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Why are the Truly Disadvantaged American, when the UK is Bad Enough?

A political economy analysis of local autonomy in criminal justice, education, residential zoning

Nicola Lacey^{*} and David Soskice^{**}

Abstract: In terms of key criminal justice indices such as the rate of the most serious violent crime and the imprisonment rate, the United States not only performs worse than other advanced democracies, but does so to a startling degree. Moreover these differences have become more extreme over the last half century. For example, the imprisonment rate, which was double that in England and Wales in 1970, is today five times higher, notwithstanding the fact that the rate in England and Wales has itself more than doubled during that period. And while, at between four and five times the English level, the American homicide rate is broadly comparable today with that in 1950 (when it was nearly six times the English level), it reached ten times that level in the late 1970s. These differences are widely recognised. What is less often recognised in comparative criminal justice scholarship is that these differences in criminal justice variables sit alongside stark differences in other key social indicators, notably in inequality of educational outcomes and in residential socio-economic and racial segregation, where the United States also does worse than other liberal market countries with similar economic and welfare systems. The comparison with other Liberal Market Economies such as the UK and New Zealand is even more striking in the light of their own poor performance on

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all these variables as compared to the Co-ordinated Market Economies of Northern Europe and Japan. In this paper, we present a thesis about what explains each of these distinctive American outcomes, and about how they relate to one another. Our core argument is that the decentralised American political system, which accords a distinctive degree of autonomy to localities, and which governs a distinctively wide range of decisions about education, zoning and criminal justice through local electoral politics, produces a polarising dynamic in which it is impossible to garner stable political support for integrative, let alone redistributive policies. The key ‘median’ voters in local elections are, disproportionately, home-owners who vote for policies which will maximise their own property values and the quality of services and the environment in their immediate area, and who are reluctant to vote for costly public goods whose benefits are not so restricted. In this light, it is rational for local governments to form policies based on zoning: whether of good schools, of community policing, of public housing, or – the most extreme example – of offender populations into the prison system. These dynamics, moreover, have become particularly strong since the collapse of Fordism and disappearance of many manual jobs which formerly provided a bridge from education to employment for the low-skilled. It follows from the dynamics of American democracy that it is virtually impossible to construct political coalitions at the local level in order to construct alternative bridges in a post-Fordist world. Our argument leads to the sobering conclusion that, within the American political system as currently structured, the opportunities for reversing the trend towards ever greater punitiveness, or combating continuing high levels of violence and inequality, are limited. In particular, our argument implies that a diagnosis of the ‘collapse of American criminal justice’ in terms of the federalisation of criminal policy by an activist state is, at best, a very partial one, while recent arguments in favour of a revival of local democracy as a solution to the ills of American criminal justice are seriously misconceived. Notwithstanding their relatively poor performance in comparison with the co-ordinated countries, the relatively strong framework for national policy development and implementation in other Anglo-Saxon countries has provided mechanisms countering some of the polarising and inequalitarian dynamics of a Liberal Market system.

INTRODUCTION

A copious literature has analysed the increase in levels of both crime and punishment in developed countries over the last 40 years. Most recently, a comparative strand in this literature has thrown light on the differences between developed countries both in patterns of offending and, particularly, in patterns of punishment relative to trends in crime, and has ventured some explanations for these long run differences. In particular, drawing on the analysis of Varieties of Capitalism (Hall and Soskice 2001), it has been suggested that the institutional capacity both to temper crime and to retain stable penal policy and moderation in punishment is greater in the co-ordinated political economies of northern Europe and the Nordic region, while the costs of exclusionary punishments are, at least for insiders, greater in these economies (Lacey 2008). Conversely, in the more flexible, lower-investment and significantly more unequal liberal market economies there is less capacity to broker cross-institutional agreements to stabilise penal policy, while the cost of exclusionary punishment of those surplus to labour market requirements is lower.

Among the higher-crime, more punitive liberal market economies which share similar economic and welfare state structures (Esping-Andersen 1990, 1996), however, the United States stands out in terms of both levels of crime, as measured (crudely) by homicide rates, and punitiveness, as measured by imprisonment rates. For example, in the 1950s, the imprisonment rate in the US was double that in England and Wales; today, despite the fact that the English/Welsh rate has itself doubled in the intervening decades, the US rate is five times higher, with American prison rates today at levels unprecedented among developed countries. The homicide rate also stands at between four and five times higher than that in England and Wales – not entirely out of line with its ratio in 1950 (6:1), but much lower than when homicide rates reached their peak in the 1970s, when the US rate reached ten times that of England and Wales (Figures 1-3).

There is, of course, a substantial literature which ponders the striking history of criminal justice in America during this period (Garland 2001; Simon 2007; Tonry 2004, 2008; Wacquant 2009; Western 2006; Whitman 2003; Zimring, Hawkins and Kamin 2001; Zimring 2007, 2012). For our purposes, three things about this literature stand out as worthy of comment. First, the literature which is concerned with patterns of punishment – and in particular with the growth of mass imprisonment – is relatively separate from the literature on patterns of crime; moreover much of the literature on crime is markedly reluctant to venture general hypotheses, concentrating rather on using data to undermine mono-causal explanations (notably the impact of policing, imprisonment or unemployment) and presenting an interpretation based on ‘cycles’ which are in the nature of characterisation rather than of explanation. Secondly – and with one partial but important exception, that of race, on which more below – to the extent that these

literatures speak to one another, they do so primarily in terms of an investigation of how criminal justice variables such as the ‘War on Drugs’, sentencing frameworks, levels of imprisonment or policing affect crime rates and vice versa, rather than in terms of how broader economic, social or political dynamics might be shaping each of these areas. Thirdly, although much of this literature is ostensibly concerned with politics, and goes forward in terms of discussions of ‘the politics of race and crime’, ‘the politics of law and order’, ‘punishment and democracy’ and so on, these references to politics in the criminological and sociological literature mainly evoke a simple observation of the salience or ‘temperature’ of crime and punishment as political issues. They do not, however, scrutinise the relevant dynamics, preferences and interests, and the institutions through which criminal justice preferences and policies are constructed and filtered over time. Sadly, moreover, (with a few honourable exceptions) political scientists have amply returned the compliment by mostly ignoring crime, punishment and criminal justice institutions as genuinely political phenomena worthy of systematic analysis.¹

In this paper, we argue that the distinctive patterns of crime and punishment in the US, as compared with countries like Canada, New Zealand and the UK, are in fact largely the product of dynamics shaped by the institutional structure of the American political system. On the face of it, this may seem a surprising claim, given that all these countries are competitive political systems in Lijphart’s sense (Lijphart 1984, 1999), by contrast to the negotiated political systems of Northern Europe. But we will argue that one institutional feature of the US political system – its peculiarly decentralised character– helps to explain the distinctive levels of both crime and punishment, particularly over the last 40 years, in the US as compared with other liberal market economies, as well as casting light on regional differences within the US. In direct opposition to the view that the cause of the ills of American criminal justice in the late 20th Century derives from an excess of ‘federalisation’ (Stuntz 2011, Bibas 2012, Scheingold 2006; for discussion, see Lacey 2013b), we argue that the radically decentralised character of American democracy is in fact a primary, if indirect, cause of both relatively high rates of crime (particularly serious violent crime) and increasing punitiveness. Decentralisation – or, to put the matter more positively, local autonomy - produces its effects on crime and punishment largely by generating phenomena such as persistent, radical residential segregation and associated concentrations of poverty, and does so to markedly higher levels than those found in other comparable countries (Peach 1996; Johnston et al forthcoming; Peterson and Krivo 2010) (Figures 4-5). Local political autonomy produces these phenomena through electoral effects which are importantly driven by a key group of decisive

¹ A good recent example would be the powerful collection edited by Paul Pierson and Theda Skocpol, The Transformation of American Politics: Activist Government and the Rise of Conservatism (Pierson and Skocpol 2007) in which the significant criminal justice initiatives of mid-20th Century activist government receive no attention whatsoever.

voters concerned about the impact of crime and disorder on the value of their primary assets: their homes.

In short, we argue that, under the economic and social conditions prevailing since the 1970s, in which the attenuated nature of institutional bridges for young people between school and future careers typical of liberal market economies have a particularly adverse impact, the decentralised structure of the US political system has produced what amounts to a high crime, high punishment equilibrium. While both decentralisation and the impact of political institutions at the local level have begun to feature in a small literature on various aspects of criminal justice (Barker 2009; Garland 2010; Campbell 2009; Stucky 2003, 2005a, 2005b), there has as yet been no attempt to provide an integrated analysis of just how those institutions affect the interests and motivations of relevant groups of actors such as voters, criminal justice officials and political elites across a range of interlinked policy areas. This is precisely the ambition of our paper.

The paper falls into three main sections. In the first section, we briefly review the most relevant literature, setting out the main arguments about American crime and punishment which explain it, either explicitly or implicitly, in terms of political factors, and draw out the conclusions and hypotheses for further investigation suggested by this literature. In the second section, we present the arguments for thinking that it is the peculiarly decentralised character of the US political system, implying an attenuated capacity for building strong bridges between education and employment which, interacting with changes in the labour market and in technology, produces the stratified social geography of cities. And we show the ways in which this spatial, educational and employment stratification, set up by decentralisation in the form of strong local government, underpins America's exceptional patterns of crime and punishment in the last decades of the 20th Century, as well as helping to explain the distinctively disadvantaged position of African Americans in each of these fields. We also present a differentiated model of the mutually reinforcing institutional dynamics set up by local autonomy and by electoral democracy at the local level, and examine their implications for the scope for individual freedom and for both legitimate and illegitimate non-state associations – from churches and clubs to gated communities and gangs via vigilante groups, private policing, a culture of private gun ownership and 'stand your ground' laws – which produce polarising dynamics of direct relevance to the politics of crime and punishment.

In the context of this strong degree of local autonomy, we further argue that one of the main resources which the American system has produced to counter the discriminatory effects of public power – the law – is often neutralised, or even subverted to the interests of the relatively advantaged. For the democratic choice at local level of local judges and district attorneys blunts what has been seen as the primary resort of minorities whose rights have been abused by the political will of local majorities, namely the US Constitution and the Constitutions of the several states. Admittedly, while the 'legal adversarialism' persuasively analysed by Robert Kagan (2001) has undoubtedly put tools into the hands of litigants with the

resourcefulness (and resources) necessary to challenge outcomes such as educational segregation or housing discrimination. However, the democratic choice of justices at the local level makes effective implementation of standards against local majority will very difficult, even leaving aside the other pathologies of legal adversarialism such as high costs, delays, patchy impact and ineffectiveness at the level of implementation. And this in turn – notwithstanding, and indeed in some ways evidenced by, the limitations of the various programmes rolled out under the aegis of the New Deal and the Great Society in the 20th Century – relates to an underlying structural difficulty for the Presidency to establish micro-governing, rule-implementing federal bureaucracies across the US (along the lines for example of the Internal Revenue Service). The US system moreover features lower status bureaucracies, and a lower overall level of trust in expertise, than other comparable countries (Kagan 2001; Savelsberg 1994, 1999; Lacey 2008).

In the third and final section, we consider, and reject, three obvious counter-arguments: that the pathologies of the US criminal justice system stem primarily from the history and dynamics of race relations; that they stem from the increasing federalisation of policy; and that they are driven by elite interests which are independent of crime and fear of crime.

POLITICS, CRIME AND PUNISHMENT: THE EXISTING LITERATURE

Notwithstanding the obvious status of punishment as a product of political action, and the widespread acknowledgement that crime and punishment moved up the political agenda in the 1970s and 1980s in many countries, interdisciplinary and comparative scholarship has tended to focus more closely on cultural, demographic and economic variables than on political ones. Thus far, even in relation to the US, notwithstanding a pervasive interest in the ‘politics of law and order’ (Beckett 1997; Scheingold 2010) and a recognition that key federal initiatives in criminal justice – notably the War on Drugs – were the product of clear electoral strategies, curiously little has been done in the way of trying to understand the impact on criminal justice policy-making of the institutional structure of the contemporary political system.² How, if at all, do factors like the electoral system, the availability of citizen-initiated referenda, the relationship between executive, legislature, judiciary, the status of the expert civil service bureaucracy, federal structures or the distribution of veto points around the

² There are, of course, some honourable exceptions, discussed later in this paper: see for example Lisa Miller’s, *The Perils of Federalism: Race, Poverty, and the Politics of Crime Control* (Miller 2008); Vanessa Barker’s *The Politics of Punishment: How the Democratic Process Shapes the Way America Punishes Offenders* (Barker 2009); Michael C. Campbell’s ‘Ornery Alligators and Aoap on a Rope: Texas Prosecutors and Punishment Reform in the Lone Star State’ (Campbell 2012).

political system affect the formation of criminal policy? These seem obvious questions to pose; and yet, shaped by the prevailing concerns of sociology on the one hand and of political economy on the other, the influence on crime and punishment of factors such as cultural norms oriented to solidarity and altruism, or of the structure of labour markets, unemployment rates and the distribution of wealth, has dominated the effort to understand criminality and punishment in their full social context (Rusche and Kirchheimer 1939; Garland 1990; de Giorgi 2006). While we share the view that such economic and social variables are of key importance, we see them as profoundly shaped by the political system. Moreover this seems a promising line of inquiry in investigating American Exceptionalism, given the very long-standing differences in the nature of the US polity as compared to countries such as the UK, Canada or New Zealand - all of them Anglo-Saxon societies differentiated from the rest of the advanced world by deep political-economic similarities.

