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**Penal Controls and Social Controls: Towards  
a Theory of American Penal Exceptionalism**

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### *Abstract*

This article argues that to explain American penal exceptionalism, we have to consider America's exceptional levels of punishment together with America's exceptional levels of violence and disorder, while understanding both of these as outcomes of America's distinctive political economy. After specifying the multiple respects in which American penalty is a comparative outlier, the article develops a new theorization of *modes of penal action* that reveals the extent to which the US has come to rely on penal controls rather than other kinds of punishment. This over-reliance on penal controls is viewed as an adaptation to the weakness of non-penal social controls in American communities. These social control deficits are, in turn, attributed to America's ultra-liberal political economy, which is seen as having detrimental effects for the functioning of families and communities, tending to reduce the effectiveness of informal social controls and to generate high levels of neighborhood disorganization and violence. The same political economy limits the capacity of government to respond to these structurally-generated problems using the social policy interventions characteristic of more fully-developed welfare states. The result is a marked bias towards the use of penal controls.

### *Keywords*

Criminal punishment; penal exceptionalism, modes of penal action; penal controls; political economy; social controls; state capacity.

### *Introduction*

How should we explain US penal exceptionalism? This article argues that to do so we have to consider America's exceptional levels of punishment together with America's exceptional levels of violence and disorder, while understanding both of these as outcomes of America's distinctive political economy. It develops an account of the social control processes that connect the structures of political economy with the phenomena of crime and disorder and points to limits of welfare state capacity that make penal controls America's default response to crime.<sup>1</sup>

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<sup>1</sup> "Social controls" are understood here as informal actions and practices oriented towards the building and maintenance of social order. Together with the related processes of socialization and social integration, social controls are a vital, positive aspect of social organization. Where social controls are weak, so too is social order.

My argument will be that America's ultra-liberal political economy, with its minimal welfare state for the poor<sup>2</sup>, has detrimental consequences for the routine operation of socialization, social control, and social integration in the families, schools, and labour markets of poorer communities, particularly following the collapse of inner city employment in the 1960s and 1970s. The resulting social dislocations give rise, in the worst affected areas, to chronic social problems and extraordinarily high rates of violent crime. When these problems become politically salient – as they did in the 1980s and 1990s – the same political economy ensures that American government authorities have a limited range of positive resources with which to respond. The result is a recurring resort to penal controls rather than to more positive social policy interventions. Well-established political and racial logics reinforce these patterned choices and reproduce these social structures.

Of course, American political economy and penal policy vary across regions and have changed over time, with notable moments of social democratic restructuring in the 1930s and 1960s. And patterns of social control are complex, involving multiple institutions, actors and processes that have independent dynamics of their own. But the general claim developed here is that the causal link between America's extensive market freedoms and its extraordinary penal controls is to be found in the quality and extent of informal processes of social control – processes that are conditioned by larger socio-economic structures and that function at a micro-social level to prevent (or encourage) crime and maintain (or disrupt) social order.

In developing this explanation, I depart from conventional theory in three respects. First, I reintegrate the sociology of punishment – which has become a largely autonomous research

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<sup>2</sup> America's welfare state is a complex structure which is comparatively robust in certain respects and a minimal in others. See Garland (2016); Hacker (2002); Howard (1997). My focus in this article is primarily on provision and social protection as they affect the poor.

program (Garland 2018) – with the sociology of crime and deviance, particularly with recent work on the social etiology of violence. Secondly, I view both crime and punishment within a ‘social control’ perspective that highlights the collective processes through which social order is routinely reproduced and views them as the context in which state policy operates. Thirdly, I show that America is an outlier with respect not just to violence but to social problems and dislocations more generally, and that these form part of the context in which penal controls are to be explained.

Most research on America’s extraordinary reliance on criminal punishment is historical, seeking to explain the major changes that occurred between 1975 and 2010. But American penalty also raises important *comparative* questions because its imprisonment rates are strikingly out of line with those of other nations (Walmsley 2016). The leading comparative studies show that cross-national differences in rates of incarceration are associated with differences in *levels of inequality* (Wilkinson and Pickett 2009); differences in *welfare state regimes* (Cavadino and Dignan 2005, 2014; Downes 2012; Lappi-Seppala 2012); and differences in *varieties of capitalism* (Sutton 2004; Lacey 2007; Lacey and Soskice 2018) – which is to say, with various aspects of a nation’s political economy (Di Giorgi 2012; Lacey, Soskice and Hope 2018).<sup>3</sup>

If we consider the American case in the context of these general findings, the US turns out to be an extreme value on each of the relevant dimensions – inequality, welfare state regime, and variety of capitalism – just as it is an extreme value with respect to rates of imprisonment.<sup>4</sup> The punishment-political economy relationship – which observes an association between free

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<sup>3</sup> Other comparative studies include Whitman (2003) a work of comparative history focused on cultural differences between the US, France and Germany; and Pratt and Eriksson (2013).

<sup>4</sup> For supporting data see pages ??? below.

market economies and high levels of punishment and conversely, between high levels of social and economic protection and low levels of punishment – would seem, therefore, to provide a promising analytic framework in which to explain the American case.

As Scharff-Smith and Ugelvic (2017) point out, current work on political economy and punishment does not go much beyond observing and documenting co-variation and we have yet to specify the mechanisms that link political economy with penal policy. What might explain these correlations? What are the linkages that connect specific production regimes, frameworks of social protection, and patterns of inequality with specific forms of crime control and punishment? Who are the actors whose conduct generates these structured outcomes and what are the motivations, interests and circumstances that shape their actions? The existing literature does not satisfactorily answer these questions. Beyond invoking values such as trust, legitimacy, and inclusiveness – which might best be viewed as attitudinal concomitants of political economy rather than macro-micro linkages – none of the comparative analyses provide us with a satisfactory theory.<sup>5</sup>

With respect to the US case, I argue that there are two major linkages connecting political economy and penal policy: one *indirect* – mediated by weakened processes of social control and high levels of criminal violence and disorder; the other more *direct* – having to do with the

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<sup>5</sup> The leading work on the question of political economy, punishment, and the mechanisms that connect them, is Lacey (2008) and Lacey and Soskice (2015; 2018). The association between coordinated market economies (CMEs) and low levels of imprisonment is viewed either as a corollary of a CME logic of incorporation that prompts penal actors to embrace inclusive policies or else as a question of sunk costs, which prompts them to conserve prior investments in human capital. Lacey and Soskice (2015; 2018) and Lacey, Soskice and Hood (2017) emphasize local political dynamics, racial divisions, and the conservative voting preferences of home owners – which generate segregation, concentrated poverty, and high crime levels, as well as punitive reactions. For a discussion of Lacey's work, see Garland (f.c.). Lappi-Seppala (2012) points to the importance of trust and legitimacy but also mentions informal social control and state capacity – two of the themes I develop here. In his comparison of the US and West Germany, Savelsberg (1994) points to the strength of state bureaucratic elites and the relative permeability of the media policy processes as in explaining differential rates of punishment. These accounts differ from but are not incompatible with the one I develop here.

limited capacities of a minimalist welfare state. I argue that America's ultra-liberal political economy – characterized by stark inequalities, weakly-restrained market forces, and minimal social protections – is detrimental to the functioning of poor families and communities, tending to limit their social control capacities and giving rise to levels of neighborhood disorganization, social dislocation, and criminal violence that are markedly higher than those of other developed societies. Faced with these social control deficits and the disorders to which they give rise, America's political economy – with its poorly funded public sector and underdeveloped welfare apparatus – also limits the capacity and disposition of governmental agencies to respond with the social services, social policy interventions, and 'workable alternatives to imprisonment' (Lappi-Seppala and Tonry 2011) that are routinely deployed by more fully-developed welfare states.<sup>6</sup> The result is a default resort to policing and punishment.

