

The politics of punishing

Building a state governance theory of American imprisonment variation

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Abstract

This article asks why some American states are more likely to rely on imprisonment in response to crime than others. Employing comparative historical methodology it brings new kinds of data to address contested questions in the field. In three case studies, it examines archival material, including citizens' letters to political leaders, transcripts from townhall meetings, internal government reports, public testimony; and it uses extensive secondary sources, including statistical data and political histories to tease out complex causal processes of crime control policy formation and its impact on imprisonment patterns. Analyzing evidence both temporarily and spatially, the article introduces a new account of American imprisonment variation based on the democratic process itself.

Key Words

American states • crime control • democratic process • imprisonment • political institutions

INTRODUCTION

Today the USA imprisons more people than ever before (particularly people of color), outpaces all other democracies and continues to expand reliance on confinement despite the recent drop in crime. Yet, many American states diverge from this national trend. Minnesota, for example, imprisons 150 inmates per 100,000 population, New York imprisons 343 inmates per 100,000 population, both below the national rate of 429 inmates per 100,000 population and well below Texas' 692 inmates per 100,000 population or Louisiana's 803 inmates per 100,000 population (Bureau of Justice Statistics [BJS], 2004: 3). This difference is significant and we do not quite understand it. This article seeks to explain why the American states use confinement differently in response to crime.

I argue that sub-national imprisonment variation is fundamentally a story about American democracy in all its variation and complexity. The USA is not a coherent or singular state but rather made up of mixed democratic practices, a rich political imagination and varying sub-national polities – polities responsible for the creation, enactment and implementation of nearly all criminal justice policy (Stuntz, 2001) among other important policy areas (e.g. state budgets, education, land use).

This article builds on scholarship that shows how punishment is fundamentally linked to the ways in which states exercise power in order to maintain legitimacy (Foucault, 1977; Savelsberg, 1994; Garland, 1996, 2001; Jacobs and Helms, 1996; Simon, 1993; Sutton, 2000; Beckett and Western, 2001; Greenberg and West, 2001; Jacobs and Carmichael, 2001). Following Savelsberg's (1994) political institutionalist approach, this article argues that differences in the ways in which states exercise, organize and institutionalize power will have differential effects on state reliance on confinement. Advancing a new perspective, this article theorizes that differences in the ways in which citizens participate in political life will significantly influence the ways in which states use confinement. The democratic process itself may help to explain how much or how little punishment states are likely to use in response to crime in order to maintain legitimacy.

By following the logic and methods of a comparative historical approach, this article closely examines how three American states with significant political differences responded to the common condition of increased crime beginning in the mid-1960s. To date, this article is the first to employ such methods in the case of American imprisonment. Based on the case studies presented here and developed elsewhere (Barker, 2004), the findings suggest, somewhat counter-intuitively, that American states with widespread citizen participation tend to keep imprisonment relatively low even in the face of high crime. The case studies suggest that when citizens participate in public life they may be more likely to keep a check on the repressive powers of the state. And conversely, when citizens withdraw from public life, we are more likely to see increased imprisonment; a crude policy response to high crime. The case studies also suggest that a centralized state, while being somewhat insulated from public demands, does not necessarily lead to lower imprisonment rates. Instead, it is likely to lead to a differentiated use of imprisonment – higher imprisonment rates for certain kinds of crimes but lower imprisonment rates for others. We should note here that the small number of cases limits our ability to generalize the findings. Yet, we should also note that the small number of cases analyzed comparatively and historically provides us with rich empirical detail, a move that can strengthen and refine our explanatory accounts. By doing so, this article contributes to the ongoing project of theory building.

By focusing on political structures and political practices – under-developed factors in the literature – this article seeks to incorporate current scholarship on imprisonment into a broader account based on the democratic process. Current scholarship has done much to advance our understanding of how various *social* factors (e.g. racial demographics, economic marginality, crime patterns) affect imprisonment rates (see Zimring and Hawkins, 1991; Tonry, 1995; Western and Beckett, 1999; Blumstein and Beck, 2000; Sutton, 2000; Greenberg and West, 2001; Wacquant, 2001). Yet, we still need to account for how and why these social factors may vary in different political contexts with varying effects on imprisonment. I argue that the structures of state governance and practices of civic engagement significantly shape how states understand and respond

to crime and other perceived problems of order in the first place. Race and economic marginality may indeed influence the extent to which states rely on confinement in response to complex social problems, but these social factors may matter differently in different political contexts with varying effects on imprisonment (for discussion of these accounts and others, see Barker, 2004). This article suggests that we gain explanatory power when we take into account how the political process translates social pressures into particular courses of state action. We gain explanatory power when we take into account how states and civil society struggle over how much or how little force to use in response to crime.

THE DURÉE OF GOVERNANCE: COMPARATIVE HISTORICAL METHODOLOGY

The political process approach shifts our understanding of causality itself, especially the temporality of causality. Consider, for example, that the work of governance is made up of ongoing activity, small moments: small movements, repetitious and mundane. These small actions exert their causal influence gradually, slowly over time, and do so in cumulative ways. I call this kind of causal process the *durée of governance* where the continuous work and enduring features of governance result in particular outcomes over time (on cumulative causes, see Pierson [2003]; on the *longue durée* see Annales École; on *durée* of human action see Giddens [1993]). In this kind of causal process, institutionalized power arrangements, for example, can result in outcomes at times other than their apparent proximity to the events under investigation (Putnam, 2000; Pierson, 2003). Natural scientists call attention to the long-term and sometimes delayed effects of colder and deeper ocean currents on much warmer southern seas, great distances away. We can think of causality in social and political life in much the same way.

A state's prison population is the result of continuous rather than discrete actions. No one, not even the most powerful state official, can round up an entire prison population in one fell swoop since the prison population is the cumulative outcome of millions of arrest, charging, sentencing, plea-bargaining and release decisions by thousands of actors, made over long periods of time (Tonry, 1996; Stunz, 2001). We make a mistake if we give too much causal weight to single events or particular pieces of legislation. Three strikes laws, for example, can only affect the prison population slowly over time as admissions gradually increase and release dates slow down. In order to fully explain a state's reliance on confinement, we need to examine causal processes over time rather than single moments.

This article employs such research strategies to develop an explanatory approach based on the causal effects of state governance over time. By working in the political and sociological tradition of Max Weber and Alexis de Tocqueville, I specifically rely on the logic and methods of the comparative historical approach (Skocpol and Finegold, 1986; Mahoney and Rueschemeyer, 2003). First, I make ideal typical comparisons of three American states, California, Washington and New York, 1965–present. This period, in excess of 35 years, allows me to investigate the long-term causal dynamics that produced contemporary imprisonment populations and it covers the major transformations of American punishment in the late 20th century. By following the small-*n* approach (Rueschemeyer, 2003), I limited the case selection to three states. The smaller sample

allows me to study the cases in richer detail and investigate intricate causal processes in a much more refined way.

I selected the states, California, Washington and New York, to form the case studies because they are representative of broader patterns in politics and punishment. The cases represent major democratic practices and governing styles present in American political life (Elazar, 1966; Bellah et al., 1985; Putnam, 2000). And perhaps most importantly, the cases diverge on state governance features, namely political structures and political practices, seriously under-explored and under-researched factors in the literature.

