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PUNISHMENT, (NEO)LIBERALISM AND SOCIAL DEMOCRACY

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**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE**  
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## **Abstract**

In this lecture, I address recent attempts to understand the relevance of political forces and institutions in shaping the practice and the social meaning of punishment. I focus on one argument about the relevance of the political which has been especially influential during the last decade. This is the 'neoliberal penalty thesis': the argument that politics can usefully be characterised as broadly neoliberal, or as social democratic; and that the decline or attenuation of social democracy, and the concomitant rise of neoliberalism have been associated with an intensification of penalty. I sketch what I take to be the key arguments for that thesis, before presenting a critique of both its method and its substantive conclusions.

Though exponents of the neoliberal penalty thesis often present it as an ambitious, general theory, I argue that it fails the key test to be applied to any such account: viz, does it have the capacity to shed explanatory light on the relationship between punishment and society? The shortcomings of the neoliberal penalty thesis at an explanatory level derive, I argue, from a failure to explicate just which political, economic and social institutions constitute neoliberalism; how, systematically, they relate to one another; and precisely how they are implicated in producing neoliberal penalty. These problems may best be illuminated by asking not only what neoliberalism 'is' but also analytic, historical and comparative questions about how it has emerged and what sorts of institutional structures are needed to sustain the policies, practices and arrangements which have come to be associated with neoliberalism; when they emerged; and where they hold sway. In conclusion, and in consequence, I make the case for a more differentiated and specifically institutional account of the defining features of political systems integrated within a broad comparative political economy of punishment.

## **Keywords**

neoliberalism, social democracy, punishment, penal policy, neoliberal penalty thesis.

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In my lecture this evening, I examine recent attempts to understand the relevance of political forces and institutions in shaping the practice and the social meaning of state punishment. A focus on politics is amply justified by the fact that penal practices are the outcomes of political decision making, and by the salience of the ‘politicisation’ of penal policy in a number of countries over recent decades. Political institutions such as parties, electoral systems; political interests and how they are conceived and organised; political mentalities and climates of political opinion; all these seem to claim our attention. And each of these factors calls for consideration in both historical and comparative perspectives, and in relation to other social phenomena. How, for example, has the climate of political opinion in relation to punishment changed in different countries over the last half century? How far are such changes driving, or driven by, political action? And how are they related to other features of social structure? How far can the distribution of political interests, itself shaped by distinctive political institutions, explain trends in punishment? Can we arrive at broad conceptualisations of families of political system which shed light on the distinctive trajectory of penal policies in different countries?

Amid this array of questions, one has to make a selection, and I will accordingly focus on one argument about the relevance of the political which has been especially influential during the last decade. This is the argument that politics can usefully be characterised as broadly liberal or neoliberal, or as social democratic: and that the decline or attenuation of social democracy, and the concomitant rise of (neo)liberalism has been associated with an intensification of penalty. I will call this the ‘*neoliberal penalty thesis*’. In what follows, I set out what I take to be the key arguments for that thesis, before presenting a critical analysis of its utility.

I will argue that the neo-liberal penalty thesis has been of value in re-establishing a focus on nation states and their politics, and in emphasising the links between national politics and local and global economic forces. It has also provided a suggestive characterisation of a cluster of economic, political and penal phenomena in certain countries. If tracing patterns or associations between punishment and other social phenomena is the limit of our ambition, the neoliberal penalty thesis has undoubtedly made a significant contribution. But I shall argue that if, like Max Weber, we aspire to a more ambitious conception of the scholarly enterprise: a conception that seeks to understand the logic of these patterns, including the causal linkages between their components, the neoliberal penalty thesis fails the key test to be applied to any such account: in other words, does it have the capacity to shed *explanatory* light on the relationship between punishment and politics?

The shortcomings of the neoliberal penalty thesis derive, I shall argue, from a failure to explicate just which political, economic and social institutions constitute neoliberalism; how, systematically, they relate to one another; and precisely how they are implicated in producing neoliberal penalty. Particularly in the most incautious statements of the neoliberal penalty thesis, notably that of Loïc Wacquant (2009), this institutional deficit and conceptual vagueness leads to an unfortunate tendency to ‘reify’ ‘neoliberalism’, ‘neoliberal politics’ or ‘neoliberal penalty’ without disaggregating their components or coming to a full understanding of their significance or indeed their conditions of existence. These problems may best be illuminated by asking not only what neoliberalism ‘*is*’ but also analytic, historical and comparative questions about *how* it has emerged and what sorts of institutional structures are needed to sustain the policies and practices which have come to be associated with neoliberalism; *when* they emerged; and *where* they hold sway. Such comparative and historical scrutiny reveals that the purportedly distinctive features of neoliberalism may be found in a number of times and places beyond the contemporary era of neoliberalism, while, conversely, many of its purported conditions of existence apply in times and places which have *not* produced neoliberal penalty. Under scrutiny, the neoliberal penalty thesis melts into air. In conclusion, and in consequence, I will make the case for a more differentiated and a more specifically institutional account of the defining features of political systems for the purposes of understanding punishment.

### **(Neo)liberalism and social democracy in recent scholarship**

Notwithstanding the obvious status of punishment as a product of political action, interdisciplinary work on punishment in society has tended to focus more closely on cultural, demographic and

economic variables than on political ones. Shaped by the prevailing concerns of sociology on the one hand and of Marxist-inspired political economy on the other, the influence on 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 punishment in its full social context (Rusche and Kirchheimer 1969; Garland 1990). And though Foucault's famous distinction between sovereign and disciplinary power (Foucault 1977), as well as the idea of governmentality which was central to his later work, lends itself to being mapped onto differently constituted political orders, relatively little has been done by way of applying his work to an analysis of the institutional structure of contemporary political systems (for partial exceptions, see Rose 1999; Harcourt 2011).