### *The distinctiveness of American penalty*

Comparative studies generally use *per capita* rates of incarceration as their dependent variable but if we look in more detail, we discover that American punishment is an outlier on multiple dimensions. American authorities do not just impose more punishment: they also punish in a distinctive way. Consider the following:

- (i) Twenty-nine American states and the federal government still permit capital punishment and a dozen states still carry out executions (Death Penalty Information Center 2019). By contrast, no European nation – and very few developed ones – retains the death penalty.

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<sup>6</sup> For descriptions of pro-social, preventive crime control in nations with more developed welfare states, see Boutellier 2001; Gilling 2001; Lappi-Seppala 2011; Albrecht 2004; Junger-Tas 2004; Kyvsgaard 2004; Janson 2004.

All 50 US states and the federal government imprison offenders for terms of Life Without Possibility of Parole (LWOP) – another extreme sentence banned elsewhere – with more than 50,000 inmates currently serving LWOP sentences of a total of more than 200,000 sentenced to life or virtual life sentences (Sentencing Project 2017).

- (ii) The *per capita* rate of incarceration for America as a whole is currently seven times higher than the Western European average (National Research Council 2014; Walmsley 2016) and six times as high as that of Canada (Doob 2018). And though there is great internal variation, the mildest US states have higher rates than the harshest of the Western European nations (Lappi-Seppala 2008).
- (iii) America's extraordinary incarceration rates are generated by sentencing practices that are also highly distinctive: sentence lengths (and time served in prison) being much longer in the US than elsewhere (Lappi-Seppala 2018), as are sentence enhancements for prior convictions (Tonry 2012). Pre-trial detention rates and the likelihood of a custodial sentence following arrest are higher (Subramanian and Shames 2013; Walmsley 2016a) and suspended sentences are rarer (Armstrong et al 2102; Albrecht 2001).
- (iv) American prisons are harsher, on average, than those of comparable nations, with more austere conditions and more solitary confinement (Whitman 2003; Gottschalk 2017; Petersilia 2003; Howard 2017). Rehabilitation, education, home leaves and re-entry assistance are less available (Subramanian and Shames 2013; Western 2018) particularly since the 1990s when US legislators imposed a 'no frills' austerity on prison regimes (National Research Council 2014).



- (v) America's *per capita* rate of correctional supervision is five times greater than the European average (Corda 2016). It is also more control-oriented with multiple restrictions placed on the supervisee's behavior and routine re-incarceration following licence violations (Rhine and Taxman 2018; Van Zyl Smit and Corda 2018). Probation and parole officers in the US are routinely armed and, unlike their European counterparts, bear little resemblance to social workers. Moreover, several US states permit 'lifetime probation' – a sentence that is unknown in Europe (Reitz 2018: 382).
- (vi) The imposition of collateral consequences such as disqualifications, exclusions, banishment, deportation, and public criminal records is a routine concomitant of criminal conviction in the US (Alexander 2010; Beckett and Herbert 2009). Such restrictions are more extensive, more onerous, and more enduring in the USA than elsewhere (Jacobs 2015; Demleitner 2018).
- (vii) Fines, monetary penalties, and reparation orders are used as criminal sanctions much less frequently in the US than in other western jurisdictions (Lappi-Seppala 2016; O'Malley 2009, 2013; Subramanian and Shames 2013). Fines are deployed as stand-alone sanctions against corporations and traffic violators but rarely against individuals with non-trivial criminal convictions. Even misdemeanors are more often dealt with by jail, probation or prosecutorial control measures than by fines (Kohler Hausmann 2018). On the other hand fines *are* frequently used by America's criminal courts as 'add-on' sanctions, tagged on to a jail sentence or probation (Hillsman 1990; O'Malley 2009). The same applies to the administrative fees and charges that criminal justice authorities impose on offenders and their families in order to recoup the costs of processing, supervision and confinement

(Harris 2016). These are *additional* charges that are not at all equivalent to the widespread European practice of imposing fines (often with time to pay and adjusted to the offender's income) as the exclusive sanction for a majority of offences.

America's penal system is also, of course, characterized by gross racial disparities. But in this respect it is not particularly distinctive: these disparities being no more marked than those of other nations such as Canada, Australia, or the UK.<sup>7</sup> My assumption is that racial disparities in American punishment are a consequence both of racial discrimination and of differential crime involvement. Racial discrimination flows chiefly through unwarranted attributions of dangerousness and refusals of mercy in a system where control is the chief imperative. Racial differences in rates of criminal involvement are, in the last instance, effects of America's political economy – as I argue below.

That America is an outlier on each of these seven dimensions suggests that it is not simply the size of America's prison system that is distinctive but also the nature of punishment, the means through which it is imposed, and the social uses to which it is put. To get at these issues, we need to shift away from the conventional focus on the official aims of sentencing (deterrence, retribution, incapacitation, reform, etc.) and attend instead to the question of *how* we punish, looking carefully at the material means and techniques whereby court sentences aims are practically enacted and penal functions carried out.

These *modes of penal action*, as I will call them, refer to the practical means whereby punishments act upon offenders: to the concrete practices by which penal actors operationalize

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<sup>7</sup> See <http://copylinemagazine.com/2015/01/28/race-justice-news-racial-disparities-in-uk-and-australian-prisons-exceeds-those-in-u-s/> <http://www.sentencingproject.org/news/race-justice-news-native-americans-in-the-justice-system/> <https://www.theguardian.com/society/2010/oct/11/black-prison-population-increase-england>

punishments and undertake to produce their intended effects. This action dimension of punishment, with its various modes, is analytically distinct from the conventional “aims of sentencing” since the same aim can be achieved by different means. It is also distinct from the symbolic or communicative dimensions of punishment which are mental rather than physical; though in reality, physical acts and symbolic meanings are always interwoven. Finally, it is distinct from specific penal measures (such as the death penalty, imprisonment or probation) since it points to just one dimension of these institutions, because different penal measures may utilize the same mode of penal action, and because the same penal measure may operate in more than one mode.<sup>8</sup>

As far as I know, no one has previously theorized the distinct forms that constitute this action dimension of punishment, though it has occasionally featured in the work of others. Michel Foucault, for example, appears to have been pointing to this when he identified the level of penal “tactics” (Foucault 1977:23) as a fruitful object of analysis and his contrast between disciplinary punishments and corporal punishments operates on this dimension, identifying specific modes of penal action that cut across different institutions of punishment and various aims of sentencing.

By highlighting these operative aspects of punishment, we can distinguish the different ways in which penal powers can be used and, on this basis, trace the functional composition of specific penal systems, which, as I will show, vary on these dimensions across cases and over time.