Washington State, for example, an open-polity with decentralized power, has consistently maintained higher than national average voter participation rates (51%) with nearly 57% of registered voters voting in 2000 (US Census Bureau, 2003). Washington ranks 10th in terms of Robert Putnam's (2000) social capital index, scoring .65. We should note here that in *Bowling Alone*, Robert Putnam (2000: 19) defines 'social capital' as social networks that tend to bring about increased reciprocity and trust among individuals. In Putnam's conceptualization, the rate of civic engagement in public life provides a useful indicator of social capital. In contrast to Washington, California has maintained lower than the national average voter participation rates in spite of its direct democracy measures with roughly 44% of registered voters voting in 2000 and ranks 28th in terms of social capital, scoring -.18 (Putnam, 2000; US Census Bureau, 2003). New York, a much more closed polity with its high degree of centralization, has maintained average voter participation rates (49%) but ranks 34th in terms of social capital, scoring -.36 (Putnam, 2000; US Census Bureau, 2003). I discuss these variations in detail in the next section.

The case studies also changed modes of state governance at least twice since the turn of the 20th century; providing additional variation and insight into the processes of state formation.¹ During the fertile and sometimes violent protest period of the Progressive era, each state turned away from patronage politics, the purportedly corrupt mode of governance dominant throughout the USA (e.g. Tammany Hall, 'Boss Tweed'). California and Washington both created populist modes of governance while New York formed its enduring pragmatic and activist mode of governance (see Peirce and Hagstrom, 1983). With the rise of the New Deal, California formed a pragmatic mode of governance, which lasted until 1965 when populism resurfaced. In the post-war period, Washington developed a participatory and activist mode of governance, linking its populist roots with the pragmatic influence of the New Deal.

I also selected California, Washington and New York because as crime and violence reached extraordinary levels by the early 1970s each state pursued different imprisonment policies; policies that did not mimic shifts in crime patterns. For over 30 years, these states experienced unprecedented levels of crime, but each maintained varying levels of imprisonment. While Washington does have lower violent crime rates than California and New York, Washington, like almost all other American states, experienced a significant increase in violent crime in the late 1960s when states began major punishment policy reform. Between 1965 and 1975, for example, violent crime more than doubled in Washington, California and New York (Uniform Crime Reports, 2003a, b and c).

Recent imprisonment rates show that California imprisons 455 inmates per 100,000 population, a rate higher than the national average of 429 inmates per 100,000 population; Washington imprisons 262 inmates per 100,000 population, a rate significantly

lower than the national average; and New York imprisons 343 inmates per 100,000 population, a rate under the national average (BJS, 2004: 3). None of these states reach the very highest or very lowest imprisonment rates. Instead they represent the common patterns of American imprisonment variation. The patterns of imprisonment in the cases pose certain puzzles that cannot be explained by previous research. And they allow us to address questions about the dynamics of punishment in ways that do not reduce them to instrumental crime control.

This article introduces new kinds of data to answer contested questions in the field. It uses a wide range of archival material and secondary sources including: transcripts from townhall meetings; letters to public and political leaders; public hearing testimony; state constitutions; penal codes; legislative bill files; governors papers; state agency reports and memos; legislative committee reports; oral histories; newspaper clippings; statistical information; state histories; social and political histories. The data show how decision making is organized, how key players participate and what they might want, and show the substance and trajectory of key policy areas such as crime and punishment.

DIFFERENTIATED STATE GOVERNANCE AND IMPRISONMENT VARIATION

Political structures and political practices

Perhaps no one has done more to advance our understanding of the causal effects and organizational features of state governance than Alexis de Tocqueville whose observations about American political culture, particularly civic engagement, continue to influence how scholars think about American democracy. And perhaps no one has done more to connect the exercise of state power to punishment than Michel Foucault (1977), David Garland (1985, 1996) and Joachim Savelsberg (1994). These scholars all persuasively show that punishment is necessarily linked to the foundation and maintenance of social order. This section explicitly builds on these important sociological contributions by taking into account how institutionalized power arrangements and political practices shape and are shaped by social and cultural conditions in ways that account for shifts in state policy, particularly imprisonment practices.

The state governance approach, based on the causal effects of political structures and political practices on state policy, effectively captures the heart of democracy – that is to say, people (*demos*) and power (*kratos*). Specifically, political structures refer to how power is exercised in a particular political system; usually institutionalized in state constitutions and routinized in the practices of politics. Because democratic states developed in different ways (e.g. revolution, bureaucratization, people's protests, technocratic reform) and at different times under various historical conditions (e.g. 17th-century New England religious settlements, 18th-century mid-Atlantic seaboard commercial enterprises, 19th-century western territorial expansion and colonization), we see significant variation rather than uniformity in the very organization of state sovereignty across nation-states and within sub-national polities over time. Following political scientists and political sociologists, I map the exercise of state power in terms of variation in political authority (e.g. how decision-making power is organized and distributed) in terms of the degree of centralization (Weber, 1968; McGovern, 1998; Amenta and Young, 1999).

A model of state policy based on political structures offers a tremendous amount of explanatory power (Skocpol, 1992; Ertman, 1997). Yet, I think that we can increase the efficacy of political institutionalist models by incorporating political practices into our approach. We can think of political practices as the ways in which actors understand the very possibilities of action and how they take action in the political field. In other words, we need to take into account how actors conceptualize the role of governance, how they understand the nature of the state (particularly the state's relationship with civil society) and how actors make governance meaningful through habitual and routinized activities (particularly through political participation) (Tocqueville, 1955, 1990; Swidler, 1986; Friedland and Alford, 1991; Bourdieu, 1996; Polletta, 1997; McGovern, 1998; Sewell, 1999). It matters to the creation and substance of state policy whether actors think the state itself is indeed activist – a useful and effective instrument of governing – or whether actors are anti-statist – openly hostile to the very idea of a strong state and seek to limit governance to the most basic functions, internal order and national defense. I map variation in political practices in terms of the degree of state activism (e.g. a broad or narrow view of government) and the degree of civic engagement (that is to say, how often and how many people participate in local or community affairs vis-a-vis town meetings, civic and social organizations and how many registered voters vote) (McGovern, 1998; Putnam, 2000).

Taken together, the two analytical dimensions yield four ideal types of governance: populist; participatory democracy; pragmatic; and patronage (Table 1). We should note that the empirical cases will approximate rather than mirror these ideal types. We should also note that even though states tend to form stable configurations, states are not immune from change, especially since the meaning of governance is rarely permanent and hardly universal. Instead, the diversity of American democratic practices encourages actors to think about the wide range of possibilities for changing existing states and building new ones (Swidler, 1986; Clemens, 1997). The inherent instability of political practices can lead to intense, sometimes unreconcilable and violent conflict, which under certain historical conditions leads to increased state repression rather than reform (Table 1).

Political practices are often related to particular kinds of political structures, but one type does not necessarily cause the other. We see elective affinities between political structures and political practices where one type influences and is shaped by the other,

TABLE 1 State governance by political structures and political practices

DEGREE OF ACTIVISM	POLITICAL AUTHORITY: DEGREE OF CENTRALIZATION	
	LOW	HIGH
Low	Populism	Patronage*
High	Participatory democracy	Pragmatism

Note: *Patronage is presented here simply as a theoretical example and not discussed in the case studies. More research is needed to assess crime control policies in a patronage mode of governance.

re-enforcing particular alignments over time. For example, American states that centralize decision making tend to discourage widespread citizen participation as executive officials and technocrats dominate the business of governing. It is not all that surprising to see lower voter turnout and lower participation in civic affairs in this pragmatic mode of governance with highly centralized political authority where 'the few' make decisions.

