives (Scheingold 1984, 71).

But why, how, and for whom do punitively inflected politics of crime and punishment pay? Just what are the political calculations that lead toward punitive policies? Our answer to these questions diverges sharply from the views of both the liberal and conservative mainstream. According to the mainstream commentators, the politics of crime and punishment are, for better (the conservative position: Wilson 1985) or worse (the liberal position: Windlesham 1998), driven *from below* by aroused citizens. In contrast, nonmainstream critics are inclined to attribute the politics of crime and punishment to the more or less conscious efforts of powerful elites to preserve the prevailing hegemony (Quinney 1980 and Hall et al. 1978).

To our way of thinking, these narratives at best tell only part of the story and at worst lead us astray in significant ways. Our reading of the data indicates that punitive policies are driven from above as well as from below. The *top-down* explanations are much closer to the mark and, at the very least, provide insightful correctives to the *bottom-up* mainstream narratives. Political leaders are not, however, free agents in this process. And although there is a punitive impulse from below, it is neither as insistent nor as decisive as the conventional wisdom suggests. Finally, the available data fail to establish a reliable association between crime, fear of crime, or criminal victimization and either punitive initiatives from above or punitive impulses from below. Instead, the politics of punishment draw sustenance from other more fundamental problems—many of which might reasonably be seen as root causes of crime.

All of this will be explored in more detail. For the time being, suffice it to say that our analysis leads to a more complex, multilayered, and interactive vision of the politics of crime and punishment than emerges from either the top-down or the bottom-up accounts. We also want to underscore the centrality of empirical evidence in our account and, thus, the sharp contrast between it and the impressionistic narratives dominating so much of public and criminological discourse on these political issues. As one of us has written elsewhere, “criminologists tend to think of the political side of things, when they think of it at

all, as both too simple and too elusive to warrant their attention” (Scheingold 1998, 860). Take, for example, the undocumented assertion of the otherwise scrupulously precise criminologist Alfred Blumstein:

It is clear that in the current era, where the political expediency of indulging the public’s intense concern about crime is sufficiently attractive and the political risk of failing to do so and being labeled “soft on crime” is sufficiently frightening—the role of research findings in the public policy arena does seem largely to have been put aside, though only temporarily one would hope. (1997, 359; italics added)

We are, of course, in complete agreement with Blumstein concerning the wide gap between criminological knowledge and crime control policy. But we take issue with Blumstein attributing punitive policies to “the public’s intense concern about crime.” We are not alone in calling attention to the constitutive contribution of politics to crime control policy, and the work of these political criminologists figures prominently in the analysis that follows.

Decoupling the politics of punishment from crime

Over the years, the substantial body of data generated in the United States has failed to establish the associations that might reasonably be expected between crime rates, on one hand, and fear of crime, punitive public attitudes, and incarceration rates on the other (Scheingold 1984, 38–49). Similarly, Tonry reprinted a U.S. Department of Justice table that indicates a lack of association between crime and incarceration rates (see exhibit 2).

Christie has found the same disassociation between incarceration and crime rates in a variety of countries in Eastern and Western Europe as well as in the United States—including, for example, Norway, Finland, and the Netherlands (1994, 22–33).

Beckett (1997, 28–44) and Savelsberg (forthcoming) interpret this disconnection between crime rates and a variety of political variables as an indication that public concern about crime follows rather than precedes punitive political initiatives like the war on drugs (see exhibits 3 and 4). According to this way of looking at things, crime control policy cannot properly be thought of as democracy at work. Political leaders simply do not seem to be responding to a frightened, victimized, and punitive public (Scheingold 1984, 49–54).

It seems much closer to the mark to think of punitive policies as starting at the top, so to speak, and being driven by the electoral needs of political leaders—rather than by either the crime rate or by public clamor. This is not to say that

Exhibit 2. Crime and incarceration rates, State and Federal prisons, 1960–90 (per 100,000 population)

	All crimes	Violent crimes	Incarceration
1960	1,887	161	117
1965	2,449	200	108
% change 1960–65	+30	+24	-8
1970	3,985	364	96
% change 1965–70	+63	+82	-11
1975	5,282	482	111
% change 1970–75	+33	+32	+16
1980	5,950	597	138
% change 1975–80	+13	+24	+24
1985	5,206	556	200
% change 1980–85	-13	-7	+45
1990	5,820	732	292
% change 1985–90	+12	+32	+46

Note: From William P. Barr, 1992, *The Case for More Incarceration*, Washington, D.C.: U.S. Department of Justice, Office of Policy Development, table 2; U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports, various years; U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in America*, various years. Data presented in boldface not provided in *The Case for More Incarceration*.

Source: Tonry 1995, 23.

punitive policies are simply imposed on an acquiescent and disinterested public. Instead, the politics of crime and punishment emerge out of complex and reciprocal interactions mediated by a variety of values and institutions—most prominently via the media (Scheingold 1991, 172–192).

Consider, for example, the Savelsberg finding of, and explanation for, much higher incarceration rates in the United States than in Germany. He notes that “[n]either the German nor the American patterns are directly associated with changing crime rates” (Savelsberg 1994, 916). Whatever the linkage between crime rates and incarceration, Savelsberg argues that it must be seen as “mediated in complex ways by many factors” (p. 920), including the institutions and practices a nation-state selects for its criminal justice systems and the cultural resonance of punitive crime control messages. We will return to these intricate interactions shortly, but first we want to present further evidence of the disjunction between crime rates and the politics of punishment.

Consider the *negative* correlation between crime rates and imprisonment discovered by Davey (1998) in his bivariate correlations for all 50 States for the period

Exhibit 3. Correlation of the crime rate, media coverage, and political initiative with public concern about crime, 1964–74

Explanatory variables	Column 1 lag=0 3–5 months	Column 2 lag=1 6–10 months	Column 3 lag=2 9–15 months
Crime rate	-.0077 (.011)	-.0067 (.013)	-.005 (.022)
Media initiative	1.2504* (.5547)	1.3103** (.497)	1.2107* (.5372)
Political initiative	1.3711** (.3509)	1.3511** (.3364)	1.2721** (.3409)
Adjusted <i>R</i> ²	.5649	.5866	.5712

* *p*<.05
 ** *p*<.01
 Source: Beckett 1997, 21.

1972–1992. He also ran a multiple regression analysis including socioeconomic, racial, and demographic variables and found that neither crime rates nor these other variables accounted for all of the variance in imprisonment rates. Finally, Davey selected six matched pairs of adjacent States, where one State had among the eight highest increases and the other among the eight lowest increases in imprisonment. Neither crime rates nor socioeconomic factors entirely accounted for the dramatic differences in imprisonment across these otherwise similar States.

The differences arose, Davey suggested, from gubernatorial values. States led by law-and-order governors experienced sharp increases in imprisonment rates. Adjacent States with more moderate governors avoided an incarceration explosion. For example:

- From 1989 to 1993, Judd Gregg served as Governor of New Hampshire. In that period, the State’s prison population increased from 103 to 157 per 100,000, while the crime rate fell 12 percent. Governor Gregg used deep cuts in State support for education to finance the increases in the imprisonment costs. He revised sentencing laws to keep young offenders in prison longer for more minor offenses and encouraged judges to get tough on crime. In addition, he expanded funding for drug enforcement while “New

Exhibit 4. Political initiatives and public concern about crime and drugs

	Political initiatives (above date line) and public concern (below date line)				
Case 1		.25	.52	1.03	.31
Crime (January 1968– January 1969)	1/68 → 8%	4/68 → 10%	7/68 → 13%	10/68 → 15%	1/69 12%
Case 2		.37	.50	.77	.50
Crime (May 1969– January 1971)	5/69 → 8%	1/70 → 12%	5/70 → 12%	10/70 → 22%	2/71 9%
Case 3		.38	.53	1.4	.83
Drugs (September 1988–December 1989)	9/88 → 15%	1/89 → 11%	5/89 → 27%	9/89 → 64%	1/90 33%
Case 4		.24	.42	1.01	.19
Drugs (January 1986– January 1987)	1/86 → 1%	4/86 → 3%	7/86 → 8%	10/86 → 11%	1/87 5%

Source: Beckett 1997, 14.