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<sup>8</sup> For example: the death penalty is both afflictive *and* a form of penal control; imprisonment can be controlling while *also* providing assistance.

Figure 1 below, is a typology of the different modes of penal action available to legal authorities, together with examples of penal measures that are operationalized by these means.

<i>Modes of Penal Action</i>	<i>Penal measures that utilize these modes of action</i>
<i>Penal Afflictions</i>	Capital punishments; corporal punishments; maiming, branding, “short, sharp, shock” punishments, etc.
<i>Penal Levies</i>	Fines; restitution; compensation; damages; forfeiture; penal labor, community service, etc.
<i>Penal Controls</i>	Imprisonment; confinement; exclusion; banishment; supervision; incapacitation; disqualification, etc.
<i>Penal Assistance</i>	Correctional treatment; restorative work; mediation; drug therapy; counseling; job training; education; re-entry provision, etc.

Figure 1

*Penal afflictions* (punishments that wound offenders’ bodies), *penal levies* (punishments that appropriate offenders’ resources), *penal controls* (punishments that impose restraints on offenders), and *penal assistance* (punishments that provide resources to offenders) are distinct modes of penal action.<sup>9</sup> Specific penal measures may combine more than one of these operational modes: probation or imprisonment might provide penal assistance as well as penal control; while capital punishments or maimings are simultaneously penal afflictions and penal

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<sup>9</sup> Notice that while social controls are mostly positive in character, building capacities and integrating individuals, penal controls are mostly negative, imposing restraints and segregating individuals.

controls. The same sentencing aim, such as deterrence or reform, may be pursued utilizing different modes of penal action.<sup>10</sup>

For comparative purposes, we can trace the differential deployment of these modes of penal action across different penal systems. And viewed in these terms, what is most striking is the extent to which American criminal justice has come to rely overwhelmingly on only *one* of these modes – *punishment as penal control* – in contrast to other western nations (and to earlier periods of American history) where penal levies, penal assistance, and penal afflictions are or were much more prominent.<sup>11</sup>

#### *American penalty as penal control*

American penalty is often referred to today as ‘mass incarceration’ as if there were a singular project or characteristic to which penal policy might be reduced. But America’s local, state, and federal penal systems are complex assemblages of laws, policies and practices, which have emerged and evolved over time. Far from being the realization of some national plan, what we call ‘mass incarceration’ is the cumulative result of multiple contributing causes, operating at distinct governmental levels, prompted by different events and considerations, involving diverse political actors and coalitions, and enacted in thousands of laws, policies, and enforcement practices (Mauer 2006; Garland 2000; Campbell and Schoenfeld 2013; National Research Council 2014).

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<sup>10</sup> The sentencing aim of “incapacitation” suggests that penal control would be its standard mode of action, though a large penal levy can incapacitate a corporation.

<sup>11</sup> Afflictive punishments have mostly disappeared in modern western penal systems. Indeed, moral opposition to *afflictive punishments* and their declining use in the modern period is often taken as a defining feature of western civilization (Spierenberg 1984; Garland 1990; Geltner 2014). Until quite recently, juvenile offenders in the UK and the US were subjected to corporal punishment, an afflictive penal action that was brief in duration and imposed no continuing controls.

Despite this multiplicity and variation, it is a remarkable fact that for 35 consecutive years between 1975 and 2010, all 50 states and the Federal government moved continuously in the same expansionist direction, increasing their penal populations and rates of incarceration (Zimring 2010; Wagner 2014). Even more remarkably, there is a recurring theme that characterizes this whole process of growth, despite the diverse historical events, political contexts, and penal laws that gave rise to it: a fundamental principle that features in virtually all of these different reforms and constitutes the operational logic that now underpins America's penal apparatus. This common principle is not something vague and generic such as 'law and order', 'harsh justice', or 'tough on crime.' It is the consistent priority given to the specific mode of penal action that I described above as 'penal control.'<sup>12</sup>

Penal control is the fundamental principle and basic imperative that runs throughout this whole historical period and across this vast American penal landscape.<sup>13</sup> It is not the only aim, nor the sole meaning – punishments are intrinsically polysemic and are rarely reducible to a single function (Garland 1990). But it is the essential, indispensable one. When penal measures exhibits secondary or tertiary aims, these are rarely allowed to dilute the measure's control functions.<sup>14</sup>

Take for example, the penal practices that have been characterized as 'vengeful' and 'degrading' (Whitman 2003) or 'cheap-and-mean' (Lynch 2009). On close inspection, it is clear that none of these practices involves any relaxation of penal control: rather the characterizations

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<sup>12</sup> Rather than think of penal systems on a single-metric continuum of severe-lenient or punitive-merciful the approach proposed here focuses on the differentiated modes of penal action and their social significance.

<sup>13</sup> Garland (2017) summarizes the history. As Campbell and Schoenfeld (2013: 1379) write, the penal policies that emerged after the 1980s exhibited "one primary goal: to incarcerate or 'supervise' masses of criminal offenders for long periods of time." See Crimmins (2018) for a discussion of the emergence of this principle, and Department of Justice (1992) report *The Case for More Incarceration* for an explicit example.

<sup>14</sup> There are few counter-examples in the period between 1980 and 2010. Of these, the federal *Second Chance Act*, enacted towards the end of the period, in 2007, is perhaps the most important.

refer to the gratuitously cruel, degrading, or low-cost manner by which controls are imposed. Lynch's cheap and mean punishments are, I would suggest, the result of an under-funded penal state tasked by a tax-averse electorate with imposing extended penal controls at minimal cost. And Whitman's harsh, vengeful sanctions are examples of punitive, racialized public sentiments being expressed in sanctions that combine penal control with penal degradation. The same might be said of criminal justice fees and charges or the exclusion of felons from welfare benefits: these measures have rationales – vengeance, cruelty, cost-saving, victim-satisfaction, deterrence, and so on – that go beyond the imposition of penal control. But they operate in ways that neither diminish nor obstruct the operational control potential of the penal measures in question.

Among the distinctive features of American penalty set out above, no fewer than six – extreme penalties; frequency and length of prison confinement; harsh sentencing; frequency and length of correctional supervision; extent and duration of collateral consequences; repressive character of American prison regimes – describe a criminal justice system that maximizes penal control and downplays penal assistance and penal levies. The seventh feature – a comparative reluctance to use monetary penalties as a stand-alone punishment – is explicable by reference to the same considerations. Whatever their other advantages, and however much they are utilized elsewhere, penal levies impose little in the way of penal control. Given the American electorate's concern to minimize public spending, and the importance of the cash nexus in American society, one would expect America's deployment of monetary sanctions to be at the top end of any international distribution. That the opposite is the case seems significant.<sup>15</sup> If the US uses stand-

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<sup>15</sup> It is plausible to think that the comparative underuse of fines as a stand-alone court-imposed penalty in the US can be explained by the fact that many offenders lack the financial means to pay. But this explanation is undermined by the fact that the criminal justice authorities show little hesitation in imposing add-on fines, followed by administrative fees and charges on these same impecunious individuals and their families (Harris 2016).

alone fines less frequently as a response to non-trivial offending, it is likely because, in the US context, fines are regarded as insufficiently controlling and restraining.