From the 1980s onwards, however, this began to change. A new intensification of the electoral salience of 'law and order politics' in countries like Britain and the US has been at the root of an emerging interest in the ways in which the political system, culture or environment shapes penalty. And over the last decade, one theme has had particular prominence amid this resurgent interest in the politics of punishment: the diagnosis of a distinctive neoliberal political culture and mode of governance; and of a concomitant 'neoliberal penalty'.

*What is neoliberalism, and how did it emerge?*

While the diagnosis of a neoliberal politics with distinctive implications for punishment is sometimes represented as having virtually global reach, it is easiest to grasp the details of the argument by tracing its application to a particular country. Taking Britain as our example, the story goes something like this. The right wing agenda pursued by the Thatcher administration in spheres such as industrial relations and welfare state reform was nested within a vision of a more individualistic society of self-reliant citizens. This amounted to a new vision of the old 'night-watchman' state providing a minimal support and disciplinary framework rather than an extensive safety blanket, let alone a framework for realising the duties of solidarity and reciprocity inherent in a social democratic conception of citizenship. Like Ronald Reagan in the US, the Thatcher government in Britain pursued a deregulatory agenda geared to making the economy more flexible and hence more competitive in the wake of the collapse of Fordism and the restructuring of the world economy after the oil crisis of the 1970s. This was both an economic and a political agenda. Breaking the power of the unions was seen as a necessary condition for the government's securing the capacity to impose the flexibility necessary for competition in world markets. And though an assault on unions might seem an obvious policy for a right wing government, in this instance it had implications across the political spectrum. For once the 'Thatcherite' economic policy was in place, it became hard for the Labour party to reverse it by supporting trade barriers which would have excluded British consumers from access to cheap goods from countries such as Japan, because of the attendant electoral costs of doing so. The development of an interdependent globalised economy bolstered the argument for increased flexibility and competitiveness at the level of national politics; the deregulation of financial markets gave a new spin to the sway of financial capital in the UK and the US; and a celebration of consumption was presented rhetorically as, respectively, a radical assault on the class system and a confirmation of the American Dream.

Over the last two decades, the repositioning of politics attendant on these reforms of the economy and the welfare state in countries such as Britain and the US has come to be conceptualised by a number of scholars in terms of a decline of social democracy and a rise of neoliberalism (Reiner 2006). As Robert Reiner, one of the most thoughtful exponents of the neoliberal penalty thesis, puts it:

Neoliberalism is the most common label for the economic theory and practice which has swept the world since the early 1970s, displacing communism in Eastern Europe and China, as well as the Keynesian, mixed economy, welfare state consensus that had prevailed in Western liberal democracies since the Second World War. As an economic doctrine it postulates that free markets maximise efficiency and prosperity, by signalling consumer wants to producers, optimizing the allocation of resources and providing incentives for entrepreneurs and workers. Beyond economics, however, neoliberalism has become the hegemonic discourse of our times, so deeply



embedded in all corners of our culture that its nostrums, once contested, have become the common sense, taken-for-granted orthodoxy underpinning most public policy debates. (Reiner 2007: 1-2)

Penetrating the cultural and political realms, neoliberalism has come to be associated with a host of phenomena bearing on both crime and punishment. In an irony particularly underscored in the work of Loïc Wacquant, the 'neoliberal' impetus to economic deregulation, welfare state retraction and individualization of responsibility has, paradoxically, gone hand in hand with the burgeoning of state powers, state pro-activity, and state spending in the costly and intrusive business of punishment. The state has steered welfare entitlements towards a 'workfare' system in which benefits are closely related to effort within a contractual system which is punitive to those unable or unwilling to work; and increasingly relies on 'prisonfare' as the preferred mode of 'governing social marginality' in relation to those falling foul of the 'workfare' system (Wacquant 2009; see also Beckett and Western 2001).

Two purportedly novel features of penalty are born of this 'neoliberal' impetus to economic deregulation, welfare state retraction and individualization of responsibility: the growth of the 'penal state', at the same time as a 'rolling back of the state' is key to political rhetoric (and welfare policy); and an increasing pattern of exclusion, with the use of the penal state to discipline the poor and otherwise dangerous or dispossessed. The results are evident in increasing *anomie* and insecurity generating greater incentives to criminality; in increasing political resort to punishment as a tool of social ordering as the state comes to rely more heavily, both materially and symbolically, on penalty as a form of social ordering; and in the shape of criminal justice interventions: rising imprisonment (Reiner 2006, 2007, Wacquant 1999, 2009); an accentuation of the demographic inequalities marking the distribution of punishment (Garland 2001, Western 2006); criminal justice interventions premised on the 'responsibilisation' of individuals as both risk- and crime-avoiders (Garland 2001); and an insistent political rhetoric of 'toughness on crime'. Just as left parties like Blair's 'New Labour' in Britain were induced to sign up to key aspects of the neoliberal economic agenda, so insecurity about rising crime made a shift to their being 'tough on crime' an electoral imperative.

