
Varieties of Punitiveness

The Political Economy of Punishment
in Advanced Democracies

Elizabeth Gordon Pfeffer



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Before the law sits a gatekeeper.
- Franz Kafka

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Abstract

This dissertation advances and connects literatures from the comparative political economy, social policy and carceral state traditions in asking when and why governments pursue more punitive policies intended to control crime and other social ills. The work analyzes punitiveness as a concept independent from both crime and incarceration. Perhaps against expectation, incarceration rates do not uniformly track crime rates across countries or within countries over time. Similarly, states often treat like crimes with highly varied packages of prison sentences and rehabilitative measures. Such cross-national and sub-national variation remains underexplored, particularly in political science. This work thus develops an original conception of punitiveness, which it measures with a novel index built from the criminal legal codes of 26 countries. To explain the resultant variation, I evaluate both voters' demand and politicians' incentives to supply punishment. I propose that we must consider how and when politicians and citizens alike make trade-offs between different policy options for crime control: those that work in a reactive, retributive fashion (punishment and incarceration) or those that work in a proactive, rehabilitative fashion (welfare and social investment). I argue that voters are more likely to emphasize punishment when their income is high and risks of arrest or police victimization are low and to emphasize welfare in the reverse situation. Cross-pressured voters may then form unexpected coalitions when the anti-punishment poor align with the rich who perceive higher positive externalities from welfare when living in high crime and inequality regions. Politicians respond to this variable demand differently based on the incentives created by electoral institutions. Under proportional representation systems, for example, politicians are incentivized to distribute welfare benefits diffusely and thus do not need to politicize crime. In majoritarian systems, conversely, locally-concentrated crime is politicized as electorally beneficial. I have tested these theoretical claims through a multi-methods design with cross-country quantitative analyses and an original public opinion survey alongside fieldwork (archival research and elite interviews) supporting qualitative case studies of Finland and England & Wales.

1 | Introduction

Democratic governments bear responsibility for numerous functions in the lives of their citizens. Amidst roles such as providing education, health care and public services, states also aim to provide a monopoly on the use of violence and control social ills through regulation of what is and is not legal. Diverse countries manage the task of “public safety” differently, sometimes through the effective utilization of public power to reduce crime and other times through a more overwhelming show of social and political control over those viewed as “deviant” for various reasons. What conditions the choices that legislators make to be punitive or rehabilitative in the face of crime? What does legislative punitiveness look like across advanced democracies?

In this thesis, I investigate diversity in criminal punishment systems and interrogate the political determinants that make some countries more versus less strict when handling crime within their borders. First, I redevelop the concept of punitiveness, which measures the orientation of the state toward leniency or harshness. Next, I argue that there is a perceived trade-off between the provision of welfare and punishment by actors within the state and propose a theory identifying the effects of electoral institutions on status quo punishment arrangements. These punitive equilibria are complicated by shocks such as rising crime and inequality that disrupt the existent regimes through changing citizen demand. The research thus unpacks and explains the systemic vari-

ation in European countries and other industrialized nations since the 1960s crime wave with an emphasis on current configurations.

Defining the Puzzle

Punishment is a common and universal task of governance and yet we observe great variation in the outcomes and design of criminal justice systems across countries. Incarceration rates vary dramatically across countries and within countries over time in ways that defy easy classification or explanation. Theories prioritizing the role of differences in the outright supply of crime across contexts only explain components of the variation (Zimring 2007; Kurian 2006; Enns 2016). The remaining unexplained diversity has increasingly become the focus of attention from political science as the utilization of state power to punish is an indiscriminately political process. Many questions, however, remain underexplored.

The first task is to ask how best to conceptualize the outcome of interest, variation in punitiveness. We must consider the nature of punishment itself as well as the systemic inputs that define its realization. This begins from consideration of not just what punitiveness means, but also how to effectively measure the concept. I argue that it is critical to consider the difference between what is attributable to punitive intention and what is attributable to punitive implementation. How, for instance, is legislative intention to punish distinct from the actions of street-level police officers who feed citizens into the criminal justice system? The thesis closely considers the concept of punitiveness and its measurement to argue that by most frequently using prison population metrics, we often overlook the intention side of the equation in discussing punitive outcomes.

Following from a more robust conceptualization of punitiveness, it remains to explain the resultant variation. Here, too, there are many puzzles. At baseline, we must understand what citizens want punishment to look like in their societies. We do not know how much social control is actually desired among social groups whose diversity of demographic characteristics may complicate or force overlapping interests when it comes to policy provision. How does punishment exist not as a solitary state aim, but as one that exists alongside other policy provision, most especially that of the welfare state?

Similarly, we must theorize how legislators make sense of trade-offs between welfare and punishment. How is their legislative decision-making process conditioned by citizen demand through political institutions? The thesis examines processes of crime politicization across contexts with a view to formal legislative decisions that emerge in the face of socio-economic conditions and variable citizen demand.

Literature on Punishment

Why do criminal justice systems differ in strictness across contexts? How do we define which systems are punitive and which are not? Questions about what punitiveness is and the determinants of its variation span many disciplines including political science, criminology, sociology, law and social policy. While the literatures are fully examined in each article, I explore interdisciplinary explanations from these fields briefly in the sections below, while prioritizing those approaches that advance social and political explanations. I turn first to literature on the dependent variable before proceeding with independent variables.

Punitiveness is concept which defies easy definition. The literature has

centered a general focus on “harshness” of punishment, with great divergences amongst particular authors on the role of proportionality (Matthews 2005; Ashworth and Roberts 2012; Pratt et al 2005; Tonry 2011), public vs. state punitiveness (Kutateladze 2010) and mercy (Cornwell 2014). There is equal disagreement surrounding the measurement of punitiveness. Although the most common approach compares prison populations, there is agreement that the measure is an imperfect match and an often misleading statistic (Lappi-Seppälä 2008; Tonry 2007; Lappi-Seppälä 2011). Alternative approaches such as Kutateladze (2010) and Liebling (2004) provide indexes of punitiveness, which focus on factors across the justice system and the prison environment, respectively.

What then explains variation in punitiveness? While explanations within the traditional disciplinary boundaries of political science remain somewhat limited, there is a wide range of literature that addresses political factors as influencers of punitiveness. I next examine these explanatory elements broadly grouped into three subcategories¹: 1) crime, 2) political economy and institutions, and 3) state capacity and control. In each, I briefly consider literature that has specifically made a link to criminal justice issues as well as examples of the broader literature, which are relevant to my theory.

Demand

Classic demand side arguments suggest that increased punishment follows directly from increases in crime as citizen punitiveness rises. However, the link between prison rates and crime rates has long been shown as tenuous (Hamilton 2014; Lappi-Seppälä 2008). Enns (2016) argues that this is due, in the United States context, to the lagged effect of long prison sentences on rates

¹There is, of course, a great deal of cross-pollination between many of the approaches.

of incarceration. Miller (2016) also proposes that crime rates cannot be overlooked, given the important and unique role of violence in the US carceral complex. However, while these explanations provide great context for the US case and encouragement of the consideration of violence and sentence length, an exclusive relationship with crime is not determinative of all cross-national variation.

Political Economy & Institutions

Other explanations posit that while changes in crime might matter, citizen demand alone cannot explain the observed design or variation in criminal justice systems and that we must consider the impact of political and economic institutions. Institutions are found to shape both the geographic and historical distribution of crime alongside the incentives actors have to make diverse policy choices in response. They also shape citizen demand. Political economic explanations of crime had begun to dwindle in the mid-1970s, but are starting to re-emerge as part of the field (Reiner 2012).