The leading characteristic of the American penal landscape today is neither harshness, vengefulness, nor cost-cutting: though these are present in abundance. Its leading characteristic is *the imposition of penal control* – a fundamental imperative embodied in sentencing law, in the culture of enforcement, and in the legal provisions that mandate judges to impose long-lasting penal controls on criminal offenders. This stress on control – and not just the quantity of punishment – sets America apart from other nations, particularly Western Europe, where penal levies and penal assistance are much more important and penal controls much less extensive (Cavadino and Dignan 2005; Reitz 2018). American policing – with its ‘warrior’ style (Balko 2014), its ‘stop and frisk’ and ‘zero tolerance’ policies (Sharkey 2018; Gelman et al 2007), its extraordinarily high rates of civilian killings (Karabel 2017); and its world leader status in the employment of private ‘guard labor’ (Bowles and Jayadev 2014) – appears similarly committed to aggressive control; as does American prosecution during the period between 1980 and 2010 (Lynch 2016; Pfaff 2017; Bazelon 2019).

Reviewing the historical processes that molded American penalty into its contemporary form, we observe the concern with penal control increasingly taking precedence and shaping the direction of penal change (National Research Council 2014; Garland 2017). Of course the historical record is by no means univocal, and scholars disagree about the background causes that might explain *why* American punishments became so much more severe in the period since 1980. But there is little disagreement about *how* these historical changes were accomplished, with most scholars accepting that the proximate causes were: (i) changes in sentencing law and practice; (ii) changes in back-end resentencing – i.e. parole, remission and pardons; and (iii)



changes in prosecution practice. The leading historical studies show quite clearly how each new legislative and policy development – determinate sentences, abolition of parole; Federal Sentencing Guidelines, the War on Drugs, Three-Strikes laws, mandatory sentences for violent, sex, firearms and recidivist offences, Truth-in-Sentencing laws, increased use of Life without Parole, the lengthening time served for serious offenders and so on – privileged the extension and intensification of penal control, including controls over the decision-making of criminal justice officials who previously had power to impose lesser penalties (Garland 2001; Mauer 2006; Stuntz 2013; Campbell and Schoenfeld 2013; National Research Council 2014; Tonry 2016; Pfaff 2017).

Each of these new measures evinced an overweening concern with ‘public safety’ and the imposition of penal control. Instead of reforming offenders by providing penal assistance or appropriating resources by means of penal levies, the regime that emerged over the last 40 years aimed to sequester, incapacitate, supervise and generally to control masses of offenders for lengthy periods.

### *Violence and Social Problems*

What explains this extraordinary circumstance? Why is American criminal justice so focused on penal control and so unconcerned with other kinds of punishment? And why are the penal controls that now exists in the US so much more extensive and more intensive than those of other nations?

Building on the analysis just set out, and viewing America’s reliance upon penal controls as an adaptation to the weakness of non-penal, social controls, I offer the following hypothesis: In the wake of de-industrialization and its disruptions, America’s mainstream institutions proved incapable of effectively performing their social control and order-maintenance functions, and

American authorities resorted to penal controls as a response to the extraordinary levels of criminal violence that resulted. I further hypothesize that America's distinctive political economy and welfare state – together with the intertwined legacies of racial oppression, segregation and exclusion<sup>16</sup> – have played a major role in bringing about these control failures and in shaping the state's responses to them. In the remainder of this article I describe these mechanisms and outline a theoretical account linking political economy to penal outcomes. I conclude the article by indicating the kinds of evidence that would confirm or disconfirm this account.

Americans are exposed to much higher levels of criminal violence than are the citizens of other affluent nations. Over the course of the twentieth century, America's homicide rate was three times as high as Canada's and between 5 and 10 times as high as those of Western and Northern Europe (Currie 2013; Miller 2015; 2016; Roth 2018; Lacey and Soskice 2015; 2018). Homicide rates are especially high among African Americans and Latinos, but white Americans are also killed at a higher rate than the populations of Western Europe (Miller 2016). The widespread availability of guns undoubtedly escalates American lethal violence, but non-firearm homicides are also higher in the US than in other western nations (Grinshteyn and Hemenway 2016). Despite the downward trend of the last two decades, America's homicide rate remains four times as high as comparable nations, while its rates of armed robbery (Currie 2013; Gallo et al 2018; Sharkey 2018) and police-civilian killings (Karabel 2017) are also markedly higher.

Compared to other affluent nations the US also exhibits remarkably high rates of other social problems. Like criminal violence, high social problem rates are a long-term feature of American society that grew worse from the 1960s onwards and have recently become somewhat

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<sup>16</sup> There is no space here to discuss the fundamental ways in which America's history of slavery, Jim Crow and racial subordination has shaped the nation's political and economic structures: see Katznelson (2006); Quadango (1996); Beckert (2015); Baptist (2016); Einhorn (2006)

less severe. Compared to other developed nations, the US exhibits strikingly high levels of child poverty, relative poverty, poverty while in work, infant mortality, single parent households, teenage birth rates, mental illness, high school non-completion, drug addiction and drug-related deaths.<sup>17</sup> Given this long list of problems, it is little surprise that in an ‘index of health and social problems’ comparing twenty-three rich nations on multiple indicators, the US had by far the worst overall score (Wilkinson and Pickett 2010:174; see also Wilensky 2002).

Violent crime and social problems are, in any society, concentrated in the poorest areas and social groups. Because American inequality is among the highest in the developed world (Wilkinson and Pickett 2009), because of its history of racial subordination, and because of it continues to exhibit high levels of racial and spatial segregation (Denton and Massey 1998) these problematic phenomena are highly concentrated in minority communities. Violent crime rates for African American neighborhoods are five times as high as for white neighborhoods (Peterson and Krivo 2010:18; Violence Policy Center 2018); African-Americans have a homicide victimization rate that is 6.6 times higher than Whites; a serious crime victimization rate that is 1.4 times higher; and are injured by gunshot wounds 19 times as often (Sharkey 2017). Homicide is *the* leading cause of death for black males aged fifteen to thirty-four (Miller 2016; Langley and Sugarman 2018). Data on single-parent households, teenage pregnancies, infant mortality, and

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<sup>17</sup> American child poverty rates are higher than in any other OECD country; American children exhibit poverty rates that are four times as high as children in northern Europe (Rainwater and Smeeding 2004; Smeeding 2006). The US has the highest levels of relative poverty when compared to ten other rich nations, and the second highest levels of absolute poverty (Smeeding 2006). American single parents work more hours than do the resident parents of other nations while also receiving less in transfer benefits (Smeeding 2006: 86). The US has one of the highest infant mortality rates of any rich nation (Garfinkel et al (2010: 86; Baldwin 2009; Reid 2009). The US has the highest per cent of single parent households of any western nation other than Hungary: almost 33% against a western Europe average of about 10% (Baldwin 2009; Smeeding 2006; Woessman 2015). US teenage birth rates are the highest in the developed world (Wilkinson and Pickett 2010:122). Rates of mental illness in the US are higher than in other rich societies (Wilkinson and Pickett 2009:67; Karabel and Laurison 2011: 23). While the US high-school graduation has been improving, it is still near the bottom of the OECD countries (PBS 2015). US has a rate of drug-related deaths that is 5-10 times higher than western Europe (Kristoff 2017); US levels of drug use are also higher than those of comparable nations (Wilkinson and Pickett (2009:71).

long-term unemployment show similarly marked racial disparities (Kost and Henshaw 2014; Burris 2017; Lu and Halfon 2003; Mitchell 2013).