In the American context, we also see states with a low degree of centralization and high political participation where citizens actively engage in the ongoing business of governing either through town hall meetings, volunteer associations and citizen advisory boards. This kind of republican style governance, also referred to as participatory democracy, less recognized and often underestimated, still exists and exerts causal influence on American political life and public policy across a wide range of states. We may be more familiar with populist modes of governance, a somewhat paradoxical arrangement. In a populist mode of governance, political authority is highly fragmented, opening up the possibilities for widespread participation, but citizen participation is quite low and often left to extremists.

Particular understandings of governance take shape and are made meaningful through various habitual and ritualized practices. We are likely to see specific kinds of routines and habitual practices correspond to particular meanings of governance and institutionalized power arrangements. For example, in pragmatic governance (e.g. highly centralized political authority and activist state), we are likely to see the extensive use of expert knowledge, executive appointed special commissions and collective inquiry rather than unfiltered public opinion to solve context specific problems. In populist governance (decentralized power and limited view of governance), we see the use of initiative process where citizens create legislation and policy that bypasses the state legislature; initiatives tend to operate as critical statements against the state, an ineffective state that cannot be trusted to do the right thing for 'the people'. In participatory democracies (decentralized power and activist governance), we are likely to see the extensive use of citizen participation in town hall meetings, citizen councils and voluntary associations where citizens collaborate with state actors to create legislation and policy; here citizen participation operates to increase cooperation, trust in governance, and submerge conflict.

We can think of political structures and political practices, both historically contingent and mutually constitutive, as a *logic of action* of the political field (Friedland and Alford, 1991). As a logic of action, these basic elements not only help to produce and reproduce particular patterns of action, they simultaneously make action meaningful (Giddens, 1993). As a logic of action, these basic elements shape action in the political field. As such, I suggest that types of governance, guided by a certain logic and structure of action, will share elective affinities with types of punishment regimes. Based on the above discussion of different democratic state processes, we can expect to see relatively lower imprisonment rates in a participatory democracy, average imprisonment rates in a pragmatic governance, higher imprisonment rates in a populist mode of governance and the highest imprisonment rates in a patronage mode of governance. I explore these linkages in more detail in the case studies below and elsewhere (Barker, 2004).

Empirical cases: how populist, participatory and pragmatic modes of governance affect state reliance on confinement

Given the space constraints, this article cannot provide a thick description of each case study. Instead, this article focuses on key moments in each state's political history, democratic process and crime control policy in order to illustrate the elective affinities between the type of governance and imprisonment patterns. I have chosen to highlight exemplary moments rather than provide a strict historical narrative of each case (for historical narrative, see Barker, 2004).

California: populism, the rise of retribution and high imprisonment rates

By the late 1960s, within the context of rising crime rates, white resistance towards black civil rights gains, and challenges to New Deal pragmatism, California introduced a more retributive approach to crime. By emphasizing mandatory penalties and stiff prison sentences, California began to de-emphasize the goals and practices of rehabilitation and began to emphasize straight up punishment. The 1976 Uniform Determinate Sentencing Act proclaimed: 'the purpose of imprisonment for crime is punishment' (California Penal Code Section 1170a). By mandating imprisonment for all kinds of crimes, burglary, carjacking, drug dealing and murder alike, California gradually increased its reliance on confinement. These early shifts in crime control created long lasting policy legacies that continue to impact California's imprisonment rate. Today, California imprisons 455 inmates per 100,000 population, a four-fold increase since 1971, and a rate just above the national rate of 429 inmates per 100,000 (BJS, 1990: 605, 2004: 3). Across the American states, California's imprisonment rate ranks 16th in the nation, far outpacing New York and Washington, ranking 30th and 40th, respectively.

To explain why California developed these kinds of policies, we need to understand how California's patterns of imprisonment are deeply embedded in its particular political and historical context. I suggest that California's political context encourages a particular way of doing politics that tends to intensify conflict instead of compromise and it tends to encourage simple responses to complex policy problems. As a consequence, in the areas of crime and punishment, the state has tended to develop quick fixes in response to the social complexities of crime. High reliance on imprisonment, a rather crude policy instrument, is one such example.

California's political context: re-emergent populism

By the late 1960s, populism resurfaced in California. A populist mode of governance is a set of political structures and political practices based on decentralized power, anti-statist views of government, and lower levels of civic engagement, trust and reciprocity. As noted earlier, in terms of social capital, a useful indicator of civic engagement, trust and reciprocity, California ranks 28th in the nation (Putnam, 2000) and ranks below the national average in terms of voter participation in state and national elections held since the mid-1970s (Gray et al., 1983, 1990; US Census Bureau, 2003). Californians exhibit low levels of civic engagement despite the state's open and decentralized political structures represented in part by the initiative, referendum and recall measures.

Populism, dormant throughout the 1940s and 1950s under the dominance of New Deal pragmatism and centralization of Governors Earl Warren and Pat Brown (Allswang, 2000; Sabato et al., 2001), has deep roots in California politics. California

populism is intertwined in the struggles of the Farmers' Alliances and progressive movement at the turn of the 20th century. Farmers, progressive reformers, along with other disempowered social groups challenged high finance, bankers, monopolistic railroads, agribusiness, and Eastern political and economic dominance for more control over the state's political and economic resources (Goodwyn, 1978; Thomas, 1991; Clemens, 1997; McGirr, 2001). After much struggle, this coalition pushed for and won direct democratic measures, such as the initiative, referendum and recall. Reformers won direct access to government decision making through the ballot box; a move that would help 'the people' circumvent the state, which was perceived to be dominated by corrupt politicians and special interests. Populist challengers created a new form of politics – direct democracy (California State Constitution, n.d.; Allswang, 2000; Sabato et al., 2001). But they also left a legacy of anti-statism – that is to say, a hostile view of the state, perceived as a hungry Leviathan taking advantage of 'the people'.

In the 1960s, we see a more conservative strand of populism emerge in California politics. Polity members tapped into the state's deep roots in anti-statism; a move that paradoxically expanded the state's role in maintaining law and order and paved the way for an increased use of the initiative process, enabling citizens to bypass state legislators to write their own anti-crime legislation.

In 1964, California voters used the initiative process to block the Rumford Fair Housing Act, an act that would have protected African Americans against housing discrimination. This particular populist challenge emerged out of the lived experience of cold war politics. In *Suburban Warriors*, Lisa McGirr (2001) explains how California's defense industry professionals lived day to day with a heightened sense of paranoia, insecurity and fear of communism, especially its big state and collectivist social organization. McGirr explains how these feelings of paranoia were intensified by the new American experience of suburban living – an experience that left many residents feeling alienated and alone. These cold war insecurities were compounded by rising crime rates in the 1960s, the apparent expansion of the state, especially through social welfare, and the perceived immorality of an unruly youth culture protesting authority (Garland, 2001). These 'suburban warriors' looked to the odd mix of libertarianism and social conservatism brought to life by Barry Goldwater in 1964 and Ronald Reagan in 1966 to restore some sense of security to their daily lives (Klatch, 1987; Diamond, 1995; Berlet and Lyons, 2000; McGirr, 2001).