Lacey (2010) argues that political economic equilibria correlate with particular punitive regime types. She conceptualizes criminal justice systems as divisible along the lines of Hall and Soskice's (2001) liberal market economies (LMEs) and coordinated market economies or the three types of welfare capitalism according to Esping-Anderson (1990). These are empirically useful categories to consider as LMEs traditionally feature larger correctional systems than CMEs (Lacey and Soskice 2013). In large part, this brings discussion about types of skill formation and protection according to the Varieties of Capitalism (Thelen 2004; Estevez-Abe et al 2001) together with conversations about the fall of Fordism and the impact of low-skilled worker unemployment that Wacquant (2009) addresses. It remains open to ongoing research, how-

ever, the mechanisms through which some of these institutional conditions might precipitate changes in crime level, criminal policy or both.

In 1987, Box argued that higher levels of inequality lead to more property crime (Reiner 2012), but until recently, the political economy approach made limited additional linkages between welfare politics and the criminal justice system or punitiveness itself. There are now predicted relationships emerging between relevant variables and punitiveness, including levels of inequality and social spending as well as the structure of the labor market. Lappi-Seppälä (2008, 2011) establishes a link between higher levels of inequality and larger prison populations, testing the relationship with gini coefficients. His mechanism is a general disregard for and lack of solidarity with the poor from society at large. Rueda and Stegmueller (2016) also establish a connection between inequality and fear of crime in their argument that wealthy individuals are more supportive of redistributive policies when living in more unequal areas of Western Europe. The mechanism here though is fear of crime.²

The size of the welfare state has been linked to punitiveness as well. Lappi-Seppälä (2008 pg. 373, 2011) alludes to the forgiving and solidaristic political culture encouraged by an encompassing welfare state that collectivizes responsibility in quoting the adage “good social policy is the best criminal policy.” Further, robust welfare institutions may make the public feel they can “afford tolerance” due to a generally more secure society; social expenditure as a percentage of GDP is shown to have an inverse relationship with prison population (Lappi-Seppälä (2008, 2011). In another example, Western and Beckett (1999) find that incarceration helps lower unemployment in the short-term by removing people from the labor market.³ In the long-term, however,

²It is important to note that the variable of interest for Rueda and Stegmueller (2016) is redistribution preferences rather than punitiveness itself.

³Western and Beckett (1999) propose this as an explanation for comparatively low levels of unemployment in the 1980s and 1990s in the United States as prison populations grew.

higher incarceration rates raise unemployment as ex-offenders have a harder time finding employment (Western and Beckett 1999).

Variations in institutional environment too have been shown to have important impacts on levels of state punitiveness. Lijphart (1999) distinguishes between consensus and majoritarian (or conflict) democracies along the dimension of power held by parties versus the executive. Tonry (2007) and Lappi-Seppälä (2008, 2011) both show that consensus systems are less punitive due to an all-good-things-go-together logic: consensual democracies promote higher levels of corporatism, lower levels of inequality and higher levels of welfare provision. However, they also argue that other institutions matter. For Tonry (2007), federalism, judicial systems that rely on political appointments and sensationalist media establishments are risk factors for greater punitiveness. For Lappi-Seppälä (2008, 2011), the legal culture (i.e. judge power and judicial independence) and media environment also matter, but he adds corporatism as an important factor with higher levels associated with greater penal leniency.

Lacey and Soskice (2013; 2015; 2021) and Lacey et al (2018) propose other institutional mechanisms such as the role of decentralization and local autonomy in harsh systems such as the US. This is also critical to Miller's (2008) evaluation of federalism as a system in which policy demands are unevenly communicated into higher level policy provision. More broadly, authors such as Cameron (1978) discuss the proliferation of costs emanating from federalism while the effects of this for urban-rural relations have also been examined (see Cramer (2016) and others) though devoid of the criminal punishment lens.

Beyond the literature that specifically addresses criminal justice systems, Persson and Tabellini (2003) find that proportional representation electoral systems necessitate less geographical targeting of benefits than majoritarian

systems. Iversen and Soskice (2006) argue that proportional systems also tend to be further to the left and have greater incentives for redistribution. Cusak et al (2010) discuss the emergence of proportional representation as conditional on organized economic interests being ripe for party mobilization and targeting. I will take these arguments about the way state institutions function into the new realm of punitive policymaking. Specifically, I will investigate how the institutional incentives defined by the literature shape crime's distribution alongside supply side action and demand side preferences for punishment among other policy options.

State Capacity & Control

A further strain of the literature maintains that punitiveness does not result from demand, crime or institutions, but rather the way the state exercises control over citizens to reach certain aims. There are three ways that this argument emerges in existing work — examinations of 1) ethnic or racial control, 2) social or class control and 3) state capacity.

First, many argue that efforts to control heterogeneous populations explain punitiveness. Lacey and Soskice (2013) find racial segregation to be indicative of greater punitiveness and Lappi-Seppälä (2008) suggests greater demographic heterogeneity leads to the same via the mechanism of “social threat.”⁴ The role of demographics is most expansively investigated and developed, however, by the carceral state literature, which focuses primarily on the US and examines racial animosity as a cause of penal harshness.⁵

This literature is primarily led by scholars such as Vesla Weaver (2007)

⁴This might be why we observe such low incarceration rates in Scandinavia, for example (Lappi-Seppälä 2008).

⁵Beyond the carceral state arguments there is an enormous amount of scholarship on issues more specific to the US incarceration complex that I do not engage with here due to limited space and the theories' lack of portability.

and Amy Lerman who propose that racial politics and a desired institutional disenfranchisement of minorities around the Civil Rights Act's passage in 1964 explain incarceration rates. Black citizens are indeed disproportionately imprisoned in the particularly punitive United States (Hochschild et al 2011) and Zimring and Johnson (2006) examine how the salience of crime is sparked by politicians.

King and Smith (2014) further suggest that the only change in US racial politics has been in the form of a "critical ideational development" as of the mid-1970s. They argue that a change from dismantling segregation to color-blind policymaking has masked remaining inequities that require targeted policy and instead perpetuated hegemonic social control particularly by conservatives (King and Smith 2014). This argument speaks to the necessity of considering systemic racial biases both in relation to criminal justice, but also welfare spending to combat inequality.

Though not explicitly a part of the carceral state literature or discussing criminal justice directly, the political economy of inequality literature develops many other useful theories. Conclusions about the effects of ethnic heterogeneity on welfare preferences such as those provided by Alesina et al (2001), Gilens (1995), Habyarimana et al (2007), Luttmer (2001) and Rueda (2014) may be crucial for investigating policymakers' incentives within the new framework of punitiveness.

Second, authors interrogate global economic changes (i.e. neoliberalism) as the driver of crime and, in particular, the regressive treatment of the poor with regard to criminal justice from different angles. Garland (2001) argues that states try to stabilize their capacity and calm public anxiety through punishment (Hamilton 2014; Tonry 2011). Similarly, Tonry (2011) argues that poor minorities are disproportionately targeted as an electoral strategy given their

relative disenfranchisement. Wacquant (2009), conversely, considers punishment as part of the macro-level neoliberal policies that governments pursue to criminalize poverty. However, Wacquant faces critiques for his exclusive focus on a liberal market economy context (Lacey 2010).