Why, in the most affluent nation in the world, is violence and disorder so much worse than in other developed nations? And why are violence and disorder so concentrated in poor, segregated, minority communities? The most persuasive explanation points to patterned effects generated by the structure of America's economic and political institutions.<sup>18</sup> Research in comparative social policy indicates that America's distinctive political economy exposes communities, families and individuals to greater market-generated risks (unemployment; poverty; inequality; inadequate housing; food insecurity, and so on) while providing them with fewer social protections (social insurance, income support, public provision, social rights, healthcare, etc.) than are provided in comparable nations (Garfinkel et al 2005; Alesino and Glaeser 2006). This risk-exposure is greatly magnified in segregated urban communities where African-Americans live in conditions of concentrated disadvantage (Wilson 2012; Sampson 2012; Miller 2016; Sharkey 2018). The result is that families, schools and employers in these stressed, at-risk communities are less able to carry out the the vital work of socializing, controlling and integrating individuals and maintaining social order in their neighborhood, giving rise to unsafe public spaces, social disorder, and extraordinarily high rates of violence.

### *Political economy and violence*

Viewed comparatively, America's political economy is characterized by an exceptionally liberal market economy; a minimalist welfare state for the poor with few economic and social

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<sup>18</sup> An alternative explanation pointing to the easy availability of firearms is unpersuasive because (i) non-firearm homicides are also higher in the US than in comparable nations; and (ii) violence is only one among many social problems that mark the US out as an outlier nation.

protections; very high levels of social and racial inequality and high levels of extreme poverty among the non-aged. ‘Liberal market economies’ are production regimes characterized by low levels of employment protection, weak trade unions, lightly-regulated labor markets, competition between firms, and high proportions of workers in low-wage, insecure jobs – and by residualist, market-oriented, welfare state regimes with minimal protections for workers and for the poor. On all of these measures, the US falls at the extreme end of the range (Garfinkel et al 2005; Karabel and Laurison 2011; Baldwin 2009).

In 2007, the US ranked second-to-last of 34 countries in terms of union membership (Karabel and Laurison 2011:7) and it has the highest proportion of workers in poorly paid jobs (Smeeding 2005: 34). America has the lowest level of labor regulation and US employers have highest level of firing flexibility (Baldwin 2009: 22). US public social expenditure as a percent of GDP ranked 19<sup>th</sup> of 20 OECD countries (Karabel and Laurison (2011:6) and, according to Luxembourg Income Survey data, America’s anti-poverty effort is the least of the 30 nations included in the survey (Smeeding 2005). Except for Mexico and Russia, the US is by some distance the most unequal of the OECD nations in terms of income distribution (Forster and Vleminck 2004; Karabel and Laurison 2011: 8; Baldwin 2009: 190). The US also provides relatively less support to families in the form of subsidized child-care, paid parental leave; housing support; and pre-school education (Garfinkel et al 2005)

Political economy is a durable set of structures but it is not static. America’s *laissez-faire*, small-state arrangements were modified between 1935 and 1965 by the social programs of the New Deal and the Great Society. But the economic and social protections that these programs provided were less developed than those of comparable nations and more racially skewed, with black workers and their families largely excluded from benefits for much of that period

(Katznelson 2006; Quadagno 2006). Moreover, this thirty-year stretch of US history proved to be an exceptional one, after which governments once again emphasized reduced taxation, the deregulation of business, and the minimizing of social protections (Cowie 2016). From the mid-1970s onwards, the New Deal coalition collapsed and America's brief flirtation with social democracy gave way to a renewed free-market fundamentalism. The result was labor union decline, wage stagnation, increased inequality, and deepened poverty for those at the bottom of the class and race hierarchy (Fraser and Gerstle 1990). Increasingly, Democratic Party politics de-emphasized the struggle for economic justice so that even as diversity improved and explicit racism diminished, the situation of the urban poor deteriorated. Inner cities suffered a large-scale disinvestment by industry and business as well as the declining support of federal and state government, giving rise to what Sharkey (2018) calls a policy of abandonment. The welfare reforms of the 1990s exacerbated these effects by concentrating benefits on the working poor and minimizing support for out-of-work men and single mothers (Edin and Schaefer 2015).

We have known for some time that forms of political economy are correlated with levels of crime and disorder, and multiple studies provide cross-national data demonstrating this association (Gartner 1990; Messner and Rosenfeld 1997; Savolainen 2000; Wilensky 2002; Wilkinson and Pickett 2002; Savage et al 2008; Messner et al 2012). What was not clear until recently was exactly how these structural effects occurred. But recent work on informal social control, neighborhood effects, and collective efficacy has identified the mediating processes that link one to the other, while simultaneously explaining the close association between poverty, racial segregation and social dislocation (Sampson et al 1997; Sampson 2006; Sampson 2012).

These studies begin from the premise that interpersonal violence is a product of social and economic structures, mediated by patterns of social control, and enacted in specific social

situations by particular individuals. Violence is a patterned phenomenon, not a random one, and those most prone to (and victimized by) criminal violence are disproportionately drawn from highly disadvantaged neighborhoods. Poverty and unemployment do not directly cause crime or violence: anti-social behaviors are plentiful among the rich (Hagan 2010) and poor people mostly overcome adversity to live decent, law-abiding lives. But in the aggregate, concentrated poverty and social exclusion undermine collective efficacy and reduce the effectiveness of socialization and social integration in families, schools, labor markets, and communities, resulting in social control deficits that give rise to crime and disorder.<sup>19</sup> To recognize that many poor, minority neighborhoods exhibit very high rates of violence is neither to blame their residents nor to suggest a causal link between race and violence.<sup>20</sup> It is to call attention to a social problem that is disproportionately experienced by communities of color; is intimately linked to the problem of mass incarceration; and is rooted in America's distinctive political economy. Far from disconnecting America's mass incarceration from criminal violence – as Wacquant (2009) and Alexander (2010) insist we should – we need to consider these problems together and connect them to the structures of political economy (Stuntz 2013; Garland 2010; Miller 2016; Western 2018).

The concept of 'social control,' as used here, refers not to state-imposed repression but to civil society's routines of socialization, norm-setting, monitoring, and informal sanctioning - routines that channel individuals in law-abiding directions, establish peaceable social relations,

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<sup>19</sup> Sampson (2012: 127) defines 'collective efficacy' – which operates as 'an inhibitor of both disorder and crime' – as 'the linkage of cohesion and mutual trust among residents with shared expectations for intervening in support of neighborhood social control'

<sup>20</sup> For studies showing that high levels of crime, violence and social disorder are associated with low levels of social integration and informal social control, see Sampson (1987; 2012); Sampson et al (1997); Sampson and Wilson (2005); Morenoff et al (2001); McCarthy (2002) and Gerell and Kronkvist (2017). Peterson and Krivo (2010) show there is no differential propensity for crime among racial groups, net of social circumstances.

and create safe public spaces. But social order is a variable accomplishment. Communities are more or less safe; families more or less integrated; and individuals are more or less self-controlled and more or less disposed towards pro-social conduct. In any community, social order primarily depends upon informal social controls exerted by families, neighbors, and community organizations – upon the quotidian work of child-rearing and parenting, teaching and mentoring, guiding and advising, supervising and scolding, restraining and rewarding, bonding and binding – backed up by the disciplines of school, workplace and labor market.