We should note here that this type of anti-statism with its critique of big government (implicated in command economies and infringements upon individual liberties), is a somewhat inconsistent view of the state since California, like nearly all western states, is heavily dependent upon the federal government for employment and economic development – more so than any other region in the USA (Thomas, 1991: 14). Nevertheless, populism as it reemerged in California in the 1960s sought to limit state governance to its most basic functions – internal security and national defense.

Populism's effect on crime control policies and imprisonment

It is in this context, we see a shift in California's crime control responses with its heightened emphasis on retribution. Already in 1967, the California State Legislature passed and Governor Ronald Reagan signed State Senator George Deukmejian's anti-crime penalty package, Senate Bill 85–87 (SB 85–87). SB 85–87 significantly increased penal

sanctions for certain crimes of violence. Specifically, it increased the minimum penal sanction from five years to 15 years to life imprisonment for offenders who injured crime victims (Berk et al., 1977; Cannon, 2003). Offenders who inflicted 'great bodily harm' on victims while committing other crimes such as burglary, robbery and rape were now subject to much lengthier prison terms. In a transformative move, the anti-crime bill introduced the pain and suffering of crime victims as a rationale for increasing penal sanctions and punishing offenders.

By incorporating the pain of victims into the calculus of punishment, the Reagan–Deukmejian 'penalty package' signaled a more emotive response to crime than had been previously practiced under California's more clinical treatment approach. The penalty package represented a more intuitive mode of punishment, a mode directly tied to the insecurities and concerns of 'the people' rather than to the dispassionate treatment models espoused by the state's technocrats and criminological experts (also see Savelsberg, 1994). At this moment, we see how crime victims come to represent or stand in for everyday people (Garland, 2001; Simon, n.d.). By following a more intuitive sense of justice, retribution does not depend on technocratic knowledge, state elites or in Governor Reagan's words, a 'self-appointed group of experts' and sociologists' 'pretentious double talk' about the root causes of crime (Reagan, 1968a, 1968b).

This policy shift laid the groundwork for future crime control policies that would increase penal sanctions in the name of crime victims, the 1982 Proposition 8 'Victims Bill of Rights' and the 1993 Initiative in particular. In the name of victims' rights, Proposition 8 linked bail decisions to public safety, limited plea bargaining, and eased rules about the use of illegally seized evidence; moves that eased the prosecution of criminal defendants (see McCoy, 1993). Three Strikes significantly increased prison terms for repeat felony offenders (for more on Three Strikes, see Shichor and Sechrest, 1996; Zimring et al., 2001). This series of anti-crime legislation coupled with a multitude of less dramatic changes to the state penal code and penal practices (e.g. slow rates of parole release, high rates of parole revocation) over time led to California's relatively high imprisonment rate.

The Proposition 8 campaign illustrates not only how anti-crime measures conflate crime control with victims rights, but it also illustrates how the initiative process itself tends to exacerbate this type of zero-sum politics. As an example of California's populist governance, the initiative process tends to reduce complex policy issues into simple 'yes or no' formulas where voters must choose one side over another. If voters vote 'yes' for victims rights, they are voting against criminal defendants. If they vote 'no' for victims rights, they are apparently endorsing unsanctioned criminal violence. In addition, the initiative process tends to dampen political participation. Apart from the initiatives' acrimonious campaigns that pitch one side fiercely against the other, many voters with mixed policy preferences may not find a reasonable policy choice in the 'yes or no' formulation and consequently, they may not vote at all. Political scientists Cain and Miller (2001) also point to the fundamentally anti-democratic nature of the initiatives process. Since no one is actually held accountable for the initiative, voters cannot vote authors of initiatives out of office if they disapprove of the outcomes. Instead, disgruntled citizens must start the initiative process all over again to override the previous initiative.

The initiative process not only reflects but it tends to reproduce distrust in state officials and politicians. Consider, for example, prior to and during the Proposition 8

campaign, citizens wrote letters to Paul Gann, a grassroots activist heading up the Victims Bill of Rights and leader of the 1970s tax revolt, Proposition 13. The Paul Gann Archive, housed at the California State Library, provides a rich source of primary data on Gann and his supporters' concerns about crime, victims and views on state government. These letters express exasperation, frustration and anger with state government, perceived to be ineffective and unresponsive to their concerns, especially their feelings of insecurity.

For example, one such letter writer, Thad Przybycien, wrote: 'Judges don't give a damn for the honest citizen and rule in favor of the criminal' (Przybycien letter to Gann, 29 November 1981). Echoing these sentiments, Gann warned that the 'real terror' in California was not the escapee child molester but 'impotent politicians' who failed to follow the 'will of the people'. Another Gann supporter, Mrs Mays, wrote about her disgust and distrust of politicians. She blamed these untrustworthy politicians for California's crime problem. She wrote:

The politicians and their attitudes in government and lack of respect for the tax payers money and how they spend it is still another and the appalling lack of doing the bidding of their constituency is also a factor and their example to the people proving this by ghost voting and switching is causing the people to give up and lose interest in elected officials which in turn promotes more crime against people from within as they follow their own interests and not the best interest of the general public and their wishes. (letter to Gann, n.d.)

In these letters and other memos, Paul Gann and his supporters expressed a recurring sense of embattlement from various directions, the state, an apathetic public and 'elitists', which tends to exacerbate mistrust and alienation (Gann, 1980, 1981). These kinds of conflict-ridden interactions, routines and practices tend to encourage ideological battles rather than a politics of compromise and coalition. For example, potential allies such as the ACLU actively opposed Proposition 8 and called the initiative a 'flawed piece of garbage' (Barnhart quoted in Ellison, 1982). Rather than work with these grassroots activists who were also critical of state power in a way that could have changed the direction of the reform initiative, the ACLU refused to align themselves with Proposition 8. Proposition 8 resonated deeply with ordinary people, afraid of crime and feeling abandoned by state officials, who found meaning in the victims rights movement. Proposition 8 passed despite its narrow gains for victims.

California summary

Taken together, California's populist mode of governance creates a political context that encourages conflict rather than compromise: counterposing one social group against another; counterposing one policy plan against another; and counterposing the state against citizen. By doing so, California's political practices tend to intensify alienation and antipathy among many parts of the population, further exacerbating citizens' withdrawal from public life. Civic disengagement subsequently weakens civil society and dampens citizens' sense of common purpose (see Barber, 1984; Tocqueville in Bellah et al., 1985). As a consequence, citizens, in what Benjamin Barber might call a 'thin democracy', not only fail to keep a check on state repression, they often demand it. They demand that force be used against perceived threats to their own security.

At the same time, decentralized power and distrust of government can hinder the development of more sophisticated policy instruments; limiting the state's response to crime. In this political context, the prison, a comparatively crude and blunt policy instrument (especially when oriented towards punishment and incapacitation rather than active rehabilitation or training), becomes the obvious response to crime. Imprisonment (based on retribution) fits nicely with populism's common sense approach to social problems. That is to say, retribution – in other words, making lawbreakers suffer for the harm done to society – is grounded in common sense rather than in expert knowledge.

By responding to crime with high rates of imprisonment, California maintains its legitimacy at the expense of one social group: the socially and economically marginalized. Yet, because the state relies on a repressive exercise of power that is internally directed, this crime control strategy fails to promote trust and reciprocity, let alone social cohesion or social solidarity. As a consequence, California returns to imprisonment again and again as it can not extricate itself from this policy loop. It cannot imagine another way to respond to crime. It cannot imagine another way to respond to social conflict and other perceived problems of order.