Third, the ability of the state to implement varied intention becomes relevant in the context of criminal justice systems containing myriad actors. In his canonical work, Migdal (1988) defines state capacity as leaders' potential to control citizens via state structures and establish a monopoly on norm-setting despite the bidirectional relationship between states and society. While Migdal (1988) did not focus on the West, the questions he poses are no less relevant to the scope of this work. In these contexts, state capacity is often considered in relation to taxation and the impact that credible collection has on voter turnout, for example (Kasara & Suryanaram 2015). Here, I extend my use of the literature to also consider the coercive apparatus of the state — not just the police, but also the functioning of the justice system more generally with recognition that not all levels of the system necessarily exhibit equal capacity. The literature I draw on here is mainly based in the US and debates whether the US state is weak or strong, given how racial inequality and the multi-level system complicate opportunities for reform (King and Lieberman 2009; Kato 2012; Peterson 1981). State capacity has been shown to directly impact mass politics whether through the feedback effects of taxation (Campbell 2012) or the primacy of the police as state actors among “race-class subjugated communities” (Soss and Weaver 2017).

Evaluating the Literature

My estimation of areas where the existing literature may be expanded can broadly be grouped into five areas — some methodological, some theoretical.

First, the underlying conceptualization and measurement of punitiveness itself requires more discussion. While studying prison populations as a proxy for punitiveness yields important insights about the outcomes of the justice system, it leaves questions about the processes that build these outcomes. To understand the full gamut of state punitiveness, we must examine its legal realization. I see these two conceptions of punitiveness as intent versus implementation or what Lacey and Zedner (2012) might refer to as formal versus substantive criminalization. I differentiate between intention and implementation in both theory and measurement, arguing intent is relatively sticky while enforcement is more fluid.

Second, the literature on criminal justice systems must extend its current scope conditions in order to explain more varieties of punitiveness. As is clear from the literature review, much of the analysis relies heavily on the US context, but European political economies function differently. For example, Lacey and Soskice's (2013) contention about the role of decentralization in the US must be examined in the context of European countries – both those that are LMEs and those that are CMEs. Within Europe, there must also be an effort to bring Eastern countries into the analyses to determine whether similar relationships hold in post-communist, newer EU-joining countries.⁶ Similarly, in this context it is important to consider what insights the state capacity literature might bring to bear on this issue in the context of newer democracies.

Third, the progress in the political economy literature on fundamental subjects such as inequality, redistribution preferences, heterogeneity and electoral incentives can shed significant light on the varieties of punitiveness. While many of the proposed relationships between political variables and punitive-

⁶Lappi-Seppälä (2008, 2011) does include some Baltic and Eastern European countries and suggests crime may drive incarceration rates more in those countries than in the larger sample.

ness are plausible, the mechanisms of the institutional effects remain fuzzy and underspecified. The focus on broad conceptions of political culture (i.e. consensus and majoritarian systems) minimizes the concrete incentives and behavior of politicians who respond to specific institutions such as electoral systems. I will seek to investigate these mechanisms here.

Fourth, the incredible continuity of many punishment systems is sometimes overlooked. This is partly a function of the concentration on incarceration rates and the limited focus on path dependence. This matters as we must understand how institutional incentives for change operate or may be stymied. Further, if system change is observed, we often need more meaningful explanations for the level at which it occurs and for why it occurs.

Fifth, the literature establishes the significance of ethnic heterogeneity, but we do not know from existing analyses whether there is an interaction between the effect of demographic heterogeneity and welfare provision on criminal justice policy. Weaver and Lerman (2010) write that arrests and imprisonment are heavily concentrated by neighborhood. This raises the question of whether this concentration affects attitudes and subsequent elite responsiveness.

On their own, the literatures on political economy, state capacity and the effect of crime rates do not provide sufficient clarity in answer to the question of what drives punitiveness. Collectively, however, they can help us unpack the material cost-benefit analyses performed by citizens and legislators alike to form their attitudes and actions on punishment in view of systemic factors like political institutions, capacity to implement intention and the geographic concentration of crime.

Theoretical & Empirical Contributions

This dissertation intervenes in the literature with three primary theoretical contributions, which are encompassed in the three paper-style chapters which follow. In the first paper, I re-theorize punitiveness as the state's approach to crime which legislators have particular incentive and ability to shape. There are three conceptual axes defined as a rehabilitation vs. punishment axis, a proportionality axis and a harshness axis. Each axis is further disaggregated into indicators which are measurable as components of a country's legal code. I then present a novel quantitative index of punitiveness built across these indicators for six crimes in 26 European countries. Results of this empirical exercise lead to further discussion of the differences that present themselves when considering intention vs. implementation in the criminal punishment sphere. As the index shows interesting relationships across Western and Eastern Europe, I contend theoretically with the impact of state capacity on the ability of on-the-ground implementation to match legislative intention.

In the second paper, I intervene in the literature on demand for punishment. My theory argues for the relevance of material factors in shaping how citizens formulate their punitive preferences. Following the introduction of three primary risks (victimization, arrest and income loss), I argue that those with higher incomes will be more punitive given the concentration of risks by demographic group and geographic location. Crucially, I consider demand in a multi-dimensional policy space where citizens realistically conceive of policy choices between welfare and punishment, and make cost-benefit calculations about the impacts of existing institutions and proposed policy change. I test these theoretical hypothesis with an original survey of United Kingdom citizens fielded in 2019.

Finally, in the third paper, legislative and citizen demand elements are brought together to examine the supply of punitiveness, which I argue is a function of the constraints imposed on legislators by electoral (proportional representation vs. majoritarian) institutions. Broadly, I argue that where there are fewer vested interests economically in maintaining the carceral state (and more vested interests in maintaining the welfare state⁷), there will be fewer opportunities for politicians to be “tough on crime”. Specifically, under proportional representation, I argue that there are incentives for politicians to spread welfare benefits diffusely, which eliminates the necessity of targeting punishment and allows a technocratic consensus of justice reform to emerge. Under majoritarian electoral rules, by contrast, there are fewer incentives to appeal to the broader electorate and instead reason to target a regionally specific median voter who is crime concerned. This leads to a system where crime is more deeply politicized and punitive equilibria can emerge. To test these hypotheses I engage in cross-national regression analyses using institutional variables, prison population and Comparative Manifesto Project data complemented by process tracing in two qualitative case studies of Finland and England & Wales.

Overall, the dissertation seeks to unpack variation in punitiveness and understand the supply and demand side factors behind its political realization. The papers’ core contention is that variation in punishment is as much a product of formal legislation as it is of on-the-ground implementation. This formal legal variation is explicable by a series of constraints imposed on legislators by the political conditions in which they operate (i.e. institutions) and public demand, which is responsive to socio-economic configurations, crime, inequality and existing welfare policies. There is an important institutional trade-off con-

⁷Among others, Gingrich and Ansell (2012) describe the policy feedback effects that emerge from particular welfare policies.