For the many scholars who deplore this state of affairs, the key factors here are what Reiner identifies as the 'harms' of neoliberalism; economic harms which lead to a greater concentration of wealth in the hands of the few, and greater poverty and un-or under-employment for many (Hale 1998, 1999), generating both greater inequality and greater insecurity in the wake of attenuated welfare safety nets and uncontrolled fluctuations in the deregulated economy; social and political harms in terms of health, social conflict and violence (Hillyard et al 2004); ethical harms in terms of increased materialism, egoism and irresponsibility towards others (Reiner 2007: 3-8).

But what, precisely, does neoliberalism consist in at the level of underlying ideas and institutional arrangements? Given the emerging importance of 'neoliberalism' as a conceptual tool in the field, a key question must be whether neoliberalism is a genuinely distinctive political culture or formation and – if so – how widely its application can be generalised. Conceptually, neoliberalism is akin to a form of *laissez faire* liberalism in a new environment and under new technological conditions of governmental institutionalisation, economic production, communication and mobility. This leaves 'neoliberalism' in the balance between the characterisation of a *zeitgeist*, and a coherent political doctrine. It is, certainly, a striking characterisation; but it is one which operates at an extraordinarily high level of generality. To take the argument further, we need to know more about precisely how neoliberalism works not only as a form of governmental rationality (Rose 1999: Chapters 1,4,7) but also at an institutional level to produce a particular form of penalty, and about how generally that institutional formation is to be found.

Unfortunately, however, the literature is somewhat confusing on this key question. Some scholars more or less ignore the question, using 'neoliberal' as a convenient descriptive typology without addressing the institutional features which characterise that typology, and why they hold together and persist over time in certain places (Cavadino and Dignan 2006; see Lacey 2008: 52-6). Scholars who do focus on the question take quite different views. For example, Reiner (2007) offers what is in effect an account based on a shift in incentives for actors in a whole variety of political and economic roles, though with an emphasis on underlying economic dynamics reminiscent of historical materialism. In his account of the upswing of 'law and order politics' in Britain, neoliberalism functions as a convenient label for a cluster of developments whose origins are to be explained in

primarily economic, terms. Conversely, Wacquant (2009) offers an account based on the idea of a diffusion of neoliberal politics from the most powerful economic and political actors reminiscent of the 'class hegemony' version of Marxism. I quote,

Neoliberalism is a *transnational political project* aiming to remake the nexus of market, state and citizenship from above. This project is carried by a new global ruling class in the making, composed of the heads and senior executives of transnational firms, high-ranking politicians, state managers and top officials of multinational organizations ... (Wacquant 2009 306-7)

In this account, neoliberalism is reified as the consolidated ambition of a cluster of powerful interests associated with the United States and multinational corporations. Yet although the restructuring of the state, and the changing balance between its penal and its welfare functions are absolutely central to Wacquant's argument (Wacquant 2009: 285–91), he gives us a relatively thin account of just how, at the level of key institutions, the shift from welfare to 'workfare', and the creation of 'prisonfare', were brought about, even in his primary reference point, the United States. Moreover there is virtually no attempt to provide such an explanation for the European and Latin American countries which are plausible candidates for the denomination 'neoliberal'. And while the neoliberal penalty thesis certainly has some purchase as a characterisation of recent developments in some South American countries, the path to and conditions of existence of neoliberal penalty in these countries cannot plausibly be assumed to be the same as in Europe (itself encompassing different national trajectories: Cheliotis, and Xenakis 2010), let alone the USA. Like theories of 'modernity' (Garland 2001; Young 2007), then, the neoliberal penalty thesis risks imposing a framework shaped by one part of the world onto the analysis of other parts to which it does not apply, or applies only in modified form. Wacquant's latest book (2009) gives many reports of penal practices and policy documents which illustrate 'neoliberal' developments. But he gives no systematic, mid-level institutional account to fill the explanatory space between the macro account ('neoliberalism' produces 'hyperincarceration' via a replacement of 'workfare' with 'prisonfare') and the micro examples, and to explain its distinctive dynamics in different countries. Without such an account, the analytic promise of 'neoliberalism' remains elusive.

Let me pause here to sum up my argument so far.

Whether seen as the form and means of a creeping Americanisation of punishment (Wacquant 2009); as the basis for characterising developments in a single country and relating them to environments such as changing technology and the global economy (Reiner 2007); or as the basis for typologies sorting countries into more and less punitive families (Cavadino and Dignan 2006), 'neoliberalism' has become a familiar conceptual tool in criminal justice scholarship. But if we are to assess not merely its utility as a characterisation but rather its potential as an explanatory theory, we need to know something more about the causal linkages between 'neoliberalism' and punishment: about when and where those linkages emerge, and about the institutional conditions under which they emerge. In the rest of my lecture, I argue that the best way to get more purchase on the neoliberal penalty thesis is to subject it to some questions prompted by a historical and a comparative perspective.

### **When is neoliberalism?**

To start with a historical perspective: when is, or was, neoliberalism?

We have seen that the argument about the emergence of neoliberal politics and penalty is, at least implicitly, a historical argument – one rooted in changes in the economic and social environment of modern nation states during the last three decades of the 20<sup>th</sup> Century. There is, however, some difference of opinion among those who invoke the neoliberal penalty thesis about just how far back in time the roots of neoliberalism reach.

Neoliberal penalty is said to be marked by four key features: its distribution is ever more demographically unequal and trained on groups marginalised by poverty and/or by attitudes to factors such as their race or nationality, with the upshot that it contributes to a strongly polarising and

exclusionary social dynamic; particularly in relation to those marginalised groups, it is intensively punitive, and relatively undisciplined by norms of restraint such as human rights which would apply were punishment more equally distributed; it is legitimated in terms of a model of individual choice and responsibility; yet, conversely, it forms a key mode of state-building. Conceived in this way, how new is neoliberal penalty?