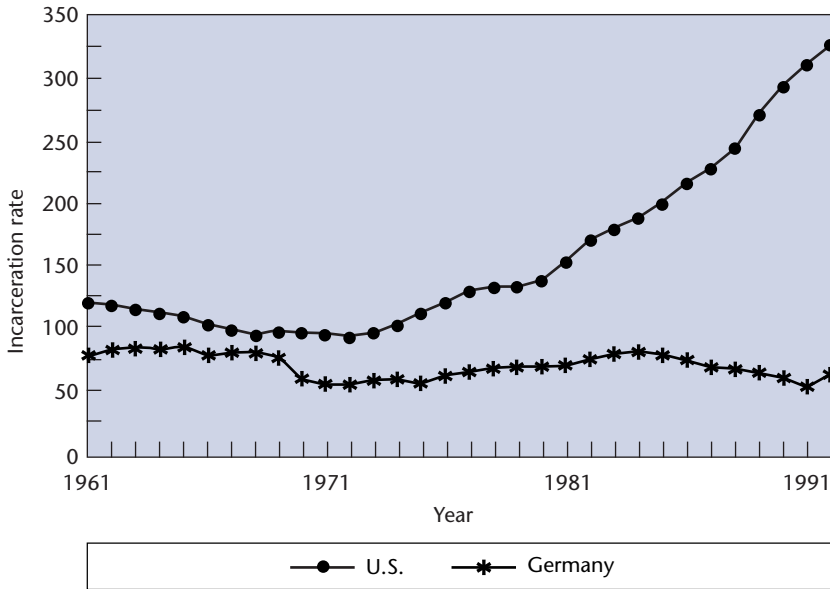
Hampshire prisons lacked the funds to provide any kind of drug and alcohol treatment” (Davey 1998, 52–53).

- For the same period in Maine—a State with another Republican Governor, John McKernan, a similar socioeconomic profile, and crime rates that also fell 11 percent—the prison population did not change.

Davey explains that what distinguished the two States was that Gregg was a law-and-order governor while McKernan took the “direct opposite” position—supporting gun control, for example, even though it was “not popular in rural Maine” (p. 54–55). Davey concludes that crime and punishment become public obsessions through “the political exploitation of public confusion and the fear of crime” (p. 48).

Of course, Davey’s conclusion begs the question of how and why States with similar cultures and demographics elect such differently situated governors.¹⁰ Although we do not directly address this puzzle, our analysis moves in that direction. We combine *macroanalytic* and *microanalytic* accounts of the politics of crime and punishment. The macroanalytic accounts attribute punitively inflicted policies to structural failings of the liberal state. The microanalytic

Exhibit 5. Trends in incarceration rates in the United States and the Federal Republic of Germany, 1961–92



Note: For the United States, the incarceration rate is for prisoners sentenced to more than 1 year under the jurisdiction of State or Federal correctional authorities between 1961 and 1992 (see Cahalan 1986; U.S. Department of Justice 1990b, 1992a; figs. for 1992 are estimated). The incarceration rate (Gefangenziffer) in Germany is based on Statistisches Bundesamt (1977, 1991; figs. for 1992 are estimated).

Source: Savelsberg 1994, 917.

accounts look directly at the policymaking processes at different levels of government. These accounts are not mutually exclusive; each makes meaningful contributions to our understanding of the politics of crime and punishment.

Punishment, governance, and the decline of the liberal state

Most broadly conceived, the punitive binge of recent years has been attributed to the inability of the liberal state to live up to its own ideals.¹¹ This broader vision is articulated in related but distinctive and not necessarily compatible ways in the works of Simon (1997, 1995), Garland (1996), Melossi (1993), and Christie (1994). For them, a postliberal state unable to maintain the economic and social conditions minimizing crime and maximizing the well-being of the society as a whole turns to punitive responses to crime. Incapable of building a

truly inclusive society and thus vulnerable to various kinds of disorder, the state turns to punishment, exclusion, and the “new penology” to maintain power and reinforce the prevailing hegemony. In the words of Jonathan Simon (1997), this amounts to “governance through crime.” Although there is general agreement that the politics of crime and punishment are a direct reflection of the problems of the liberal state, the diagnoses diverge sharply.

Both Christie and Garland see the imposition of punitive crime control strategies as a more or less direct response to unacceptable levels of crime leading to, and resulting from, a transformation of consciousness. According to Christie (1994, 23–24):

[We] are in a situation where the old defenses against committing unwanted acts are gone, while new technical forms of control have been created. God and neighbors have been replaced by the mechanical efficiency of modern forms of surveillance. We live in a concrete situation with crime as a mass-phenomenon. Here anger and anxieties [associated with crime] . . . become the driving force in the fight against *all* sorts of deplorable acts.

Garland (1996, 446) states:

Despite the fact that crime has an uneven social distribution, and that high risk victimization is very much a pocketed, concentrated phenomenon, crime is widely experienced as a prominent fact of modern life. For most people, crime is no longer an aberration or an unexpected, abnormal event. Instead, the threat of crime has become a routine part of modern consciousness, an everyday risk. . . . My claim is that the normality of high crime rates in late modern society has prompted a series of transformations in official perceptions of crime, in criminological discourse, in modes of governmental action, and in the structure of criminal justice organizations.

In this scenario, elites deploy and play on the fear of crime to encourage acquiescence to the concentration of violence in the state. State violence can then be separated from the moral constraints constitutive of community life by encouraging the perception of “even minor transgressions of laws as crimes and their actors as criminals” (Christie 1994, 23–24).

Crime figures much less prominently in Melossi’s analysis tracing punitive policies to the economic downturn of the 1970s:

Abruptly, after 1973 the rate of growth in *real* weekly earnings dropped. From a 1973 peak of \$327.45 in constant (1982–84) dollars, *real* weekly earnings slipped to \$276.95 during the 1982 recession. In spite of the recovery and the long expansion of the 1980s they continued to fall to \$264.76

in 1990. Thus seventeen years after . . . and in spite of the vaunted prosperity of the Reagan years, the real weekly income of the worker in 1990 was 19.1 percent *below* the level reached in 1973! (Peterson 1991, 30)

As working conditions became more onerous, Melossi argues, elites used the threat of punishment as a “social whip” to maintain discipline within an increasingly alienated workforce. At the same time, views about economic adversity shifted. Rather than acknowledging its structural sources, criminologists, politicians, and other opinionmakers directed attention to crime and criminals, and, in so doing, nurtured a “climate of social disciplining” (Melossi 1993, 266).¹² For Melossi, this reframing is better understood as a reassertion of hegemonic discipline than as effective crime control—as a way of directing attention away from a redistribution of income leading to more class inequality and poverty.

