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STATES, INCARCERATION, AND ORGANIZATIONAL STRUCTURE

Towards a General Theory of Imprisonment

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I. Introduction

Comparative researchers have converged upon a strong, but under-specified, consensus that "institutions matter" regarding the causes of imprisonment and the rise of mass incarceration. A large and growing body of consistent research reports a robust correlation between socio-political institutional types on the one hand and criminal justice outcomes on the other. Nations with similar economic and political institutional regimes tend to possess similar criminal justice systems and relatively similar punishment outcomes including prison population rates.[1] However, contrasting theoretical perspectives yield different conclusions regarding the ultimate causes of prison growth and mass incarceration. What particular institutional types shape prison population rates, and through what causal processes, remains unresolved. This chapter attempts to make progress towards a generalizable framework designed to foster better understanding imprisonment.

The currently dominant view explains mass incarceration's timing and magnitudes with reference to political efforts intended to effect class- or race-based social control.[2] I will refer to this paradigm as the "social control model." In contrast, a growing body of research accounts for patterns of imprisonment with reference to organizational dynamics and the systemic potentials for error across different degrees of institutional centralization.[3] I will call this latter framework the "government failure model."

Are high incarceration rates primarily the result of political efforts to maintain dominant power and social control? Or is excessive prison growth better understood as an unintended consequence of certain bureaucratic organizational patterns? Are the consequences of supposed "mass incarceration" a failure of societal preferences and political bias, or is mass incarceration a unique form of governmental failure more likely given some organizational arrangements than others? The respective implications and constituent features of these alternative frameworks can be investigated against the empirical record.

Given the well-established economic and social consequences of mass incarceration,[4] proper answers to these questions carry substantial implications for guiding reform efforts. If prison growth

is primarily the result of attempts to achieve or maintain social control, then political activism and cultural change are likely needed to reshape outcomes. If mass incarceration instead stems more from incentive arrangements more prevalent within some institutional types than others, then reshaping outcomes may be a more difficult and complex process. If the government failure approach is correct, traditional forms of democratic action may prove ineffective against or even contributory to continual prison growth.

I apply a standard of generalizability to adjudicate between these contrasting frameworks. In an ideal world, fully detailed and accurate measures of imprisonment across times and places would allow for more rigorous causality tests. Given the limitations of currently available data, I argue that prison growth should at least be understood from the vantage point of whichever framework most accords with the best available evidence. At least there now exists a growing body of increasingly more precise and accurate forms of empirics surrounding crime and punishment trends historically and at the cross-national level. The preferred model for comprehending the causes and consequences of imprisonment ought to fit most compatibly with these stylized facts and to require the least degree and quantity of ad hoc adjustments.

To understand which alternative theory is more generally compatible with real imprisonment patterns, I investigate a variety of evidentiary sources, both qualitative and quantitative. I survey the available theory and evidence supporting and challenging each of the two contrasting approaches. I also summarize research surrounding the historical origins of prisons and punishment by incarceration. Where and when were prisons first constructed, and for what purposes? Last, I survey cross-national empirics and related historical research to describe the organizational dynamics of prison development and prison growth.

In summary, these sources stand in substantial contrast to the social control model. Furthermore, the government failure model can be fitted to account for a broader sample of the available evidence. Thus, I propose a spectrum of organizational centralization that better accords with the observed patterns of imprisonment and contemporary trends of mass incarceration. In short, societies appear to commit more material and financial resources towards imprisonment where and when criminal justice institutions are more centralized and hierarchical.

These findings are of particular relevance to anarchist theory and the interested readers of this volume. First, the government failure model broadens the relevant sample of social contexts to include and account for stateless social orders, whereas the social control model tends to focus more exclusively on advanced western democracies. Second, because of this recognition regarding the potentials and limits of statelessness, this framework has the ability to engage normative arguments surrounding prison abolitionism in ways typically unaddressed.[5]

Normative commitments that preclude the role of formal state authorities thus also conveniently avoid the social consequences of and normative concerns raised by mass incarceration. Similarly, as David Boonin has noted, the practical potentials of punitive norms within stateless contexts serve as a unique challenge to the typical justifications for state-based provisions of criminal punishment.[6] Supplanting the social control model of imprisonment with the government failure model establishes a unique standard for the broader justification of state authority. Any punitive paradigm beginning from the presumption of state necessity and or legitimacy must also address and respond to the potential social consequences and normative dilemmas associated with prison growth and excessive imprisonment. I argue that this adjustment in how the causes of imprisonment are best understood would thus reshape much of our normative reflection on criminal punishment. Rather than focusing on debates regarding how to properly justify criminal punishments given state legitimacy, political philosophy must engage the more practical constitutional project of explaining how to justly limit state authority while minimizing systemic errors such as mass incarceration.[7]