It is surely a reason for entertaining a degree of caution about the distinctiveness of neoliberal penalty that mechanisms for the selective and highly punitive demonization and exclusion of targeted low-status ‘outsiders’ have a depressingly long history. As early as the mid fourteenth century in England, in a policy worthy of one of today’s ‘neoliberal’ think-tanks:

the royal council had alerted local officials not only to the excessive demands of wage labourers but to the accompanying prevalence of ‘sturdy beggars’, who refused work and took to crime. Following the biblical injunction that ‘he who will not work neither shall he eat’, it forbade giving them alms or charity. (Harriss 2005: 244).

Think of the history of the Bridewell, used to mop up ‘vagrants’ from its inception (Beier 1985). Think, too, of the poor laws, with the infamous distinction between the ‘deserving’ and ‘undeserving’ poor echoing down through the arrangements of the welfare state, even in its supposed golden age; of the repeated Victorian attempts to purge London of the social ‘residuum’ (Stedman Jones 1971); or, more recently, of the invention of the black mugger as emblem of the ‘law and order crisis’ of the 1970s, as documented by Stuart Hall and his colleagues (Hall et al. 1978). All of these, of course, predate the supposed onset of ‘neoliberalism’. Yet while they represent different forms of penalty, their targets and their rationales are remarkably similar. If the primary impulse of ‘neoliberalism’ (Wacquant 2009: 304–13), is the targeted exclusion of marginalized groups, ‘neoliberal’ punishment has been around in Britain for centuries, and it is the welfarist, inclusive, ‘social democratic’ penal policies of the first two thirds of the Twentieth Century (themselves easily romanticised...) which begin to look like a historical exception calling for explanation.

But perhaps we should conceive neoliberalism not so much in terms of a distinctive substantive politics as in terms of its social ontology. Again, a historical perspective leaves us struggling to isolate the distinctive features of neoliberal ontology. Notwithstanding the pervasive authoritarian paternalism of nineteenth-century Britain, we can find, underlying much Victorian penal and indeed social policy, strains of what is being cast as ‘neoliberalism’ today. The huge influence of Beccarian neo-classical penology and Benthamite utilitarianism, both of them focusing on individual agents who can be motivated by incentives created by social policy, demonstrates that key features claimed to be definitional of neoliberalism are hardly new (Wiener 1991; see also Garland 1985). Prison reformers, for example, agonised over prison regimes precisely because they assumed that individual prisoners could be brought to ‘work on their characters’ through, variously, laborious work, religious contemplation and solitary reflection (Wiener 1991). Conversely, the (in)famous classifications on which much late nineteenth-century social and criminal policy was based – ‘inebriety’, ‘feeble-mindedness’ and so on – fit, albeit in a very different way, the allegedly neoliberal dynamic of exclusion. How useful is a conceptual frame which can readily embrace such very different phenomena?

If neither the substantive penal politics nor the underlying ontology of neoliberalism is peculiar to it, can we find its distinctive core in the importance neoliberalism attaches to penalty or ‘the penal state’? Once again, we find continuities. The Victorians, like the late twentieth-century ‘neoliberals’, used the creation of a modern criminal justice system – notably the prison and the police – as a key part of their state-building agenda. The creation of the police, the invention of the modern prison, the rationalisation of penal policy and the reform of the criminal trial stand as central pillars in the edifice of the British Victorian state (Radzinowicz and Hood 1999).

More argument would therefore be needed to establish that neoliberalism is really distinctive as a constellation of ideas about either political philosophy or social ontology. As I will show, the one genuinely unprecedented feature of contemporary penalty – the phenomenon of mass imprisonment – characterises one advanced capitalist country, the USA, to a qualitatively distinctive degree. Indeed, it looks as if it is not neoliberal politics, but rather a distinctive set of environments – institutions at the

national and international levels; technologies; economic developments – which gave a new spin to exclusionary penal practices in some countries in the late twentieth-century. If we are to tease out the force of the political in penalty, we will need a more institutionally concrete understanding of what counts as a neoliberal system, and of why and how it comes about. Without such an understanding, we have no way of distinguishing between a genuinely causal explanation and a simple characterisation of dynamics which recur with some regularity through the course of British social history.

### **Where is neoliberalism?**

I now want to move beyond the example of Britain so as to assess the more general claims implicit in the diagnosis of ‘neoliberal penalty’, asking not so much what neoliberalism is or when it prevailed, but *where* neoliberalism is or has been. In trying to assess the explanatory power of ‘neoliberalism’, a comparative approach offers a further possibility for analytic purchase. The historical path to neoliberalism which I have just sketched is one which applies only to certain countries. This in itself gives some pause for the idea of a general theory. Focusing on the present day, how many countries follow this supposed pattern? How consistently does the neoliberal environment operate across nation states? How far do different political institutional structures – democratic versus non-democratic; different forms of democracy – affect the adaptation to that shared environment? If we find significant regional variation, this tells us something important about the interaction between international environment and national politics. It suggests that to take further our understanding of the linkages between macro factors such as changes in the structure of the world economy and national politics, and between national politics and penalty, we need a clearer understanding of how national political systems differ at an institutional level. Might it be that a move to neoliberalism was a good way to compete and manage social conflicts for some countries and not for others? And hence that comparative institutional advantage will lead to divergence not convergence? Or that apparently neoliberal adjustments turn out to be ephemeral in some countries and lasting in others?