Clearly, Melossi points to a broader crisis in the authority of the liberal state—one that transcends crime. The breadth of Melossi’s analysis lends weight to Simon’s “governing through crime” thesis. Melossi moves beyond crime to challenges to political authority posed not only by the excluded underclass but also by the discontents among the working poor and other portions of the working and middle classes. Melossi’s analysis also seems more compatible with data, already presented, that decouples crime rates from the politics of crime and punishment. Finally, the broader vision is more compatible with data showing how punitive preferences are more closely linked to a loss of status and sense of material deprivation than to fear of crime or victimization.

But whatever the nature and sources of these threats to the liberal state, there is general agreement that they result in punitive policies diverting resources from social and economic policy to the agencies of the criminal justice system. In addition, there is evidence that once under way, these policies generate their own momentum, driven by increasingly entrenched vested interests. Crime control is, after all, a big business (Christie 1994) and a huge job creation program (Schlosser 1998).

Schlosser (1998, 54) argues that decisions to invest in punishment and the prison construction frenzy that followed are evidence of:

But whatever the nature and sources of these threats to the liberal state, there is general agreement that they result in punitive policies diverting resources from social and economic policy to the agencies of the criminal justice system.

[a] prison-industrial complex—a set of bureaucratic, political, and economic interests that encourage spending on imprisonment, regardless of the actual need. The prison-industrial complex is not a conspiracy. . . . It is a confluence of special interests. . . . [C]omposed of politicians, both liberal and conservative, who have used the fear of crime to gain votes; impoverished rural areas where prisons have become a cornerstone of economic development; private companies that regard the roughly \$35 billion spent each year on corrections not as a burden on American taxpayers but as a lucrative market; and government officials whose fiefdoms have expanded along with the inmate populations.

In other words, not only is crime control inescapably sculpted within ongoing political struggles, but, in addition, the outcomes impact jobs, community, and citizenship.

From the macroanalytic perspective, then, there is a great deal at stake. To acknowledge that punitive crime control policy has failed, “would call into

question not just the crime policies themselves but the success—and the humanity—of the vision as a whole” (Currie 1998, 8). It also would challenge the distribution of full employment, private-sector profits, and a widely accepted and comforting understanding of how to make sense of our social problems. This understanding is anchored in a dramatic and compelling “myth of crime and punishment” that conveys the dual message of acute criminality and of the crime control capabilities of professional law enforcement practices (Scheingold 1984, 60–75).

At the same time, the macroanalytic, high-stakes politics of crime control, as identified by Garland, Christie, Melossi, and Simon coexist with, and are qualified by, a lower stakes political game. That

political game is more fluid and adaptable. We now turn to this perspective with its potential for reform.

Broadly speaking, crime control policies in urban jurisdictions with the most crime tend to be distinctly less punitive than those developed by the Federal and State governments.

Punishment, politics, and contingency within the liberal state

From the macroanalytic perspective, the politics of crime and punishment may well be about the form and future of the liberal state. Another story needs to be told, however, about the interior politics of the liberal state. This story reveals a multilayered, fluid, less deterministic side of the politics of crime and punishment. Although these two perspectives are in tension with one another, they

are not mutually exclusive. We seek to understand how they interact and, in so doing, to illuminate both the opportunities for, and the constraints on, reform of the emergent punitive state. By exploring and explaining the imposing variation that divides the general public and political elites on punitive approaches to crime control, we lay the foundation for examining reform.

National and State politics: Campaigning on punishment

It might be expected that reactions to crime by both the public and policymakers would vary directly with their proximity to crime, but this is not the case. Instead, insofar as there is a relationship, it is not direct but inverse. Consider, to begin with, the *fear of crime*:

Research on fear of crime—the emotional response to possible violent crime and physical harm—began some 20 years ago with the idea that fear reflects the possibility of victimization. This notion foundered on two repeated findings: (1) fear levels do not closely reflect local crime rates when social class is removed from the relationship . . . and (2) fear levels of age-sex groupings are inversely related to their victimization rates. (Covington and Taylor 1991, 231)

For example, young males tend to be more victimized but less fearful while the elderly and women are less likely to be victimized but more fearful. The incongruities compound when we turn to *punitive attitudes* that do not seem to be associated with *either* victimization or fear. Thus, women are more fearful but less punitive (Scheingold 1984, 47–48). Most telling perhaps is the so-called “rural hunting culture” of white males in nonurban settings who are less victimized and less frightened but more punitive (Stinchcombe et al. 1980).

What is true of public attitudes is also reflected in policy. Broadly speaking, crime control policies in urban jurisdictions with the most crime tend to be distinctly less punitive than those developed by the Federal and State governments. These outcomes are generally consistent with the distribution of public attitudes. Since urbanites are the most ambivalent about punishment, it stands to reason that urban political elites would court controversy by politicizing crime and would simultaneously be more receptive to nonpunitive policies. Conversely, as the skeptical urban constituency is diluted at the State and Federal levels, the influence of the more distant and punitive publics probably increases. But how do we explain the underlying discrepancy between distance from and attitudes toward crime and punishment? Punitive attitudes are driven by expressive rather than instrumental motivations. Ellsworth and Gross (1994) report that respondents who support the death penalty do not necessarily believe in it as a crime control technique; nor, for that matter, does support

decrease as crime stabilizes or falls. These findings led Ellsworth and Gross to conclude that support for the death penalty is largely moral and absolute—expressive rather than instrumental: “Research suggests that fear is not the driving emotion. Future research should focus on other emotions, particularly frustration and anger. Anger is the most positive of the negative emotions, because it is the only one that confers a sense of power” (p. 45).

Note that Ellsworth and Gross mention frustration and anger but not specifically frustration and anger about crime.

The link between punitive attitudes and crime is further attenuated by data generated in Tyler and Boeckmann’s (1997) study of “three strikes” legislation. They found both strong public support for a California “three strikes and you’re out” initiative and reasons why that support cannot be taken at face value. Enthusiasm for the punitive three-strikes approach to crime control, it turned out, could not be traced directly to public reactions against crime but rather to public reactions against a rather amorphous sense that “social conditions” and “underlying social values” have become too precarious (p. 255). In short, those citizens who feel that the moral and social cohesion that holds society together is declining are more supportive of punitive public policies (p. 258).

Although crime may well be one indicator of social malaise, there are of course many others. Consider the unsettling *social* upheavals that this society has experienced in recent decades, the so-called “culture wars” (Hunter 1991) arising from challenges to established hierarchies along race and gender lines, and the struggle between secular and religious values. Consider also the neoliberal reconfiguration of the American economy with reduced job security, increased material inequality, and a weakened social safety net. Many Americans have, in short, been working harder but earning less in jobs that may be temporary and/or insecure.

Given this context, crime can serve as a condensation symbol—a vehicle for channeling other deeply felt concerns about society into amplified fears of crime (Melossi 1993; King 1989; Hall et al. 1978; Beckett 1997). For a host of reasons, those in distress might displace their anxieties onto crime—even if they themselves were not threatened by it. Kathlyn Gaubatz’s research on “crime in the public mind” leads her to conclude that criminals are among the last socially acceptable targets for venting our anger and resentments in an increasingly tolerant society and thus our “insufficiently actualized negative feelings” are eagerly and resolutely directed at them.