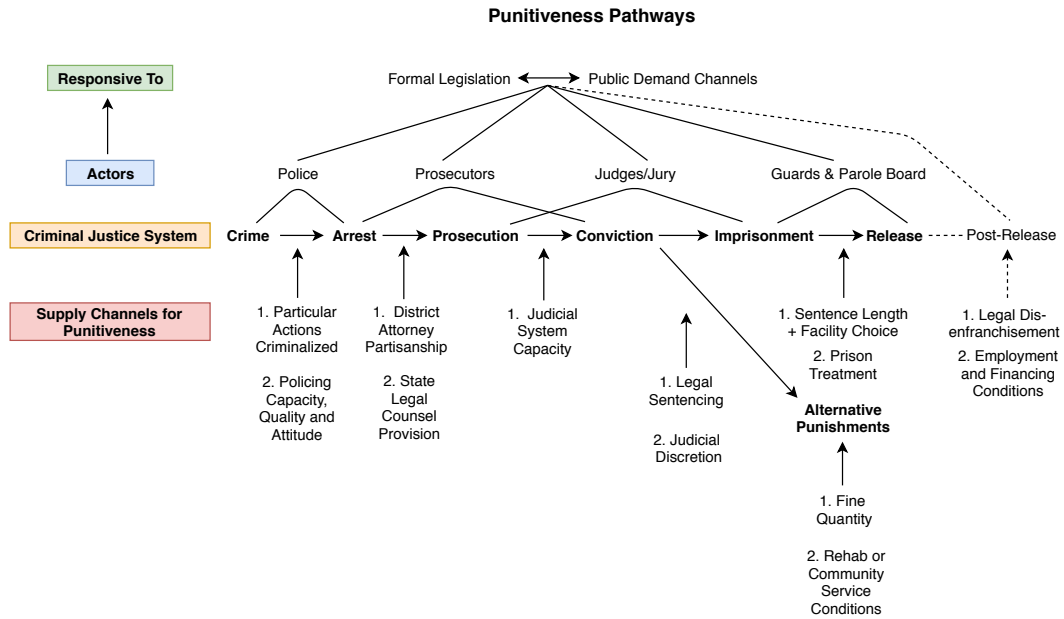


Figure 1.1: Punitiveness Pathways & Thesis Scope Conditions

ceived across the three papers between welfare/rehabilitation and punishment. In a case like Finland, we see the three papers speak to a relatively non-punitive equilibrium, delivered by low public demand against the backdrop of a welfare state that is more easily provided given proportional electoral rules. In a case like the United Kingdom, on the other hand, we see a punitive equilibrium emerge in formal legislation given that politicians operate in an increasingly disproportionate system which incentivizes them to target punishment of the “deviant” to appease a median voter living amidst oppressive inequality.

It is also worth noting the scope conditions for these papers. In Figure 1.1, I lay out the universe of punitiveness pathways that emerge across the various stages of the criminal justice system (from crime committal to prison release) alongside the everyday actors involved, who and what they are responsive to (i.e. legislation and public demand), and where there are opportunities for punitiveness to be introduced. In this work, I am primarily focused on the *de jure* rather than *de facto* elements of system harshness, especially those which

occur at the sentencing and incarceration stages as influenced by legislator and public opinion and action. This is not to say that punitiveness which emerges at other stages of the criminal justice system or via other actors is any less significant; it is just not the focus of this work.

Plan of the Thesis

Across the three papers, this thesis contributes to the field theoretical innovations on the nature and causes of punitive variation as well as an original dataset and indicator, novel survey results and two case studies amidst broader supply-side empirics. The research questions pursued here merit addressing as the topic has received relatively limited attention outside criminology although criminal justice policies are an inherently political project. There are clearly intuitive relationships between institutional context, inequality and punishment, but the mechanisms have not been formally demonstrated or explored. Further, institutional conditions like electoral systems and the scope of the welfare state have been tied to many outcomes in the political economy literature, but have not been brought forth to consider how the state handles crime as one of its primary functions.

The thesis proceeds as follows. The next chapter is the first paper entitled “Conceptualizing and Measuring ‘Punitiveness’ in Contemporary Advanced Democracies” in which I formalize punitiveness and its measurement with the introduction of the P-Index. This article is currently under revise and resubmit at *Regulation & Governance*. Next, the paper “Safe and Sound? Evaluating Citizens’ Interacting Demands for Punishment and Welfare” follows with the evidence of the original survey fielded in the United Kingdom. The third paper “Electoral Determinants of Criminal Punishment across Europe” follows

with the macro-analysis of electoral systems and case studies of Finland and England & Wales. Finally, I conclude with some brief thoughts about the broader implications of this work and next steps for further research. All paper appendixes can be found at the end of the thesis.

2 | Conceptualizing and Measuring “Punitiveness” in Contemporary Advanced Democracies

Abstract

This paper addresses a key political question regarding the relationship between states and their citizens: how harsh are judicial systems in their punishment of those who deviate from the law? Punitiveness is a fraught concept in the existing literature and robust measurement methods maximizing conceptual complexity are lacking. Here I develop a functional approach to punitiveness through a revised conceptualization and operationalization of this key variable while cautioning the solitary use of incarceration rates to measure state intention. Punitiveness is conceptually disaggregated into three main components: 1) a commitment to punishment over rehabilitation, 2) the degree of harshness of response to crime (i.e. a longer sentence in prison), and 3) the lack of a logical progression of punishment based on the severity of crime committed or intent of the offender. These axes are further disaggregated into measurable indicators to build a novel index of punitiveness (P-Index) from the legal codes of 26 countries. Ultimately, this rules-as-data measure offers researchers purchase on the puzzling variation in punitiveness across contexts, which persists regardless of current and historical crime levels, offering particular utility for supply-side political economic explanations.

Introduction

“Although the term ‘punitiveness’ is widely used in the literature, there is little attempt to define or deconstruct it. The consequence is that punitiveness remains a ‘thin’ and under-theorized concept.”

— Matthews (2005)

Punishment is one of the fundamental responsibilities of the state in democracies where the rule of law is sacrosanct. The legal system shapes responses to criminal activity and is in turn shaped by it. Despite the centrality of this concern, however, the political science literature has been relatively reluctant to examine why certain countries adopt particularly punitive measures or even systematically characterize the contemporary punishment regimes.

Whether or not a country is punitive when it comes to its criminal justice apparatus can tell us a lot about how the state functions, where the priorities of elected officials lie and how society at large treats those who deviate from a broad set of agreed norms. While the number of people in prison every year may vary to a degree according to relatively fluid principles such as the supply of crime or a particular campaign in a particular city to crack down on a specific type of offense, the underlying orientation of the state toward crime is a relatively static principle.

For this reason, I argue that when thinking about and measuring punitiveness we should aim to tap into this underlying sentiment and intent. I theorize punitiveness as a scale along which to measure countries ranging from most to least lenient on three primary axes: a punishment-rehabilitation trade-off, the degree of harshness and the proportionality of the legal response. I design an index, hereafter referred to as the P-Index, that quantifies information from

the most recently available legal codes of 26 European countries. This is a novel approach and measure that advances the existing literature broadly in political science and criminology as well as the specific study of measuring institutions.

A broad survey of the existing datasets shows that there is limited broadly available data on sentencing over time across countries and also little use of methodology that relies on the formal rules of the game – legal codes. Alternative productive indexes focus on different elements of the criminal justice process (Liebling 2004; Cavadino and Dignan 2006). The aggregated result of the P-Index is a punitiveness score for each country, which provides opportunities for comparison across countries and captures details such as the sentence range, whether offenses can be settled with rehabilitation, whether judges must abide by mandatory minimums, whether there are penalties for recidivism and what elements of offenses are criminalized. Though this is here a static view of the system at one time, I demonstrate that the legal codes are actually fairly sticky with most reform occurring around the edges.

Punishment’s Purpose and Existing Measures

Punitiveness is an inherently fuzzy concept with great disagreement among its users for the most appropriate definition and subsequent measurement. Criminologists define the concept variably and political scientists tend to use one often oversimplified indicator of punitiveness—prison population. It is worth recognizing the many different purposes of punishment as Tonry (2011) suggests. These range from sociological explanations such as reinforcing community norms or maintaining a particular social order to more political explanations like the deterrence of crime, the office-seeking behavior of politicians or the institutional communication to the public about state order (Tonry 2011).