In a recent book, *The Prisoners' Dilemma* (Lacey 2008), one of us made an initial attempt to analyse the question of how political structures affect criminal justice. The book's starting point was the striking fact that, though most advanced countries saw proportionately comparable rises in crime from the early 1970s to the mid-1990s (since when most countries have similarly experienced a modest drop in crime), their reactions in terms of punishment had been markedly different (Figures 1 and 2). These differences undermined the diagnosis of a burgeoning 'culture of control' or 'neoliberal penalty' grounded in factors such as a common reaction to the economic restructuring following the global economic crisis of the 1970s (Garland 2001; Wacquant 2009; Reiner 2007). Notwithstanding the increasing interdependence of national economies, nation states have maintained striking differences in penal policy. Looking at the trajectory of punishment over time and space, we can see a number of patterns, widely noted in the sociological literature: countries with lower levels of inequality, more generous welfare states, higher levels of unionisation and higher levels of social trust, for example, show consistently lower rates of imprisonment (Downes and Hansen 2006; Sutton 2004; Savage et al 2008; Zimring and Johnson 2006). The challenge is to move from an observation of these patterns or correlations to an explanation of how they were reproduced over time, even amid common pressures created by a globalising economy.

Drawing on work by Iversen and Soskice which examines the political underpinnings of different forms of capitalism (Iversen and Soskice 2006, 2009), *The Prisoners' Dilemma* suggested that the structure of electoral competition in winner-takes-all, first past the post systems like that of England and Wales or of the US tends under certain conditions to produce what we might call a law and order arms race between the two main parties.³ This argument about political

³ Since publishing 'The Prisoners' Dilemma', Nicola Lacey has been working on a series of papers seeking to refine this broad argument by using case studies such as the US, New Zealand and Scotland to isolate and examine the impact of particular features of political structure, so as to be able to explain

systems was nested within the ‘varieties of capitalism’ distinction between ‘liberal’ and ‘co-ordinated’ market economies (Hall and Soskice 2001).⁴ A ‘co-ordinated market economy’ functions in terms of long-term relationships and stable structures of investment, not least in education and training oriented to company- or sector-specific skills, and incorporates a wide range of social groups and institutions into a highly co-ordinated governmental structure, including a generous welfare state (Esping-Andersen 1990). Such a system is more likely to generate incentives for the relevant decision-makers to opt for a relatively inclusionary criminal justice system. For it is a system which is premised on incorporation, and hence on the need to reintegrate offenders into society and economy – making it structurally less likely to opt for exclusionary stigmatisation in punishment. Typically, moreover, the interlocking and diffused institutions of co-ordination of the co-ordinated market economies of northern Europe and the Nordic region conduce to an environment of relatively extensive informal social controls, and this in turn supports the cultural mentalities which underpin and help to stabilise a moderated approach to formal punishment.

A ‘liberal market economy’ is typically more individualistic in structure, is less interventionist in economic regulation, and depends far less strongly on the sorts of co-ordinating institutions which are needed to sustain long term economic and social relations, and feature considerably less extensive welfare provisions. In these economies, flexibility and innovation, rather than stability and investment, form the backbone of comparative institutional advantage. It follows that, particularly under conditions of surplus unskilled labour - conditions which liberal market economies are also more likely to produce - the costs of a harsh, exclusionary criminal justice system are less than they would be in a co-ordinated market economy. Britain and the US, of course, fit firmly within the typology of an individualistic, liberal market economy.

Where do political systems fit into this account? The organisation of political systems varies widely of course, between both countries and sub-national regions (Lacey 2008: Chapters 2-4; Tonry (ed.) 2007; Tonry 2007; Barker 2009; McAra 2011). But it is striking that the two families of capitalist system turn out to be distinguished not only by differently structured production regimes and welfare states, but also by different types of polities. For example, the co-ordinated market economies feature, without exception, proportionally representative electoral systems, and the liberal market economies, with a small number of exceptions, first past the post, majoritarian systems. This makes a substantial difference to criminal justice in a number of ways. Of indirect but real importance to

differences between (and within) countries with similar forms of electoral system (Lacey 2010; 2011 a, b and c; 2012).

⁴ The varieties of capitalism framework was developed specifically in relation to the ‘advanced economies’ which made up the original group OECD countries. Its hypotheses require adaptation in relation to the countries of southern Europe such as Spain, Portugal, Greece and Turkey, and *a fortiori* in relation to other regions such as Latin America.

punishment, the structure of the political system affects the capacity to build coalitions capable of providing stable support for long-term investment in institutions such as the welfare state, the education system and the more welfarist versions of criminal justice intervention whose benefits are hard to quantify and are realised only in the medium or long term. More directly, the shape of the political system affects the ways in which perceived anxiety about crime or insecurity register in the electoral process. In longstanding proportionately representative systems, to be brief, there are significant constraints on executive power, as well as robust institutional arrangements facilitating co-ordination between settled interests and underpinning, in Lijphart's terms, a consensus orientation in politics.⁵ In 'first past the post' systems, by contrast, a typically adversarial and individualistic political culture, along with a decline in electoral turn-out, particularly among younger and less advantaged voters, and a reduction in the number of voters who identify consistently with a particular party, have fostered the volatility of law and order politics amid an unedifying scramble for the short-term support of the 'floating' or the reluctant voter.

Features of political systems, in other words, conduce to – or militate against – support for the economic and social policies which make it easier for governments to pursue inclusionary criminal justice policies. In liberal market economies with majoritarian electoral systems – particularly under conditions of relatively low trust in politicians and declining electoral turn-outs, relatively low deference to the expertise of criminal justice professionals,⁶ a reduction in the proportion of the electorate who vote on stable party lines, and candidates for office consequently focused on the resultant 'floating' (or potentially abstaining) voter – the unmediated responsiveness of politics to popular opinion in the adversarial context of a two party system makes it harder for governments to resist a ratcheting up of penal severity. These dynamics become particularly strong where both parties take up a law and order agenda (Downes and Morgan 2007; Newburn 2007), and where – as in the UK and the US over much of the last 40 years – economic inequality and insecurity have fed popular anxiety about crime, marking out penal policy as an especially suitable platform on which politicians from all points of the political spectrum may appeal to undecided voters. The result is, loosely speaking, a 'prisoners' dilemma' in which neither party can afford, electorally, to abandon its tough stance, while everyone (other than those – not insignificant – groups with a financial interest in the prison build-up) loses from the increasing human and economic costs of an ever more punitive system.

⁵ The qualifier, 'longstanding' is important: in subsequent work, Lacey has refined the PR/majoritarian argument by exploring the significant differences between CME countries whose PR systems grew out of and alongside a sectoral system, and LME countries such as New Zealand and Scotland which have moved to PR from a majoritarian system: Lacey 2011b.

⁶ On the links between different forms of political system and the status of the expert bureaucracy, see Lacey 2008: 72-5, 191-2; Savelsberg 1994, 1999; Kagan 2001: 10-11, 61-81. Particularly in recent years, the increasing relative importance of political advisers and the concomitant decline in influence of the civil service in the criminal justice field appears to have been driven by growing domination of political parties by their leaders, who multiply specialist adviser appointments in their own offices to maximise their control over the policy-making process. Again, this is driven by the chase for the swing voter.

The Prisoners' Dilemma is not alone in pointing towards the relevance of political-institutional dynamics in producing crime and punishment. Over the last decade, various features of America's political-institutional structure have begun to attract criminological attention. Michael Tonry (1995, 2004, 2008) has analysed not only the impact of the politics of race but also that of a constitutional structure which places few restraints on the substance of criminal policy; of the separation of powers; and of the relative insulation from politics of the policy-making process (see also Savelsberg 1999). Consistent with the argument of *The Prisoners' Dilemma*, he has also noted the relevance of Lijphart's (1984, 1999) distinction between consensus-based and competitive political systems; though he has not as yet pursued the point in terms of an integrated analysis of the institutional structure of the US system. Marie Gottschalk (2006) has traced the shifting role of criminal politics in American history, pointing up a gradual accretion of institutional capacity which ultimately underpinned the prison expansion of the late 20th Century, and a political structure in which the preferences of a distinctively punitive victims' movement registered strongly. Vanessa Barker's (2009) study of California, New York and Washington has shown the way in which different governance structures have contributed to large regional disparities in patterns of punishment. Barker shows that, interacting with the history and culture of state politics, those structures shape varying – populist, managerialist or deliberative – traditions of political participation which imply markedly different capacities for collective agency. Loïc Wacquant (2009) has emphasized the changing balance between 'the penal state' and 'the welfare state' attendant on the prison build-up and the shift to workfare-based social welfare, interpreting this as a significant transformation of the nature of the American state towards 'neoliberalism' (for discussion, see Lacey 2013a). Both David Garland and Jonathan Simon have argued that waning confidence in the political capacity to manage the economy, alongside the relatively straightforward process of demonstrating governmental competence through tough law and order policy, has helped to accentuate the tendency to 'govern through crime' and enhanced the executive power of officials such as prosecutors (Garland 2001; Simon 2007). And the decentralisation of the US political system, which causes problems for any national reform movement, is an important factor in Garland's recent analysis of American retention of capital punishment (Garland 2010). Franklin Zimring has studied the impact of local policy-making on the 'great crime decline' and has noted that the fact that (most) criminal justice policy-making is divided between local and state levels has implications for how effectively costs, or a reduction in costs, register in the political process: for example, the penal cost-savings produced by an effective crime prevention strategy at the local level will have to be massive before they register with policy-makers at the state level (Zimring 2012: Appendix B). And a developing literature exploring the various links between crime and punishment and politically relevant economic factors such as wage rates (Fagan and Freeman 1999; Freeman 1996; Bound and Freeman 1992; Boggess and Bound 1993;

Machin and Meghir 2004; Gould et al 2002; Western and Beckett 1999) is raising questions about the causal relevance of institutional factors, although studies in this area have tended so far to be monocausal, and relatively little attention has been paid to the ways in which individual incentives and motivations may be influenced by institutional structures and settings. These and other examples throw up important elements of a systematic analysis of how political institutions shape crime and punishment; but they remain at a fragmentary level and do not provide the overarching explanation attempted by *The Prisoners' Dilemma*.

From the point of view of understanding crime and punishment in America, however, *The Prisoners' Dilemma* suffered two key drawbacks. First, it was primarily concerned with punishment rather than crime, and hence did not present a systematic argument about how the two might be related.⁷ Second, it prompted the question of why the scale of crime (notably homicide) and punishment in the US had come to dwarf that in other liberal market economies. Certainly, it provided some tools from which such an analysis might be derived. The US majoritarian system has a particularly weak system of party discipline; its bureaucracy has become highly politicised; and its constitutional controls are oriented to due process rather than to the substance of punishment or criminalisation. Moreover the US economy is marked by particularly low levels of unionization, of employment protections and of industry/union/government co-ordination and investment in training; it experienced a particularly catastrophic collapse of Fordist industrial production; its welfare system is particularly ungenerous, and this conduces – notwithstanding its reputation as a classless society – to especially high levels of social inequality and polarisation, most vividly around the characteristic of race (see Western and Pettit 2000; Western 2006; Wacquant 2009; Sutton 2004).

Even granting the relevance of the argument that the US amounts to an 'extreme case' of a liberal market economy type, however, the scale of the penal disparities are such as to invite a more careful look at the way in which the model applies. While, as Western and his colleagues have argued (Western and Pettit 2000; Western 2006; see also Wacquant 2009), there is a persuasive case for the proposition that increasing social inequality in the US is strongly associated with the rise in punishment, with prisons gradually replacing, in many states, social welfare as the dominant strategy for 'governing social marginality' (Beckett and Western 2001), this sort of analysis begs the question of why political support for the policies which produced these dynamics should have been so strong in the US – and in certain states of the US in particular. According to the most recent Sentencing Project report (<http://www.sentencingproject.org/map/map.cfm>, accessed 11 April 2013) the combined jail and imprisonment rate ranged from a high of 1569 per 100,000 in Louisiana to a low of 264 in Maine, as compared with an overall US rate of 728. Average rates in the South are substantially higher those

⁷ As pointed out in Tim Newburn's review: (Newburn 2009).

in the North-East.⁸ This variation also applies to racial disparities in incarceration: the rate of black imprisonment in the US in 2006 ranged from highs of 4,710 and 4,416 per 100,000 in, respectively, South Dakota and Wisconsin, to 'lows' of 851 in Hawaii, 1,065 in Washington DC and 1,579 in Maryland (Mauer and King 2007: 8). And analogous differences can be seen in patterns of capital punishment: since the re-legalisation of the death penalty in 1976, more than 70% of all executions have been carried out by the Southern states, with Texas alone accounting for more than a third of the executions which took place in the thirty years from 1976 (Garland 2007, 2010). How can we trace the relevant institutional and causal relationships here?

Many existing analyses of the US political system focus on its distinctive range of checks and balances as between judicial, executive and legislative power, as well as between state and federal power. By contrast, we will suggest that these arrangements, and particularly those pertaining to the federal structure, rarely have a decisive impact on the formation of criminal policy, even given key federal initiatives in the area of law enforcement (Feeley and Sarat 1980). For the bulk of criminal policy implementation – and along with it, a decisive formation of criminal policy itself – goes forward not merely at state but at local level.⁹ The most promising lines of inquiry about the impact of the political system, we argue, have rather to do with the nature of the US party system and the highly decentralised nature of its electoral democracy. As we shall argue, these factors both lead to a magnification of the 'prisoners' dilemma effect', and imply that much policy – not only criminal justice policy, but other social policies which shape the interests and preferences of voters in relation to crime and punishment – is strongly affected by local elections in which voters have a relatively constrained view of the relevant externalities: in other words, where voters are unlikely to support investment in policies from which they will not benefit directly. This underlying dynamic of the political system, we argue, provides the missing link in existing analyses of the relationship between crime, punishment and inequality in the United States. In the following sections, we accordingly set out three mutually reinforcing sets of dynamics attendant on the decentralised structure of the US political system, each of which has clear consequences for crime, punishment, social polarisation and – crucially – for the links between the three.