Many Americans have decided to tolerate behavior which they nevertheless find bothersome. Thus they go about their lives, still carrying the burden of feeling that their fellow citizens are engaging in activities which

are somehow distasteful, unnatural, sinful, dangerous, immoral, or uppity. But they choose not to release that psychological burden into advocacy of prohibitions on these activities. . . . [As a result, they have been] developing a pool of insufficiently actualized negative feelings, and . . . they [have] needed some place to put them. What better place than in strenuous opposition to the acts of criminal offenders? (1995, 162)¹³

Moreover, in contrast to the readily acknowledged complexity of economic, social, and cultural problems, taking a bite out of crime seems like a rather straightforward proposition. These simple truths about crime and punishment are readily accessible as common sense (Scheingold 1991, 4–7), although the available data lead in unequivocally counterintuitive directions.

There are also reasons why an expressive reaction to crime, generated at a distance from it to displace a broader malaise, would privilege punishment—regardless of beliefs about punishment’s effectiveness. If, for example, the public turns to matters of crime and punishment in reaction to hard-to-grasp economic problems or to objectionable social and cultural changes, punishment tends to become an end in itself. As Ellsworth and Gross put it in connection with their research on support for the death penalty:

It is not hard to understand why many people support capital punishment even though they believe it does not deter crime and is not fair. The death penalty is concrete, it is forceful, and it is final (which nothing else seems to be); it is *something*, and being for it means that you insist that *something* be done. (1994, 42; italics in the original)

In short, the anxieties associated with unwelcome social, economic, and cultural transformations generate anger, and punishment becomes a vehicle for expressing that anger. Conversely, more permissive responses to crime are less likely to discharge anger and anxiety than to compound them.

It stands to reason that if we turn to the world of crime and punishment for solace, we are unlikely to be receptive to the messages of enlightened liberalism. We do not want to hear that we are all responsible or that there is no definitive solution to the problems of crime, nor that we should turn the other cheek. (Scheingold 1984, 71)

The problem with this vague message is that it imports into the world of crime and punishment the same sense of futility we are fleeing and also forecloses the opportunity to express anger.

Politicians are attracted to punishment in part because their constituents are attracted to it. Politicians are, of course, always in search of campaign issues. Valence (largely symbolic and expressive) issues, like anticommunism, for

Proximity does not make people less concerned about crime. On the contrary, those closest to crime tend to be less punitive, in large part, precisely because they have a real, rather than a symbolic, stake in effective crime control strategies.

example, are particularly attractive in that they unite sizable majorities. The only challenge with respect to valence issues is to present them in ways that work for you and against your opponent. Certainly in presidential politics, street crime has frequently served as an effective valence issue, especially for conservative Republicans. Not only is there overwhelming agreement that street crime should be reduced, it has the added attraction of arousing strong emotions—something capable of gaining a firm grip on the public imagination (Scheingold 1984, 68). Much the same seems to be true at the State level—going back to the 1960s. Indeed, Ronald Reagan’s 1966 law-and-order campaign for Governor set the tone for much of what was to follow in presidential politics (Berk, Brackman, and Lesser 1977, 59). More broadly, the California legislature seemed inclined to invoke criminal law indiscriminately. “[T]he almost universal response to a wide spectrum of perceived social problems was increased criminalization” (p. 300).

This does not mean, however, that politicians are simply responding to the demands of their constituents, as many argue. On the contrary, politicians have their own

reasons for stoking the punitive fires. Street criminals, who are objectionable in their own right, are also serviceable surrogates for displacing other discontents. Accordingly, campaigning on crime provides politicians with an opportunity to divert the public’s attention to crime and away from underlying social, economic, and cultural problems. Dealing with these latter issues (e.g., reducing inequality, enhancing job security, and confronting cultural cleavage) is likely to be both costly and divisive. Although punishing criminals has been a fiscal burden, it has not been divisive and, indeed, has been the foundation on which enduring and successful political coalitions have been constructed at the national and State levels. Moreover, for presidential candidates and members of Congress to divert attention from the economy to crime is to refocus the public’s attention from problems for which the Federal Government is responsible to a problem for which local and county officials have primary responsibility.

Urban politics: Punishment as contested value

Although a punitive consensus emerges readily among those who are distanced from crime, proximity seems to reduce, or at least to destabilize, both instrumental and expressive forms of support for punishment. Those living closest to crime are not as likely to embrace get-tough policies, and local political leaders

are less inclined to campaign on crime. In short, a reverse synergy exists between politics and punishment in high-crime urban settings. The result is that, at the local level, both political leaders and the public tend to be more ambivalent about punitive responses to crime.

Proximity does not make people less concerned about crime. On the contrary, those closest to crime tend to be less punitive, in large part, precisely because they have a real, rather than a symbolic, stake in effective crime control strategies. For those in close proximity to crime, it is neither an expressive abstraction nor a political opportunity. The data also indicate that for both officials and the public generally, crime is not readily separable from a host of concrete structural problems, such as unemployment or inferior educational opportunities, that are associated with crime and, arguably, contribute to it. At the same time, those familiar with the forces driving marginalized Americans toward crime are less likely to be receptive to the moral case for punishment—especially punishment unaccompanied by measures to reduce crime and strengthen communities. In short, proximity to crime generates an intense engagement that casts doubt on both the easy moralizing and the superficial policy calculations associated with exclusively punitive crime control strategies.

Another reason that punitive wars against crime are of limited appeal in urban areas is because they tend to be racially divisive (Beckett 1997; Hall et al. 1978). Attitudinal research reveals that African-Americans respond to punishment with more skepticism than do whites. Although, at first glance, there appears to be “a fair degree of consensus between blacks and whites,” with blacks only slightly less punitive than whites (Cohn, Barkan, and Halteman 1991, 291), this agreement is more apparent than real.

In the first place, blacks and whites invest their punitive preferences with distinctly different meanings. Cohn, Barkan, and Halteman found that punitive attitudes among blacks are instrumentally driven by a fear of crime, whereas among whites punitiveness is rooted in “prejudice” (1991, 293). Insofar as punitive preferences are driven by prejudice, they are visceral and expressive and are thus unlikely to be influenced by even the most successful crime control strategies. Recall the research mentioned earlier that found peak punitiveness within the rural white hunting culture—among those, that is, who are neither threatened by, nor fearful of, crimes. Conversely, insofar as blacks are responding to a fear of victimization, they are more likely to evaluate punishment in instrumental terms.

Moreover, although African-American attitudes toward punishment are not exclusively instrumental, the expressive element tends to mobilize blacks *against* punishment. Consider, in this regard, Sasson’s focus group research

conducted among African-Americans. His Boston area neighborhood crime watch groups were strongly attracted to conspiratorial explanations of the high crime rates among blacks. These African-American respondents were willing to attribute “the drug trade and ‘black-on-black’ violence to the clandestine actions of powerful whites” (Sasson 1995, 266). Starkly put, there was an inclination to credit what most Americans find incredible: high crime in African-American neighborhoods as the *intended* consequence of genocidal policies pursued by white elites. According to Sasson, blacks are receptive to conspiracy theories because of “the absence of a public discourse on crime corresponding to African-American popular wisdom” (p. 281).¹⁴ Specifically, conspiracy theories flourish, he says, largely because there is no space in mainstream explanations of crime for one of the central “facts” of the African-American experience: the brutal reality of white racism.