Washington State: participatory democracy, the practice of parsimony and low imprisonment rates

By the late 1960s, within the context of rising crime, Washington State began its long-term effort to restrict the use of confinement and expand non-carceral sanctions. In the realm of penal sanctions, Washington began to emphasize what the late Norval Morris called 'the principle of parsimony'. That is to say, the state tends to punish offenders with the 'least restrictive (punitive) sanction' possible (Morris, 1974: 59).

From the late 1960s onwards, Washington has consistently turned convicted offenders away from prison by using First Time Offender Waivers, probation and other diversionary mechanisms. By 1980, 75% of all felony defendants received probation (Washington Association of Prosecuting Attorneys, 1980: 2). In the early 1980s, the state adopted sentencing guidelines and explicitly directed the Sentencing Guidelines Commission to come up with alternatives to incarceration (Boerner, 1985). By 2002, Washington ranked first in the nation with the highest percentage of its overall correctional population in community supervision (BJS, 2003a: 2). Today, despite a net increase in imprisonment since the early 1970s, Washington ranks 40th in the nation, imprisoning 262 inmates per 100,000 population, a rate well below the national rate of 429 inmates per 100,000 population (BJS, 2004: 3).

To explain these policies, we need to locate Washington's penal patterns within its particular political context with a focus on the nature of the democratic process in the state. I suggest that Washington's political context encourages a particular way to doing politics that tends to defuse conflict. Through a deliberative democratic process, polity members debate differing policy responses in open forums – forums that emphasize compromise rather than winner-take-all politics. By doing so, this style of politics tends to promote empathy rather than antipathy between different social groups and defuses rather than exacerbates social conflicts and social divisions (see Barber, 1984). As a consequence, in the areas of crime and punishment, polity members, state officials and citizens have tended to prioritize non-carceral sanctions seeking to limit the state's repressive force.

Washington's political context: participatory democracy

By the late 1960s, a participatory mode of governance took hold in Washington State. During this turbulent time of rising crime, anti-war, civil rights and environmental protest, Washington officials feared and documented their own citizens' declining 'faith in government' (Evans, 1966, 1975). Faced with similar historical conditions as California, Washington polity members did not resort to populism's paranoia and insecurity nor co-opt citizens' concerns about crime and poverty, for example, to justify increased state repression. Instead, state officials, under the strong leadership of then Governor Daniel Evans, tried to incorporate citizens into decision making and promote activist governance.

To do so, Washington tapped its deep roots in progressive politics, particularly its roots in the cooperative practices of the farmers' Grange and other 'producerist associations' which transformed Washington's political institutions at the turn of the 20th century (Clemens, 1997: 260). Washington carried these legacies of cooperation, shared power and decision making, and citizen participation in political life into the contemporary era (Evans, 1964; Elazar, 1966; Barber, 1984; Putnam, 2000).

Taken together, we see how Washington approximates a participatory mode of governance. A participatory mode of governance is a set of political structures and political practices based on decentralized power, activist views of government and high levels of civic engagement in political life. In addition to direct democracy measures, citizens participate in political life vis-a-vis townhall meetings, hybrid citizen-state councils and commission, and the state's extensive volunteer program. Washington ranks 10th in the nation in terms of social capital with particularly strong participation in town hall meetings and civic associations (Putnam, 2000) and consistently ranks above national average in voter participation rates in state and national elections held since the mid-1970s (US Census Bureau, 2003; Gray and Hanson, 2004). These political practices and political structures, particularly the routines of debate, discussion, open exchange of ideas and opinions – in other words, the habits of communicative action – tend to strengthen reciprocal and trusting networks. By doing so, these habits encourage compromise and collaboration between the state and civil society in matters of governance (see Barber, 1984; Putnam, 2000).

Participatory democracy's effect on crime control policies and imprisonment

It is in this context, we see Washington's crime control policies emphasize the 'principle of parsimony'. We see an emphasis on non-carceral sanctions and the state's overall resistance to the use of confinement as a response to crime and other signs of social disorder and social conflict.

Similar to other American states, Washington faced high crime rates in the 1960s (Uniform Crime Reports, 2003c). Unlike most other states, Washington came up with street lighting rather than the prison to deal with it. A hybrid citizen-state council, the Washington Citizen Council, proposed these 'situational' crime control techniques to transform the environment rather than reform or punish criminals to decrease opportunities for crime (e.g. car alarms, credit cards, motion detectors) (Washington State Citizens Council on Crime, 22 February 1966; Clarke, 1997).

Consider another example. In the 1960s, when faced with rising crime the Central

District, a predominantly poor black neighborhood in Seattle, the state sought ways to improve the living conditions of black and other minority communities rather than criminalize poverty. The state established a hybrid citizen–state commission, the Washington State Commission on Causes and Prevention of Civil Unrest, to discuss, debate and come up with solutions to race discrimination, crime, residential segregation, poor housing and economic marginality. The Commission set up a ‘multi-service center’ that provided ‘outreach, counseling, basic education, vocational and job training, and job placement’ (Washington State Commission on the Causes and Prevention of Civil Unrest, 1968). We should note here that unlike California’s tendencies towards racial exclusion (as partially evidenced by the rejection of Fair Housing in the mid-1960s), Washington tried to address potential racial conflict with acts of political and economic integration. Here we can see how the state’s democratic processes may have redirected potentially explosive race relations away from social conflict and towards political integration. Given Washington’s much smaller black population, it is still crucial to note how these early acts may have provided a buffer against the use of imprisonment as a blunt instrument of racial social control.

Consider another significant example. In the mid-1980s, after nearly 20 years of debate, discussion and extensive public hearings among political figures, professionals and ordinary citizens, Washington adopted Sentencing Guidelines. Washington’s Sentencing Reform Act 1983 phased in presumptive sentencing, explicitly linked sentencing to prison capacity, and charged the Sentencing Guidelines Commission to come up with alternatives to incarceration. By doing so, Washington emphasized proportionate sentences, non-carceral sanctions and created an institutionalized mechanism to control and limit prison growth.

By turning to Washington’s democratic process, we see how citizen participation, the deliberative process and the open forums of the townhall meetings and public hearings, may have influenced the substance and trajectory of the state’s policy priorities. Washington held extensive hearings around the state to find out how the public felt about the Sentencing Guidelines Commissions report on sentencing reform. Space constraints do not allow a full accounting of citizens’ comments and policy suggestions, but we can see from a few poignant examples, citizens overwhelming favored non-carceral sanctions.

Of course, many participants favored stiff penalties, victims advocates such as Family and Friends of Missing Persons and Violent Crime Victims in particular. Yet, by the end of this long-term process, a consensus emerged that favored alternatives to imprisonment as the main penal sanction for all sorts of crime categories. In her testimony, Margaret Casey of the Washington State Catholic Conference argued that prison should be the ‘last resort’. Jonathan C. Nelson, former inmate and Lutheran pastor, agreed and described prison and jails as ‘vile septic system’ where ‘a-social people’ are made worse by ‘the acid that prison represents’. Bart Haggin, a citizen, captured the dominant sentiment expressed at public hearings: ‘I hate to see concrete and steel as the answer rather than reform’. Kitty Gillespie, citizen, testified that it was a ‘myth that prison construction will decrease crime’; Tina Peterson, citizen, argued that the ‘state can’t afford to imprison all offenders’ and so ‘alternatives are needed’ (Washington State Sentencing Guidelines Commission Public Hearings and Written Comments, 1981–1983).