More on the fringes of the literature, there are explanations that see punishment as a means of conflict resolution and discuss its purposes as ‘restorative justice’ or mercy (Cornwell 2014; Tonry 2011). While this is not the main thrust of the literature—and may indeed constitute a counterpoint to punitiveness—I will elaborate later on how I incorporate alternatives to penal punishment into my measure. Additionally, some conceptualize a distinction between state punitiveness and public or individual punitiveness (Kutateladze 2010) even though these supply and demand side notions may influence each other. More broadly, the literature on norms is conscious of how institutions are variable in their signaling depending on the actor (van Rooij and Sokol 2021).

Political science and criminology are conscious of the imprecise nature of punitiveness definitions. Tonry (2007) writes, “Usually the thing being described is left vague; what is usually meant is an unspecified mix of attitudes, enactments, motivations, policies, practices, and ways of thinking that taken together express greater intolerance of deviance and deviants, and greater support for harsher policies and severer punishments.” There is also some agreement that proportionality of punishment is associated with reason and leniency (Ashworth and Roberts 2012; Pratt et al 2005; Tonry 2011) whereas excess punishment is punitive (Matthews 2005), though the basis of these notions in concrete scales is notoriously complex (Lacey 2021).

As is necessary in the scientific study of institutions (Voigt 2013; Stevens 1946), these broad dimensions may be broken down into more concrete elements as I will do later with my measure. The best example of this is sentencing theory. Ashworth and Roberts (2012) examine the punitive purposes of court sentences discussing their general orientation toward deprivation or obligation. Yet, even here the conversation devolves into a variety of sometimes contradic-

tory aims of punishment: deterrence (discouraging future crime), rehabilitation (helping the offender), incapacitation (preventing recidivism), restoration (restoring previous circumstances) and desert (punishing proportional to the offense) (Ashworth and Roberts 2012).

How much does the purpose of punishment matter? I will argue that for the purposes of exploratory studies it matters most for informing how we measure punitiveness and the phenomena we expect these measures to explain. Measures of punitiveness in explanatory studies vary, but by far the most common measure is the prison population. The idea is that prison population provides a relatively reliable, easily accessible and cross-country comparable indicator of the outcomes of a criminal justice system that allows the study of trends over time.

However, even among the researchers who use it, there is agreement that the measure is seriously flawed (Lappi-Seppälä 2008; Tonry 2007; Lappi-Seppälä 2011) among the challenges inherent in criminal justice statistics overall (Harrendorf 2018). It has long been established that prison populations do not track changes in the crime rate (Hamilton 2014; Lappi-Seppälä 2008). Recent work by Enns (2016) shows this is due to differences between the stock and flow of prison populations: in the United States, crime has indeed declined, but the unusually long sentences have masked this effect, keeping prison populations high. Enns (2016) proposes prison populations are thus better explained by a lagged crime rate.

There are other issues as well. Methodologically, prisoners held under conviction are often merged with those held under remand making the measure fuzzy (Hamilton 2014). Conceptually, some argue that other factors such as the treatment offenders receive in prison matter to punitiveness and that the stock and flow problem is a significant one (Liebling 2004; Lappi-Seppälä 2011).

Is there not a difference between having a lot of people in prison for a short period of time versus fewer people in prison serving longer sentences? I address the inability of prison rates to give us this information through my measure's prioritization of sentencing guidelines.

There have been attempts at more inclusive measures of punitiveness that avoid some of the limitations of the prison population figures (Hamilton 2014; Kutateladze 2010; Cavadino and Dignan 2006; Liebling 2004). Perhaps the most ambitious of these is Kutateladze's (2010) 44-indicator instrument, which includes factors such as the average time served, spending on prisons, number of arrests by crime and stock and flow figures. While the broader conceptualization is productive, Kutateladze's measure suffers from problems with its applied use. With such a wide range of indicators considered that reference different points in the criminal justice system from arrest to post-release, what explanatory power does this give us? How can we reconcile the unlikelihood that the same set of political or social factors precipitate state decisions along all of these different subindicators?

Additional indicators include that of Cavadino and Dignan (2006) who build on Mayhew and van Kesteren (2002) to use data from four waves of the International Crime Victimization Survey (ICVS) to examine comparative social attitudes to punishment for a recidivist burglar. A punitiveness score per country indicates the percentage of the population who would hypothetically prefer a prison sentence imposed and the suggested length of that sentence. This is, interestingly, a score based on survey public opinion and thus measures public punitiveness related to burglary rather than "law in the books" or practice. Another measure from Liebling (2004) examines punitiveness within five prisons in England according to prisoner ratings across 14 dimensions such as fairness, safety and respect. This highly valuable measure of com-

parative prison quality could be expanded cross-nationally, but again utilizes survey data and focuses on a view of punitiveness from within the prison environment rather than at the sentencing stage. Ultimately, the P-Index sits alongside these other measures of punitiveness, offering a conceptualization based on formal intention through legal codes.

Offering Alternatives

My measure will aim to walk the balance between the limitations of using prison population alone versus using a kitchen sink approach to measuring punitiveness. In doing so, I recognize that prison population is a useful indicator of the implementation of crime control. However, in focusing on institutionalized punitiveness in legal codes, I seek to match my measure with the types of supply-side descriptions that seem especially salient when explaining what causes punitive variation across countries. I also join emerging literatures in leximetrics (Buchanan et al 2014; Kholodilin and Pfeiffer 2021) and “rules-in-form” (Brady et al 2018), which emphasize the transformation of legal and other texts into measurable indicators.

The index I propose below has a number of benefits. Unlike incarceration rates, which have been challenged alongside crime rates for the different measurement methods used in different countries (Harrendorf 2018), the legal code P-Index uses the same method across a broad range of countries. In addition, while prison population is an outcome-based measure, the P-Index measures the state’s intentions for punishment following from analyses such as von Hofer (2003) which argue that punishment is a “political construct.” Measuring intentions allows a closer match with the conceptual dimensions of punitiveness explored in the next section and also with explanations that investigate supply side dynamics and actors’ legislation incentives. Prison population, by contrast

only shows the number of people incarcerated at a given time,¹ but obscures whether the punishment is proportional to the offense and what length of time they may be serving, for example. My measure aims to get at these elements.

The cases I analyze are the 27 current members of the European Union plus Iceland, Norway, Switzerland and the United Kingdom broadly since the 1960s crime wave with an emphasis on current configurations.² Case selection was driven primarily by three factors. First, this geographic region provides the greatest availability of data and allows my results to be in conversation with the existing literature. Second, the government's incentives for choosing punitiveness versus rehabilitation fall along a similar axis in these countries. They are all electorally responsive to some extent in that they are democracies and their status as advanced economies begets similar motivators of crime at somewhat comparable rates. Finally, by conducting a Europe-specific analysis, I revise the literature's overwhelming concentration of the US, which is exceptional in many respects. Europe is also sufficiently diverse in itself to offer numerous divergent trends for examination.

The analysis is not all-inclusive. I do not seek to explain either police behavior or activity within prisons as it relates to punitiveness as this has been done elsewhere (see, for example, Liebling 2004). My scope remains in the treatment of crime within society and the legal process leading to imprisonment or alternative punishments. I also do not attempt to explain what I see as the outcomes of the criminal justice system, namely the incarceration rate, but rather the system intentions and how they vary from outcomes. This is consistent with concerns in the literature about the presumed equivalence

¹In any given year, the number of people in prison is equal to the number of people who were incarcerated the year before (the "stock") subtracting those who have been released and adding those who have been newly sentenced (the "flow").