If there are African-Americans who see crime itself as part of a deliberate plan fomented by whites to destroy black communities, it stands to reason that punitive responses to crime would be perceived as inextricably linked to the same plot. Blacks are, after all, being incarcerated in astonishing numbers while also being disproportionately subjected to police violence. Zero-tolerance policing, a centerpiece of urban anticrime strategies, is certainly intrusive and seems to be leading to increased police violence. Even police officers who believe in the effectiveness of zero-tolerance law enforcement are sensitive to its problematic repercussions. According to James Savage, president of the Patrolmen’s Benevolent Association in New York City:

When zero-tolerance tactics were first introduced by the department, crime was at an all time high. . . . Now that crime is way down, an adjustment of the strategy is required. If we don’t strike a balance between aggressive enforcement and common sense, it becomes a blueprint for a police state and tyranny. (Cooper 1999)¹⁵

Presumably whites continue to be less afflicted by this increasingly punitive police presence—thus, further exacerbating the racial schism. According to Scheingold (1995, 3):

[W]hites are likely to see the best police officers on their best behavior while African-Americans and other marginalized groups are likely to see the worst police officers at their worst. But it may also be because whites expect the police to treat “the dangerous classes” in just the ways that antagonize minorities. If so, then Andrew Hacker’s ominous admonition that we are *Two Nations: Black and White, Separate, Hostile and Unequal* may apply at least as much to the fight against crime as to other areas of American life.¹⁶

In short, crime in general and punitive policy initiatives in particular tend to pit whites against blacks.

Sampson and Bartusch recently conducted a multilevel statistical analysis of survey data compiled from 8,783 residents of 343 neighborhoods in Chicago and found that proximity to crime and police misconduct contributed to more complex attitudes about the nature of crime and punishment.

[N]eighborhoods of concentrated disadvantage display elevated levels of legal cynicism, dissatisfaction with police, and tolerance of deviance unaccounted for by sociodemographic composition and crime-rate differences. Concentrated disadvantage also helps explain why African-Americans are more cynical about law and dissatisfied with the police. Neighborhood context is thus important for resolving the seeming paradox that estrangement from legal norms and agencies of criminal justice, especially by blacks, is compatible with the personal condemnation of deviance. (1998, 777)

This does not mean that African-Americans are more accepting of crime, but their desire to reduce crime coexists with deep cynicism about, and distrust of, the criminal justice system (Podolefsky 1983; Hagan and Albonetti 1982). The increasing influence of minorities in urban electoral politics tends, then, to inject a moderating influence into policy choices.

With crime such a racially divisive issue, political and civic elites in urban areas have reasons not to campaign on crime—reasons for avoiding the issue rather than deploying it. Just this finding emerged from the most comprehensive available research, the Governmental Responses to Crime Project (Jacob and Lineberry 1982). Ten cities were examined over the 30-year period 1948 to 1978. To be sure, there were instances of successful campaigning on crime. The overall message of that research was, however, that most of the time, in most of the 10 cities, crime was not a salient issue. Similar findings emerged from a case study by one of the authors. That research, conducted in the 1980s, found that central city blacks were much less willing to support get-tough policies than were similarly situated whites (Scheingold 1991, 50–55). With civic elites arrayed against them, neither the law-and-order campaigns nor the campaigners were able to establish an influential, much less an enduring, political presence. Once again, occasionally successful law-and-order electoral campaigns were the exception that proved the rule (p. 66–69).

Electoral and commercial forces also contribute to policy moderation in urban areas. Civic elites are likely to see the politicization of street crime as bad for business—likely, that is, to drive people from the inner city to suburban shopping malls, housing developments, and business parks. Unlike their more distant counterparts in Washington, D.C., and even in State capitals, urban

political leaders and criminal process professionals are in the front line of “wars” waged against crime. They are directly answerable to an electorate that, on one hand, tends to see crime as one of a number of afflictions and, on the other, witnesses the collateral damage inflicted by overly zealous law enforcement (Scheingold 1995).

In racially heterogeneous urban settings, therefore, punishment and crime both become contested values rather than valence issues. Rather than symbolic expressions of putative support for punitive and exclusionary forms of social control, local crime control debates focus more on what will express moral approbation in a way that reduces crime and strengthens communities. For all of these reasons, we believe that urban policymaking processes are more inclined to take seriously the criminological knowledge that casts doubt on an exclusively punitive crime control strategy. It is no accident that more balanced and criminologically informed programs such as community policing and Weed and Seed programs are being embraced in urban areas. Consider also the findings emerging from a current study of the Weed and Seed program in Seattle. Local officials, responding to African-American constituents, have negotiated a partial reversal of the priorities of the Federal program—reducing its emphasis on punitive weeding provisions and giving more attention and resources to the preventive seeding provisions (Miller 1999).

This does not mean that the urban setting is devoid of punitive impulses or that the political ethos is not predominantly punitive from time to time and place to place.¹⁷ Rather, our point is that there is substantial receptivity to nonpunitive responses to crime among local elites, the lay public, and criminal process professionals—or to punitive responses that are also reintegrative (Braithwaite 1989). Accordingly, there are definitely insistent political incentives to develop a more balanced and less obtrusively punitive policy agenda.

Beyond Punishment: Policy and Political Alternatives

In concluding this paper, our agenda is twofold. On one hand, we sketch in the broad outlines of a crime control strategy that we believe would make much better sense than either punishment, *per se*, or the pervasively intrusive practices of the new penology. On the other hand, we look more closely at what is politically feasible. To do so, we balance the opportunities for reform suggested by our analysis of the political process against the constraints that stem from the ongoing problems of the liberal state. To invoke the mantra of this paper once again, our claim is that crime control policies must be understood as political choices made in contexts where options are constrained by larger cultural

and economic forces. Thus, although our analysis separates policy from politics, they are inextricably interdependent.

Beyond punishment: Strengthening communities and families

To discuss alternatives to punishment is in no way to argue against the need for punishment. In analyzing crime control debates, Currie is critical of the political right for dismissing prevention in favor of unlimited punishment. But he is also critical of the left for a failure to focus on crime prevention programs that work—and, instead, voicing uncritical support for social programs as being superior in all cases to punishment.

Given what we've learned about crime prevention in recent years, four priorities seem especially critical: preventing child abuse and neglect, enhancing children's intellectual and social development, providing support and guidance to vulnerable adolescents, and working intensively with juvenile offenders. . . . The first priority is to invest serious resources in the prevention of child abuse and neglect. The evidence is compelling that this is where much of the violent crime that plagues us begins, especially the kinds of violence we fear the most. (Currie 1998, 81–82)

Relying heavily on Currie's analysis and his proposals, we advocate an even-handed approach that takes more cognizance of the structural sources of crime and puts less emphasis on crime as a volitional act—a matter, that is, of strictly personal choice (Scheingold 1991, 7–15).¹⁸ Fundamentally, this means, in effect, investing in noncriminal justice system programs that, according to the available criminological knowledge, have crime prevention value. In this way, it will be possible to reduce the need to resort to the punitive crime control strategies that provide short-term drama and serve political needs, but tend at the same time to weaken the communities that are most victimized by crime. But there are also worthwhile steps that can be taken within the context of crime control policy per se, and we will begin with them.

We see community policing as a step in the right direction but only insofar as it is rooted in a genuine partnership among police officers, police departments, city governments, and community residents. Community policing programs should manifestly demonstrate how they would strengthen the communities most victimized by crime.