The remainder of this chapter is organized as follows. Section II summarizes the social control model as the dominant framework for understanding imprisonment and prison growth historically and across social contexts. Section III summarizes a variety of contemporary research and findings that raise substantial doubts about the generalizability of the social control model. Several of the direct implications within the social control model stand at odds with the available evidence. Section IV provides the outline of an alternative model of government failure for better explaining imprisonment trends. Section V offers some concluding remarks.

II. The Social Control Model

The social control model carries at least three related implications. First, crime rates do not sufficiently explain the patterns of imprisonment. Second, prison growth in the modern era and across developed nations is conspicuously correlated with free market capitalist ideology or public policies. Third, especially in the American experience, mass incarceration was instigated and buttressed by race- and class-based animosities.

One of the most confirmed claims of the dominant social control model is that imprisonment trends are not sufficiently explained as a byproduct of real crime rates. In other words, it does not appear to be the case that prisons were originally designed or constructed or subsequently expanded because of a real societal need for crime control. Instead, it is argued that imprisonment historically provided a unique technological opportunity for the concentration of power. Hence, the subsequent implications of the social control model draw more attention to the particular identities of powerful interest groups: predominant owners of capital and racial majorities. This initial claim about the insufficient explanatory power of real crime trends is not necessarily new, nor is it necessarily unique to the social control perspective. In fact, many alternative models of imprisonment accept that contemporary imprisonment patterns cannot be fully explained with reference to real crime rates.[8]

Michel Foucault popularized the idea that incarceration ought to be understood alongside a fuller awareness of power structures.[9] Drawing on Jeremy Bentham's[10] model of panopticism, Foucault explains: "The whole machinery that has been developing for years around the implementation of sentences, and their adjustment to individuals, creates a proliferation of the authorities of judicial decision-making and extends its powers of decision well beyond the sentence."[11] In short, incarceration not only levies penalties upon criminals but also provides a mechanism for authorities to both deter and encourage entire swaths of human and group behaviors.[12] Furthermore, the disciplinary role of the criminal law provides a technologically unique form of power reserved to governments in the modern era. With such power came a similarly unique and often exploited opportunity for the expression and satisfaction of private and political interests.[13] The social control model implies that the increased usage of incarceration reflects these tendencies towards the achievement and exercise of power rather than alternative explanations framed in light of such factors as real societal needs or supposed moral progress away from brutal penalties and towards humane alternatives. (Foucault famously rejected this latter explanation.)

Foucault drew heavily on the work of Rusche and Kirchheimer, who viewed the growth of imprisonment in conjunction with unemployment trends.[14] Prisons, they argued, helped to ameliorate the social problems associated with surplus labor conditions amidst post-industrial business cycles. Criminal justice via imprisonment was said to provide effective monitoring and deterrence against idleness, criminal opportunism, and organized revolt. Thus, prisons were also thought to assist in the maintenance of a relatively willing and docile industrial labor force.

> [T]he punishment of crime is not the sole element; we must show that punitive measures are not simply 'negative' mechanisms that make it possible to repress, to prevent,

> to exclude, to eliminate; but that they are linked to a whole series of positive and useful effects which it is their task to support.[15]

Thus, on this view the criminal justice system writ large and incarceration in particular ultimately serve to preserve concentrations of wealth and privilege.

Subsequently, more contemporary writings have extended this general theme of prisons as a mechanism for social control with foci on class inequality, mass incarceration, and racial disparity. Wacquant and Garland emphasize the relationship between prison power and economic inequality.[16] Western highlights the strong correlations between economic inequality, criminality, and race in the American experience. And, most notably, Alexander argues that the criminal justice system has supplanted the Jim Crow legal regime as a means of maintaining white dominance over the black community.