⁸ http://sentencingproject.org/doc/publications/inc_Trends_in_Corrections_Fact_sheet.pdf
Accessed 11 April 2013.

⁹ The argument that recent criminal justice policy in the US has been largely shaped by 'federalisation' is considered, and rejected, below.

LOCAL AUTONOMY I: THE PRISONERS' DILEMMA MAGNIFIED BY MULTIPLE SITES OF ELECTORAL COMPETITION AND BY ASSOCIATED ACCOUNTABILITY GAPS

Voter affiliation to the two main parties in the US has historically been strongly tied up with the need to garner support at the diverse local level via links with political clubs and associations (Katznelson 1981). Declining partisanship among voters in recent years has implied the power of independents and an increased emphasis on political leaders. Voter affiliations – and hence the strategies which candidates for office use in seeking election – have therefore come to be defined rather in terms of the policies and even personalities of current office-seekers or office-holders. In this context, policies likely to secure independent votes by appealing to median voter interests have become a key preoccupation for political leaders – not least in a system equally characterised by weak party discipline, and in which it therefore pays for leaders, as individual candidates for office, to appeal directly to voters. To the extent that criminal justice is identified by political leaders as just such an issue (and here crime and the fear of crime enter the political picture), this has set up, loosely speaking, a ‘prisoners’ dilemma’ in which candidates become locked into a costly strategy which they dare not abandon because of the electoral advantage, particularly *vis-à-vis* ‘floating voters’, which they fear would accrue to the other side. Key examples at the national level would be Richard Nixon’s War on Drugs (later amplified by Ronald Reagan) and Bill Clinton’s enthusiastic support for the death penalty. In the context of a majoritarian, two-party system, the fact that this dynamic has also been associated with a general move towards the ideological right is also of significance here (Stuntz 2001, 2006, 2008; Pierson and Skocpol 2007). The key impact of the electoral ‘prisoners’ dilemma’ dynamic in the US seems, however, likely to be at the state and local levels.

The impact of political institutions on criminal justice varies significantly as between different levels of electoral competition (Miller 2008). But it is equally important to recognise that these levels are much more numerous and differentiated in the US than in almost any other advanced democracy (Soskice 2009). The radically extensive and extraordinarily decentralised quality of American democracy sets up two dynamics which, particularly in a world of relatively widespread anxiety about crime, strongly shape the formation of criminal policy. First, it implies that the prisoners’ dilemma is reproduced through very frequent elections at state, county and municipal levels, significantly increasing its impact. Second, it implies an accountability gap: individuals seeking election at local level have an interest in advocating popular policies the costs of which do not necessarily fall on the electoral constituency.¹⁰ Increased resort to imprisonment, where the political benefit accrues largely to local politicians while

¹⁰ For a detailed elaboration of this argument, see Soskice 2009); see also Boggess and Bound 1993; Stuntz 2001, 2008; Campbell 2012:306; Zimring 2012.

the costs fall on the state, would be a key example. We will consider each of these effects in turn.

It would be hard to exaggerate the distinctiveness of the American tendency to organise governmental and broad executive power through electoral mechanisms at the local level. Though state politics and the varying institutional structure of states are undoubtedly of great importance in understanding criminal policy (Barker 2009), the local level of the county or city – more laborious to research, and hence less fully understood – has almost certainly been of equal or even greater significance (Feeley and Sarat 1980). And if weak party discipline and leader/personality- domination has characterised national and state level politics, this is yet more true of local politics. Here actors with key roles in the criminal process – mayors, judges, district attorneys, sheriffs, to name only the most obvious – are, in stark contrast to other liberal market economies, often elected, and hence subject to direct electoral discipline; and their electoral campaigns depend on an extensive practice of radio and television advertising focused on individual record or policy commitments rather than on party platforms. Even beyond this, the American practice of electing officials – County Commissioners, School Boards, Treasurers and so on – reaches deep into institutions at one or more remove from the criminal justice system, in which a median voter orientation will nonetheless be likely, under certain conditions, to bring concerns about crime and punishment into play. And these locally elected officials in turn appoint police chiefs and zoning boards. The resulting electoral cycle effects on policy areas such as police hiring, prosecution rates and even judicial decision-making are amply attested in the empirical literature (Levitt 1997; Dyke 2007; Shepherd 2009).

This American election habit has decisive implications for political accountability. It might be thought that pervasive electoral competitions would be a recipe for the rigorous accountability of public officials. In fact, the opposite is the case. To see why, consider the following facts. Crime ranks among the most important issues identified in national opinion surveys, and has often been seen as an especially salient electoral issue when the economy is performing well (Levitt 1997: 274). Local officials like district attorneys and mayors therefore stand to gain electorally by promising tougher measures on crime. Yet, crucially, they may either not have themselves to fund the costs of such measures, or, if they do have to fund them, may not face the full political costs of their economic choices. Mayors for example are not responsible for most aspects of a city's economic performance. Even state governors are rarely regarded by voters as importantly responsible for the state of the economy, whose management is seen as lying primarily at a federal level (Chubb 1988; Levitt 1997: 274). In this context, tough law and order policies are electorally attractive – and politically costless. And these dynamics seem likely to be particularly strong in large urban areas (whose voters often include suburban homeowners) which have seen concentrations of crime and disadvantage in the inner city. These cities, other things being equal, will want

tough sentencing and high imprisonment rates because they get the benefits; but it is the whole state population which pays the bill. This does not, of course, explain the original voter preference for high imprisonment. And it is worth noting that no state governor has (as far as we are aware) proposed city financing of imprisonment. The present system does, however, set up a ‘common pool’ problem in which the costs of policies supported by a key group of voters is passed on more generally; and in which it ‘pays’ candidates for office at local level to make promises of expenditures in relation to which they bear no political cost.

And while the recent recession, and its impact on state budgets, has begun to exert some pressure on state prison budgets, the possibility of making savings by cuts in per capita costs (e.g. by reducing the quality of regimes and of health care, and by increasing overcrowding) and the political costs of closing whole facilities, have thus far limited the consequences of that pressure for prison numbers. Moreover the accountability gap implicit in the decentralised structure may imply a converse feedback blockage, meaning that prison numbers savings prompted by e.g. expenditures on policing at the local level are not properly registered at either level in electoral terms (Zimring 2012 Appendix B). Again, this feature of American decentralisation contrasts sharply with the position in other liberal market economies. While in the UK there was a similar shift in the median voter’s position following the collapse of Fordism in the early 1970s, centralised/integrated policy-making at national level means that there is no possibility of ‘passing costs upstairs’ as in the US model; costs as well as benefits register at one political level.

LOCAL AUTONOMY II: PUBLIC GOODS AND THE POLARISING DYNAMICS, POST-FORDISM, OF ELECTORAL DEMOCRACY AT THE LOCAL LEVEL IN EDUCATION, ZONING AND CRIMINAL POLICY

So far, we have argued that the decentralised structure of American political institutions leads to a magnification of the punitive orientation witnessed in other liberal market economies since the economic shocks of the 1970s, via the proliferation of electoral competition and the production of accountability gaps in which political gains can be made from adopting law and order platforms for which the beneficiary of those gains does not bear the costs. However, this argument does not address the question of why political decentralisation should affect patterns and levels of crime. Nor does it explain a more fundamental question about why it should be that voters at the local level are less likely than voters at state or national level to vote for investment in the sorts of public policies which promise alternative, potentially more effective, strategies for dealing with high crime rates and insecurity about crime. In this section, we tackle these questions, showing how the dynamics of decentralised politics under recent social and economic conditions in the US systematically militate against investment in proactive, preventive community policing; investment in education and related

community programmes such as recreation centres; and investment in better quality housing and policies encouraging residential integration.

The locus of most democratic decision-making in all of these areas in the US is the city or county; this entails that *local autonomy* has tremendous power, and that decisions basically reflect the interests and preferences of median voters. The median voter in local elections in political systems with such a degree of local autonomy is likely to be a home owner with strong concerns (Fischel 2001, 2004)¹¹ to segregate the poor residentially – in the suburbs to keep the poor out (in the cities), and in the cities to push the poor into their own enclaves (the middle classes, including the black middle classes, escape or gentrify); to keep property taxes low if public schools are bad (de facto segregated) or high if they are good, in order to maintain property values.

These voters will also in their own interest favour effective policing outside disadvantaged, high-crime areas and limited resources for policing in these areas (where victims are poor and are not median voters). Moreover, in so far as these areas have high levels of violent crime and established gangs, they are extremely costly to police effectively. This is a self-reinforcing process: the less effective (or more purely militarised) the policing the greater the violence and the more costly any attempts at initiating effective policing. Policing is normally determined at city level for poor inner city areas (a unified city police force is the rule, even if there are somewhat different policies in different areas of city). Poor areas are seldom separate cities (and so are unable to determine policing practices), though they would presumably prefer more investment in community policing than spending on mass imprisonment, both for their own safety and to prevent their own young men being locked up (Miller 2008).

These policies on zoning, education and policing have strong implications for violent crime, both in highly segregated poor (usually ethnic) tracts and via its spill-over into middle class areas. In a powerful recent study, Krivo and Petersen have shown how violent crime is strongly related to highly segregated poor areas with a high proportion of high school dropouts (Peterson and Krivo 2010; Krivo, Peterson and Kuhl 2009). They do not present policing data, but it is plausible to hypothesise that limited policing of these areas ratchets up violence. Krivo and Peterson also show that middle class areas in cities with high proportions of such poor high violence areas suffer from some spill-over of violent crime (Peterson and Krivo 2010).

Other areas of cities, therefore, prefer tough sentencing since they regard it as cheaper than effective policing, let alone broader social policy interventions, and because they do not see themselves as benefiting from the greater safety for the poor in poor areas which high quality policing can buy. This holds *a fortiori* for better housing and education provision in these areas. There are therefore two

¹¹ On the implications of increasing home ownership during the second half of the 20th Century for criminal justice policy, see Simon 2010.

conditions for investment in effective (and expensive) community policing. The first is economic activity sufficiently strong in poor areas for such policing to be feasible, combined with its being economic for the rest of the city to invest in these areas. (This seems likely to have been one factor in the crime decline in New York, where the small size and high density of Manhattan implied that violence and poverty in Harlem, for example, would have had palpable city-wide effects, particularly in the context of efforts at urban reconstruction and the regeneration of retail and leisure activities in cities during the period of ‘the great moderation’ from the 1990s to the financial crash of 2008. As hourly wages in the lowest paid sectors of the economy started to rise and crime fell, urban renewal began to get under way in several cities, and the conditions for community policing became easier.¹²) The second is political determination at the state level, preferably realised through a clear legislative framework, to prevent tough sentencing.¹³ In many if not most racially and economically diverse urban areas of the US, these conditions are not met – and were not met to a particularly stark extent in the 1970s and 1980s.

When the poor have a strong presence (Wilson 1987, 1996, 2009), these reinforcing policies lead to a bad equilibrium; conversely, when the poor are hardly present ‘nice’ communities result from the very same dynamics. What the ‘vicious’ and the ‘virtuous’ circles unfortunately have in common is that each tends towards polarisation. These dynamics help to explain the concentrations of the ‘truly disadvantaged’ (Wilson 1987), particularly among African Americans and Hispanics in urban areas, in which white flight and suburbanisation has hollowed out the cities, leaving an attenuated tax base, and the concentrations of poverty which, as Krivo and Peterson have convincingly shown, are themselves strongly correlated with not only high levels of local violence, but also with higher levels of violence across the city (Krivo, Peterson and Kuhl 2009; Peterson and Krivo 2010; Browning et al 2010). Our argument provides an explanation for how these striking correlations are produced to form a robust equilibrium, featuring fertile conditions for persisting ghettos, poor schools and sporadic and/or militarised policing which further attenuates the social structures which could promote social norms and order (Patillo 2007). Residential exclusion further leads to attenuated networks which create further barriers to integration and social mobility (Royster 2003; cf. Patillo-McCoy 1999 on the revival of Black English even among the black middle class), and effects damaging black exclusion from pluralist politics (Massey and Denton: 153-60). The worse the level of disadvantage, the greater the incentive for middle class voters to opt for segregation and distance. Evidence for

¹² Again, however, the polarising dynamic of American politics is evident: for those unable or unwilling to play by the rules of the newly refurbished cities, or whose presence promoted feelings of insecurity among residents or those spending money on property investment, retail or leisure activities, new forms of zoning regulation have been created through civil, criminal and planning laws to ‘banish’ the troublesome from middle class areas (Beckett and Herbert 2009).

¹³ For a case study in just how difficult this is to implement at the local level, even given the relevant political determination at the state level, see Campbell 2012; on problems of implementation in the American system more generally, see discussion below.

the politically self-sustaining quality of this equilibrium independent of race (on which more below) can moreover be found in ethnographic research such as Mary Pattillo's rich study of the gentrification of a downtown Chicago area, *Black on the Block*, in which middle class blacks who have invested in housing exhibit much the same concern as their suburbanite white counterparts about the impact of the lifestyles of their less advantaged neighbours for property values (Pattillo 2007: Chapters 2 and 6). Another relevant factor here is that a significant number of black leaders' electoral position depends on residential concentration/segregation, hence black elites may not have fought against segregation as hard as they might have done (Massey and Denton 1993: 213-5; cf Douglas 2005 on black ambivalence about educational desegregation).