Nonpunitive crime prevention

Crime control policymakers would be well advised to heed medicine's first principle: Do no harm. Tonry's research indicates that this principle has certainly been violated in the so-called war on drugs. Its focus on street dealers and punitive sentencing policies has, he argues, had foreseeable and destructive impacts on African-American families and communities. Accordingly, he proposes reducing statutory maximums or establishing strong presumptive upper limits on punishment severity, abolishing all mandatory penalties, empowering judges to mitigate sentences based on individual circumstances, and "greatly limit[ing] the use of imprisonment" while using the money saved to invest in communities (1995, 41–46).

In addition to eliminating the *negative*, there are a variety of *positive* steps that can be taken within the criminal justice system itself. We believe these will promote both crime reduction and stronger families and communities. Programs for repeat offenders can be structured in ways that circumvent the exclusionary consequences of deterrent, incapacitative, and preemptive strategies. Hope (1995) and Tremblay and Craig (1995) argue for the crime prevention value of investing in vulnerable adolescents in ways that build concrete skills and support systems. According to Currie, this is the strength of programs like Job Corps, where intensive skill training "significantly reduced violent crime among its graduates" (1998, 102). The key remains a comprehensive and consistent approach that offers tangible supports (valued skills, activities, stipends, relational networks). Punitive programs (boot camps) that are currently popular but are of dubious value (Simon 1995) and treating offenders in isolation are a "prescription for failure" (Currie 1998, 105). When offenders are treated as "participants in a range of institutions, from the family to the school and beyond," success has been shown to be more likely (Currie 1998, 107).

Community policing has, of course, become a central feature of crime control strategies throughout the United States. We see community policing as a step in the right direction but only insofar as it is rooted in a genuine partnership among police officers, police departments, city governments, and community residents. Community policing programs should manifestly demonstrate how they would strengthen the communities most victimized by crime. Similarly, it is essential that aggressive crime suppression activity not be undertaken without a demonstrated consensus in the communities concerned over the definition of the problem and the proposed solution. Finally, self-consciously and in consultation with citizen partners, police must avoid practices that, even if effective in the short term, undermine the relational networks, resources, and informal social control mechanisms communities depend on to subject unaccountable power in their neighborhoods to critical public scrutiny (Lyons 1999).

Meares and Kahan (1998, 816–828) argue along these same lines that a focus on policing that strengthens communities of concentrated disadvantage would emphasize different police practices than those currently in place. Reverse stings, for instance, would spread the disorganizing impact of formal sanctions across many communities and are likely to be just as effective as buy-busts that concentrate that impact on those communities already least advantaged (see also Miller 1999). Curfew laws rather than aggressive gang units, order maintenance that does not rely on arrests and focuses on the concerns of all communities, and alliances with African-American churches can each contribute to both crime prevention and strengthening those communities most victimized by crime.

Structural responses to crime

But to focus on what criminal justice agencies can do on behalf of families and communities only scratches the surface of the problem. In the United States, “unlike other advanced societies, we cannot link our early-intervention programs to national-level health care” and “we have traditionally over-estimated the capacity of purely educational strategies to over-come the effects of endemic poverty, community disorganization, and economic insecurity” (Currie 1998, 98–100). In short, we agree with Currie that it is necessary to combine social service interventions with investments in structural reform.

Consider in this connection Tremblay and Craig’s (1995) detailed review of the literature evaluating programs designed to prevent crime by reducing developmental risk factors. They conclude that “money invested in early prevention is money saved later on remedial services in school, social, physical, and mental health services for families and correctional services for juveniles and adults” (p. 224). Programs that target children engaging in unusually disruptive behavior, experiencing cognitive difficulties, or being subjected to poor parenting had “generally positive results” (p. 151).

Tremblay and Craig’s review covered many programs, but one common characteristic of success emerged consistently. The successful programs invested in teachers, parents, and children by distributing resources in the form of concrete *skills* (such as moral and legal reasoning skills, conflict management skills, study skills), consistent and

Because areas of concentrated disadvantage lack precisely those resources needed to mobilize the informal social controls associated with strong communities, a failure to make the necessary structural investment inevitably leads to punishment as the only meaningful alternative.

targeted *support* systems, caring relational *networks* (social bonding), and self-confidence stemming from concrete *achievements*. These investments paid off in terms of improved attitudes toward school, better academic performance, fewer school suspensions or expulsions, an increased capacity to hold a job after graduation, less drug abuse, and often significantly less criminal behavior (Tremblay and Craig 1995).

Child abuse itself is a crime linked to 5,000 deaths, 18,000 permanent disabilities, and 150,000 serious injuries per year. Children who survive this threat “are far more likely to turn to violence themselves as teenagers or adults” (Currie 1998, 82). Abused kids are more likely to engage in serious delinquency (Tonry and Harrington 1995). One key ingredient of crime prevention strategies is, therefore, early and consistent assistance for at-risk families (Currie 1998, 85–86). In reviewing a prenatal–early infancy program pioneered in Elmira, New York, Currie concluded that even for those families at greatest risk of producing delinquent children, timely and sustained investment that supported the parents and children led to crime rates that were lower than those of control groups.

The families, in short, represented a tough population, and their children were heavily exposed to the multiple adversities of poverty and social marginality. . . . The control children were almost four times as likely to have a formal juvenile record (22 percent versus 6 percent of the program children). And even the relatively rare delinquencies of the program children were minor. (1998, 97)

Returning to Hope’s review of the literature on community crime prevention, we note that he underscores the importance of investing in ways that counter the “nexus of youth poverty and crime emerging in areas where crime and poverty are concentrating” (1995, 77).¹⁹

In the final analysis, then, neither families nor communities are going to be strengthened without directly tackling the extreme deprivation that “inhibits children’s intellectual development, breeds violence by encouraging child abuse and neglect, and undermines parents’ ability to monitor and supervise their children” (Currie 1998, 135–140). In a context of predominantly punitive, politically appealing approaches to crime control, families are left without an alternative to poverty and dependence on state agency. Accordingly, Currie (1998, 150–157) proposes:

- Living wage campaigns to raise the minimum wage.
- Upgrading part-time work to include benefits and security against arbitrary layoffs.
- Providing universal health and child care nationally.

- Creating jobs in inner cities: jobs in child care, child protection, health care, and public safety.

In short, because chronic joblessness hurts families in ways that cause crime, Currie suggests that the most intelligent crime prevention approach would focus on reforming work rather than welfare. People who work should be able to earn enough to support their families. More broadly, the idea is to place the welfare of at-risk families and the well-being of communities most victimized by crime at the top of the criminal justice agenda. These are, after all, sites “where the strains and pressures of the larger society converge to influence individual development” (Currie 1998, 141).

Because areas of concentrated disadvantage lack precisely those resources needed to mobilize the informal social controls associated with strong communities, a failure to make the necessary structural investment inevitably leads to punishment as the only meaningful alternative. As Hope puts it: “Disintegrating urban communities may need significant social investment in their institutional infrastructure to offset the powerful tendencies of destabilization of poor communities within the urban free-market economy” (1995, 78). Unlike whites fleeing to the suburbs, privatization in fortress communities is not an option for these communities. For crime prevention to make sense, investment in the strength of these communities is an indispensable complement to punishment. As for punishment itself, there is reason to believe that forms of punishment that are reintegrative will strengthen communities more than those that are strictly exclusionary (Braithwaite 1989).