States are, of course, complex entities. The constellation of state institutions is made up of actors with distinctive interests and incentives, themselves shaped in significant part by those institutions. Focusing on this institutional level, recent work in both comparative criminology and comparative politics shows conclusively that different states – to put it crudely – work in different ways (Cavadino and Dignan 2006; Cheliotis and Xanakis 2010; Lacey 2008; Lappi-Seppälä 2008; Pratt 2008a, 2008b; Tonry 2007a, 2004a). As many of the exponents of the ‘neoliberal penalty thesis’ acknowledge, this has key implications for punishment. Let us take the example of Wacquant’s argument about a shift from welfare to workfare, and an intensified reliance on ‘prisonfare’ as the means of governing the socially marginal under neoliberal conditions. Esping-Andersen’s important work on welfare states (written of course, when he was here at the Institute) shows that there are three rather different regimes of ‘welfare capitalism’ across the developed world. Each of them has distinctive structures of entitlement, and each is articulated in strikingly different ways with other features of the political economy (Esping-Andersen 1990, 1996). The ‘neoliberal’ move to ‘workfare’ is typical of only one of these three regimes. And, notwithstanding some recent pressure on the more generous welfare regimes of the corporatist countries of northern Europe and the social democratic regimes of the Nordic countries, there is reason to think that these differences will persist over time (Martin 2004a, 2004b; Pontusson 2005). As research has shown (Beckett and Western 2001; see also Downes and Hansen 2006), this has important implications for punishment.

Nor are welfare state regimes the only systematic institutional differences among advanced political economies. As the ‘varieties of capitalism’ literature has shown (Hall and Soskice 2001), production regimes are also systematically different in institutional terms, implying very different levels of vulnerability to the collapse of Fordism. Moreover – and of key importance to the neoliberal penalty thesis – production regime variation and differences in the form of economic activity in which countries excel imply very different constraints on the sway of the market, and very different levels of influence for financial capitalism. To take just one key example, there has been significantly less pressure for flexibilization in the more highly co-ordinated market economies of northern Europe and Scandinavia. Notwithstanding a certain level of ‘neoliberal’ (and punitive) political rhetoric, it is clear

that these co-ordinated countries have, so far, been decisively less influenced by a neoliberal political and economic agenda than have liberal market economies such as the USA or the UK. As Figure 1 (p.11) shows, it is also the case that their penal regimes have remained significantly more stable than have those of the liberal market economies (Lacey 2008: Chapter 3; Cavadino and Dignan 2006). Even restricting our analysis to countries with relatively similar political histories and levels of economic development, differences in penalty are striking.

This is not to say that the moderate rates of imprisonment and relatively humane criminal justice policies currently enjoyed by the Nordic countries are immune to threats from the international developments on which the ‘neoliberal penalty’ thesis focuses. Migration flows in particular seem likely to pose a challenge to penal moderation both because of the costs of extending generous welfare benefits to a significant new group, should attempts to incorporate them in the productive economy fail or proceed slowly; and because of attendant risks in terms of the attenuation of the solidaristic social culture on which political support for those welfare benefits has rested. But, forty years after the emergence of the environmental conditions which arguably produced a ‘neoliberal politics’ in Britain, differences as significant as those persisting among European and Nordic countries (see Figures 2 and 3, pp.11-12) which are broadly similar in terms of levels of economic development and commitment to liberal values must be accounted very significant (Lappi-Seppälä 2007; Tonry (ed.) 2007; Pratt 2008 a and b);

On the face of it, these facts undermine any generalised neoliberal penalty thesis. Yet proponents of that thesis have been curiously impervious to the test of difference. Notwithstanding the evident differences in terms of factors such as vulnerability to changes in the world economy, political/economic power to shape the development of ‘globalisation’, and pressures on and incentives for countries to please the United States by bringing criminal justice policy into line with the ‘Washington consensus’, the USA, Britain, South America, and Europe are all too often lumped together in an undifferentiated global order. Wacquant, for example, refers to a ‘global firestorm of law and order’ (Wacquant 1999: 162), and argues that the ‘US carceral archipelago....’ shows us the ‘possible, nay probable, contours of the future landscape of the police, justice, and prison in European and Latin American countries that have embarked onto the path of ‘liberating’ the economy and reconstructing the state blazed by the American leader’ (Wacquant 2009: 20). And he asks in another passage, ‘who can say today where and when the ballooning of the jails and penitentiaries *visible in nearly all European countries* will stop?’ (Wacquant 2009: 26, my emphasis: see also 23–4).

Furthermore – and a neglected question in criminal justice scholarship – the organization of political systems varies widely both between countries and between sub-national regions (Lacey 2008; Tonry 2004a, 2007a; Barker 2009; McAra 2011). This seems likely to make a substantial difference to criminal justice in a number of ways. Of indirect but vast importance to 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, crucially, the more welfarist versions of criminal justice intervention whose benefits are hard to quantify and are realised only in the long term. More directly, the shape of the political system affects the ways in which perceived anxiety about crime or insecurity registers in the electoral process. In long-run proportionately representative systems, to be brief, there are significant checks and balances, as well as more robust institutional arrangements facilitating co-ordination between settled interests, than in ‘first past the post’ systems. In the latter, a typically adversarial and individualistic political culture, along with declining partisanship, has fostered the volatility of law and order politics amid the unedifying scramble for the short-term support of the median voter. Given the extraordinary diffusion of electoral politics in the USA, this seems a potentially important factor in explaining the recent history of American penalty (Lacey 2010, 2011).