Key to our argument, then, is the reinforcing nature of poor schools, weak social employment networks, economic poverty and lack of employment/education opportunities, all of them contributing to the social disorganisation which is associated with high levels of crime (Sampson 1987; Sampson and Groves 1989; Sampson and Wilson 1995). 'Homevoters' – people particularly motivated to vote out of concern with ensuring policies which protect the value of their primary asset – (Fischel 2001, 2004, 2005), turn out to vote in much higher numbers than others (Hajnal and Trounstein 2005) and co-opt the local state, which in effect operates in their private interests: the local state is used to insure private assets. This is perhaps not so surprising in a country in which the property owning minority constituted the main concern of the framers of constitution (Alexander 2012: 25). But why should this 'homevoter' effect be so powerful in the United States, leading to unique levels of residential segregation (Peach 1996; Johnston et al forthcoming)? Two considerations are important, and may to some extent differentiate the United States from comparable countries such as the United Kingdom. The first has to do with the structure of the labour market and of pensions provision. The motivation of the median voter is almost certainly strongly affected by concern about property values in other countries where home ownership is widespread, as is the case in most of the liberal market economies. But in US the home represents not only the largest personal investment for many middle class families, but also their pension pot, as compared with more complete public and occupational pension provision in the less flexibilised liberal market economies. Growing rates of home ownership through the second half of the 20th Century have increased the relevant dynamics (Simon 2010). The second reason brings us back, however, to local autonomy, and follows from the fact that the main mechanism by which segregation is achieved is that of zoning – a key form of autonomous political power at the local level ever since the Supreme Court ruled on the legality of zoning ordinances in 1926.¹⁴

¹⁴ A decision which was, of course, made during a period of significant black migration from the South; see further the section on race below.

By contrast to the localised basis for zoning, education and policing decisions in the US, all the key rules governing zoning, police organisation and practice, justice, public prosecution, and the education system are made primarily at the national or provincial level in other liberal market economies such as Canada, the UK and New Zealand (Figure 5). This helps to explain the striking differences between the US and other liberal market economies which have also struggled with issues of inner city decline and unemployment following the collapse of industrial production in the 1970s. Despite the ‘prisoners’ dilemma’ effects attendant on national governments’ competing for median voters, more centralised systems avoid the negative externalities of local decision-making characteristic of the US. This is because of an important difference in the typical interests of median voters – and hence of politicians – at national as opposed to local level. The idea that people are more likely to vote for public goods at the national than at the state or local levels seems counter-intuitive given evidence that more homogeneous groups are more likely to vote for collective goods (Alesina, Baqir and Easterly 1999). However, it makes sense if one assumes a mobile society in which people vote at the national level for goods from which they will benefit wherever they live. Conversely, at the local level people will be inclined to vote only for things from which they can be guaranteed to benefit – hence voters are less likely to vote for long term investment, notably in education, where the benefits accruing may then move elsewhere. This would help to explain Alesina, Baqir and Easterly’s (1999) finding of an inverse correlation between the ethnic heterogeneity of a city and its spending on a range of public services from education to garbage collection. Local voters, in short, have a strong incentive to ‘capture’ the benefits of social policy by restricting their support to policies from which they are sure to benefit. Under conditions of relative homogeneity, this becomes a less pressing concern. But overall, the extensiveness of local electoral government means that arrangements which are in the interests of politically powerful swing voters – themselves drawn from more advantaged groups - can more readily be inscribed in public policy.

The positive externalities – in other words, the expectation that they may benefit from widely diffused goods - which mean that voters are more likely to vote for public goods at higher levels of government, especially the national level, whereas at local level they will be concerned about capturing externalities -make localities a poor basis for long term policy-making let alone redistribution. Particularly given low turnout and homevoter interests, median voters at local level are likely to be considerably to the right of median voters at federal or even state level (Hajnal and Trounstone 2005: 16-17.). And while there has been some progress in the US in mounting legal challenges to impose uniform standards in education – notably in decoupling school spending from local property tax revenues (a strategy which itself ultimately depended on state enforcement (Corcoran et al 2003)) – housing and zoning policies remain strongly shaped by local interests, with devastating effects for efforts at desegregation, in both class and race terms. Even in the area of education, litigation strategies have had mixed

success (Douglas 2005), with network-based inequalities rooted in factors such as private/parental contributions to school infrastructure and variations in teacher standards persisting (Corcoran et al 2003; cf Houck 2011).

The structure of local government and in particular of ‘city trenches’ in the US accorded power to ‘in-groups’ (typically those with property, strongly associated with race, for obvious reasons). Early city politics ran on ethnic lines, and provided a strong basis for reproduction of group/sectoral identities and ethnic separation (Katznelson 1981: 104ff, 80ff; on decentralisation 113). Newer local political structures such as school boards have in many ways reproduced the old group-based Tammany Hall structures (Katznelson 135 ff).¹⁵ The density and scope of local autonomy is such that huge regional and intra-state differences of what would in more centralised countries be stabilised by public provision can emerge. In the UK, for example, policing, education and planning all go forward within a national legislative framework, with modest provision for local control/variation (Figure 5). In Canada, these policies are largely framed at Province level, while even voter preferences for more localised city government have on occasion been overridden by provincial legislatures in the interests of better co-ordination of policy (Mitchell-Weaver et al 2000:865). In the ‘balkanised’ (Miller 2010) local government of the US, multiple jurisdictions do not have to consider effects on other jurisdictions (Mitchell-Weaver et al 2000). But what is yet more important is that median voter logic means that the ‘truly disadvantaged’ are rarely heard at the ballot box even if they vote, and that this problem becomes more intractable the greater the degree of inequality and concentration of disadvantage. Again, this is confirmed by empirical research: Pattillo’s black ‘middlemen’ lost power (Pattillo 2007) due to demographic changes and the collapse of Fordism.

That the voices of the disadvantaged tend to be muted in electoral politics, and that that disadvantage itself was accentuated by the collapse of Fordism is, of course, true in all the industrialised democracies. What is special about the US, however, is the degree to which the structure of the political system allows these widespread facts to issue in distinctively polarising policy. The degree of local autonomy in the US means that the wealthier groups can opt out of collective

¹⁵ As we discuss in the final section of the paper, some key differences between migrants from overseas, and black American migrants from the South, themselves related to the American political system, help to explain the dramatically different levels to which those groups became integrated in the city trenches system. Key to this argument is the fact that the political regime in the Jim Crow South deliberately obstructed both the formation of political networks and the development of education by and for blacks. Even if it was the case that, as with most migration, those migrating North were among the best educated and organised of their group, it is logical to suppose that the blacks who moved north in search of a better life and an escape from Jim Crow would have been, on average, considerably less educated and politically organised than other migrant groups, implying that their full integration would have been more costly for the localities to which they moved. The fragmented American system has never managed to co-ordinate an effective strategy to tackle the continuing effects of Jim Crow – a fact which we see reflected in the racial patterns of crime, imprisonment, educational disadvantage and residential segregation discussed in this paper.

problems via the construction of gated communities or the purchase of private education or private security: they can even incorporate within a new city with its own zoning laws. But, yet more importantly, local autonomy means that the local state itself can be invoked for similar structural purposes. In other words, zoning decisions, public housing policy, policing and school funding can be organised in the interests of the middle classes who swing elections. Moreover, this would not be changed by a greater emphasis on local democracy or a change in constituency boundaries. For even granting Miller's (2008, 2010) finding that high victimisation/high crime groups such as poor inner city blacks have a more sophisticated view of criminal policy than do more privileged groups, to implement the sorts of policies which that sophisticated view would endorse – i.e. better housing, education and employment – would require resources. And these resources in turn depend to a significant extent – particularly in the wake of the federal funding cuts and squeezed state budgets of recent years – on a local tax base which would be severely attenuated. There is huge irony here: in this most anti-statist democracy, the local state has in fact become a powerful medium for realising private interests. These decentralisation effects, though they vary according to specific state structures (Barker 2009), are sufficiently pervasive to constitute a key explanation for American exceptionalism.

LOCAL AUTONOMY III: COORDINATION PROBLEMS FOR US FEDERALISM AND THE RELIANCE ON LEGAL AND/OR LOCAL ENFORCEMENT

The final aspect of decentralisation which bears on our explanation of America's distinctive problems of criminal violence, punitiveness and polarising social policy follows from the second. As the Great Society and New Deal Programmes of the mid 20th Century attest – an era, incidentally, which saw drops in the homicide rate (Hall and McLean 2009) – the US can on occasion develop significant national policies in areas such as education, housing and criminal justice. But the federal government can push forward nationwide social policy objectives only within certain constitutional constraints and under certain conditions: either where a party with a clear programme has control of Congress as well as the Presidency, or where there is cross-partisan consensus. Where there is neither this power nor this consensus at federal level, everything turns on states or localities. And even when federal initiatives are brokered, implementation largely rests on action at the state and local levels (Feeley and Sarat 1980). In the absence of powerful agencies, implementation furthermore has to be triggered either by legal enforcement, with all its problems of cost, unevenness, delay and ineffectiveness as a strategic tool (Douglas 2005; Kagan 2001; Patillo 2007) or by financial incentives – the provision of which has become more problematic in an era of small government ideology and huge budget deficits. Lessons from school segregation and civil rights history more generally show that while litigation strategies can achieve real progress, they are both costly and divisive: they provide an adversarial framework for policy implementation, while individual case-based legal remedies or even class

actions are rarely effective to resolve structural problems or coordination problems (Kagan 2001; Douglas 2005). Hence this distinctively American translation of political activism into legal strategy has had significant disadvantages. Of course, it is no surprise that law has come to assume such dominance in the American system: it makes sense that the more individualistic and fragmented the society, the more likely it will be to resort to legal enforcement which does not depend on compromise and negotiation, hence bypassing structural problems of coordination. But these problems, inevitably, reproduce themselves at the implementation level, with key recent examples including the lack of enforcement powers under the Fair Housing Act (Massey and Denton 1993: 14-15; on the over-reliance on legal strategies, see further 187, 223-30, 206 ff) and the notoriously long-running Gautreaux litigation in Chicago (Pattillo 2007: 110-4; Peterson and Krivo 2010: Chapter 5). These difficulties have become more acute in an era of declining funding for agency enforcement (Kagan 2001; Pierson and Skocpol 2007).

THE IMPLICATIONS OF LOCAL AUTONOMY FOR CRIME: EXPLAINING THE SALIENCE OF CRIME AND FEAR OF CRIME IN POST-1970s AMERICA

Our argument in the last three sections has shown that the dynamics of voting and of electoral competition in the decentralised US system have implied powerful polarising forces. It remains to emphasise the implications of this polarisation and exclusion of the 'truly disadvantaged' in terms of levels of violence. As Peterson and Krivo (2010) have shown, levels of violence are strongly positively correlated with levels of residential segregation, in terms of both poverty and race – with the criminogenic effects of segregation spilling out across the entire city: violent crime is higher in the most advantaged areas of the most highly segregated cities than in the least advantaged areas of the most integrated cities (Krivo, Peterson and Kuhl 2009). The dominant explanation of the relationship between segregation, poverty and crime lies in 'disorganisation theory' (Hagan and Peterson 1995; Sampson and Wilson 1995; Sampson and Groves 1989) – the argument that deprivation and in particular concentrations of deprivation undermine the capacity of communities to sustain norms of order. Crucially for our argument, much of that disorganisation in the US is traceable to political decisions at the local level (Hagan and Peterson 1995: 15 23-4; Massey and Denton 1993: 14, 153-60). As Krivo and colleagues spell out the irony here, the greater the fragmentation and polarisation, the greater the need for coalition-building to resolve problems, yet the lower the capacity to engage in it (Krivo, Peterson and Kuhl 2009). Inadequate policing of poor areas plays into the strength of gangs (Hagedorn 1998, 2008), which get involved in legitimate as well as illegitimate social control, and team up with institutions like block clubs, community associations and churches to provide local goods and security – hence with public local support and toleration of their illegitimate activities, albeit within limits (Pattillo-McCoy 1999: chapters 4 and 5). Poor

policing makes deprived groups form protection associations which can readily resort to violence and /or turn into gangs, creating violence-promoting boundary disputes (cf analogous dynamics traced in work on ethnic violence: Fearon and Laitin 2000). In the face of these developments, the middle class median voter reacts by interpreting crime and indeed poverty as matters of individual responsibility, thus legitimating their own resistance to voting for expensive strategies such as the improved housing, better schools and proactive policing which might hold out some hope of real crime-reductive effects (Royster 2003: 184 ff; Peterson and Krivo 2010; Alexander 2012: 216). In short, the spill-over of the effects – material and psychological – of violent crime promote electoral concerns which foster polarising policies through the locally controlled mechanisms of education, policing, prosecution and zoning.