Mary Ann Connelly of the League of Women Voters, Janet Rice of the King County

Public Defenders, Donna Schram of the Sentencing Guidelines Commission and Washington Council on Crime and Delinquency, Maria Lindsey a citizen, Gerard Sheehan of the ACLU, Margaret Casey of the Washington State Catholic Conference, Lamont Smith a criminologist and associates of the Catholic Prison Jail Ministry and Unitarian Universalist Service Committee all testified and advocated for alternatives to incarceration, proposing community sanctions and increased use of probation instead of confinement (Sentencing Guidelines Public Hearings and Written Comments, 1981–1983).

Washington summary

For well over 30 years, Washington has maintained relatively low reliance on confinement by pursuing non-carceral sanctions such as probation, waiver programs and alternatives to imprisonment, and has limited growth by linking sentencing to prison capacity. While Washington has in recent years created stiffer penalties, passed three strikes legislation and tough sex offender legislation, this legislation has been drawn quite narrowly and has not significantly impacted the prison population (Austin et al., 1999; Washington State Sentencing Guidelines Commission, 2003; Washington State Public Policy Institute, 2003).

I suggest that Washington's participatory mode of governance has created a way of doing politics that prioritizes low reliance on confinement even in the face of increased crime rates and racial unrest. Increased civic engagement, decentralized power and activism have encouraged a more deliberative policy making process based on participation and compromise rather than winner-take-all politics. Citizens and civic groups have been incorporated into long-term decision making. I suggest that these acts of political integration encourage actors to take one another seriously, make compromises, diffuse conflict, and express empathy rather than antipathy (Barber, 1984; Putnam, 2000). By doing so, this style of governance facilitates networks of trust and reciprocity not only among social groups but between the state and civil society (Putnam, 2000).

Participatory democracy tends to promote empathy rather than antipathy between different social groups and defuses rather than exacerbates social conflicts and social divisions. In this context, citizens are less willing to incarcerate one another because incarceration implies that the state and civil society cares little for the social groups who will suffer under it. Additionally, Washington's mode of governance creates a permeable boundary between the state and civil society best exemplified by the state's extensive reliance on the hybrid citizen–state councils and commissions. This permeability can dampen actors' willingness to incarcerate because imprisonment, understood as raw form of state power, amplifies the colonizing and repressive powers of the state – practices that infringe upon individual liberty and quite possibly break trust.

New York State: pragmatism, managerialism and medium imprisonment rates

From the mid-1960s onwards, New York State pursued a managerial response to crime and other perceived problems of order. Unlike California's more indiscriminate use of imprisonment, locking up petty thieves and parole violators alongside muggers and murderers, and unlike Washington's more restrictive use of imprisonment, New York tends to use imprisonment strategically, imprisoning certain classes of offenders and

uses non-custodial sanctions for others. In other words, New York tends to be choosy but not shy about sending criminals to prison. Specifically, New York fills its prisons with violent felony and drug offenders, particularly drug dealers, rather than property offenders, parole violators and other low-level offenders.

In 2000, for example violent and drug offenders made up over 83% of New York's prison population, 53.4% and 30% respectively, whereas property offenders made up 15% (New York State Department of Correctional Services).² These figures contrast with the national average of 48% violent offenders, 20% property offenders and 20% drug offenders in US prisons (BJS, 2003b). At the same time, despite its notoriously stiff drug penalties, New York has maintained a medium rate of imprisonment. The state falls below the national average for 22 of the 33 years under study between 1971 and 2004 (BJS, 1990, 2004). Currently, New York's imprisonment rate, 343 inmates per 100,000 population, currently ranks 30th in the nation, a figure below the national average of 429 inmates per 100,000 population (BJS, 2004).

New York's political context encourages a particular way of doing politics that tends to emphasize pragmatic responses to conflict and prioritize managerial responses to complex policy problems. Here the state's legitimacy hinges upon its ability to appear useful and responsive to context-specific problems rather than as a carrier of a particular ideology. As a consequence, the state has tended to develop a managerial cost-benefit approach to crime control. That is to say, the state tries to calculate the appropriate degree of force to use in response to crime based on the perceived risk and estimated cost of the response (Feeley and Simon, 1992; Bottoms, 1995; Garland, 2001). In this context, drug crimes necessitate an extreme response as they are perceived to be highly contagious, breeding more crime, infecting entire communities whereas lower level offenses are considered fairly innocuous and do not require the use of custodial resources. Bypassing concerns about moral depravity and social deprivation, New York tends to use more or less confinement to quarantine perceived contagions rather than to strictly punish wrongdoers or rehabilitate incorrigibles.

New York's political context: elitist pragmatism

By the late 1960s, New York's pragmatic governance was in full swing under the strong leadership of Governor Nelson A. Rockefeller. A pragmatic mode of governance is a set of political structures and political practices based on a high degree of centralized power, a high degree of state activism and lower levels of civic engagement. As noted, New Yorkers do not vote as often as the national average (Gray et al., 1983, 1990, 1999; US Census Bureau, 2003) nor participate as much in town hall meetings and civic associations (Putnam, 2000). New York ranks 34th in the nation in terms of social capital (Putnam, 2000). Without direct democracy measures and without much civic engagement in political life, New York governance is dominated instead by state elites, government officials, technocrats and elected officials. Decision-making power tends to be concentrated in the executive branch as governors, without limits on terms of service, can maximize their high degree of institutional control over the budget, appointments and vetoes to shape the substance and trajectory of public policy (Beyle, 2004: 212).

New York's pragmatic mode of governance emerged out of the Progressive Era. Inspired by the momentum of social reformers and state builders, New York progressives such as Theodore Roosevelt, Charles Evans Hughes and Alfred Smith and other

state actors, challenged the dominance of patronage politics, partly suppressing the politics of cronyism, corruption, private interest and other abuses of power (Peirce and Hagstrom, 1983). In order to reclaim decision making power and regain control of the state, New York concentrated power in the executive branch, centralizing political authority (New York State Constitution; Liebschultz et al., 1998; Schneier and Murtaugh, 2001; Beyle, 2004). We should note that in contrast to California and Washington, states that decentralized power in response to patronage politics, New York centralized decision making. Within a decade, New York had established its enduring pragmatic governance and subsequently laid the foundation for New Deal politics, a mode of governance that would eventually transform national state policy and politics (see Skocpol and Finegold, 1986; Clemens, 1997; Amenta, 1998).

New York's pragmatic governance is made up of a high degree of state activism. In other words, the state is considered legitimate the extent it is considered useful. Rather than an entity to be feared or scaled back, a utilitarian state can be put to work to solve emergent social problems and at times, improve social conditions (Nichols, 2001). Informed by Progressive sensibilities of efficiency and rationality, New York has developed a more regulatory and interventionist style state based on technical and practical responses to emergent social problems (McGovern, 1998). Over time, New York has created a fairly extensive state apparatus but created one that is oriented towards the public welfare rather than personal gain. As a result, the state has tended to provide public policies that are fairly generous by American standards. New York consistently outspends the national average on general expenditures, which include education, social services and public safety spending. For example, in 2000, New York spent over US\$7.4 million per capita on general expenditures, a rate much higher than the US\$5.3 million per capita national average, California's US\$5.8 million per capita and Washington's US\$5.7 million per capita (US Census Bureau, 2004). As a pragmatic state, New York has tended to provide fairly generous public services not so much for a great love of 'the people', but because it is more efficient to bring the poor along than let them sink the economy.