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Note, finally, that even if we focus on what is undoubtedly a key example for proponents of the neoliberal penalty thesis – the United States – the notion of an overarching, monolithic 'neoliberal penal state' is less than convincing. To take just one indicative factor, imprisonment rates across the USA vary hugely, encompassing a range which in the late 2000s spanned imprisonment rates less than double that of the most punitive of the other advanced economies through to rates many times higher. In 2007, the imprisonment rate ranged from a high of over 800 per 100,000 in Louisiana to a low of 159 in Maine (Barker 2009: 3-6). In 2001, average rates in the South were one and a half times those in the North East (Lacey 2010). This variation also applies to racial patterns of incarceration: the rate of black imprisonment in the USA in 2006 ranged from staggering highs of 4710 and 4416 per 100,000 in, respectively, South Dakota and Wisconsin, to 'lows' of 851 in Hawaii, 1065 in Washington DC and 1579 in Maryland (Mauer and King 2007). Even in the USA, therefore, the 'workfare' to 'prisonfare' nexus is working differently in different parts of the country – a fact which seems highly likely to be related to institutional differences in sub-national political systems. Yet, despite the obvious implications for their argument, scholars committed to the neoliberal penalty thesis have given relatively little attention to these salient facts.

### **Beyond (neo)liberalism and social democracy: for an institutional account of political systems**

I hope to have done enough to convince you that, notwithstanding its welcome emphasis on the distinctive power of the political in shaping punishment, the neoliberal penalty thesis suffers certain key defects: defects in terms of how clearly neoliberalism or neoliberal penalty can be characterised as distinctive phenomena, either ideologically or institutionally; and – in part as a result of this conceptual indeterminacy – about where, when, how and why they prevail.

Concepts such as liberalism, neoliberalism and social democracy are, in short, insufficiently specified to be helpful analytic tools, though they can certainly be suggestive characterisations. If we want to understand the relationship between politics and punishment, we must turn to the task of trying to build up a more differentiated characterisation of different kinds of system in terms of concrete institutional features which bear on factors which we know to be important to the shaping of penal policy: the distribution of veto points; the structure of electoral politics; the distribution of policy-making power across fora and among differently qualified, motivated and accountable actors. Electoral systems, party systems, local government, pressure groups and social movements are all a key part of the picture.

There are, of course, many ways in which an institutional account of the relationship between politics and punishment may be developed. I will offer a schematic account of two of the most obvious. One approach is to work downwards, as it were, from a macro-model of political economy and society, in something of the way that the grand social theories of Marx, Weber and Durkheim attempted. In the field of political science, there are a number of such macro-models which present institutionally differentiated accounts of 'Varieties of Capitalism' (Hall and Soskice 2001) or 'Families of Nations' (Castles 1993) based on the methods of, variously, rational choice theory, historical institutionalism and the analysis of comparative institutional advantage. Alternatively, one may work, as it were, upwards from studies of the impact of particular institutional structures and forces in particular cases, gradually developing generalisations from these ground level insights (Downes, 1988; Miller 2008; Barker 2009; Tonry 2004a; McAra 2011) or from long-run historical interpretations.

In my own contribution (Lacey 2008), taking the ‘macro’ approach, I drew on the ‘varieties of capitalism’ model and on comparative imprisonment rate data to suggest that economic differences are themselves reinforced by independently important features of political structure and organisation. Certain sorts of political system, 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, relatively low deference to the expertise of criminal justice professionals, and a weakening of the ideological divide between political parties focused on the median 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 (main) parties take up a law and order agenda, and where – as in the UK and the US over the last 30 years – economic inequality and insecurity has fed popular anxiety about crime so as to mark out penal policy as an especially suitable platform on which politicians from all points of the political spectrum may appeal to median 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 with a financial interest in the prison build-up) loses from the increasing human and economic costs of an ever more punitive system.

By contrast, in the proportionally representative (PR) systems of the co-ordinated market economies of northern Europe and Scandinavia, where negotiation and consensus are central, and where incorporated groups can have greater confidence that their interests will be effectively represented by sectoral parties in the bargaining process which characterizes coalition politics (Iversen and Soskice 2006), the dynamics of penal populism may be easier to resist. Due to the discipline of coalition politics in long-run PR systems, in which bargains have to be struck before elections, voters can be more confident about what policy slate they are voting for – a striking difference from majoritarian systems, where a party with a comfortable majority is more or less unconstrained by its own manifesto once elected. The result is that longstanding PR systems typically produce a significant buffer between a popular demand for punishment and the formation of penal policy. Turning to historical and case-study based approaches, we also find that features of political institutional structure are beginning to attract fruitful criminological analysis. In a telling contribution to our understanding of the distinctively punitive practices of the United States, Vanessa Barker’s (2009) recent study of state-level penal politics in California, New York and Washington focuses on different modes of governance emerging from distinctive political structures offering particular opportunities for collective action, which themselves become entrenched over time as a result of path dependence and relative insulation from pressures at the national level. Barker shows the way in which the different structure and culture of state politics has fed into large regional disparities in patterns of punishment. In Washington, political structures invite and facilitate a form of deliberative democracy that has fostered a more moderate and inclusive approach to punishment; in New York, elite domination of politics has led to an expert-oriented managerialism which targets punitive strategies onto particular groups while maintaining moderate penal policies for others; in California – in stark contrast with Washington – the initiative system, under which citizens can invoke referenda, generally organized around polarizing yes or no questions, has generated a thin, populist form of political participation which has contributed significantly to a highly volatile and punitive penal culture. And Lisa Miller (2008) has illuminated the shaping force of the differently constituted policy-making environments at national, state and local levels, diagnosing a distortion of political representation at the national and state levels, and one which has been of great significance in the upswing in punishment as a result of the increasing federalization of criminal policy. Miller’s study shows 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 – a finding that meshes with Barker’s (2009) findings about the moderating impact of richer forms of civic participation in Washington.