Beyond punishment: The politics of reform

The political struggle over crime control policy takes place inside and outside the communities most victimized by crime. Within the afflicted communities, the streets are the site of encounters over the status and funding of professional law enforcement, the tax burdens imposed on various business interests, and the electoral fortunes of political leaders and governing coalitions. We have already established that punitive tendencies are under considerable pressure in these urban settings. In our concluding pages, we will demonstrate that even outside the inner city, punishment is not uncontested, nor is a punitive agenda indispensable for electoral success.²⁰ It is, however, much less clear that a non-punitive agenda will necessarily translate into the kind of structural reform that we claim is the key to strengthening communities and families in crisis.

A nonpunitive political ethos?

There are a number of indications that it is not only in the inner cities that support for punishment is equivocal. Most broadly, the political ethos has never

really been as punitive as is often thought to be the case (Gottfredson and Taylor 1987). Throughout the last decade, public opinion research has revealed a distinctly nonpunitive streak. In the same 1989 survey that found rehabilitation was preferred over punishment by 48 percent to 38 percent, it was discovered that, by a 61- to 32-percent margin, the public believed that attacking social problems was more likely to deter crime than improved law enforcement (Gallup Organization 1989, 31). Moreover, when asked about the factors that are responsible for crime, only 4 percent chose lenient courts and 4 percent chose lax punishment while 58 percent pointed to drugs, 14 percent to unemployment, and 13 percent to a breakdown in family values (p. 25). In other words, even if the public is inclined to treat known criminals harshly, they have a broad sense of the causes of crime and of ways to reduce it.

Consider also the moderation beneath surface enthusiasm for capital punishment. Between the mid-1960s and the mid-1990s, support for capital punishment grew from just above 40 percent to more than 75 percent (*American Enterprise* 1991, 80). It might seem at first glance that these numbers run counter to our proposition, but research by Bowers, Vandiver, and Dugan suggests why this is not the case. They report that these polls have been “misinterpreted” and that:

[T]here is now solid evidence that the “prevailing wisdom” of “strong,” “deep-seated” public support for the death penalty is mistaken. . . . When people are presented with an alternative to the death penalty that incorporates both lengthy imprisonment and restitution to murder victims’ families, and are then asked whether they would prefer the death penalty to such an alternative, they consistently choose the non-death-penalty alternative. (1994, 79)

More specifically, in this research conducted in 1991 in New York and Nebraska, support for capital punishment was cut almost in half when respondents were presented with the alternative of life in prison without the possibility of release. Support dropped still further when restitution was added to the life in prison option (Bowers, Vandiver, and Dugan, 1994, tables 5 and 7). These findings do not, of course, reveal an aversion to punishment. Indeed, there was strong agreement in both States that we should be tough on criminals—even tougher than we already are (table 9). What is revealed, however, is that there is political space for enterprising political leaders who refuse to raise the punitive ante and instead choose the instrumental over the expressive.

Bowers and his associates further demonstrate the existence of this nonpunitive political space by the responses of legislators to capital punishment. On balance, the legislators were, if anything, slightly less punitive than their constituents (table 13). On capital punishment, however, they took a tougher line. Why? Bowers and colleagues state:

Seven out of ten [New York] legislators believed that their constituents would prefer the death penalty over any of the other alternatives—when . . . only one in three voters statewide preferred it to [life without parole], and only one in five preferred it to [life without parole plus restitution]. (p. 139)

In other words, what drove capital punishment policy in New York was not so much a punitive public or a punitive legislature as legislative misperception of public preferences.²¹

Toward a structural crime control strategy?

The empirical record thus suggests that punitive policies are politically constructed on surprisingly uncertain foundations. Research suggests that the general public and State agencies are more ambivalent and more conflicted about punitive policies than a cursory reading of public opinion and State policy might suggest. Given these crosscurrents, punitively inflected politics of crime and punishment are hardly inevitable. On the other hand, there is no quarreling with the electoral success that has been achieved by hardline campaigning on crime in State and presidential politics.

So even if we are correct and it is *possible* to steer a nonpunitive course, is there any reason to believe that it is *likely*? And, moreover, is there any reason to believe that nonpunitive policies will progress to genuine structural reform? Certainly fiscal prudence would militate against further prison construction. But States continue to build prisons at an alarming rate. Perhaps fiscal discipline will kick in—but perhaps not. After all, as indicated previously, prison construction as well as many other policies and practices associated with the emergent punitive state have a built-in economic payoff.

We do, however, see a glimmer of hope elsewhere. Punitively inflected politics of crime and punishment resonate with anger and anxiety generated by the interaction of social, cultural, and economic instability. It is therefore hardly surprising that, given the high level of prosperity that this Nation has enjoyed during most of the 1990s, neither crime nor punishment has been the veritable political pot of gold that it once was. Although the rising economic tide has definitely not raised all boats, it is entirely plausible to believe the influential, so-called middle class has been sufficiently mollified that it offers less fertile soil in which to plant the seeds of law-and-order populism. Of course, insofar as we are correct, this respite from a punitive political ethos will last only as long as our current prosperity. Still, for the time being, it is reasonable to hope and expect that the nonpunitive approaches being developed in inner cities are less likely to be undermined by enterprising outsiders in Washington, D.C., and in the State capitals.

On the other hand, the prospects for genuine structural reform seem less promising. We do believe that with less free-floating public anger and anxiety for politicians to exploit, it will become increasingly difficult to deploy crime as a political fig leaf concealing the structural failings of our liberal-democratic state. But it also seems that the current prosperity has itself provided something of a fig leaf and, if so, we may be further from facing up to our structural problems.²² In addition, the burden of these problems increasingly falls on those largely without political voice—the so-called dangerous classes that figure so prominently in the governing-through-crime literature.

Even if criminal justice agencies pursue more enlightened crime control policies and practices, there is no reason to believe that macroeconomic policy-makers will shoulder the redistributive burdens implied by genuine structural reform. Indeed, it may even be that the better the nonpunitive palliatives work, the less incentive there will be to undertake structural remedies. Further complicating policy choices is the distinct possibility that redistributive policies could generate a backlash by fueling the kinds of resentments on which law-and-order politicians have been preying for many years. Thus, one need not think of the crisis of the liberal-democratic state as a terminal condition to be pessimistic about the prospects for the kind of genuine structural reform that we see as a necessary component of an effective and inclusive crime control strategy.

Notes

1. Put another way, while criminologically speaking, the case for punishment is contested terrain, politically speaking, punishment tends to be largely uncontested. A heated debate among criminologists is thus politically transformed into widespread acclaim for punishment as both a necessary and a sufficient response to crime.
2. Strictly speaking, Wilson has always given priority to certainty, rather than to severity, of punishment—as the quoted statement clearly indicates. But this distinction is regularly lost in the public discourse on crime and punishment, and, even in its qualified form, there is a clear implication that punishment is exclusively about the relationship between the law-abiding citizens represented by the State and the criminal element.
3. According to Currie (1998, 29): “The incarceration rate has risen much more than anyone imagined. But there has been *no* overall decrease in serious criminal violence, and there have been sharp *increases* in many places—including many of the places that incarcerated the most or increased their rates of imprisonment the fastest. The national incarceration rate doubled between 1985 and 1995 alone, and every major reported violent crime increased.”

4. Tonry goes on to note that this research was “commissioned and paid for by the Reagan administration’s Department of Justice” but had no discernable effect on policy-makers who, Tonry concludes, could not have used the best available data in deciding to adopt punitive policies that depend on deterrence (1995, 17–18). The disconnect between criminology and policymaking is, of course, central to our underlying argument and will be revisited at length in the next section of this paper.

5. Further, Fagan (1994, 207) suggests that an approach that accounts for contextual factors like the job market will avoid the “counter-deterrent effects” of strictly punitive approaches.