These vital tasks require energy, resources, and a stable, secure setting. When families are stressed, money scarce, employment and housing inadequate, family members addicted, absent, imprisoned, or never home because they are working multiple jobs – and when governments fail to counter these problems – neighborhoods become disorderly, disorganized, and prone to vice and violence. Where social order is well-established, law and courts stay in the background and reinforce informal processes. Where social order is fragile, the state's control agencies – police, prison, probation, parole – play a much more prominent role (Goffman 2014; Kohler-Hausmann 2018).

The effectiveness of neighborhood institutions and informal controls is conditioned by larger socio-economic structures that determine the resources – jobs, decent schools, affordable housing, public transport, social services, responsive policing, information networks, and so on – made available to residents. Political economy conditions how effectively families, schools, local labor markets, and community organizations are able function, and in turn, how much deviance and disorder is liable to emerge. Routine social control is enabled or inhibited by socio-economic structures and the supply of public resources. Where social control is weak, crime and disorder result (Peterson and Krivo 2010).



Political economy conditions the effectiveness of community-based social controls, which in turn determines the levels of crime and disorder that tend to emerge. Admittedly, social control processes have their own dynamics and are never entirely determined from above: even in the poorest neighborhoods, some families overcome disadvantage and raise well-socialized children; just as some poor neighborhoods establish vital and solidaristic communities.<sup>21</sup> But the important points for my purposes are that, generally speaking, political and economic structures have consequences for criminal violence; and that America's political economy is, for reasons we now understand, much more criminogenic than those of other developed nations.

#### *Political economy and social control*

American society, like any other, is held together by ongoing processes of socialization, social ordering and social control. These processes are woven into the everyday routines of families, schools, neighborhoods, workplaces, churches, and voluntary associations. They are extended by market exchanges and social networks; reinforced by the social protections and services of the welfare state; and backed up, in the last resort, by the remedial controls of criminal law. Social and economic structures provide the settings in which civil society institutions undertake that vital work. Where these structures generate stresses rather than resources, social controls are weakened and social problems emerge (Messner and Rosenfeld 2012). Because American families and communities are exposed to market forces in ways that

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<sup>21</sup> Recent research has shown that collective efficacy is a variable that mediates between structural conditions and criminal outcomes – meaning that collective processes of social control may sometimes be strengthened (or weakened) without concomitant changes in socio-economic structures (Sampson 2012; Gerell and Kronkvist 2017; Sharkey 2018).

are comparatively unmitigated by social protections, the fundamental institutions of poor neighborhoods are often weak and disorganized.

America is a deeply unequal society, so these effects are uneven in their distribution. America's more affluent communities often possess considerable social capital and impressive levels of collective efficacy and, on average, Americans are more liable to participate in voluntary activities and community associations than are citizens in comparable nations (Baldwin 2009). But many Americans, especially African Americans, live in segregated, impoverished neighborhoods that are plagued by health and social problems to an extent that is unknown elsewhere in the developed world (Messner and Rosenfeld 1997; Avendano and Kawachi 2014; Darroch et al 2001; Banks et al 2010; Singh and Kogan 2007; Williams and Collins 2001).

The welfare states of most rich nations provide extensive social protections, economic transfers, social services, and social controls (Garfinkel et al 2005). They help families and communities function more effectively; protect against the economic and social risks; and provide resources for managing deviance without resort to punishment. In America, by contrast, risks are more fully borne by individuals, families, and communities. Market winners are allowed to prosper so that, compared to their counterparts elsewhere, well-to-do Americans earn higher incomes, pay lower taxes, enjoy more corporate welfare, and accrue more wealth. Market losers, on the other hand, do much worse than equivalent groups elsewhere: experiencing more insecurity, deeper poverty, and greater disadvantage.<sup>22</sup> The result is the presence, in many American cities, of dangerously disorganized neighborhoods characterized by chronic social

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<sup>22</sup> Social deficits in the USA are not restricted to urban communities and minority groups (Chen 2016). Most poor Americans live in rural areas and there are more poor whites than Blacks or Hispanics (Kaiser Family Foundation 2016; Proctor et al 2016). States with more African-Americans provide the least generous welfare (Alesino and Glaeser 2006; Edsall 2018).

problems, unsafe streets, and endemic violence – neighborhoods that can appear alien and frightening to the more affluent groups who control local governments and shape policy choices (Lacey and Soskice 2015).

### *Political economy and the urban crisis*

From the 1960s onwards, a series of developments brought these problems to crisis levels (Garland 2001; Klinenberg 2002; Sharkey 2018). Shifts in the global economy, technology and communications prompted a rapid deindustrialization as manufacturing moved abroad or to cheaper exurban sites. The result was the disappearance of decent jobs for low-skilled urban workers and an exodus of middle- and upper-income families, transforming inner city neighborhoods into workless ghettos (Wilson 1996). These problems worsened as chronic unemployment prevented poor men from supporting families and increased the number of female-headed households with children (National Advisory Commission 1968; Wilson 1996; Sampson 2012). As household income fell, so did city tax revenues and the level of public services. Rather than provide resources to alleviate the growing crisis, successive federal administrations scaled back urban policy. The result was a depleted local state and inner city businesses, churches, schools, labor markets, and neighborhood associations starved of resources and increasingly incapable of carrying out their order-maintaining functions. Many communities of color were ‘devastated’ by unprecedented levels of crime and violence (Forman 2017: 10) and at their peak in 1993, dozens of American cities had homicide rates that topped 40 murders per 100,000 of population – a level 20 times higher than most Western European nations (Sharkey 2018: 25). In the nation as a whole, the homicide rate reached 10 per 100,000 residents, and open-air drug markets, gangs, muggings, homelessness and addiction made urban streets ever

more dangerous. As crime rates escalated, so too did public pressure for government action. By the 1990s, a majority of Americans – in black as well as white communities – viewed crime as one of the nation’s most serious problems, and demanded that politicians ‘do something’ (Fortner 2015; Forman 2017; Enns 2016; Pickett 2019; Garland 2001; Flamm 2005).

Crime rate rises do not necessarily change penal policy. There is no automatic mechanism linking crime trends to punishment trends. Indeed, cross-national studies of European nations report the absence of any correlation between increased crime rates and penal policy changes (Tonry 2009; Lappi-Seppala 2008; but see Miller 2016). But any analysis of crime-rate changes and their social meaning needs to be attentive to base lines and absolute levels; in particular we need to differentiate between relatively safe societies experiencing elevated levels of ordinary crime and already dangerous societies facing increased levels of life-threatening violence. The political dynamics of crime-control are fundamentally altered when fear of lethal violence becomes an aspect of everyday life – and in the US between the 1960s and the 1980s crime became an existential threat for many Americans. When this lived experience found political expression, politicians of both parties responded, producing a decades-long, nation-wide policy revolution that transformed American criminal justice from end to end.