These examples, briefly though I have canvassed them, serve to demonstrate how institutionally focused work of different genres can generate specific hypotheses for further

comparative and historical investigation. In the remainder of this section, I shall sketch two examples arising from the work cited so far.

First, an interesting difference of view emerges from my own argument about the moderating impact of a certain degree of political insulation and Miller's and Barker's findings that richer practices of civic participation are associated with a greater political capacity to sustain moderation in punishment (cf. Loader 2006). Miller's argument, for example, is that the distance of state and national politicians from constituents' concerns, in which *both* criminal victimisation *and* the deleterious social impact of imprisonment register strongly, and the influence of prosecutors and other pro-victim lobbies at state and national levels, has had a decisive impact on the acceleration of punitiveness at those levels. This is 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. Yet a number of studies (e.g. Dyke 2007) nonetheless suggest that in the competition for office, law and order bidding wars also feature strongly at the local level (Lacey 2011), while electoral competition affects decision making in a range of different institutions (e.g. Shepherd 2009). These contrasting findings are a useful provocation to further research designed to try to establish more precisely the ways in which different levels and qualities of political participation affect the development of penal policy and to identify the conditions under which participation works to moderate the demand for punishment. The United States in particular provides an extraordinary opportunity for this sort of institutional research, given that its federal structure assigns the majority of – though not all – criminal justice responsibilities to states. Hence the US sets up, as it were, a natural comparative experiment.

Second, and similarly, changes in political structure such as the introduction of referenda or the reform of the electoral system in different countries can provide excellent platforms for comparative investigation of the importance of particular features of institutional structure. In my own recent work, I have used the cases of Scotland and New Zealand, which have moved from first past the post to proportionally representative electoral systems during the last 20 years, to investigate both whether PR constitutes an institutional variable of independent importance, and to illuminate the conditions under which institutional arrangements inimical to adversarial politics and facilitating co-operation and bargaining shape the development of penal policy (Lacey forthcoming).

## **Conclusion**

Over the last decade, an appeal to 'neoliberalism' – along with an explicit or implicit version of what I have called the neoliberal penalty thesis – has established itself as the most prominent and influential account of the politics of punishment in contemporary societies. In doing so, it has succeeded in placing political dynamics at the centre of scholarship on punishment. While this success is to be applauded, I have argued that the conceptual vagueness of neoliberalism, and the institutional deficit which characterises the neoliberal penalty thesis, dooms it to failure as an explanatory account of contemporary punishment. Historical and comparative analysis comprehensively undermines the idea that 'neoliberalism' is plausible as an explanation of current trends in punishment, striking though it may be as a characterisation of a certain kind of political reaction to a constellation of current geo-political and economic conditions.

The neoliberal penalty thesis should, therefore, be abandoned. But in its place, and learning from its failures and its insights, there is an exciting agenda to pursue: to build a systematic account of how political institutions shape penalty, and to work towards an understanding of the linkages between those political institutions and other social forces.



**Figure 1 - Political Economy, Imprisonment, Homicide**

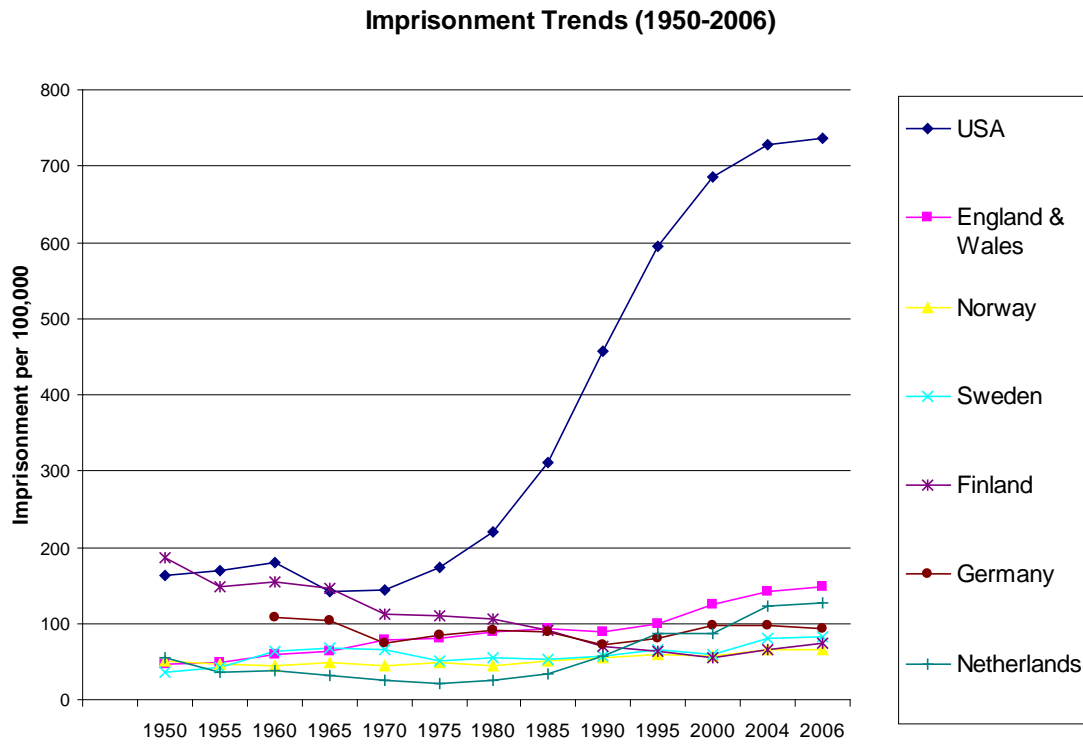
	Imprisonment per 100,000			Homicide Rate per 100,000
	2002/3	2006	2009/10	2008
<u>Neo-liberal countries (Liberal Market Economies)</u>				
USA	701	737	748 <sup>^</sup>	5.2
New Zealand	155	186	203	1.3
England & Wales	141	148	154	1.2
Australia	115	125	134 <sup>^</sup>	1.2
Scotland <sup>a</sup>	128	140	153	2.2*
<u>Conservative corporatist countries (Co-ordinated market economies)</u>				
Netherlands	100	128	94	1*
Germany	98	94	88	0.8
<u>Social democracies (Co-ordinated market economies)</u>				
Sweden	73	82	78 <sup>^</sup>	0.9
Denmark	58	77	71	1.4*
Finland	70	75	60	2.5
Norway	58	66	71	0.6*