6. Blumstein (1998, 132) makes the same point as part of a multifaceted, carefully balanced (but largely skeptical) account of the incapacitative contribution of punitive sentencing to crime reduction. “The incapacitative effects could have been diminished because the marginal prisoners brought into prison during the expansion [of incarceration] had lower values of offending frequency . . . than might have been anticipated.”

7. Blumstein (1998) agrees that recruiting replacement drug dealers is likely to reduce the incapacitative effects of stiff sentences (p. 131), and he takes advocates of incapacitation to task for ignoring its “postrelease” consequences. Unlike Currie, however, Blumstein believes that these consequences may be both positive and negative (p. 133).

8. In the past 5 years, there has been considerable discussion about the dramatic reduction in urban crime—first noted in New York City and attributed to that city’s zero-tolerance policing, and thus arguably, to punishment. As we see it, the returns are not yet in and other explanations should probably be taken into account—for example, the maturation of the drug markets and unemployment rates that are at an all-time low. It should also be noted that, while our focus is on the prevailing punitive trends in crime control policy, current policy also includes less punitive approaches, such as community policing, drug courts, and family violence courts. Clearly, nonincarcerative sanctions and a concern for rehabilitation remain part of the overall crime control picture. We see these less punitive approaches as both promising and, in the current punitive context, unlikely to realize that promise. As currently practiced, initiatives like community policing, for instance, are often constructed as part of larger punitive efforts emphasizing public relations, aggressive law enforcement, and empowering the police department, often at the expense of strengthening those communities most victimized by crime (Lyons 1999).

9. In his classic study, *The Morality of Law*, Lon Fuller argues that these are among the defining elements of law—in his words, “the morality that makes law possible” (1964, ch. 2).

10. Davey also contrasts the incarceration rates of two other States with similar demographics and Republican Governors. While South Carolina’s incarceration rate jumped from 294 to 415 per 100,000 (1985–89), North Carolina’s rate fell from 254 to 250. According to Davey, the elevated rates in South Carolina were because Governor Carrol

Campbell “knew well the value of exploiting the voter’s fear of crime” (1998, 60). Meanwhile, in North Carolina, Governor James Martin did build some new prisons but only to ease overcrowding. Despite the danger that building prisons would inevitably lead to filling them, Davey argues that “in the absence of a ‘law and order’ governor, that apparently did not happen in North Carolina” (p. 62).

11. Blumstein (1998) provides a criminologically based explanation of the stunning acceleration of incarceration rates beginning fairly early in the 1970s (see exhibit 5). Blumstein traces the upturn to criminologist Robert Martinson’s widely read 1974 *Public Interest* article “What Works? Questions and Answers About Prison Reform.” Martinson’s answer, drawn from more than a decade of empirical research, was that nothing worked. Blumstein claims that it was this criminological research that spearheaded a retreat from rehabilitation and an increasingly insistent demand to get tough with criminals. We see things differently. The years in which incarceration took off were also years of double-digit inflation, heated conflict over busing, and white flight—and just after the height of social turmoil over the war in Vietnam (Scheingold 1991, 66–71). In other words, for reasons detailed in the pages ahead, we look to the major dislocations of the 1970s to explain the upsurge in incarceration.

12. U.S. Census Bureau data lend credence to Melossi’s analysis. From 1974 to 1994, the income of the poorest (lowest quintile) Americans fell from 4.3 percent to 3.6 percent of total income earned. Middle-class (the middle three quintiles) income fell from 52.2 percent to 47.3 percent. At the same time, the income of the wealthiest (highest quintile) Americans increased from 43.5 percent to 49.1 percent (U.S. Bureau of the Census 1996).

13. For a complementary psychoanalytic explanation that links the lure of punishment to perceptions of declining status and/or material well-being, see Chancer and Donovan (1994).

14. A newspaper report implicating the CIA in inner-city drug dealing both fueled the conspiracy fires and revealed how rapidly they tend to spread among African-Americans (Golden 1996).

15. Retiring San Diego Police Chief Jerry Sanders urges that this statement be taken at face value and not attributed to a hidden agenda or to political posturing. He argues, as we have, that “no one is more aware than officers on the beat that arrests and citations don’t solve many long-term problems” (Sanders 1999).

16. Reactions to the O.J. Simpson trial revealed this same black and white division on matters of criminal justice, as did the earlier reactions to the Bernhard Goetz incident (Rubin 1986).

17. It is instructive that both of these studies found substantial urban politicization of crime only in the mid- to late 1970s—very close to the period when incarceration took off and society seemed to be coming apart at the seams. This is also, arguably, the period when conservative whites were making a kind of last-ditch stand against unwelcome changes in the racial composition and balance of political power in U.S. cities.

18. We realize that some of these proposals are controversial and that there are prominent figures, perhaps most notably Charles Murray, who doubt that they will work. Again, we are treading on contested terrain—rooted, in this instance, in competing and ultimately irreconcilable views of human nature. Thus, Murray rejects the investment of resources in improving inner-city schools, concluding that there is “little hope” for success because the contribution of formal education “has already been realized” (1984, 389). Further, he rules out several preschool programs he found to be effective, because they were too costly. He does not, however, contrast these costs with the \$100 billion spent on crime control in 1993 (Beckett 1997, 3)—not to mention the many other costs that we analyzed earlier. We are under no illusions that we can resolve this longstanding and deep-seated conflict. Accordingly, our objective is to present the data on which our own judgment rests. In so doing, we offer what are, at the very least, plausible and promising additions to the crime control policy repertoire.

19. Hope also acknowledges the importance of incorporating the concerns of victims into such programs. Because these are areas with concentrations of victims, not just offenders, he argues on behalf of programs “to protect the fearful, vulnerable, and victimized if the destabilization of communities is to be arrested” (1995, 77). To ignore victims is likely to encourage destabilizing forms of flight, blight, and, perhaps, gentrification.

20. With that said, it is important to keep in mind that policies that are not overtly punitive do, nonetheless, contribute to the punitive tide. We have already called attention to the “new penology”—various forms of surveillance and separation. Although less overtly punitive, the intrusive practices of the new penology fall heavily on the powerless. For example, the *New York Times* recently editorialized about New Jersey’s “racial profiling and drug interdiction” programs: “In the name of crime-fighting, the [New Jersey State Police] agency has created a vast surveillance network that engulfs large numbers of innocent hotel guests” (*New York Times* 1999, A30). Similarly, private-sector security devices that protect the social space of the privileged constrict the social space available to the marginalized. Thus, even if politics *within* the liberal State are more permeable and more protean than the politics *of* the liberal State, it does not necessarily follow that repression and exclusion will be avoided or mitigated.

21. Similar findings have been uncovered in Indiana by Edmund F. McGarrell and Marla Sandys (1993).

22. How all this plays out in the long run will depend on the extent to which neoliberal conceptions of freedom are internalized. As Nikolas Rose (1999, 156–166) persuasively argues, the insecurities of corporate downsizing, mid-career retraining, and the like are currently being touted as opportunities to display resilience and resourcefulness. Insofar as the vicissitudes of the neoliberal market are, thus, successfully transmuted into a hallmark of freedom, it could be argued that there will be less anxiety and anger available to sustain the politics of law and order. On the other hand, to thus repress anxiety and insecurity might well trigger resentments that, although more deeply buried, could provide soil that is at least as fertile for the kinds of political mischief that we have documented in this paper.

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