The story of violent crime and the fear of crime in the US is not, of course, exclusively a story about the structure of political institutions. Both cultural and economic factors have played a role, while political institutions have shaped the way in which the US has reacted to external shocks also felt by other comparable countries. The liberal market structure of the US regime of economic production, along with changing technologies in the 1960s and 1970s, has intersected unhelpfully with the political system in this context. An extreme example of a flexible, liberal market economy, with associated weak employment protections and an (increasingly) ungenerous welfare regime, the US economy was particularly strongly affected by the downturn in Fordist production from the mid-1970s on, which resulted in a significant group of unskilled men – many of them black Americans who had moved relatively recently, in the middle decades of the 20th Century, from the Jim Crow South to the North in search of work and better opportunities – becoming surplus to the requirements of the labour market (Wilson 1987, 1996). The Civil Rights Act was less than a decade old when the economic collapse overtook the industrial cities; persisting discrimination and segregation in both housing and education meant that the educational and social disadvantages which African Americans had brought north with them remained ineffectively tackled. Key to understanding the impact of the production regime on crime and punishment is to grasp the peculiar shape of its institutional arrangements which constitute the nexus between school and careers for young people. Low grade transferable skills conduce to two way bridges in a flexible labour market, where significant labour mobility can exist without high unemployment in times of growth. But these bridges become barred in one direction in times of recession. In an economy structured around a large proportion of transferable skills requiring relatively low standards of education and training, particularly during periods of growth, adequate bridges from education to employment existed for a good proportion of the population. With the gradual move from the 1970s on to a knowledge-based skills economy, however, a system with little capacity for long term investment in education for a significant portion of the population (mainly those from low income and culturally deprived backgrounds with access only to ghetto schools and without family socio-

employment networks) was left without a strategy to create new bridges between school and the legitimate labour market for disadvantaged young people.

Hence these disadvantaged young people looked for other avenues of self-development and earnings. Here, interacting with the impact of local autonomy, the infrastructure of gangs becomes important, since the protection, peer approval and economic activities provided by gangs constitute an alternative, parallel social and economic system for young people, but one which is, crucially, a bridge which is hard to re-cross once it has been traversed (Fagan and Freeman 1999). In this context, the distinctive ethnic composition of gangs in the US, as well as their unique scale and geographical reach, acquire real significance in explaining American patterns in crime and punishment, and intersect with cultural factors pertaining to both the persisting separation of distinct racial identities in some parts of the population (Pattillo-McCoy 1999) and the widely debated American attachment to guns.

As we have already observed, the much-discussed crime decline of the 1990s was associated with a decisive upswing in the real hourly wages of men in the bottom economic half of the population, and in particular for those in the tenth and twentieth wage percentiles (Austin 2011). This is of particular significance because accumulating scholarship on the relationship between crime and labour market indicators suggests that varying average wage levels are much more strongly associated with crime levels than are unemployment rates – the main focus of the criminological literature, and hence the basis for widespread scepticism in that literature about the relationship between labour market and other economic indicators and crime (Machin and Meghir 2004). Furthermore, it is arguable that the greatest strides towards racial integration in the US took place not in the wake of the Civil Rights Act but in the decades of growth from the 1940s to the late 1960s (with more modest gains also seen during the ‘great moderation’ of 1990-2008).

If we look at the development of gangs during this period, it is possible to hypothesise some explanations here. Research shows that, by the (late) 1970s, gangs were strongly established in many of the highest crime areas of the US, and that they were predominantly black or Hispanic (US Youth Gang Survey). This period, of course, coincided with the accelerating War on Drugs. Drugs were largely controlled by street gangs. As has been widely acknowledged (Tonry 1995; Stuntz 2001, 2008), arrests on suspicion of drug offences are often used by the police as convenient proxies for other kinds of law enforcement. Even without discriminatory sentencing norms such as those pertaining to crack until the Fair Sentencing Act of 2010, this alone would help to explain the disproportionate racial impact of criminal enforcement. We need to add several further items to this account. First, the consolidation of gang networks within prisons created a nexus between black/Hispanic imprisonment and continued gang activity post-sentence. Second, the growth of gangs in (particularly urban) localities, made it hard for the police to gather intelligence without cooperating with them. Third, social

disorganisation allowed gangs to organise and get a purchase at local level, while reduced investment in policing in poor areas added to problems of violent crime and led to attenuated networks of information, making effective policing yet more difficult. Fourth, the link between a sense of insecurity and fear of crime and gang activity, especially where there was suspicion of gang influence over local politics/corruption/capture, led to a suspicion of gang impunity. Data on gangs in the US moreover suggest a close association between the scale and scope of gang activity and fluctuations in the economy; the collapse of Fordism was associated with the steady growth and diffusion of gangs, while the period of growth from the mid 1990s was associated with a corresponding decline. Gang activity, this suggests, is proto-economic activity, with gangs providing the nexus to ‘careers’ for a substantial number of (particularly black and Hispanic) youth during the 1970s-1990s. With these factors in mind, the patterns of criminalisation and punishment become less puzzling. And, crucially from a comparative perspective, nothing equating to the level, intensity or racial patterning of gang activity exists in the UK over the same period (Hagedorn 1998, 2008; US Youth Gang Survey).

COUNTER-ARGUMENTS TO THE LOCAL AUTONOMY THESIS: THE POLITICS OF RACE; FEDERALISATION; AND THE ELITE POLITICS OF LAW AND ORDER

In this section, we consider three possible ripostes to the argument set out above: first, the argument, widely voiced in criminological, sociological and political science literature, that the key driver of American exceptionalism in crime, punishment and social inequality is the distinctive American history and politics of race; second, the argument that many of the factors which have driven the increase in American exceptionalism over the last 40 years stem from the increasing activism of the Federal state in the area of criminal justice; and third, the argument that the prison build-up had little to do with crime, but rather was the creation of a political elite motivated ultimately by electoral interests, encapsulated in the ‘Southern Strategy’ of the Republican Party. In our view, each of these positions offers either a misdiagnosis, or a very partial explanation for the development of US criminal policy from the 1970s on.

THE HISTORY AND DYNAMICS OF RACE

It would be foolish to deny that the history and politics of race have been important contributors to America’s distinctive patterns of crime and punishment (Loury 2003, 2010). While the over-representation of certain ethnic groups, notably young black men, is a marked phenomenon in the criminal justice systems of many countries, with the disproportion in the UK for example corresponding to that in the US, the much larger population of African-Americans in the US than

of black Britons in the UK entails a more noticeable impact on overall prison numbers. In 2006, the incarceration rate for men in the US was 943 per 100,000; disaggregating by race, this drops to 487 for white males, rising to 1,261 for Hispanic and Latino males and to a staggering 3,042 for black males (Bureau of Justice Statistics 2006: 8). Despite a very small drop in the national imprisonment rate in 2010, the imprisonment rate for black non-Hispanic males had risen slightly to 3,074, a rate which was nearly seven times that for white non-Hispanic males (Bureau of Justice Statistic 2010: 7; see further Mauer and King 2007). These factors, it might be argued, are in themselves sufficient to lead us to expect that the US would display especially acute penal severity. Moreover the War on Drugs has undoubtedly accentuated the racially skewed patterns of law enforcement over the last thirty years, not least because of the use of drug arrests as 'proxies' for enforcement of more serious offences which present greater problems of proof (Stuntz 2011; Loury 2003, 2010; Mauer 2006; Tonry 1995).

But this explanation is not wholly satisfactory. For a start, the huge penal disparity between the US and other liberal market economies at similar levels of economic and political development has become markedly greater over the last thirty years, while in the earlier part of the 20th Century American penal practices equated more closely to those of, say, the UK. Until the mid -1970s, the US imprisonment rate was relatively stable, ranging from a low of 119 in 1925 to 153 in 1974, with moderate fluctuations, and breaching the 200 mark only in a single year - 1939.¹⁶ Moreover, as we have seen, the gap between imprisonment rates in the US and in England and Wales is two and half times larger today than it was in 1970, notwithstanding a large increase in the English/Welsh rate during that period (Figures 1 and 2). And while some of the explanatory factors which we rely on – notably the collapse of Fordism – relate specifically to the more recent period in which those disparities have grown, many of the salient features of the US system – including its relatively high black and Hispanic population and its practices of racial oppression and institutional discrimination - have a much longer history (King and Smith 2011; Alexander 2012). It is true, of course, that black Americans and, to a somewhat lesser extent, Hispanics have suffered particularly acutely from the labour market changes of the 1970s and 1980s, in a tragic collision between economic forces and the continuing legacy of racism, which put black Americans in precisely the wrong place (poor areas in large cities) at precisely the wrong time (during the collapse of industrial production) (Wilson 1987, 1996; see also Allen and Farley 1986). It is instructive here to compare the United States with New Zealand – a country which has, in its Maori population, an even more disadvantaged minority of similar relative size, and which exhibits similar over-representation of that minority in both crime and punishment: while Maori constitute 15% of the New Zealand population, they make up 51% of its prison population (Pratt and Clark 2005; New Zealand Department of Corrections

¹⁶ <http://www.angelfire.com/rnb/y/ratesusa.htm#years> Accessed 20 May 2013.

2007). Moreover, most serious observers of New Zealand's white culture would regard it as having significant racist elements. Yet we see in New Zealand nothing approaching the scale overall of crime, punishment or segregation which pertains in the US (Johnston et al 2005; Johnston et al forthcoming). Though this does not exclude the possibility that race has an independent impact on the overall pattern and scale of American punishment, it is also worth noting that, if we remove blacks from the US imprisonment figures, the rate remains in the region of 450 per 100,000, about three times the level in England and Wales and two and a half times that in New Zealand. Even with Hispanics too removed from the prison figures, the rate remains about 300, double that in England and Wales and one and a half times that in New Zealand. The legacy of a vicious history of racism, even reinforced with continuing worries about discrimination, is, pace many commentators (e.g. Tonry 1995; most recently Alexander 2012) not enough to explain American crime and punishment.

We would further argue that the concept of institutional racism which is so frequently invoked in the relevant literature is ambiguous as between two basic explanatory positions. The first is the claim that what is at issue is pretextual racism covered up by formally equal institutional structures which are really a proxy for race-based classifications: straightforwardly discriminatory motivations underlie these institutional designs (Massey and Denton 1993; Alexander 2012; Peterson and Krivo 2010: 33). The second is the (very different) claim that continuing patterns of racial segregation and disadvantage are simply an unintended consequence of institutional structures which have evolved in particular ways over time; for example Wilson's argument (1987) that the timing of desegregation and the Civil Rights Act happened to coincide with the collapse of Fordism and that this hit black Americans hardest because of their recent entry into the labour market on (formally) equal terms. The 'pretextual racism' account has retained its appeal, and has recently assumed a particular priority thanks to the striking argument of Michelle Alexander's *The New Jim Crow*, which is often couched in the terms of deliberate policy – as for example in the description of poor whites as 'collateral damage.... Not the real target' (Alexander 2012: 204). Yet in her book and in much of the relevant literature, it is not absolutely clear which of those two positions is being adopted. For example, while Alexander argues (persuasively) that a 'racial caste' system can be sustained without racial animus (Alexander 2012: 183ff), she also refers to 'color-blindness' as a 'veil' (Alexander 2012: 204), which appears to imply a strategy (for further examples of this ambiguity, see Massey and Denton 1993: 182-5, 205; Alexander 2012: 223).

If the pretextual racism argument is right, it becomes hard to explain the undoubted progress, in economic and social terms, which American blacks made up to the 1970s, particularly after the Second World War. Conversely the unintended consequences version still begs the question of what explains why the particular form of American institutions had this effect, notwithstanding some key political efforts – in the White House, in Congress, in the courts, and among social movements – to avoid it. What are their longer term origins and what has enabled

them to remain stable notwithstanding their adverse effects on the realisation of an articulated public policy of equal protection and anti-discrimination? Evidence from social psychology (Baumeister and Leary 1997) suggests that most people prefer to live in proximity with like-minded neighbours; and more advantaged people show consistent bias against and hostile attitudes towards low income/skill groups unless they behave subserviently. The unfortunate likelihood is that not merely ‘blacks on the block’ but ‘poor whites on the block’ push middle class house prices down; moreover this is an inference not merely from our argument but from the minutes of zoning boards (Figure) and the case studies in the sociological literature (Pattillo 2007: chapter 5; Matejczyk 2001). Sampson and Wilson are right to insist that race and class are inextricably linked in the production of the persisting and devastating disadvantages still encountered by African Americans in criminal justice, education, housing and beyond (Sampson and Wilson 1995; see also Wilson 1987; and on the effects of inequality in punishment, Western 2006). Massey and Denton (1993), and Peterson and Krivo (2010), are right to ascribe primary importance to residential segregation in the production of disadvantage – an effect which feeds into other important dynamics such as social networks, access to education, training and jobs, and the development of patterns of employment (Boyd 1996). But more work remains to be done if we are to pin down the institutional processes and political motivations which produce that segregation (see also Sampson 2012). King’s and Smith’s account in terms of shifting coalitions forming opposing transformative and anti-transformative ‘racial institutional orders’ or ‘racial institutional alliances’ (2005; 2011) provides in our view a promising framework in that it provides a clear account of the role of agency as well as of institutions. But even here, there remains some ambiguity about the extent to which they assume the current ‘anti-transformative’ coalition – which they argue to operate within the parameters of formal equality, but via a negative agenda aimed at opposing ‘measures (such as affirmative action) explicitly aimed at reducing racial inequalities’ (King and Smith 2005:83) - to be characterised by a deliberate desire to impede progress towards a reduction of substantive racial inequality.