Taken together, these kinds of habits and routines – centralization, low civic engagement, technical analysis, state activism – exemplify a style of politics that seeks to manage and control conflict rather than facilitate winner-take-all or zero-sum politics. At the same, this mode of governance, dominated by state insiders, insulated from public pressure, can also lead to a slow, laborious policy process, deadlock, and inaction.

Pragmatism's effect on crime control and imprisonment

In this context, high crime rates are particularly threatening to the state's legitimacy as they point to the state's inefficacy – its inability to provide internal security and public safety; the state's most basic duties. In the words of Governor Rockefeller, New Yorkers expect their 'hard-earned tax dollars' to 'produce a correspondingly high level of efficient and economical public services' (Rockefeller, 1973a: 10). In order to shore up the state's legitimacy and to do so quickly, state elites such as the governor, the state legislators and expert driven commissioners, try to find ways to maximize the state's public impact and do so efficiently.

By the mid-1960s, as crime rates dramatically increased, New York had already turned its attention to crime victims. But it did so with financial aid rather than increased penal sanctions. By 1966, New York State, led by a series of expert commissions such as the

New York Commission on the Revision of the Penal Law, created the Crime Victims Board, a new state agency that would administer the new crime victims compensation program (*New York Times* 23 October 1965). Within a year, victims compensation increased five times, from awarding 43 victims US\$55,665 to awarding 220 victims a total of US\$386,585 (New York Statistical Yearbook, 1979: Table L-9). Today, New York maintains one of the most generous compensation programs in the country.³ I suggest that New York's early efforts to incorporate victims into the business of governing may have averted victims' moral protests against an unresponsive state. I also suggest that the state's generous financial response instead of a punitive response may have defused some of the victims' anger and resentment. In contrast, in California, victims' feelings of anger and resentment had been legislated into California's 1967 'great bodily harm' penalty as justification for stiffer penalties.

By the early 1970s, New York state elites turned their attention to criminal offenders but did so in a characteristically managerial fashion. Governor Rockefeller, a series of expert commissions and state insiders such as the New York Temporary Commission on Revision of the Penal Law and Criminal Code, the New York State Commission on Management and Productivity in the Public Sector, the Bellacosá-Feinberg Committee, and the Black and Puerto Rican Legislative Caucus developed and pushed for differentiated penal sanctions – sanctions that included prison sentences for the most violent offenders and alternatives to incarceration for low level offenders (Griset, 1991). With the Second Felony Law (1973), New York institutionalized its differentiated crime control response by sorting repeat and violent offenders into prison and diverting low level offenders away from prison with its 'alternative definite sentence' – a provision that enabled judges to sentence low level felony offenders to fixed short prison terms of less than one year (New York Consolidated Laws, 2004).

Consider another example. The 1973 Rockefeller drug laws, often characterized as a conservative and punitive 'law and order' campaign, I think are better understood as the result of pragmatic governance. The drugs laws exemplify a pragmatic state's persistent attempt to solve a rather narrow policy problem (heroin drug addiction) and do so with restrained force. The drug laws also exemplify a pragmatic state's managerial response to conflict. Following its technical approach to crime victims, New York sought ways to manage and appease potential sources of conflict, to appear responsive to demands and to defuse sources of discontent. Governor Rockefeller in particular tried to enlist the support of African Americans into his anti-drug efforts.

Throughout his 14-year tenure as governor (1959–1973), Nelson A. Rockefeller mobilized the power of the centralized executive branch in order to redirect massive state and private resources towards drug addiction. He considered drug addiction a serious social problem that was 'akin to cancer in spreading deadly disease among us' and 'deserving all the brain power, manpower, and resources to overcome it' (quoted in Underwood and Daniels, 1982: 140). Rockefeller called for a national effort to end drug addiction on the scale of the Manhattan Project. In 1959, he urged the federal government to police international drug traffic to stop the flow of drugs into the country. In the early 1960s, he poured millions of dollars and other state resources into the nation's largest drug treatment program, the Narcotics Addiction Control Commission and continued throughout his administration to expand drug treatment, including methadone programs, drug research and preventive education (Rockefeller,

1971). Through various committees, commissions, task forces and surveys, his administration (with financial aid from Rockefeller's personal estate) continually proposed possible solutions to drug addiction and fulfilled its obligations as an activist state, taking action with concrete programs and policies.

Then in 1973, after a decade long battle, Rockefeller acknowledged that the state had failed to eliminate drug abuse: 'whole neighborhoods have been effectively destroyed by addicts as by invading army' (Rockefeller, 1973a: 21). So in order to stop the supply of drugs into neighborhoods, a practical way to prevent addiction and its associated crime, Rockefeller went after drug pushers. Reversing much of his own and long-time treatment oriented approach to drug addiction, the new drug laws mandated prison terms for felony drug offenses. Criticized for their severity, Rockefeller eventually toned down some of the harshest elements. After extensive discussion with various staff members, administrators and other state insiders, he restored plea-bargaining and parole, sentencing practices he had originally eliminated (Rockefeller, 1973a).

At the same time, many African Americans, the social group most adversely affected by crime and the drug trade, supported Rockefeller's anti-drug efforts. Since the late 1960s, many black activists pushed the state to take a tougher stand against lawlessness in their communities. African Americans wanted the state to fulfill its responsibility and provide protection. Black residents wanted to 'escape the reign of criminal terror' (*New York Times*, 1969a). In the late 1960s, for example, the NAACP Citizens' Mobilization Against Crime advocated stronger law enforcement presence in black neighborhoods and lobbied Governor Rockefeller for stiffer penalties against violent offenders. In 'Harlem Likened to the Wild West', the *New York Times* (1969a) reported that African-American activists sent Governor Rockefeller and the New York State Legislature telegrams supporting increased police presence and minimum prison terms, including five years for muggers.

Well into the late 1960s, many black activists continued to patrol their own neighborhoods in an effort to root out drug dealers. For example, John Shabazz, leader of the Harlem based Black Citizens Patrol, an organization made up of 155 reported members, explained that his voluntary association would try to root out drug dealers from the city's public schools:

We have the names and photographs of pushers . . . and we have people inside the schools to turn over the names to the proper authorities. If they [the police] don't deal with the problem, we will have to deal with it our own way. (*New York Times*, 1969b)

By the early 1970s, African-American community groups, social activists, church leaders and ordinary residents wanted more state action, they want the state to intervene in the drug trade and its associated violence and crime. In support of the stiffer penalties, Reverend Oberia Dempsey of Harlem argued: 'Citizens have a right to be protected. We're being punished [by drug pushers] punishment is being meted against you, me, our children' (News Conference with Governor Nelson Rockefeller, 22 January 1973b). Mrs Spring Anne Bell, a Bronx resident, explained her support: 'What is being done to our youth who fall prey to some unscrupulous pusher is awful . . . our children are dying on rooftops, in dirty basements and hallways' (*Amsterdam News*, 1973a). Similarly, the *Amsterdam News*, the major black newspaper in New York City argued that 'Aggressive state action against narcotics addiction is long overdue'. The *Amsterdam News*

(1973b) supported mandatory life sentences for the ‘non-addict drug pusher of hard drugs’ because as the editors explained, this kind of drug dealing ‘is an act of cold calculated, pre-meditated, indiscriminate murder of our community’. However, the *Amsterdam News* like many African Americans opposed any attempts to criminalize addicts or low-level addict-pushers.