This social control model is the more prominent view today, with some or all of the following observations typically seen as supporting it. First, imprisonment supposedly became the standard practice of criminal punishment as and where the Industrial Revolution occurred. In particular, Britain in the late eighteenth and early nineteenth centuries served as the spawning ground for the Industrial Revolution, the Scottish Enlightenment and Bentham's related ideas, and the rise of incarceration as the default form of criminal punishment. Second, the contemporary trend of mass incarceration seems conspicuously related to American practice. It is well established that the net amount and per capita rate of incarceration are greater in the United States than in any other developed nation.[17] Furthermore, as the world's only economic and military superpower, the United States is also perceived as an influencer and disseminator of specifically neoliberal policies and ideology. Presumably, the cross-national patterns of prison growth reflect American influence. In this vein, contemporary expressions of neoliberalism are seen as a consistent extensions of the social control methods used during the Industrial Revolution.[18] Benthamite models of "panoptic" discipline obtained in factories and prisons alike during the eighteenth century; proponents of the social control approach suggest that contemporary neoliberal policies leverage similar incentive systems, featuring monitoring and graduated sanctions, to assure domestic economic performance, international free trade, and the privatization of traditionally public services.[19] Excessive prison population rates result from the policies of neoliberal democratic regimes. Countries with stronger cultural legacies of individualism and more legal and political commitments to free markets tend to host larger prison population rates than do more interventionist and socially redistributive regimes.[20]

Lastly, the social control model suggests that US prison growth resulted in large part from the anxieties of wealthier white voters. Mass incarceration appears to have become a prominent feature of American life in the wake of the civil rights movement, the rise of national political campaigns focused upon law and order, and the war on drugs. Enns demonstrates the strong link between increases in punitive attitudes and public opinion trends.[21] Wasow further shows conspicuous correlations between changes in partisan voter support and their proximity to racially motivated riots.[22] As Clegg and Usmani explain: on the social control model, "American mass incarceration was the means by which white America re-established a system of racial control that had been threatened by the civil rights movement"; they note "more than 150 studies that offer support … and only a handful … that dispute it."[23]

III. What the Social Control Model Cannot Explain

Several of the basic components and implications of the social control model have been in place for decades. But the increased availability of better empirical evidence gives us the opportunity to verify or challenge this dominant paradigm and its constituent claims. In light of this evidence,

I argue that the social control model does not effectively account for the full range of global and historical imprisonment patterns.

First, the early observation that the invention and systemic adoption of incarceration as a standard form of criminal punishment coincided with emergence of Enlightenment ideas and the Industrial Revolution isn't simply inaccurate; but it isn't fully accurate, either. As Spierenburg has demonstrated, imprisonment was first leveraged as a punitive technique within Scandinavian territories prior to the British experience.[24] Scandinavian imprisonment seems to have emerged more as a product of state convenience than as an attempt at full-fledged social control. The first prison facilities were remnant military outposts in which suspected and tried criminals could be housed and monitored at minimal additional social cost or security risk. Similar military spillover effects have shaped the forms and magnitudes of criminal justice techniques and protocols throughout history.[25]

The available evidence doesn't simply contradict the social control model. The milder claim, that the desire to control crime doesn't suffice to explain imprisonment, remains well supported,[26] as does the implication that imprisonment does serve some social control function or functions. Furthermore, it is undisputed that Bentham's designs were highly influential in England and subsequently inspired similar facilities throughout the developed world and especially the United States.[27] However, details regarding the *mechanism* of military resource abundance also complement the recognition that the rise and proliferation of incarceration across primitive contexts coincided with episodes of developed and enhanced state power and capacity.[28] Thus, this evidence alone leaves open the question of the merits of alternative frameworks for understanding incarceration.

Another implication of the social control model potentially reaffirmed or challenged by more recent and detailed evidence is the supposed relationship between the rise and expansion of incarceration and the emergence of global capitalism, neoliberal ideology, and free market public policies. The most obvious confirmatory pieces of evidence compliment the social control model's original narrative linking the rise and proliferation of incarceration to the Enlightenment and developments associated with the early Industrial Revolution. Mass incarceration is most apparently concentrated in the latter-twentieth-century United States. There is strong and detailed evidence of increased punitive preferences amongst voters in this setting.[29]

Recent empirically rooted efforts to establish an institutional framework for understanding cross-country patterns of imprisonment have reported greater prison population rates in nations identified as "neoliberal market democracies." By contrast, more corporatist or socially democratic states apparently host proportionally smaller prison populations.[30] (In this context, "neoliberalism" is defined as "almost the opposite of … the standard meaning of the word 'liberal' when applied to American politics. 'Neo-liberalism' refers to the (politically conservative) late twentieth-century revival of the nineteenth-century approach of economic liberalism, based on free-market capitalism."[31])