<sup>^</sup> Prison rate for 2009

\* Homicide rates for 2007

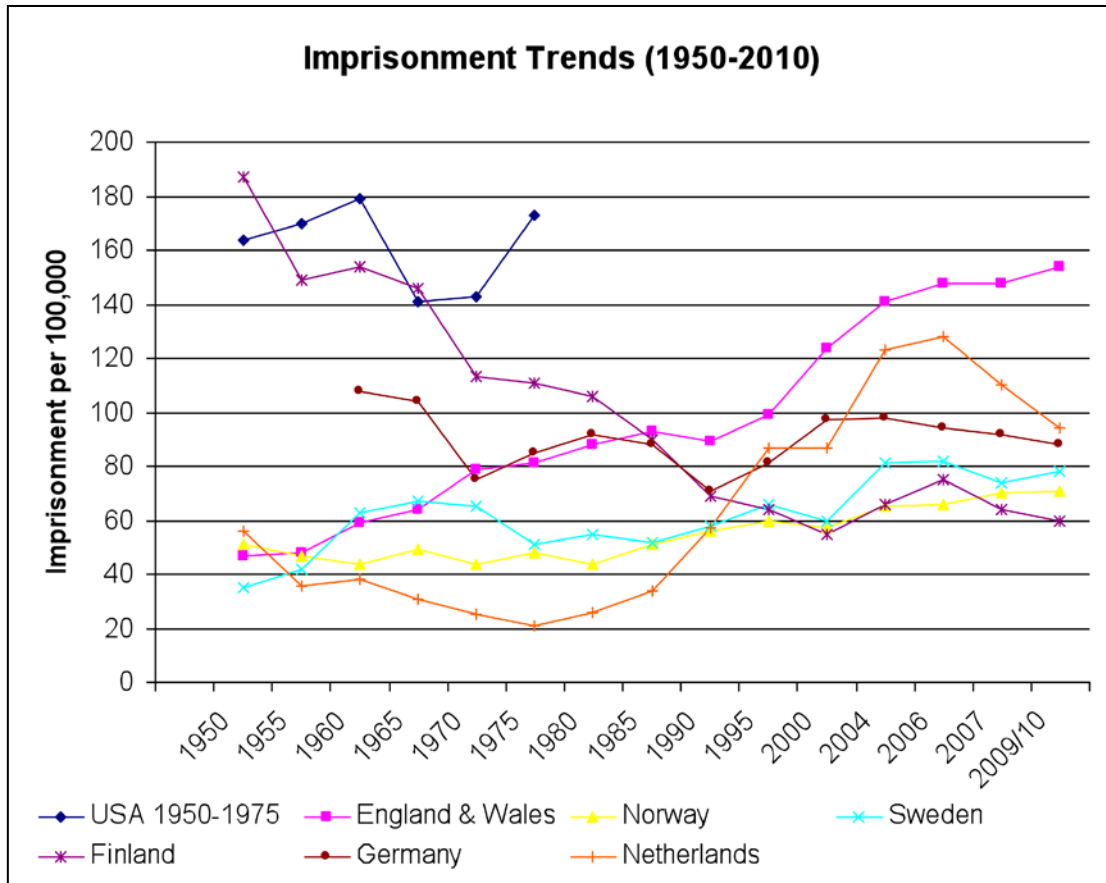
<sup>a</sup>Prison rates for Scotland are estimated on the basis of average daily prison population for 2002/3, 2006/7, 2009/10

Figure 2



Source: *International Centre for Prison Studies, 2007; John Pratt, British Journal of Criminology 2008*

**Figure 3 - Imprisonment Trends (1950-2010)**



*Source: International Centre for Prison Studies (2010); European Sourcebook of Crime and Criminal Justice (2010); John Pratt, British Journal of Criminology (2008)*

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