The stark facts of racial inequality in the US, as graphically charted by scholars like Massey and Denton (1993), Alexander (2012), Loury (2003), Wilson (1987) and Western (2006) are clearly direct and indirect consequences of Southern racism in the 19th Century and the continuing echoes of slavery, the Jim Crow regime which replaced it, and a host of associated institutional arrangements, notably in relation to policing (Muller 2012). And we must acknowledge the continuing existence of racist attitudes – which persist of course not just in the US but also in the UK and in New Zealand,¹⁷ to take just the two

¹⁷ There are no widely agreed comparative measures of racism. But to take just one compelling example, in his report following the public inquiry on the police investigation of the murder of black teenager

most comparable cases. What we argue, however, is that segregation, particularly in the industrial cities of the North East and Mid-West, along with the lack of any real educational escape for the truly disadvantaged, has been the consequence of local median voters' choices under conditions of radical local autonomy. We further argue, following Wilson (1987), that this has been exacerbated by the social disorganization attendant on the demographic implications of mass migration and, later, the gradual exit, whether to suburbs or to contiguous areas (Pattillo-McCoy 1999), of a sizeable number of black middle classes. We note in addition that the centrifugal dynamics set up by local autonomy have driven demographic divisions within as well as between racial groups, just as they have given local black political leaders disincentives to combat segregation (Massey and Denton 1993 153-60; 213-5). Once divisions of disadvantage become mapped onto space, the possibilities of reversal¹⁸ – notably through educational achievement – steadily diminish. And these local institutional arrangements which have, often through zoning, fostered the spatial concentration of disadvantage, crucially, predate the great migrations of black Americans of the early and mid-20th century.

The resulting tragedy of entrenched segregation did not happen on the same scale in systems where policing, planning and education policy are developed at national level. For example, the degree of racial residential segregation in America has been shown to be substantially higher than that in the UK, Australia or New Zealand (Johnston et al forthcoming; Johnston et al 2005). This can hardly be thought to be because other Anglo-Saxon countries are strangers to racism or indeed to discriminatory public policy. The UK introduced an implicitly colour-based 'Nationality' (i.e. Immigration) Act in 1971, and introduced comprehensive race discrimination legislation only in 1976, 12 years after the Civil Rights Act. Australia abolished the last elements of the White Australia immigration policy which had prevailed since the beginning of the 20th Century only in 1973. Perhaps most striking of all, New Zealand, whose Maori population is, as we have seen, comparable to the black American population in terms of both proportionate size and social and economic disadvantage, and is over-represented in the prison population to a similar degree (New Zealand Department of Corrections 2007), had an explicitly White New Zealand immigration policy until 1986. Yet Maoris have been integrated into the cities in which they are most populous, notably Auckland, about twice as completely (in terms of residential segregation) as American blacks [Figure 4]. In America's radically decentralised system, it is impossible to frame and find consistent support for political strategies to combat segregation. And without such policies, racial disadvantage will continue to

Stephen Lawrence in London in 1993, Sir William Macpherson famously diagnosed 'institutional racism' in the Metropolitan Police (Macpherson 1999).

¹⁸ The spatial concentration of disadvantage is of particular importance given findings not only that perceptions of crime are affected by racial stereotypes (Quilliam and Pager 2001; Chiricos, McEntire and Gertz 2001) but also that those stereotypes are less powerful in racially heterogeneous neighbourhoods (Gilliam, Valentino and Beckmann 2002).

accumulate. Indeed one might even say that it is not primarily racial dynamics which today cause segregation but rather the segregation-promoting dynamic of local politics which consolidates the problem of black and Hispanic disadvantage. Indeed this is consistent with Peterson and Krivo's findings (2010) that higher segregation is accompanied by higher levels of violence across the city. American localism predates, and cannot be argued to have been motivated by, racism; but it has, unfortunately, had particularly striking effects in consolidating the disadvantage of certain groups, notably blacks and Hispanics.

It is equally important to note that local autonomy has been a key element in the 'government' of the US since the early 19th Century, at least outside the Southern states. Moreover, through the 19th Century, the local autonomy of cities and townships was critical in driving economic development outside the South. This contrasted with the push in the UK and its settler colonies towards centralisation. Equally, the system of ethnic segregation of migrants in the North and the Mid-West long pre-dated black migration (Katznelson 1981). Indeed, to the extent that people prefer to live among those they consider to be similar to themselves (Baumeister and Leary 1995), one might see residential sorting as a 'normal' response of local democratic autonomy to waves of migration, albeit one which has ill effects. But earlier migrants had significantly higher education and more developed institutions of social organisation: the Irish, Poles and Italians had the hierarchical Roman Catholic Church; Germans and Swedes brought a strong tradition of local associational organisation with them to the US. This in turn made it relatively easy for 'City Hall' governments to incorporate them into employment and the education system. These groups accordingly found it easier to find a position within the system of 'city trenches' which formed the 19th Century system of local government in the US, and were gradually integrated in both residential and employment terms. But, as Katznelson has charted, after the breakdown of city trenches, continuing segregation made it hard for black Americans to find stable positions in local government; and, as a further complicating factor, in so far as black local politicians have stable power bases, this often depends on residential segregation, hence compromising their commitment to measures to combat segregation (Pattillo 2007; Douglas 2005; Massey and Denton 2005).

The legacy of both slavery and the governmental structure of the South right through to the end of the Jim Crow era accordingly had two effects which are of special importance in explaining why it turned out to be so difficult to achieve real black integration, particularly in the cities of the North and Mid-West. First, the southern regime impeded the development of any political structuring of black society – a fact which had significant long term implications for social disorganisation. And second, the southern regime restricted the educational development of blacks. We would argue that it is these features, rather than, as Wilson suggests, the sheer size of the black migration, which have had such damaging implications for the chances of black integration in the North. This

historical legacy was then magnified by the dynamics set up by strong local autonomy and weak national capacity for policy development and implementation. The collapse of Fordism happened at a disastrous time *vis-à-vis* black integration, and local autonomy made things decisively worse both by allowing the median voter to zone poverty and disadvantage spatially and educationally. This has set up a polarising dynamic in which the more advantaged have an interest in, and, given local autonomy, the power to, separate themselves ever more completely – spatially, culturally, educationally, economically – from the disadvantaged. Since blacks and Hispanics are markedly over-represented among the disadvantaged, they suffer especially from these dynamics. In this light, mass imprisonment looks dispiritingly like the extreme policy manifestation of a much more widespread institutional (as well as social) dynamic. Pattillo's (1999) refinement of Wilson's (1987) thesis about outmigration of the black middle class – often into liminal areas between white suburbs and inner city – plus the continuing extent of intraracial commerce (Boyd 1996) reinforces the idea that they too would have been more affected than the white middle class by the collapse of Fordism.

The key problem therefore lies in the local political institutions which have driven and sustained socio-economic segregation, and which have in doing so subverted not only the ideals of the Civil Rights Movement but any real prospect of alleviating poverty and disadvantage in the absence of state or federal initiatives. In the face of these dynamics, the main tools for national policy-making and for the implementation of national policy at local level – the provision of federal grants to localities; the institution of regulatory agencies to produce and/or monitor standards; and the enforcement of constitutional standards in the courts – have proved weak or even impotent. Local administration of federal grants subjects federal policy to local political dynamics. Regulatory agencies tend to be weak and have in any event become less salient in the wake of the 'new federalism' (Feeley and Sarat 1980) and, most recently, of budget cuts. And litigation is protracted, expensive, divisive, uneven in its impact, poorly adapted to tackle broad issues of policy or principle reaching beyond the specific case¹⁹ and unhelpfully trained on issues of process rather than issues of substance (Kagan 2001). Key examples of these pathologies of over-reliance on legal enforcement include the Gautreaux litigation in Chicago, already mentioned, and the drift in litigation challenging state public school financing systems and in particular the impact of the varying tax base on education provision. Since the *Rodriguez* case in 1973, in which the US Supreme court diverted this issue to state courts, there has been a gradual shift from a concern with equity to a diluted concern to enforce an obligation merely to provide a baseline of adequate education, and a reluctance to treat children in poorer school districts as victims of unequal protection, or to subject local education financing to more than deferential scrutiny for the purposes of constitutional review (Nickerson and Deenihan 2003).

¹⁹ Even class actions, which were designed to overcome some of these difficulties, still encounter them, not least as a result of their extraordinary procedural complexity and the high levels of legal expertise needed to manage them.

THE DYNAMICS OF FEDERALISM AND OF 'FEDERALISATION'

Recently, two influential scholars have mounted arguments which speak to political institutional structure, and which merit particular attention because they argue against the position which we have adopted in this paper, in that they attribute the rise in crime and punishment in part to an impoverishment of local democracy. Lisa Miller (2008) has focused on the significance of the differently constituted policy-making environments at national, state and local levels. She diagnoses a distortion of political representation at the national and state levels, and argues that it has been of great significance in the upswing in punishment as a result of the increasing federalisation of criminal policy (see also Stuntz 2001, 2006, 2008, 2011; Husak 2008). In her empirical study, Miller found that local politics in Philadelphia evinced a markedly more complex, less straightforwardly punitive analysis of crime than that which pertained at national or state levels. Her argument is that the distance of state and national politicians from constituents' concerns, in which *both* criminal victimisation *and* the deleterious social impact of mass imprisonment register rather strongly, and the influence of prosecutors and other pro-victim lobbies, has had a decisive impact on the acceleration of punitiveness at those levels.²⁰ In similar vein, in his important posthumous book *The Collapse of American Criminal Justice* (2012), William Stuntz noted that local political decision-making produced in many cities a new investment in policing and a rethinking of policing policy which is widely (though not universally: Harcourt 2001) acknowledged to have had some positive impact in reducing crime, increasing a sense of security, and moderating the demand for punishment. State decision-making, by contrast, produced an ever larger and more costly prison system, as well as sentencing frameworks which often (though not universally) facilitated a move to greater severity in sentencing. A greater involvement of local decision-makers in the construction and delivery of policy, he concluded, would lead to a more moderated approach (see also Bibas 2012).

Our argument in this paper runs directly counter to Stuntz's conclusion in arguing that, in crucial ways, the check on federal influence at local levels has conduced to volatility in criminal justice policy, because the federal median voter has a different view of the relevant externalities than does the local median voter. But we would also question how important federalisation has really been, in comparison with the influence of political dynamics and decisions at the local

²⁰ We find Miller's diagnosis of a systematic difference in the framing of criminal justice issues at different levels of government (Miller 2008) persuasive, and an excellent example of the ways in which both the size and the fragmentation of the US system have affected its penal policy. But the electoral studies which we cite in this paper nonetheless demonstrate that in the competition for office, law and order bidding wars also feature strongly at the local level, hence blocking any inference from Miller's findings about the more sophisticated analyses of crime problems among local residents to the advisability of great diversion of power to the local level. Miller herself (ibid 177) is careful to specify that her analysis does not imply a case for localism.

level. Let us take what is probably the key example for the ‘federalisation’ analysis: the War on Drugs. It is incontrovertible that the War on Drugs significantly expanded federal jurisdiction (Mauer 2006 157-76; Tonry 1995). And while most enforcement was at state and local level, this was federally influenced, primarily via financial incentives to states, both in terms of cash incentives to mould legislative or enforcement policy in particular ways, and through provision of military-style policing hardware. Many commentators cite these incentives and set out the relevant figures: but they rarely give any careful critical attention to the question of how big these financial incentives really were, in the context of overall state budgets (see e.g. Alexander 2012: 73 ff; cf Feeley and Sarat 1980: 36-61). From this comparative point of view, we would argue that the federal incentives are unlikely to have been large enough to get states and localities to do what they did not already have substantial reason to do as a result of local political incentives (Figure). Moreover the fact that the financial incentives were subject to local administration implied plentiful room for operational interpretive manoeuvre at local level.

As Marie Gottschalk (2007: 41-76) has argued, to the (in our view modest) extent that there has been a nationalisation of crime policy in the US, it goes back a long way, at least to the creation of the FBI. Federal policy can be influential when it is backed by the creation of powerful executive agencies such as the FBI. But agency enforcement is not always successful. President Johnson constructed the Law Enforcement Assistance Administration (LEAA) (Beckett 1997: 90-92 99) in an effort to counter Barry Goldwater’s emphasis on crime in the presidential campaign of 1964. It provided modest federal funds to bolster law enforcement at state and local level backed up by a national agency oriented to the delivery of consistent standards of effective law enforcement (Feeley and Sarat 1980). Though the LEAA was not infrequently used for moderate purposes such as diversion schemes, it is often argued to have set the model for more robust federal intervention via the sorts of financial incentives used in the War on Drugs, and prompted the growth of law enforcement agency lobby groups (Beckett 1997). Yet in the long run, the LEAA was a model case study in the limits of federal enforcement powers. These forms of highly visible federal intervention should not blind us to the fact that not only federal but even state control of American criminal justice is dwarfed by local control and implementation: indeed as both Feeley and Sarat and Scheingold have argued, this explains the ultimate demise of the LEAA (Scheingold 2010: 82-3; Feeley and Sarat 1980). The recent decline in the funding of agency enforcement in an era of ‘small government’ means that implementation – always the Achilles heel of a system such as the American one in which both the decentralised fragmentation of political institutions and limits on the jurisdiction of federal government imply low capacity for coordinating and seeing through the implementation of policy (Hacker and Pierson 2007; Feeley and Sarat 1980) – has been rendered yet more problematic. The effort to use litigation strategies to challenge segregation via discriminatory zoning laws has been only minimally effective, while underlining the adversarial

nature of this policy domain (Massey and Denton 1993; Pattillo 2007). The legal effort to counter school segregation was similarly laborious and slow-moving (Douglas 2005), and while there has been some equalisation of education laws as a result of legal challenges in recent years (Corcoran et al 2003; Nickerson and Deenihan 2003), these modest successes came too late to wipe out the accumulated magnification of black educational disadvantage. Even in the era of so-called 'activist government', localities were capable of using federal funds to subvert state/federal purposes, as Michael Campbell has shown in his fascinating account of the Texas public prosecutors' association – precisely the sort of institution which the LEAA was designed to encourage and support – which co-operated to subvert moderating state-level penal policies which prosecutors saw as undercutting their autonomy at the local level (Campbell 2012). While the activist federal state of the mid twentieth century was an important development, in the long historical sweep, it was a relatively short-lived adjustment to a longer-standing American structure of localism, while the comparative perspective which is so often sorely missing from accounts of the American criminal process (and indeed of other American institutions) reveals that its scope, as judged in terms of spending levels, remained modest in comparison with other liberal market economies. As an indicative measure, in 1992, the federal Byrne Grant programme provided \$160m for multi-jurisdictional task forces enforcing drug laws: this compares with a total policing expenditure that year of approximately \$40 billion.