Sorting real political regimes into relevant conceptual categories is a difficult task, as objective and quantifiable measures of the salient institutional features and their criminal justice correlates are lacking.[32] When larger data sets are used alongside more sophisticated statistical techniques, a number of findings emerge which don't appear fully consistent with the social control model. First, long-standing claims regarding the contextual influence of unemployment cycles on crime and imprisonment trends cannot be confirmed.[33] Results are mixed, and don't appear strongly consistent *or* inconsistent with the social control model. Some researchers find that unemployment mildly coincides with prison growth,[34] while others find the opposite.[35] Similarly, several studies have reported that it is difficult to verify any consistent or positive relationship between prison population rates and objective measures of free market capitalism. Neither the aggregate size of the economy, growth trends, nor formally measured indexes of capitalism or economic

freedom are robustly or significantly correlated with prison population rates.[36] In contrast, the largest and most sophisticated empirical investigations available report that the institutional feature most correlated with contemporary prison largess is years under socialism.[37]

The racial implications of the social control model have also been empirically assessed. While Alexander and others have argued for a causal link between racial anxieties amongst white voters and "tough on crime" political campaigns, the war on drugs, and increases in punitive attitudes and policies, a number of recent studies offer a picture of the development of current criminal justice policies that is more complicated than the one offered by proponents of the social control model and in which racist and right-wing attitudes play less central roles.

It is well established that American voter opinion became more punitive *prior to* as well as in conjunction with the rise of mass incarceration.[38] The usual caveat that correlation does not imply causation correctly applies here.[39] Furthermore, the implication that punitive opinions are foundationally or primarily motivated by racial anxieties is also less certain than proponents of the social control model have assumed. Wasow demonstrates a measurable link between the potency of violent riots amidst the civil rights era and switches from predominant support from Democratic to Republican candidates in proximate counties. Thus, from the impact of racial anxieties on increased imprisonment apart from the influence of real crime and violence is difficult. The link between specifically conservative and white opinions and punitive attitudes is also less clear than proponents of the social control model have supposed. Murakawa shows the pervasive nature of punitive attitudes on the part even of progressive Democratic candidates[40] and Forman Jr (2017) highlights the embrace of such attitudes even by black political leaders.[41] Similarly, Clegg and Usmani, investigating the impact of race on the adoption of punitive policies and incarceration outcomes, conclude that the available "evidence supports a revisionist view which emphasizes that crime [also] shaped black preferences."[42]

The supposed link between specifically American mass incarceration rates and racist intentions is also challenged by comparative cross-national and historical observations. Tonry noted that England, Australia, and Canada all had larger black-to-white inmate ratios than the United States in 1994.[43] Cases drawn from varied histories, cultures, and contexts suggest that, as a general matter, economically disadvantaged ethnic minorities tend to be over-represented in prison populations. Disparate impact may be an inherent component of imprisonment. However, existing rates of racial disparity, though disconcerting, are not prima facie evidence that racism operates as a foundational or predominant cause of prison growth.

IV. The Government Failure Model of Imprisonment

In this section, I develop a preliminary framework for understanding imprisonment as a form of government failure. Furthermore, I argue that this alternative paradigm better accords with the historical and contemporary evidence related to prison population rates. The government failure model posits that prison outcomes are related to the organizational patterns of different criminal justice institutions.

A large and consistent body of theory and research explains the relationships between the dynamics of alternative internal decision-making processes and the effectiveness of these processes across differently organized institutions. First, the concentration of organizational hierarchies within governments helps to explain how effectively decision-making processes promote economic growth.[44] Differently organized systems vary in their respective potentials for error correction and feedback. With discretionary authority concentrated in more centralized decision-making nodes, hierarchies tend to find it more difficult to identify and respond to errors than do polycentric systems.[45] More hierarchical organizations thus tend to err more by suppressing otherwise "good" proposals, whereas polycentric systems err more by permitting a greater

number of "bad" proposals.[46] Furthermore, hierarchical bureaucracies tend to suffer from greater inefficiencies resulting from rent-seeking and capture.[47]

Can we extend this general account of institutional dynamics to account for imprisonment outcomes? What are the relevant decision-making processes and how do these processes deal with ineffective or otherwise undesirable policy proposals in the criminal justice context? What alternative responses to criminal behavior might help to avoid and or reduce mass incarceration outcomes?