²Data collection and analysis subsequently require dropping Cyprus, Iceland, Ireland, Luxembourg and Malta, resulting in a final sample size of 26 countries. These decisions are explained in greater detail in the Methods section.

of such concepts given challenges in “interpretability” (Melton et al 2013) and “statutory coherence” (May 1993). Further, the analyses here prioritize the supply side elements of institutional design and political incentives. I do not deny that demand for punitiveness also exists more broadly from citizens themselves (and may even be linked to their demand for social spending and insurance), but these issues are not the focus of this work (see other work such as Mayhew and van Kesteren).³

As with any methodology, there are of course limitations to the P-Index’s explanatory power. One of the primary concerns is the lack of room for how discretion is differentially practiced in sentencing across contexts to be baked into the measure. Another limitation is the static nature of the measure. I explore these and other issues in the following sections and in Appendix C (pg. 156), showing why the index remains robust and useful. Another methodology that captures some complexity would be to measure the average sentence served for a given crime in different countries. I do not do this for two reasons. First, the data on this indicator is extremely spotty and does not provide an opportunity to look across crime types in a broad cross-section of countries unlike the legal codes. Second, and more importantly, the average sentence served or assigned may be more reflective of the individual offender than the system itself. It is not possible to deduce whether the average length sentenced is characteristic of an overly punitive system or a judge who sees a continued risk to the community from a repeat offender. In these cases, studying the minimum allowed under the legal code or even the average would better indicate systemic punitiveness.

Overall, I expect the P-Index to provide a novel approach to measuring punitiveness, maximizing variation while being broadly comparable across

³Notable recent works on this topic more specifically include Rueda and Stegmüller (2016) and Miller (2016).

countries including beyond the typical Western European context. The index runs both across violent and non-violent crime types while capturing details such as the allowance for alternatives to imprisonment that are crucial given the underlying conceptual structure of punitiveness developed in the next section.

Concept & Theory

I define punitiveness as the degree of strictness of a given country's criminal justice system as institutionalized and intended in the legal codes that support the punishing arm of the state. This is a conscious break from much of the political science literature which relies exclusively on a country's rate of incarceration for comparative purposes or on measures of punitiveness that are subjective or report on other stages of the justice system.

I disaggregate punitiveness into three component categories along which the state's orientation to punishment may be organized and characterized. These are the punishment-rehabilitative axis, the harshness of the system and the proportionality of responses to criminal activity. In each case, these categories align with content contained in legal codes and further with the indicators I utilize in building the punitiveness index. I develop each of these indicators further here and in Figure 2.1 where the system inputs are visually mapped.

There are many possible responses to crime with incarceration being just one of them. We can imagine perhaps a continuum along which the state might orient itself from a punitive to a rehabilitative response. In the legal code this would present itself as giving the judges leeway to impose a mandated rehabilitation program or fine in lieu of a prison term.⁴ This nexus is more relevant for

⁴Fines may certainly also be punitive, but the focus here is on whether prison time is part of the punishment for a crime.

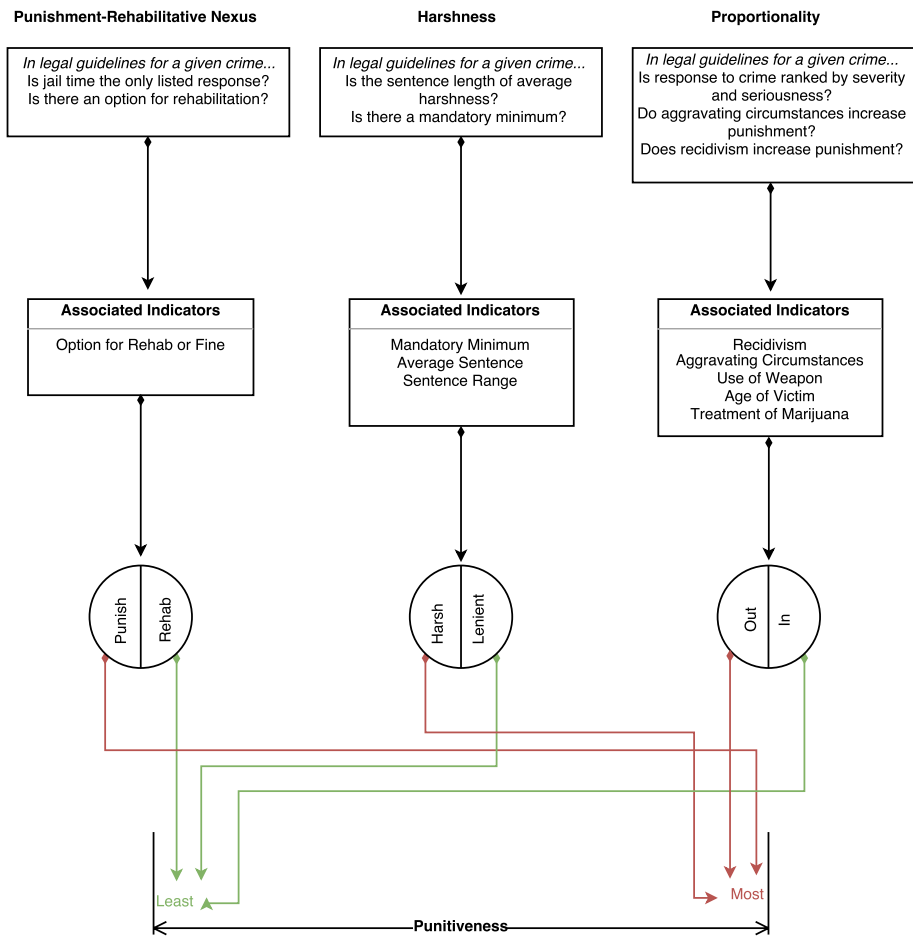


Figure 2.1: Punitiveness Concept Map

some crimes than others. For example, rehabilitation is a much more common route offered to judges in the case of minor drug crime than manslaughter. In the provisions for fraud, fines or restitution are permitted more frequently than for violent crime. Ultimately, a system that prioritizes rehabilitation over punishment is less punitive than one which emphasizes punishment.

Perhaps the most common conceptualization of punitiveness is some elusive connection with harshness. This must be formalized. In the legal guidelines for a given crime, is the sentence length suggested of an average length? Must the judge impose a particular minimum sentence? How comparable is the sentence in Country A with that in Country B? A system is less punitive if the legal code encourages judges to be more lenient when giving sentences. This may come in the form of requiring no minimum sentence, having a low average sentence or giving the judge a minimal range in which to operate for sentencing to prevent against individual liberties toward punitiveness. The level of harshness or leniency in these last two variables—average sentence and sentence range—can only be truly considered by looking across countries to find averages. This motivates my choice to standardize these indicators in the index.

Finally, a crucial last component of punitiveness is proportionality.⁵ Does the law rank the response to a crime by its seriousness and severity? Are basic crimes (i.e. robbery) punished with less time than those with aggravating circumstances (i.e. armed robbery)? If an offender has committed the crime before, will he or she get more time behind bars?⁶ Whether or not the punishment varies if the crime is committed against an adult or child also illustrates this principle. If the punishment better fits the crime, the system

⁵This has been established in the literature, for example, by Pratt et al (2005), Ashworth and Roberts (2012) and Tonry (2011).

⁶There is some debate on whether punishing recidivists more rather than treating each crime individually is just.

can be considered more proportional and less punitive.

There is naturally overlap between the categories as well in reinforcing and opposite directions. For example, a repeated robbery in Country A might be punished more than a first offense, but the resulting sentence may still be comparatively harsh or lenient when juxtaposed with Country B.