Moreover the image of law as a guarantor of common standards, even across single states, is compromised in the US by the inevitabilities of discretionary implementation accentuated by the profusion of electoral mechanisms. Crucially it is also compromised by the widespread existence of powers at city and county levels to create, for example via ordinances, regulatory mechanisms which institutionalise the polarising dynamics produced by the way in which preferences are shaped by and registered in the local political system. For example, in their recent study of Seattle – hardly the city one would have selected as a key suspect for exclusionary or segregative criminal justice practices – Beckett and Herbert (2009) trace extensions of trespass laws and the creation of civil/criminal hybrids such as park exclusion orders and off limits laws, most of them used to sanitise middle class areas of the city, or to keep the poor from leisure and retail facilities (cf Husak 2007). In effect, Beckett and Herbert identify a resurgence of police power at the local level, which has been used to reinvent the loitering and vagrancy laws invalidated by the Warren Court in the 1960s and 1970s – a stunning example of the impotence of even the highest level of judicial enforcement to counter underlying political dynamics in the longer term. In a phrase which underlines the effect of those dynamics on crime, punishment and inequality at the local level, they refer to the upshot of these legal inventions as a form of 'banishment', in which the poor or otherwise undesirable – many of them non-white – are driven out of 'nice' middle class areas. Our one disagreement with their analysis would be in their description of this process as 'counter-productive'.

Certainly, they are right to emphasise both the cruelty of the process and the fact that it resolves none of the problems which originally created crime, homelessness or drug and alcohol addiction, or which brought the poor onto the streets and into the parks. But in a dark and real sense, our argument would imply that 'banishment' is far from 'counter-productive': on the contrary, it is simply one manifestation of a polarising logic which increasingly structures American institutions, and whose fundamental dynamic is fostered by local autonomy, accentuated by the value which private and commercial property owners attach to their investments.²¹

Recent scholarship on federalisation, and in particular the work of Lisa Miller (2008; 2010) has been important in highlighting the relevance of the different levels of decision-making to the production of crime and criminal justice policy in America. But it would be a mistake to conclude that the solution to the problem is a rejuvenation of local democracy, let alone to think that an increase in direct electoral accountability equates to a better quality of democratic governance. As we have argued, an analysis of the distribution of voter preferences within the decentralised US system in fact leads to the very different conclusion that the diffusion and localisation of democracy has been one of the most powerful institutional factors in shaping America's distinctive patterns of crime, punishment, segregation and indeed social inequality. The 'truly disadvantaged' groups, mainly located in inner city areas, whose victimisation at the hands of both crime and criminal justice underpins their more complex view of crime and punishment, are rarely the median or decisive voters in the electoral contests which shape policy (Hajnal and Trounstein 2005; Stucky 2003, 2005 a and b; Cutler, Glaeser and Vigdor 1999). The history of increasing racial and socio-economic polarization, in both economic and spatial terms, in recent years, much of it driven by zoning regulations and median voter concern with property values, gives the lie to any thought that greater localisation spells more equal criminal justice. Of course, electoral constituencies could be re-drawn in terms which allowed for the voices of a differently constituted – less advantaged, less white – group of median voters to swing the outcome. But even if it was possible to garner the political support necessary for such a structural change, this would have little effect in enhancing equality in the criminal process. For since good quality criminal justice, like good quality schools and good quality housing, costs money, in the absence of redistribution of income via taxation, the zoning of electoral districts within smaller, more 'communitarian' units would simply serve to exacerbate the already powerful polarizing and ghetto-producing dynamics of the American political system. And, crucially, issues of redistribution would continue to be decided at levels where the median voter is unlikely to be enthusiastic about paying higher taxes to be used on goods which they do not want, do not need, or to which they do not have access. Radical local autonomy is, in short, one

²¹ Our argument here resonates with Jennifer Hochschild's worrying interpretation of the tensions fracturing the 'American' dream – tensions which have surely strengthened since her analysis was published (Hochschild 1995).

important source of the ills of American criminal justice, and not a recipe for its cure.

ELITES AND LAW AND ORDER

We would like, finally, to underline one further argument which is implicit in what has gone before, but which perhaps requires some emphasis. In an effort to trace the undoubtedly important political dynamics which have led to the prison build-up in the US over the last 30 years, some scholars have gone as far as to argue that rising crime and the insecurity attendant on fear of crime were either irrelevant to the growth of punishment, or merely a political construct manufactured by political elites in pursuit of electoral gain. Both Stuart Scheingold (2006) and Katherine Beckett (1997) (see also Beckett and Sasson 2004) in particular have argued that a careful analysis of contemporary social attitudes as revealed through surveys does not back up the claim that politicians alighted on crime as a salient issue because of widespread concern about crime among the electorate. Rather, crime in their view presented a convenient platform for adversarial electoral competition and for the furthering of a largely (but covertly) race- and class-based agenda of repression.

We agree with Beckett and with Scheingold that the dynamics of electoral competition have been highly influential in producing American patterns of punishment: indeed our paper is precisely an effort to analyse these dynamics and the institutional framework which shapes them. But we do not accept that the aggregate survey data on fear of crime on which they rely supports the conclusions drawn from it. This is for the simple reason that electoral outcomes (and hence politicians' electoral strategies) are shaped not by all voters – let alone by all those eligible to vote, from whom survey recipients are drawn – but by a particular subset of voters. To make the argument which, for example, Scheingold advances, it would have to be shown that this subset of swing voters had the same attitudes to crime as general survey respondents. But in fact there is strong reason to think that rising street and violent crime from the 1970s had a particular impact on swing voters such as blue collar workers – the white working classes whom the Republicans targeted in their 'Southern strategy' during the Nixon election campaign of 1968, and later the 'Reagan democrats' whose votes were so crucial to the outcome of the 1980 presidential election. For many of them were living in precisely the urban areas which were becoming most directly affected by ghettoization, the concentration of poverty and the rise in violence (Peterson and Krivo 2010). It was not irrational for these voters to fear the impact of crime on both their daily lives and the value of their hard-earned assets, and political strategists – particularly those in the Republican party – astutely exploited these fears. And notwithstanding the social attitudes data cited by Scheingold, there is plenty of other evidence that crime was a salient political issue among particular sectors of the electorate from the mid-1970s on (Gottschalk 2007: Chapter 2).

Similarly, Beckett's otherwise powerful argument struggles in our view to explain why political elites saw it as so strongly in their interests to play on/stimulate fear of crime and develop a War on Drugs through exercise of federal power. Her analysis blends aspects of the race conspiracy theory considered and questioned above, and a median voter argument which should point to the conclusion that crime mattered to swing voters from the mid 1970s on in ways it had not before (Beckett 1997:85). We share with Beckett and with Scheingold the view that political elites are driven by self-interest. But accounts such as theirs do not in our view explain why those interests fell out as they did; and in our view they exaggerate the detachment between the policy platforms of political elites and the interests and preferences of median voters.

CONCLUSION

Our explanation of the exceptional character of American crime and punishment turns, then, on the nature of the US political system. But we have not centred our analysis on the features of the American system which generally capture attention: its federal structure, its distinctive constitution, its powerful system of judicial review or its distinctive reliance on legal solutions to political problems. Rather, we have focused on institutional arrangements which have thus far drawn little comment from criminologists and sociologists of crime and punishment: its weak party discipline under conditions of declining voter partisanship and, above all, its peculiarly decentralised character, which obstructs the development of national criminal justice policy while allowing for varying local solutions which tend towards significant regional variation (and, given social and economic factors, polarisation); and which disproportionately reflect the interests of the relatively advantaged, and of homeowners in particular. The decentralised political system, moreover, implies a situation in which the emergence of parallel institutions of social governance is more or less inevitable – as witness the widespread influence of churches, neighbourhood associations and, of more direct relevance to our argument, gangs. Particularly in the context of the significant demographic shifts which affected many cities in the run-up to the collapse of Fordist production in the 1970s, the decentralised political system has led to increasing polarisation of housing quality, education quality, policing styles and general social provision in and around American cities, while economic forces and technological change have led to similar polarisation in working life, and gangs have provided alternative paths to peer approval and meaningful activity, particularly for many young black and Hispanic men. Taken together, these political, economic and social dynamics have created a powerful centrifugal force which, up to the 1990s, significantly increased crime, insecurity and punishment in the least advantaged sectors of the population, while also increasing their poverty and the extent of their geographical and social isolation. The inevitable upshot, to paraphrase Peterson and Krivo

(2010), is an ever more divergent social, economic and spatial world, and the development of what we might call ‘alternative social and political economies’ – parallel worlds of work, social interaction and social control, most vividly in the example of gangs – competing, colliding and, on occasion, co-operating (Patillo-McCoy 1999, Patillo 2007) with the legitimate economy and the conventional social order.

Significantly and sharply rising crime rates from the mid-1960s fostered an increasing sense of insecurity and concern about crime which, through its particular impact on swing voters, itself helped to move crime and punishment up the political agenda. The decentralisation and penetration to localities and to a vast variety of roles of competitive electoral politics or political appointment in the American system, along with the homevoter dynamic in local elections in which homeowners concerned about protecting their investments dominate in low turnout elections (as in other forms of civic activism: Patillo 2007) helps to explain the radical way in which the increasing political salience of crime led to a upswing in punitiveness and segregation. As Wilson (1987), Wilson and Sampson (1995), and most recently Peterson and Krivo (2010) have shown, the consequent concentration of poverty and disadvantage is in turn associated with rising violence (see also Sampson 1987), whose own spatial distribution gives further impetus to the centrifugal dynamic implicit in local autonomy. As long as it remains easier to motivate the local median voter to vote for locally specific goods e.g. security in a particular area, the polarizing dynamics of the localised US system will remain in place – with baleful consequences for the quality of not only criminal justice, but also education, housing, and social equality more generally.

Our basic answer to the puzzle of American exceptionalism, then, lies not in race or in federalization: It lies, rather, in the huge – and distinctive among Anglo-Saxon countries - degree of democratic autonomy ceded to the local level, primarily to incorporated cities, but also to counties, to school districts, to district prosecutors and judges, as well as other special purpose districts; and including the de facto power of unincorporated municipalities within counties to incorporate. While both Federal and State governments, as well Supreme Courts at both levels, have sought at different moments and in different areas to roll back this autonomy, they have seldom attained the desired goals. Gains through litigation have tended to be both fragmentary and fragile in the light of countervailing political dynamics in local government, while the decentralisation of law enforcement and the proliferation of locally based ordinances and control measures in civil as well as criminal law have increasingly been called in aid to further and consolidate the centrifugal and polarising dynamics created by the political system (Beckett and Herbert 2009). The contrast between this radical decentralisation and the national frameworks within which planning, education and criminal justice policy proceed in other liberal market economies can hardly be exaggerated.

It is only a minor exaggeration to say that democratic local autonomy puts *de facto* into the hands of local median voters power over policy and taxation in the areas of public education, zoning, police strategy, prosecution and sentencing. Homeowners, who as Fischel (2001, 2004) has noted have a sharp incentive to participate in local politics, are overrepresented in the ranks of median voters at local level. Particularly up to 1970, these dynamics were reinforced by white homeowners' willingness to pay a premium to live in segregated areas (Cutler et al 1999). We have argued that this leads to a set of policy and tax choices profoundly inimical to the poor: to the residential segregation of the poor; to inadequate policing of poor areas; and to their weak education. Caged into their inadequately policed segregated tracts, and without the middle-class communicative skills or the socio-economic networks needed to get stable employment after the collapse of Fordism, we have further argued that this leads to flourishing gangs and violent crime. As violent crime spills over into white home owner communities, there is political pressure on police, (elected) district prosecutors and (often elected) district judges for exclusion of criminals via long imprisonment. This then reinforces the concern of (voting) homeowners to ensure residential segregation of the poor.