A credible organizational theory of imprisonment should carry some verifiable implications. We should expect that social environments with more centrally managed criminal justice systems would feature more challenging processes of error correction and greater proneness to bureaucratic inefficiencies and rent-seeking when compared with polycentric alternatives. Polycentric criminal justice systems would err more in so far as they made possible a variety of criminal justice regimes that did not necessarily preempt or alleviate mass incarceration, and some jurisdictions within polycentric systems could also perhaps be expected to punish insufficiently. Furthermore, hierarchically centralized criminal justice systems would err by suppressing punishment strategies that could otherwise successfully avoid or reduce mass incarceration.

Before investigating these specific implications, we must first understand patterns of institutional organization through history and across countries more adequately. Which social environments possess more hierarchical criminal justice systems and which possess more decentralized structures, and how is the existence of such structures correlated with known patterns of imprisonment? Two groups of sources provide relevant details. First, qualitative histories can reveal the institutional breadth and variety of social environments prior to the development and proliferation of incarceration and prior to the recording and accumulation of accurate imprisonment measures. Second, we have reasonably accurate and detailed empirics related to contemporary imprisonment trends across a relatively wide variety of countries.

While the social control model emphasizes the apparent connection between the invention and proliferation of imprisonment on the one hand and industrialization on the other, the government failure model recognizes that governmental institutions were organized in substantially different ways before and after the origins of the prison and the emergence of industrial society. A consistent pattern of decentralized and informal institutional processes is evident in multiple pre-modern and primitive social contexts. The relevant features include consistent legal standards, graduated sanctions against criminal behaviors, sustainable social orders, and restitution-based penalties.[48] As governments became more formalized as city-states, monarchies, and feudal arrangements, so too did the powers of criminal law enforcement become more monopolized by governments.[49] Hence, when we look comparatively at pre-modern stateless societies on the one hand and early feudal and city state environments on the other, we see the initial predictions of the government failure model supported. Stateless environments featuring informal and decentralized governance processes possessed a variety of punitive norms but lacked large-scale incarceration. Punishment by imprisonment does not seem to have been a prominent response to crime in such environments.

As organizational theory predicts, the effectiveness and desirability of punitive norms and outcomes across individual localities within and across polycentric jurisdictions is a mixed bag. On the one hand, pre-modern punitive norms found within such legal rules orders as Hammurabi's code, Draconian law, and the *Ancien Régime* are well recognized as mandating excessive responses to minor violations. Inversely, it is also well understood that such systems essentially underprotected the rights of members of the lower classes.[50] The early dispersed networks of frontier spaces in the new world similarly lacked the enforcement and policing potentials associated with the later rise of centrally coordinated oversight and federal authority.[51] The operations and outcomes of early, formalized state governments are also consistent with the predictions of basic

organizational theory. With the emergence of widespread punishment by imprisonment, state authorities were capable of expanding their legislative discretion, taxing powers, and territorial reach.[52]

To further investigate the implications of organizational theory requires broadening the sample of comparative imprisonment contexts. The organizational forms of contemporary nation-states are more varied than those observed in the early modern legal era. The structures of contemporary nation-states exhibit a broad range of varied organizational characteristics, though there are no precise quantitative metrics of the hierarchical or decentralized character of a government. As D'Amico and Williamson demonstrate,[53] legal origin categories, more than any other organizational characteristics, are strongly and robustly correlated with imprisonment outcomes. As is well documented, such categories serve as reliable proxies for significant organizational features across countries.[54] Contemporary nation-states founded on and committed to the common law possess significantly greater incarceration rates than German civil law, French civil law, or Scandinavian civil law societies.[55] Beyond common-law countries, nations with the longest experiences under communism incarcerate people at the highest levels.

At first glance, the correlation between common legal origins and greater prison population rates appears at odds with basic organizational theory. Common-law countries typically embrace more decentralized organizational patterns such as competitive market economies and stronger protections against corruption and rent-seeking.[56] By contrast, as La Porta, Lopez-de-Silanes, and Shleifer indicate, "civil law is associated with a heavier hand of government ownership and regulation."[57] Yet it appears that this typical relationship between the size of centralized governments and legal origins is inverted with regards to imprisonment outcomes.