In the mid-1970s, American criminal justice began its long-term shift towards increased penal control. But why was this the preferred response? Why not a renewed effort to invest in urban areas and address the economic, social and racial problems that, according to contemporary experts and observers, had caused the upsurge in crime and violence? There were, after all, well-publicized proposals along these lines at the start of this period (President’s Commission on Law Enforcement 1967; National Advisory Commission 1968; National Commission on the Causes and Prevention of Violence 1969).

The familiar explanation for this punitive turn points to a major political shift at the end of the 1960s: the conservative backlash against civil rights and Great Society liberalism; the election of Richard Nixon; and the emergence of a ‘law and order’ politics (Flamm 2005; Hinton 2016). And this, no doubt, is correct as far as it goes (Garland 2001). But it seems to me that we need a more decidedly structural account if we are to explain why this policy response outlived its originating conjuncture to become so very durable and so all-pervasive.

My hypothesis is that the social and economic structures that generate America’s high levels of social dislocation also shape the character of the governmental action undertaken to deal with these problems. In the final part of this article, I sketch an account of how America’s political economy and distinctive welfare state limit the capacity of state actors to adopt social as opposed to penal approaches to crime control.

### *Political economy and state capacity*

There is widespread skepticism in the US about the efficacy of government programs: a skepticism that is reinforced by the poor performance of under-funded government agencies operating in a hostile political climate. Criticism is especially directed at social programs that aid ‘undeserving’ minority communities (Gilens 1999) and the supposed failures of the War on Poverty are cited as dispositive evidence that such initiatives cannot work (Duquette 2014; Bailey and Danziger 2013; Jencks 2014). There is also a widespread assumption that when it comes to crime-control, punishment *works*. Unlike social policy interventions, the imposition of harsh penal controls appears immediate, targeted, relatively inexpensive, and morally appropriate – giving offenders the punishments they deserve.

But there are structural as well as attitudinal reasons that make social policy programs less likely than penal responses. Social policy interventions are generally more long-term and more expensive – even if they would work out cheaper in the end – and their impact upon crime is less targeted and less direct.<sup>23</sup> Given powerful resistance to taxation; Republican opposition to social spending; the short-termism of election cycles; popular hostility towards ex-prisoners and people on welfare; and a division of political power that allows numerous opportunities to veto controversial legislation; American governments are generally predisposed to reject preventative social investments and rely instead upon *post facto* responses (Soskice and Lacey; Edsall 2018; King 1997; Gilens 1999; Miller 2016; Baldwin 2009). Given this settled disposition, efforts to mount social interventions often require novel forms of expertise, personnel and agencies – and a willingness to engage in long-term investment and institution-building on the part of government. In contrast, there is a ready-made resort to police, prosecution and imprisonment that makes penal control the path of least resistance. Political barriers are lower too, since proposals to increase punishments rarely meet with organized opposition (Stunz 2001; Miller 2015; Barkow 2019).

To these explanations of why American crime control adopts penal rather than social controls, I want to add a further, more conjectural explanation that focuses on comparative *state capacity*. My hypothesis is that America’s political economy, in its current form, ensures that American officials, at all levels of government, are less able to adopt social measures of crime-control than are their counterparts in other affluent nations.

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<sup>23</sup> Clegg and Usmani (unpubl) provide a comparative cost analysis of penal policy responses to crime as opposed to social policy responses arguing that because the former is narrowly targeted on offenders and potential offenders, while the latter has to be general in scope, penal options will always tend to be cheaper. “[B]ringing the American welfare state to European levels would require an outlay of nearly 10% of GDP (about 1.8 trillion dollars)...This is roughly 7 times the amount of money America spends on its prisons, police, and the courts” (p. 36). As Savage et al (2008) remark, “contemporaneous effects of social welfare spending on crime may be very minor compared with the long-term benefits of aid received much earlier in life.” (p 233).

What is state capacity? Broadly speaking, it is ‘the institutional capacity of a central state....to penetrate its territories and logistically implement decisions’ (Mann 1993:59) – a capacity that derives from the strength of the state’s bureaucracy, its relations with social actors, and its spatial and societal reach. As Soifer and vom Hau (2008) explain, ‘[h]igh capacity states are....better equipped to establish a monopoly of violence, enforce contracts, control their populace, regulate institutions, extract resources, and provide public goods’ whereas low capacity states encounter difficulty in exerting control over their territories and populations.

To get at this issue, we need to differentiate between state capacities; settled political dispositions; and specific policy choices – though these each interact over time: capacity being the build-up of power that comes from repeated policy choices of a certain kind, choices that are themselves shaped by settled political dispositions. Each of these elements has a different temporality and durability. Policy choices are usually shaped by established dispositions (or ‘policy paradigms’, as Hall (1993) calls them) though conjunctural contingencies can generate breaks with the past. Settled political dispositions are shaped over time by political forces and interest groups – and by path-dependencies that make repeated action easier than innovation. But these too can change as political forces rise and fall. State capacity (which embodies resources, administrative and logistical arrangements, personnel, professionalism, expertise, buildings, institutional routines, relationships and so on) is the most durable of the three, accumulating slowly over time as the infrastructural product of repeated policy outcomes. In moments of radical change, transformations in state capacity can occur quite rapidly: the New Deal transformed the apparatus of social security and welfare provision in the course of a few years; and the 1990s saw a massive expansion of the prison estate. But in normal times, state capacity is relatively fixed.

Considerations of state capacity and disposition are, of course, relative to specific policy goals and for our purposes, the key question is: why did the American state seek to supply the public good of physical security by resort to *penal* rather than *social* policy interventions? <sup>24</sup> Why did American legislators, at the federal, state, and local levels, repeatedly define the problem as too little punishment – rather than too much poverty, or unemployment, or social disorganization? And why did they enact measures of penal control rather than more pro-social measures such as prevention, social services, social and economic investment?

Part of the explanation is, as we have seen, dispositional: in the American polity there is a settled political preference for penal rather than social measures, especially where poor minorities are concerned (Currie 2013). But I want to suggest that the resort to penal controls is also determined by limits of *state capacity*: that America's ultra-liberal political economy has produced a welfare state that is much less expansive and much less enabling. That, as compared to other nations, the US state (at the national, state, and local levels) has a more limited capacity for remedial social action. And that this distinction between capacity and disposition matters because it shows another way in which operational differences in criminal justice may be structured by differences in welfare state regimes.

Welfare states are not just systems for tax-and-spend redistribution; they also involve large-scale expansions of state capacity and infrastructures of positive state power by means of which governments affect the fates of families and firms and the conduct of individuals. In the welfare states of most rich democracies, there are governmental agencies, employees, and funding streams whose task it is to ensure that households, schools and communities are

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<sup>24</sup> It is true that other political considerations, populist appeals, and racial sentiments helped shape penal legislation in the 1980s and 1990s, but a core aim was to address problems of crime and violence by increasing public safety.



supported; social exclusion combatted; affordable housing made available; job-training and placement provided; and employment made secure. Highly developed welfare states provide diffuse, extensive, front-end forms of social prevention that enhance social control and reduce social dislocation.<sup>25</sup> And when deviance or disorder do occur, there are already-existing social services, public health agencies, community agencies, and professional caseworkers to deal in a non-penal manner with problems such as homelessness, mental illness, drug addiction, prisoner re-entry, and the needs of crime victims.<sup>26</sup>

The social infrastructure of American government is, by comparison, less extensive and less well-resourced. City governments in particular, lack the power to undertake elaborate or costly social initiatives, so urban problems are rarely effectively addressed in the absence of state or federal assistance.<sup>27</sup> America's meagre welfare state is less well equipped with the kinds of soft power – the social services, personnel, infrastructure, and capacity for positive, co-ordinated action – that other nations use to deal with crime and disorders. As a consequence, it lacks social reach and effectiveness. When American politicians, policy-makers and judicial actors are faced with urgent demands to stem the tide of criminal violence, they have fewer options at their disposal and those they have are mostly repressive.