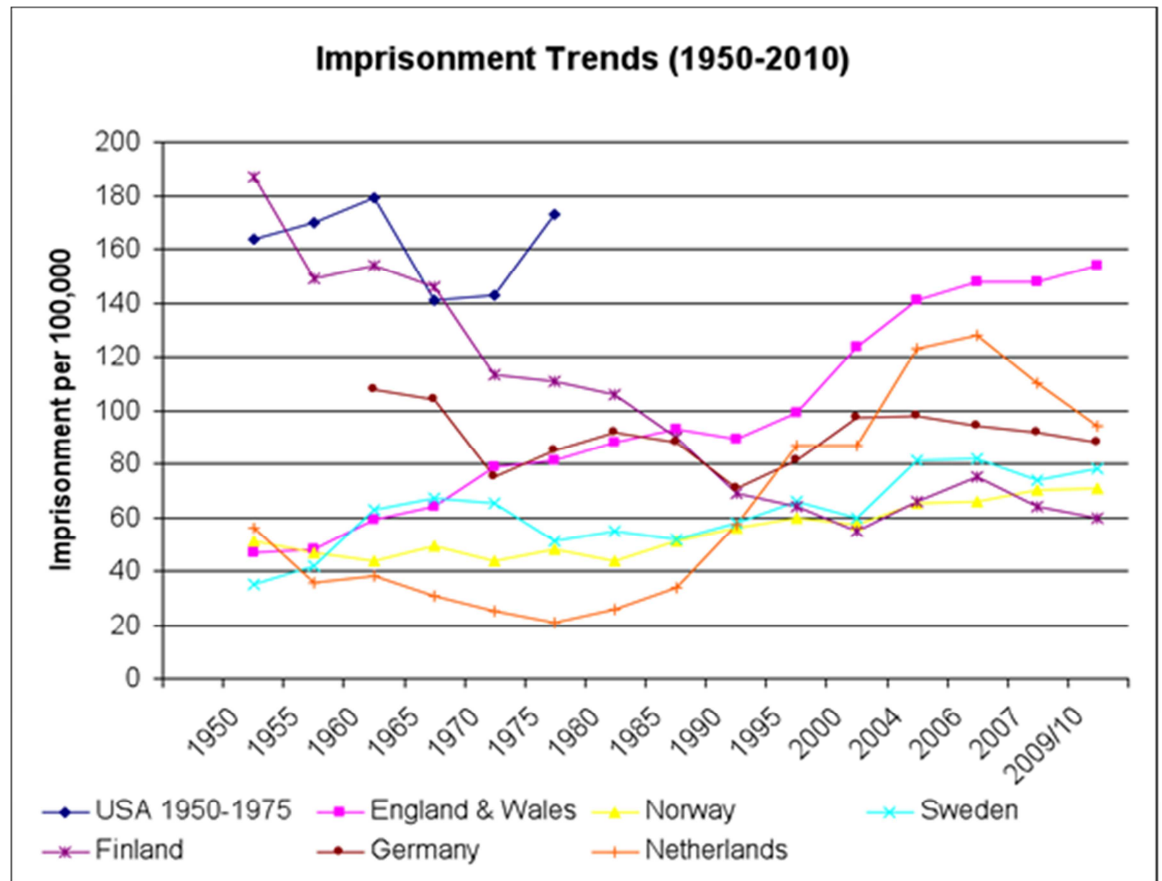
The upside of local autonomy is a high degree of individual freedom; the downside is that only the privileged can use that freedom fully, and that they moreover tend to do so to the further disadvantage of the already disadvantaged. In other liberal market economies, greater controls on individual freedom via planning laws and other forms of regulation, e.g. gun control, are regulative institutions which are regarded as normal part of the political scene, while informal social controls are probably also greater. By contrast the polarising dynamic in the US is a strong one, because the advantaged have more reason to use their freedom to distance themselves from the disadvantaged the more disadvantaged the latter become. In Bill Clinton's terms (Democratic Convention 2012), the localised democratic structure in the US has already created a society in which the advantaged can opt to 'go it alone' whenever 'being in it together' doesn't suit them – whether through participation in organisations like churches, by moving to suburbs or gated communities, or by voting to isolate troublesome co-habitants in inner city ghettos or, more extremely, prisons. Conversely the disadvantaged, locked out from the benefits of being 'in it together', become more likely to opt to use their remaining autonomy for criminal purposes (alternative political economies) or by joining gangs (alternative social norms) (Hale 2005; Young 1999).

By contrast, democratic local autonomy plays a much smaller role in the rest of the Anglo-Saxon world. Framework rules and laws governing all the policy areas discussed in this paper – public education, zoning, police, public prosecution and justice – are made at the level of central government (England and Wales, and New Zealand) or at provincial/state and partially federal levels (Australia and Canada). It remains to be seen whether the British Conservative-led Coalition Government's 'Big Society' agenda will make significant changes in the

decentralised American direction. In the event that it does so, our argument would lead us to expect adverse effects on poverty, educational inequality, spatial segregation, crime, punishment and relative disadvantage in England and Wales.

Statistical Appendix

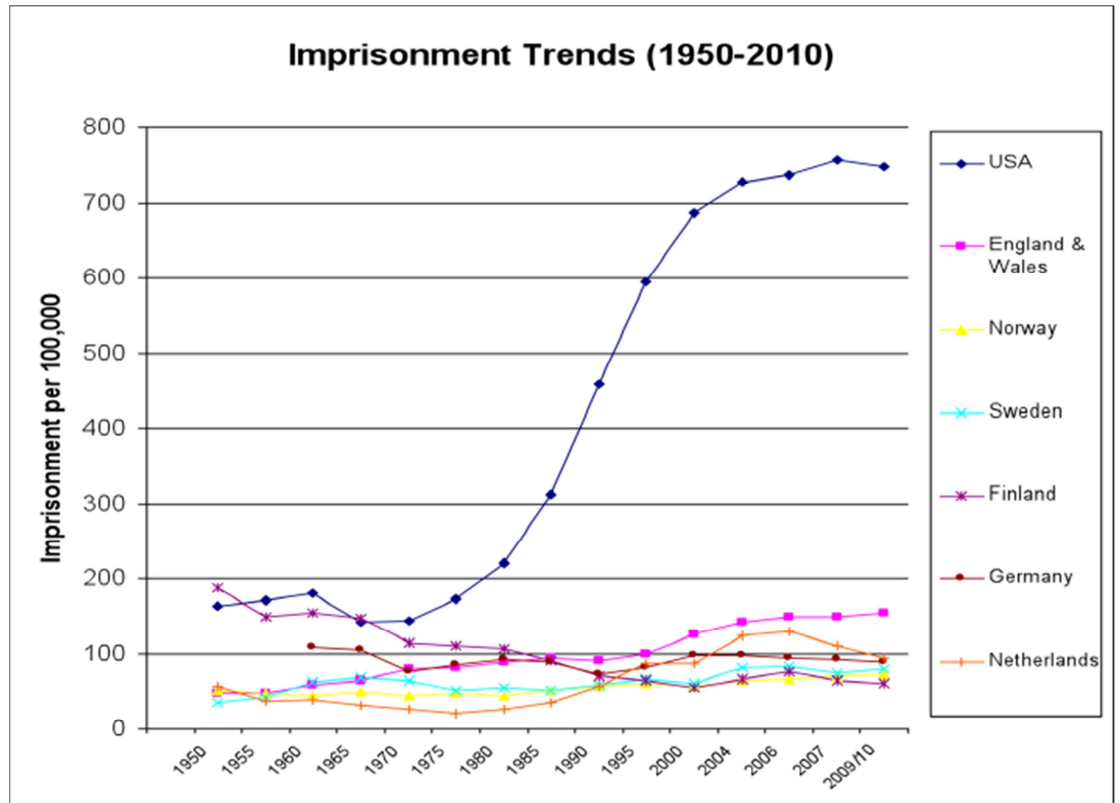
Figure 1: Imprisonment Trends in Europe, 1950-2010



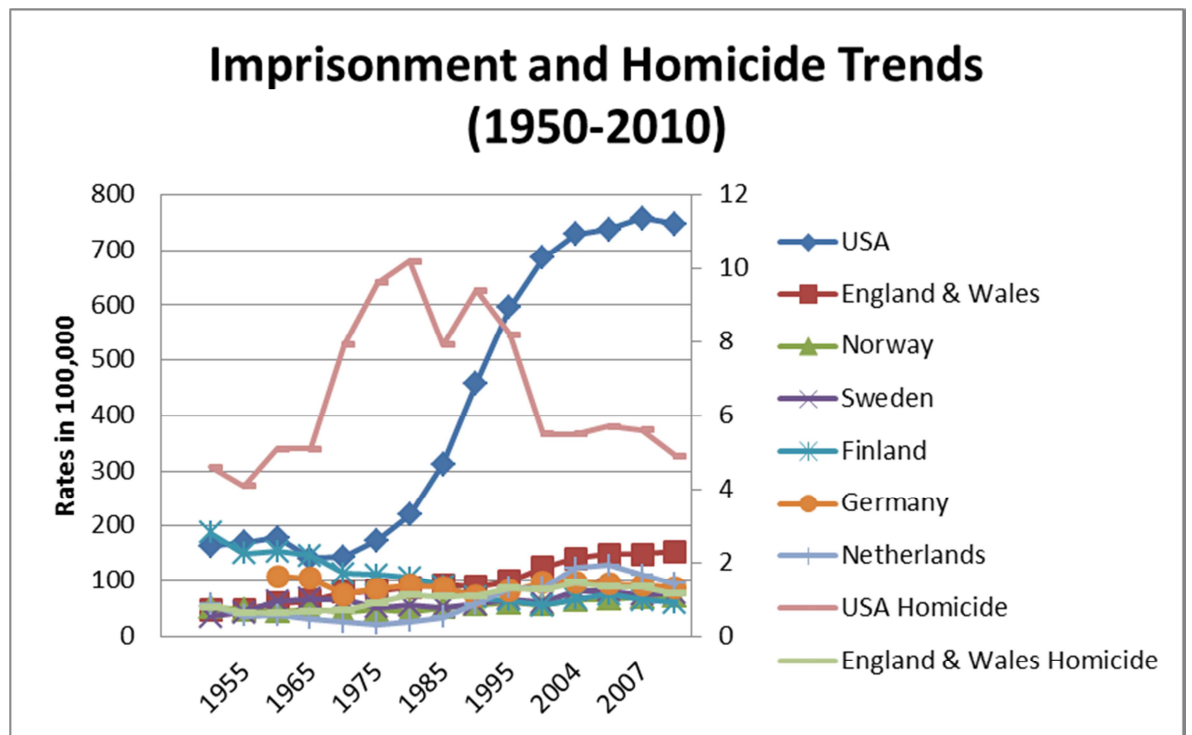
Source: International Centre for Prison Studies (2010) *World Prison Brief*; John Pratt (2008) 'Scandinavian Exceptionalism in an Era of Penal Excess'

Note: The US trend for 1950-57 is shown for comparison.

Figure 2: Imprisonment Trends in Europe and the US, 1950-2010



Source: International Centre for Prison Studies (2010) World Prison Brief; John Pratt (2008) 'Scandinavian Exceptionalism in an Era of Penal Excess'

Figure 3: Imprisonment and Homicide Trends, 1950-2010

Source: International Centre for Prison Studies (accessed 2010) [World Prison Brief](#);
 John Pratt (2008) 'Scandinavian Exceptionalism in an Era of Penal Excess'

Figure 4: American Exceptionalism in Adverse Social Outcomes

	<i>United States</i>	<i>United Kingdom</i>	<i>Australia</i>	<i>New Zealand</i>	<i>Canada</i>	<i>Sweden</i>
<i>Residential Segregation: (Ethnic)</i>	10.8 [11.4] <i>Black</i>	1.7 [9.9] <i>S Asian</i>	0.1 [2.7] <i>Asian</i>	0.0 [19.6] <i>Maori</i>	1.4 [11.2] <i>Asian</i>	
<i>Prison per cap</i>	701	141	115	155	129	73
<i>Homicide rate</i>	5.0	1.2	1.2	1.5	1.8	1.0
<i>Literacy score 5th percentile</i>	136.7	151.2	145.1	164.8	144.5	214
<i>Child poverty</i>	23.1	12.1	10.9	11.7	13.3	7.3

Source: Ron Johnston, Michael Poulsen and James Forrest (2005) 'Ethnic Residential Segregation Across an Urban System: The Maori in New Zealand 1991-2001'; International Centre for Prison Studies (accessed 2010) [World Prison Brief](#); OECD (accessed 2013) 'Literacy in the Information Age'; Unicef (accessed 2013) 'Measuring Child Poverty'; UNODC (accessed 2013) [Homicide statistics](#).

Notes:

(1) Residential segregation: % population in large cities living in tracts where (a) > 70% ethnic (non-white), (b) one ethnic group dominant, (c) > 30% of group in city live in these tracts. The number in [] is % of main ethnic group in cities analysed. 2001-2 Johnston, Poulsen, Forrest, ms 2005.

(2) Prison data 2002-3; 2004 Canada.

(3) International Adult Literacy Survey 2000 OECD.

(4) Unicef, 2012.

(5) Homicide rate 2009.

(6) Note that black % in US big city sample is < % in US population (because of South), while Maori % >; both around 15% of population.

(7) Prison per cap in US is male and female and includes jail.

(8) % children 0-17 in households disp inc (corrected for family size/comp)< 50% median.

Figure 5: Levels of Political Decision-making in Liberal Market Economies

	<i>Police</i>	<i>Prosecutors</i>	<i>Local judges</i>	<i>Zoning</i>	<i>Schools</i>
<i>US</i>	<i>City/municipal appointment by mayor (sometimes elected)</i>	<i>DA elected county or multi-county district</i>	<i>Most states elected on county or multi-county district</i>	<i>Zoning Boards appointed by locally elected Council/Mayor</i>	<i>Property tax by elected School Board at School District</i>
<i>Canada</i>	<i>Office of Provincial AG; operating procedures, appointments, training</i>	<i>Provincial AG</i>	<i>Provincial government</i>	<i>Provincial, Federal defined policies</i>	<i>Provincial policies</i>
<i>England and Wales</i>	<i>Home Office appoints Chief Constables</i>	<i>Attorney General (government agency)</i>	<i>Lord Chancellor (Ministry of Justice)</i>	<i>Min Housing rules, right of appeal to Minister</i>	<i>National government policies</i>
<i>NZ</i>	<i>Government appoints (under Minister of Police, prosecution independence)</i>	<i>Attorney General appoints (remain private lawyers) national guidelines</i>	<i>Attorney General</i>	<i>National guidelines</i>	<i>National system (Ministry of Education)</i>

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