To account for the common law's decentralized structure and superior economic performance, Glaeser and Shleifer highlight long evolutionary histories in the course of which decentralized institutions were periodically re-affirmed and re-enforced amidst political and cultural revolutions.[58] Hence, D'Amico and Williamson investigated the long historical processes of institutional selection regarding specifically criminal justice policies, practices, and norms across England, France, and the United States.[59] The organizational patterns typically found within market- and civic-oriented legal processes under the respective common- and civil-law traditions are inverted within the criminal justice systems of each. Criminal justice administration under the common law in the British and American experiences has been a long history of continual centralization. By contrast, persistent decentralization is evident in France. The civic and commercial legal sector in civil-law countries fostered more centralized interventions, rent-seeking, and suppressed economic performance, whereas criminal justice institutions were shaped by stronger commitments to local autonomy and decentralization. Similar observations were made by theorists as early as Beaumont and Tocqueville,[60] and have been reaffirmed more recently by Stuntz and by Hinton. Such sources suggest that the effectiveness of the American criminal justice system is largely dependent on the decentralization of enforcement authority across more localized jurisdictions.

In result, the government failure model leverages institutional theory and criminal legal history to outline a rudimentary organizational centralization spectrum that is applicable indifferent national contexts and that consistently illuminates different nations' respective imprisonment patterns. See Figure 28.1 below.

On the far left side of the spectrum are those societies—for instance, primitive and stateless ones—with both the lowest prison population rates and the most decentralized administrative institutions of criminal justice. On the far right end of the spectrum are those societies—totalitarian regimes, say—with the highest rates of imprisonment and the most intensive forms of institutional centralization.

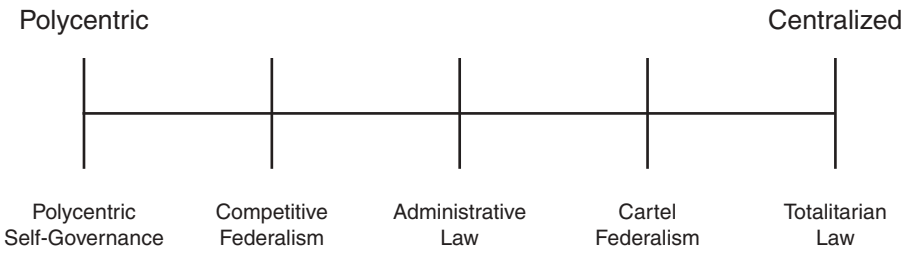

Figure 28.1 Spectrum of legal organization

A consistent arrangement of some intermediate cases within these end points is evident. Polycentric systems that still feature states, such as the overlapping and competing jurisdictions operative in the Anglo-Saxon territories prior to the emergence of the British monarchy, the early American colonies, and the contemporary Swiss cantons are all relatively more centralized than fully stateless orders but still exhibit substantial levels of decentralization. I label this sample of cases "competitive federalism."

Further towards the centralization end of the spectrum are contemporary civil-law jurisdictions such as France, Germany, and the Scandinavian countries. I label these "administrative law" societies. Contemporary common-law countries fit *between* these administrative-law societies and totalitarian societies. These societies were originally decentralized, marked by competitive federalism. However, the criminal justice processes within contemporary common-law jurisdictions, especially the United States, became extremely centralized amidst broader trends of cartel federalism during the latter half of the twentieth century.[61] This framework suggests a consistent relationship between organizational centralization and prison population rates. As criminal justice decision-making becomes more centralized and hierarchical, rent-seeking and bureaucratic growth increase. Simultaneously, discovering, designing, and experimenting with alternative punitive strategies becomes more costly in such cartelized environments than in either the more competitively federalist conditions that preceded them or in civil-law jurisdictions.

The government failure model does not directly contradict to the social control model or its particular implication. Rather, it emphasizes alternative factors as more primarily relevant to the patterns of incarceration and prison growth around the world and throughout history. Whereas the extreme incarceration tendencies of socialist regimes and the potentials of social order observed in stateless environments cannot be consistently accounted for by the social control model, the government failure model does not require ad hoc adjustment in light of these observed features.

V. Conclusion

The governmental failure model is more consistent with the patterns of imprisonment observed around the world and over time relative to the more dominant social control model. These paradigms are not entirely in conflict with one another. However, there are facets of the historical and comparative record that cannot be fully explained from the vantage point of the social control model, but that are well accounted for by the government failure model. In particular, imprisonment was not as tightly linked to the Industrial Revolution or the British experience as many have presumed, nor does any empirical evidence support a consistent relationship between imprisonment and capitalism. Imprisonment emerged across a variety of social settings in consistent conjunction with the rise and formalization of state authority. In addition, most of the contemporary states with

the highest imprisonment rates are nations that endured longer socialist experiences. A consistent spectrum demarcating the organizational properties of criminal justice institutions maps neatly onto the broad sample of incarceration patterns. Communities with more centralized criminal justice institutions tend to foster larger prison population rates.