As a result, American criminal justice is charged with tasks that other nations allocate to social service agencies. Jails are America's biggest mental health facilities – a task for which

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<sup>25</sup> I refer here to the positive crime-control effects generated as a kind of externality by social welfare infrastructures that were built to serve other purposes. That these welfare states typically also provide penal assistance within their penal or penal-welfare institutions is a separate point.

<sup>26</sup> For concrete accounts of such interventions, see Boutellier 2001; Gilling 2001; Lappi-Seppala 2011; Albrecht 2004; Junger-Tas 2004; Kyvsgaard 2004; Janson 2004; Kristoff 2017; Gottschalk 2006.

<sup>27</sup> In many US cities, there is a myriad of charitable, private, or public-private initiatives directed at such problems – but they tend to be under-financed, unco-ordinated, and not to scale. Nor are they amenable to strategic deployment by government officials at moments of crisis. When they mobilized themselves, however, they can be highly effective. See below.

they are singularly ill-suited.<sup>28</sup> And America's police – relatively ill-trained as they are – are expected to manage the social and health problems of poor communities in addition to the work of law enforcement.

### *Further research*

I have suggested that American society relies on penal control more than do other nations because: (i) 'Free market' arrangements and minimal social protections undermine the functioning of families and communities, weakening the effectiveness of informal social controls; (ii) Weak social controls increase the incidence of violence, crime and social problems – particularly in segregated communities of color; and (iii) When public concerns about crime and violence generate demands that 'something must be done,' penal control is the default outcome, in part because non-penal state controls are under-developed and under-resourced.

There are several lines of research that might test these hypotheses and extend them beyond the single case analyzed here: (1) *Variation across American space*. Punishment and political economy vary across American states and regions. Researchers could examine America's localized welfare states at the state or city level, comparing the most and the least developed in terms of their crime and social problem rates, and their penal policies (c/f Beckett and Western 2001 and Garland 2010); (ii) *Variation over time*. Researchers could examine historical moments when social policy approaches were favored – such as the New Deal, the Kennedy administration, or the War on Poverty – to trace how these policies came to be adopted

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<sup>28</sup> The National Research Council (2014): describes the overlapping epidemics affecting incarcerated populations: substance abuse, infectious diseases, and mental illness in the context of poverty, violence, homelessness, and limited access to health care. According to its report, 64% of jail inmates have mental illness and 68% have drug or alcohol dependence. In state prisons, the prevalence is 56% and 53% respectively. 80% of inmates are without private or public health insurance upon reentry, and many states make former inmates ineligible for Medicaid.

and why they were subsequently abandoned. They could track whether over-time changes in America's political economy were associated with changes in patterns of punishment. And they could study the relationship between insecurity and penal policy by studying the current conjuncture, which combines falling rates of violence with slight relaxations in penal control; (iii) *Variation across comparable nations*. If political economy relates to penal policy in the ways hypothesized here, then research should discover similar patterns and processes elsewhere; particularly if large N comparative studies can be combined with more targeted comparisons, such as comparisons of the US with Canada (most similar nation) or with Norway and Sweden (most contrastive penal policies); (iv) *Variation in state capacity*. Future research might analyze comparative measures of state capacity across the states and cities within the US; and in the US as compared to other nations. A focus on failed or poorly implemented efforts to launch social policy interventions – such as public health responses to New York City's heroin problems in the 1960s (Fortner 2015), or President Johnson's War on Poverty (Duquette 2014) – would likely be revealing in this regard; (v) *Variation in types of control*. Because this article is concerned to explain American punishment, I have been discussing *state responses* to crime and disorder, together with the *informal social controls* of families, schools and community members. But there is also a third type of control that we might refer to as *private security provision* – encompassing the organized efforts of corporations, landlords, merchants associations and NGOs to enhance security and crime-control mounted. This kind of control has become increasingly prominent since the 1980s and appears especially important in the US.

If we are to explain the post-1990s recovery and revitalization of America's cities – the steep decline in violence; the return of families from the suburbs; improved school safety and test scores; increased employment opportunities; and an increasing number of children from poor

families moving out of poverty – we need to acknowledge the part played by private, non-state organizations and the capacity of private, often self-interested action to serve the collective good. As Sharkey (2018: 43) puts it, this ‘is a story about... a set of people and organizations – public law enforcement, private security, private citizens, and nonprofit groups – that responded to the rise of violent crime by taking ownership, and oversight, over public and private spaces.’ Indeed, it seems likely that it was these new modes of ‘private prevention’ – together with improved policing and the incapacitative effects of mass incarceration – that enabled the remarkable crime drop of the last two and a half decades (Garland 2001; Sharkey 2018; Sharkey et al 2017).

Social policy scholars have shown that America’s weak welfare state is supplemented by a large, private corporate welfare sector (Howard 1992; Hacker 2002). A similar compensatory dynamic may be at work in the field of crime control. Given their interest in preserving the value and viability of urban spaces, persistent crime-control failures on the part of state will tend to prompt collective action by urban businesses and landlords, universities, and other private actors (Garland 2001). Because the American state and public sector have historically been weak, American business and the private sector have become comparatively powerful and resourceful; and the same is true of America’s NGOs, foundations, and private charities. So when mobilized to provide urban security and crime prevention – as they have been in recent decades<sup>29</sup> – these private sector forces can be quite effective. Moreover, these interventions are primarily preventive rather than punitive, operating by improving and securing social spaces rather than by imposing penal controls. When American state authorities are mobilized, they default to a police and punishment response. When private actors intervene, they do so without the power to punish

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<sup>29</sup> Lacey and Sockice (2019) explain the renaissance of these private controls in cities by reference to the new information economy and the changing demographics of cities.

and so are obliged to adopt non-penal, preventative mechanisms – which they have done with considerable success and creativity (Clarke 1997; Felson 2015; Garland 2001). Future research should study this symbiotic relationship and gauge to what extent private sector controls function as substitutes for state action; what consequences flow from this substitution; and how sustainable and scalable these private initiatives might be.

### *Conclusion*

In this article I have tried to explain why the US is a comparative outlier when it comes to the use of criminal punishment. My strategy has been to examine the qualitative character of contemporary American punishment, as compared to that of other nations and other times, and to make inferences from these characteristics. I claim that America's inordinate stress on the imposition of penal controls is the distinctive feature that sets the US apart, and I explain that stress by placing penal controls within the larger context of social controls more generally. My aim has not been to provide a singular explanation that excludes all other historical and sociological accounts. Instead I have attempted to frame the issues and thereby provide the theoretical contours within which more specific explanatory narratives can be situated.

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