Additionally, we must consider the concept of proportionality to be a political one in and of itself as Lacey (2021) often finds other conceptions to be “rootless.” She writes, “The appeal of proportionality, seen in political rather than moral terms, lies in whatever capacity it has, or its supposed capacity, to define the contours of the state’s power to punish and thereby to foster democratic accountability and the legitimacy of punishment.” I would argue that there exists a political ordering of crimes which can allow us to generally be able to evaluate proportionality within contexts and for the sentences and indicators of this index. For example, there has been much political focus in recent years on non-violent *visa vi* violent crimes or features of crimes. These may be distinct or may be emergent from citizen moral and historical conceptions leading to an understanding that is politically constructed. Thus, I argue this is consistent with finding sentences that treat violent escalation more punitively than baseline offenses as proportional.

To summarize, in an ideal type low punitiveness society, the legal system prioritizes rehabilitation of offenders, imposes comparatively lenient sentences and gives judgments that are in proportion with the seriousness of the crime. In an ideal type high punitiveness society, the legal system prioritizes punishment over rehabilitation, imposes comparatively harsh sentences and gives judgments out of proportion with the seriousness of the crime.

Measurement & Methodology

To incorporate these contributing factors, I will design a new index that gives a comparable score of punitiveness across geographical units for a given period in time. This limits the tractability of my theory over time, but not as much as would be anticipated given the relative stickiness of criminal justice policy in recent years. Making law, and indeed institutions more generally, into numerical indicators has significant priors in the literature (see Buchanan et al 2014; Kholodilin and Pfeiffer 2021; van Atteveldt et al 2021; Stevens 1946).

Data Sources

Building the P-Index required a large quantity of information from the legal codes of many countries. My sample includes all of the current European Union member states except for Cyprus where data was not available. For completeness, I also include Iceland, Norway, Switzerland and the United Kingdom.⁷ This gives a sample size of 30 countries.

As the goal is to make an argument about current levels of punitiveness, the most recent legal code information was obtained whenever possible.⁸ Where possible, information on different types of crime was collected from a minimal number of sources to maximize continuity⁹ though this was not feasible for a subsection of countries.

The Organization for Security and Co-operation in Europe operates an on-line database with translations of the legal codes of most of the countries in my sample. Data for the offenses of robbery, rape, manslaughter and financial

⁷Data for the United Kingdom represents the legal systems of England and Wales except for drug crime, which was simply labeled as the United Kingdom in source material.

⁸As of 2017. There are some caveats to this due to availability of translations, which will be noted.

⁹This is supported by literature such as Harrendorf (2018).

fraud were found here for all countries except Denmark, Germany, Greece, Ireland, Italy, Portugal and the United Kingdom.¹⁰ In all cases, the most recent translated version was utilized.¹¹ In cases where no English version was available, I translated the code from the original language. This was the case for Austria (German), Belgium (French), Italy (Italian), Luxembourg (French) and Portugal (Portuguese). Appendix A (pg. 146) shows the source information and dates for this data more completely. In this source information, we can see how legal codes are comparatively more static to other indicators, frequently immune from systemic overhaul electoral cycle effects. The underlying documents in 14 of the 26 countries ultimately studied precede the 21st century.

For all drug crime, data was provided by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), which runs the European Legal Database on Drugs. The online tool allows for consistent data comparison across countries and indicators and was last updated as of 2017 in 2015. Iceland and Switzerland are not included so their codes are obtained from Althing (the Parliamentary Office)¹² and the United Nations Office on Drugs and Crime, respectively.

¹⁰The United Nations Office on Drugs and Crime (UNODC) provided the Danish criminal code. The Federal Ministry of Justice via the European e-Justice Portal provided the German criminal code. Greek data was collated from *The American Series of Foreign Penal Codes 18*, HEUNI The European Institute for Crime Prevention and Control and the UNODC's SHERLOC Database of Legislation. The Irish Statute Book provided the relevant acts of Irish criminal law. Italian data was collated from *The American Series of Foreign Penal Codes 23*, the UNODC's SHERLOC Database of Legislation and Conso and Barbaliardo's *Codice Penale e Norme Complementari* (2005). The World Intellectual Property Organization provided the Portuguese code. The Sentencing Council provided information about UK sentencing.

¹¹A 2017 version of the Estonian legal code was published following data collection and analysis. A 2009 amending act is available for Slovenia, but the full code of 2008 is utilized.

¹²The latest Icelandic drug legislation is Act no. 32 (2001)

Legal Code Interpretation

The aim of the P-Index is to be as wide ranging as possible while still providing a comparable measure of punitiveness across the different European countries. At times, these were contradicting goals as different countries codify rules into their legal systems differently. Thus, my approach was to convert the maximum amount of detail into code that was available across the sample. Naturally, definitions of different crimes vary by country (Harrendorf 2018), but my method prevents against these biases as much as possible. The only instance in which the comparability of definitions was questionable was manslaughter and the index is aggregated without this data in Appendix C (pg. 156) with broadly similar results. I next outline the design of the P-Index more closely, including decisions about crime types to include, indicators to code and the reading of legal codes.

Crime Types

The P-Index covers six types of crime: robbery, rape, manslaughter, financial fraud, drug possession and drug distribution. The crimes run the gamut of those a typical criminal justice system will handle and intentionally balances three violent crimes with three non-violent crimes. How a given country responds to crime that is violent may not necessarily match its response to petty crime and this distinction may tell us something about the system and leniency more broadly. In particular, given research advances in recent decades showing the medical bases of addiction, the contours of a country's drug policy and its commitment to rehabilitation can tell us a lot about its underlying punitive complex.

For purposes of analysis, I utilize the definitions of crime type, which are

most cross-cutting.¹³ Robbery is defined as theft under duress and is considered separate from larceny and unmitigated theft. Rape constitutes sexual intercourse that is non-consensual or with someone incapable of giving consent. Manslaughter is defined as homicide without premeditation and includes an element of being committed in the heat of the moment.¹⁴ Fraud is the use of deception for personal gain. Drug possession indicates holding banned substances for personal use while drug distribution refers to the supply of such substances.

Existing literature and recommendations suggest it may be sufficient to measure only robbery or homicide as the former typically has a very similar definition across contexts and the latter is often argued to be the sole homologous international crime indicator. I find that these approaches would not give me the same purchase on the complexities of cross-national variation that the index can confront. Specifically, punishments for homicide are unlikely to vary significantly as the crime is typically construed among the most serious. Using this indicator alone would thus mask what are otherwise diverse justice systems.

Indicators and Coding Process

Specific indicators reflect efforts to maximize information observed, match the conceptual categories of punitiveness and build on legal elements considered important in the existing literature. For all crimes, factors observed include three yes-no binaries: whether a mandatory minimum sentence exists, whether there is an option for rehabilitation or fines instead of incarceration

¹³The definitions used also broadly conform with those given for crimes listed in the European Sourcebook of Crime and Criminal Justice Statistics (2003).

¹⁴As will be discussed subsequently, manslaughter was also operationalized as negligent homicide in some cases.

and whether there is a specified penalty for recidivism within the offense. As an aside, Tonry (2011) discusses the importance of mandatory minimums, explaining why they emerged in the 1970s to prevent against racial biases in indeterminate sentencing. While this may be accurate historically, I choose to code the existence of a mandatory minimum as more punitive because evidence has shown that mandatory minimums actually reinforce disparities in justice processes by race and class. In most cases, the codes specify a range that may be imposed as a sentence.¹⁵ For all crimes, therefore, the average sentence is calculated and the absolute value of the range is maintained as a second indicator to demonstrate latitude given to judges. For crimes where it was possible, these same indicators were also collected for an aggravated version of the offense such as gang rape or large-scale fraud.¹⁶

A number of other binaries are also collected based on the specific crime: whether age is specified as a mitigating factor in rape sentencing, whether marijuana is treated differently than other drug types in possession and supply offenses and whether the use of a weapon matters for punitiveness in robbery and rape. The full list of all 47 indicators broken down by crime type is shown in Appendix B: P-Index Codebook (pg. 148).