While the available evidence does not allow confident causal or predictive inferences, the alternative frameworks do have substantially different implications for practical reform strategies. The social control model conveniently implies a need for traditional forms of democratic action. In the face of systemic power imbalances and class-based or racial bias, activist efforts to raise awareness, coordinate voting coalitions, and request legislative reforms from elected officials are the most obvious paths towards positive change. Efforts of this sort have taken place in the United States since at least the mid 1980s, yet mass imprisonment has continued to grow. Today, the national trend has essentially plateaued, with the most tangible cases of successful reform happening at the state level.

The government failure model is less sanguine about the effects of traditional political activism, as electoral political action is less capable of reshaping the organizational dynamics of the criminal justice system writ large. Furthermore, if increased centralization is a significant contributing factor to prison growth, we must inquire if any relationship exists between traditional democratic activism and the potentials for institutional centralization. As Murakawa has noted, support in the United States for consistent tendencies towards centralized criminal justice authority at the federal level and the increased professionalization of police have transcended partisan divides. Opportunities for structural change thus tend to be more limited to instances of exogenous shock or crises.[62]

Though it does not yield tangible reform strategies, the government failure model features substantial implications for the more normative political philosophy of punishment. Whereas the vast majority of justificatory frameworks for criminal punishment begin by assuming the legitimacy of formal state authority, the government failure model exhibits predictive power with respect to both traditional states and stateless societies. Formal governance can be recognized as a step towards the centralization of criminal justice administration. Thus, the government failure model offers a substantial challenge that any justificatory paradigm of criminal punishment must address. How can punitive institutions be arranged justly and effectively given the real potentials for errors of excessive imprisonment? If the potential for abuse is an inherent, inevitable feature of more centralized forms of governance, then any justifications for state legitimacy or the role of punitive authority must take account of this potential. Challenging mass incarceration, then, may seem to prompt critical questions about the state itself.

Notes

1 M. Cavadino and J. Dignan, *Penal Systems: A Comparative Approach* (np: Sage, 2005), 3–30; J. Brodeur, "Comparative Penology in Perspective," *Crime and Justice* 36 (2007): 49–91; N. Lacey, *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies* (Cambridge: Cambridge UP, 2008) 3–55.

2 Clegg and Usmani (2018, 2) identify Alexander (2012), "cited over 6,000 times in just six years," Garland (2002), "cited 9,000 times," and Western (2007), with "2,345 citations," as the sources contributing most substantially to this more popular framework. J. Clegg and A. Usmani, "The Racial Politics of the Punitive Turn" (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3025670; M. Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York, NY: New P, 2012); D. Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (2002); B. Western, *Punishment and Inequality in America* (New York, NY: Russell Sage Foundation, 2007).

3 See W. Stuntz, *The Collapse of American Criminal Justice* (Cambridge, MA: Harvard UP, 2011); E. Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge, MA: Harvard UP, 2017); D. D'Amico and C. Williamson, "The Punitive Consequences of Organizational Structures in England, France and the United States," *Journal of Institutional Economics* (forthcoming).