As the above example suggests, I think it is too crude to characterize the drug laws as a blunt instrument of racial social control. Many African Americans, activists, community leaders and ordinary urban residents, wanted more state protection against the perceived threat of drug offenses, particularly against its associated crimes of violence. Unlike California, in New York throughout the 1960s, African Americans were incorporated into polity as the state adopted integrative civil rights policies, pro-black community programs and strengthened anti-discrimination in housing and employment (Lockard, 1968). In New York, African Americans were not passive victims to a repressive state unconcerned about their fate. That said, we should note that African Americans provided legitimating support for the drug laws but many of their specific concerns about drug addicts were ignored. Neither Governor Rockefeller nor the New York State Legislature altered the drug laws to ensure that drug addicts would not be swept up into the prison alongside drug dealers. Inside a centralized state, insulated to a certain degree from public demands, New York state elites may have used black support to their own advantage. By including the social group most likely to be affected by the drug laws but without fully incorporating their demands into policy, state elites still gained strategic support for the drug laws. They sought to manage the problem by minimizing opposition. By taking into account the political context in New York, we gain a richer understanding of the complex racial dynamics involved in crime control policies – an understanding that is grounded in empirical realities.

New York summary

Taken together, New York’s pragmatic governance – that is to say, its high degree of centralization, activist political practices, dampened civic participation, heavy reliance on expert knowledge and scientific inquiry and dominance of state elites in decision making – creates a political context within which the state pursues technical or managerial approaches to policy problems. In this context, the pragmatic state shrewdly calculates the degree of responsiveness and compromise necessary to maintain legitimacy. In other words, the pragmatic state seeks to use state power efficiently and deliberately. Because of which, the state is less likely to overindulge in democratic participation and it is less likely to overindulge in repressive exercises of state force. Since the state does not pursue democracy for its own sake the state must show itself to be useful to maintain legitimacy. With its strong activist component, the pragmatic state seeks to intervene in and respond to crime and other perceived problems of order with technical rather than crude or vulgar responses. The state prides itself on its expertise and scientific engagement with social problems and is therefore less likely to pursue strictly punitive responses, considered crass and unscientific. As a result, we see a highly differentiated response to crime and differentiated penal sanctions.

In contrast to mass imprisonment, an indiscriminate use of state power, New York’s differentiated use of confinement is a highly disciplined use of state power. The removal of violent and drug offenders from the community is an immediate display of state

action and state competence. The state moves quickly to remove contagious threats from communities. Violent and drug offenders are quarantined (but not cured) to maintain the health and viability of surrounding communities. Rather than invest in long term social engineering, rehabilitation, or even crime prevention, imprisonment is a visible and quite dramatic expression of state action. Without delay, the state tells its citizens that it takes its duties and obligations seriously. Differentiated imprisonment efficiently provides internal security, re-enforces the legitimacy of the state.

CONCLUSION

By the late 1960s, the American states faced some of the most difficult governing conditions of the 20th century – high crime rates, contentious racial politics and challenges to New Deal pragmatism – conditions that challenged the meaning and practices of democratic governance. Rising crime became particularly troublesome to American state governments since it undermined their authority. High rates of crime questioned the states' competence and willingness to provide internal order and security, the most basic duty of governance. In this moment of political turmoil, American states transformed the nature of governance, changes that had ongoing and lasting effects on state imprisonment policies.

Some states like California turned to populism, specifically anti-statism, and intensified reliance on confinement in order to bring about a new social order based on exclusion. Other states like New York clung to pragmatism, stretched activist governance to its limits, and deployed a strategic use of confinement to restore social order with minimal force and maximum legitimacy. In contrast, Washington solidified its tendencies towards participatory governance, gave up state power and tightly linked active citizen participation to the maintenance of social order, which subsequently led to low reliance on confinement.

The findings complicate conventional accounts of American imprisonment. Following the work of Garland (2001), Beckett and Western (2001) and Wacquant (2001), this article has suggested that crime rates, contentious racial politics and state regulation of social marginality do indeed matter to the rise and fall of American imprisonment. But a close examination of California, Washington and New York has also shown that these social forces – crime rates and racial politics, for example – have different effects in different political contexts with varying effects on imprisonment. Similar to the work of Savelsberg (1994) and Simon (1993, n.d.), this article suggests that the state, political institutions and practices of governance are *necessary* components to our explanations of punishment patterns. However, this article has suggested that it is not the state alone that accounts for imprisonment variation, but rather the dynamic interaction between the state and civil society. In other words, I claim that the democratic process itself must be incorporated into our accounts of punishment. Civic engagement, the intensity and its character, has consequences for how and why states use confinement against their own citizens. Increased citizen participation can actually set limits on state reliance on confinement. Increased democratization does not necessarily lead to mass imprisonment as Zimring et al. (2001) have argued.

The findings suggest that how states responded to black civil rights has had a lasting effect on the use of imprisonment. Space constraints do not allow for a full account,

but the Civil Rights Movement has had a profound effect on American social and political life. Activist states such as Washington and New York formulated pro-civil rights policies that tend to keep imprisonment rates lower than states that continued to exclude blacks from full citizenship. New York and Washington, for example, integrated blacks both politically and economically through a wide range of state policies (e.g. anti-discrimination laws, education, employment). Over time, these incorporative measures can defuse periodic racial conflict and latent hostilities. Black political participation in state governance provides a crucial buffer against the use of imprisonment as a blunt instrument of racial social control.

More research, especially cross-national comparison, is needed to further develop the point that higher levels of civic engagement may lead to lower imprisonment rates. It is possible that additional comparative historical research in other political contexts may lead to contradictory findings. But at this point in time, we simply do not know enough about how different democratic states rely on confinement differently and how variations in institutionalized power, activist governance and citizen participation, may actually explain those differences. Additional research can only help us refine our understanding and explanation of causal processes that lead democratic states to solve problems of order with imprisonment.

Acknowledgements

I would like to thank David Garland, Malcolm Feeley, Jonathan Simon, David Greenberg, Joachim Savelsberg, Edwin Amenta and the anonymous referees for helpful suggestions on earlier drafts. Research for this project was funded in part by the National Science Foundation (Doctoral Dissertation Improvement Grant SES 0001992) and the Rockefeller Archive Center.

Points of view expressed in this paper are those of the author and do not necessarily represent those of the NSF or the RAC.

Notes

- 1 A proper analysis and explanation of state formation is well beyond the scope of this article, but I mention these transformations in order to call attention to: (1) the rich variation of democratic practices in the USA, often overlooked in the literature; (2) the ongoing nature of state-building; (3) and to challenge the common perception of state structures as highly static variables. Although states tend to form stable and long-term configurations, they rarely submerge past policies or past structures (Pierson, 2003), and they are open and quite vulnerable at times to major change (Clemens, 1997; Amenta, 1998), especially since the meaning of democracy itself is not settled, fixed or universal.
- 2 We should note here that while the New York State Department of Correctional Services classifies burglary as a violent felony offense, for comparative purposes, I have calculated burglary under property offenses. I have done so in order to make more meaningful comparisons across cases and across offense type with data from the California's Department of Corrections, Washington's Department of Corrections, and the US Bureau of Justice Statistics.
- 3 We should note that even though it was an innovator in compensation, California maintains one of the stingiest victims compensation programs in the country –

California caps awards at US\$6000 whereas Washington caps at US\$20,000 and New York does not cap awards (Marion, 2002: 117).

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