4 It is worth noting that this essay presumes as a starting point of investigation that "mass incarceration" or exceptionally high prison population rates observed in recent decades (especially within the United States) are at least concerning and likely socially inefficient. While writing amidst the peak of American mass incarceration, economic historian Robert Higgs pointedly explained a possible worst-case scenario: "if the total incarcerated population were to continue to grow by 7.3% annually, it would double approximately every ten years …. Hence in the decade of the 2080s, within the lifetime of many people already born, the prison population would overtake the total population." R. Higgs, *Against Leviathan: Government Power and a Free Society* (Oakland, CA: Independent Institute, 2005) 96.
5 Duff (2017) explains that, despite the fact that "insufficient attention is paid [to it] in the philosophical literature," "in principle, the abolitionist challenge is one that must be met, rather than ignored; and it will help to remind us of the ways in which any practice of legal punishment is bound to be morally problematic." A. Duff, "Legal Punishment," *Stanford Encyclopedia of Philosophy* (2017), https://plato.stanford.edu/entries/legal-punishment/#PunCriSta.
6 D. Boonin, *The Problem of Punishment* (Cambridge: Cambridge UP, 2008).
7 M. Pennington, *Robust Political Economy: Classical Liberalism and the Future of Public Policy* (Cheltenham: Edward Elgar, 2011)
8 E. Glaeser, "An Overview of Crime and Punishment" (2000), World Bank, www.worldbank.org.
9 M. Foucault, *Discipline & Punish: The Birth of the Prison* (New York, NY: Vintage Books, 1975).
10 J. Bentham, *Panopticon* (London: T. Payne, 1791).
11 Foucault 21.
12 Defending the panopticon, Bentham writes explicitly: "morals reformed—health preserved—industry invigorated—instruction diffused—public burthens lightened—Economy seated, as it were, upon a rock—the Gordian knot of the Poor—Laws are not cut, but untied—all by a simple idea in Architecture!"
13 B. Benson, "The Development of Criminal Law and its Enforcement: Public Interest or Political Transfers?" *Journal des Economistes et des Etudes Humaines* 3.1 (1992): 79–108.
14 G. Rusche and O. Kirchheimer, *Punishment and Social Structure* (New York, NY: Columbia UP, 1939).
15 Foucault 24.
16 L. Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham, NC: Duke UP, 2009); L. Wacquant, *Prisons of Poverty* (Minneapolis, MN: U of Minnesota P, 2010); D. Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago, IL: U of Chicago P, 1993).
17 R. Walmsley, "Global Incarceration and Prison Trends," *Forum on Crime and Society* 3.1–2 (2003): 65–78.
18 Wacquant, *Punishing*; B. Harcourt, *The Illusion of Free Markets: Punishment and the Myth of Natural Order* (Cambridge, MA: Harvard UP, 2012).
19 P. Mirowski, *Machine Dreams: Economics Becomes a Cyborg Science* (Cambridge: Cambridge UP, 2002).
20 Cavadino and Dignan; Lacey.
21 P. Enns, *Incarceration Nation: How the United States Became the Most Punitive Democracy in the World* (Cambridge: Cambridge UP, 2016).
22 O. Wasow, "Do Protest Tactics Matter? Evidence from the 1960s Black Insurgency" (2017), working manuscript.
23 Clegg and Usmani 1–2.
24 P. Spierenburg, *The Prison Experience: Disciplinary Institutions and Their Inmates in Early Modern Europe* (New Brunswick, NJ: Rutgers UP, 1991).
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27 D. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston, MA: Little Brown, 1971).
28 E. Peters, "Prison Before the Prison: The Ancient and Medieval Worlds," *The Oxford History of the Prison: The Practice of Punishment in Western Society*, ed. N. Morris and D. Rothman (New York, NY: Oxford UP, 1998) 3–43; D. Allen, *The World of Prometheus: The Politics of Punishing in Democratic Athens* (Princeton, NJ: Princeton UP, 2002); D. D'Amico, "The Prison in Economics: Private and Public Incarceration in Ancient Greece," *Public Choice* 145.3–4 (2010): 461–82.
29 T. Flanagan and D. Longmire, eds., *Americans View Crime and Justice: A National Public Opinion Survey* (Thousand Oaks, CA: Sage, 1996); Enns.
30 Cavadino and Dignan; Lacey.
31 Cavadino and Dignan 15–16. Reflecting contemporary assumptions about neoliberalism, Wikipedia links neoliberalism "with an increase in human trafficking, the traumatization of the working classes, 'belligerent capitalism,' and high incarceration rates in the U.S. which aim at 'keeping unemployment statistics low, and stimulating economic growth through maintaining a contemporary slave population within the U.S. and promoting prison construction and militarized policing.'" B. Caldwell, "The Chicago School, Hayek, and Neoliberalism" (2000), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1356899. Thus it is not only the case that neoliberalism is presented as a causal explanation of mass incarceration, but also that, for some, mass incarceration is inherently baked into the meaning of neoliberal ideology.
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36 J. Neapolitan, "An Examination of Cross-National Variation in Punitiveness," *International Journal of Offender Therapy and Comparative Criminology* 45 (2001): 691–710; J. Sutton, "Imprisonment and Social Classification in Five Common-Law Democracies, 1960–1985," *American Journal of Sociology* 106 (2000): 350–86; Sutton, "Political Economy"; R. Ruddell, "Social Disruption, State Priorities, and Minority Threat," *Punishment and Society* 7 (2005): 7–28.
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