Binaries coded as 1 imply greater punitiveness while those coded as 0 suggest less punitiveness. For example, if a recidivism penalty is specified, that is coded as a more proportional punishment system and thus less punitive. If aggravating circumstances increase the sentence provided, the punishment system is again more proportional and less punitive. Both of these examples would be coded as 0. Where countries' laws were more complex or required

¹⁵France is an observed outlier here as the standard is to indicate a set number of months per sentence per crime rather than a range in the legal code.

¹⁶There is a binary indicator of whether aggravated circumstances are considered in the legal code and for cases where many aggravating circumstances are detailed the recommended punishments are collapsed into one overall aggravating category.

exceptional treatment, this is noted in the Appendix. Such cases include, for example, the coding of aggravated robbery in Slovakia and Norway, which list death of the victim as an aggravator unlike all other cases.

P-Index Aggregation

The index is aggregated in a very intuitive manner. The non-binary variables are converted to standardized versions of themselves. The values then represent the relationship to the standard deviation from the mean each country displays. This serves two purposes. First, standardization limits wild fluctuations in the final index that would result in sentences ranging from mere months to 10+ years, making it difficult to interpret the meaning of differences between countries' ultimate scores. Second, as already discussed, it is hard to say whether a given average sentence is punitive without comparing it to the average level of the group both in terms of harshness and proportionality. Taking the sample average and calculating standard deviations from there allows for better comparisons.

Next, all standardized and binary values are summed by crime type and divided by the number of indicators in that type. Given that manslaughter and rape, for example, have five and 11 categories, respectively, this ensures each crime is weighted equally. Ultimately, the six individual crime scores are summed to find the overall punitiveness index according to the following equation where p is punitiveness score:

$$p_{\text{total}} = (p_{\text{robbery}}/10) + (p_{\text{rape}}/11) + (p_{\text{manslaughter}}/5) + (p_{\text{fraud}}/9) + (p_{\text{drug-possession}}/6) \\ + (p_{\text{drug-distribution}}/6)$$

Table 2.1 shows the numerical values of the sums by country and crime type.

I present the results in the next section, but first a few comments. When a sentence range included a life sentence this is calculated as being 20 percent

Table 2.1: Sums by Crime Type for Punitiveness Index

Country	Rob	Rape	Mans	Fraud	DrugP	DrugD	Total
United Kingdom	0.511	0.852	1.211	0.074	0.582	1.149	4.378
Poland	0.649	0.393	0.717	0.672	1.076	0.332	3.840
Slovakia	0.754	0.639	0.087	0.677	0.530	0.617	3.305
France	0.707	0.463	0.253	0.667	0.909	0.289	3.288
Belgium	0.908	0.743	0.221	0.415	0.364	0.481	3.132
Croatia	0.512	0.478	0.717	0.672	-0.015	0.743	3.108
Slovenia	0.612	0.569	0.986	0.315	-0.015	0.620	3.089
Greece	0.384	0.361	1.302	0.523	0.031	0.322	2.922
Bulgaria	0.392	0.433	0.213	0.674	0.640	0.497	2.849
Italy	0.648	0.280	0.407	0.229	-0.015	1.235	2.784
Hungary	0.366	0.354	0.579	0.072	0.530	0.499	2.400
Romania	0.224	0.343	0.402	0.042	0.479	0.908	2.398
Switzerland	0.340	0.501	0.717	0.461	0.203	0.148	2.370
Germany	0.416	0.492	0.013	0.680	0.530	0.148	2.280
Czech Republic	0.496	0.070	0.694	0.082	0.691	0.146	2.179
Spain	-0.122	0.347	0.929	0.379	-0.015	0.208	1.726
Lithuania	-0.075	0.189	0.276	0.396	0.203	0.662	1.652
Netherlands	0.180	0.369	0.643	-0.004	0.094	0.166	1.448
Latvia	-0.088	0.604	0.013	0.211	0.146	0.496	1.381
Sweden	0.195	0.111	0.660	-0.107	0.312	0.192	1.362
Estonia	0.409	0.125	0.975	-0.172	-0.006	-0.142	1.190
Finland	0.110	0.049	0.532	-0.257	0.203	0.130	0.768
Norway	0.195	0.567	-0.113	-0.090	0.203	-0.036	0.726
Austria	0.488	0.476	-0.239	-0.102	0.040	-0.019	0.644
Portugal	-0.435	0.229	-0.113	0.060	0.094	0.578	0.414
Denmark	-0.075	0.235	-0.281	-0.238	0.203	-0.036	-0.192

more than the maximum sentence observed in the category. This is an imperfect solution, but satisfies the need for regulations to be translated accurately across countries and, at minimum, biases all estimates for the countries affected (Ireland, Malta and the United Kingdom) in the same way. In certain cases, it is possible that this approach could overestimate the harshness of systems where there is a large degree of discretion baked into the system such as for manslaughter in England and Wales. In subsequent robustness checks, I aggregate the index without manslaughter and find that the United Kingdom remains in the top quartile of countries and is outranked as the most punitive only by Slovakia. The construction of the index intentionally accounts for the formal range of discretion rather than realized sentencing although subsequent users of the index who prioritize a close match between these elements might exclude cases where a life sentence is formally indicated.

There were also countries in which upper limits to sentencing were not given such as six+ months. In these cases, the high end is calculated as the average of all other countries' upper limits. Another method would be to use the highest value in the sample instead for the affected countries (Finland, Germany, Greece, Poland and Switzerland), but this unfairly skews the results for Germany in particular, which has very moderate low end ranges. Other tests to confirm the robustness and advantage of this aggregation method include: 1) double-weighting the average sentence indicator, 2) excluding the range indicator from aggregation, 3) excluding manslaughter from aggregation, and 4) aggregating robbery alone.

Finally, the country sample must be finalized at this stage as each country affects the standardizations of the range and average sentence variables. I drop Iceland and Ireland as the natures of their legal codes were too exceptional to utilize the same categorization process as the other countries. Examples of

specific difficulties can be found in the Appendix. I also drop Malta and Luxembourg as, in subsequent analysis, relationships cannot be adequately demonstrated due to the small population size.¹⁷

Like any methodology, the P-Index methodology poses certain challenges. It is worth noting here particularly a challenge that emerges from this selection of indicators and methodology. Namely, the same indicator may be interpreted in different ways in different countries. For example, mandatory minimums are in some cases utilized to ensure proportionality and thus limit punitiveness, which is contrary to their coding here. Similarly systems with large amounts of discretion baked in for judges (i.e. larger sentencing ranges) may have different norms on how these are implemented leading to challenges interpreting the comparability or “accuracy” of average sentences. However, these challenges are to some extent an unavoidable consequence of considering “law in the books.” I argue that the measure gives us important purchase on the impact of formalized discretion (or lack thereof) as codified in the legal system. Future users of the P-Index may also be selective in which indicators to aggregate for different purposes. Additional discussions of challenges and robustness checks can be found in Appendix C (pg. 156).

Discussion

Figure 2.2 reports the results of the P-Index for the final 26 countries measured. Values range between -0.2 (Denmark) and 4.4 (United Kingdom) with a mean score of 2.1. The negative score for Denmark is due to the standardization of range variables and indicates that the country is comparatively lenient in sentencing based on its position relative to the standard deviation of the

¹⁷This would have also applied to Cyprus had data been available.

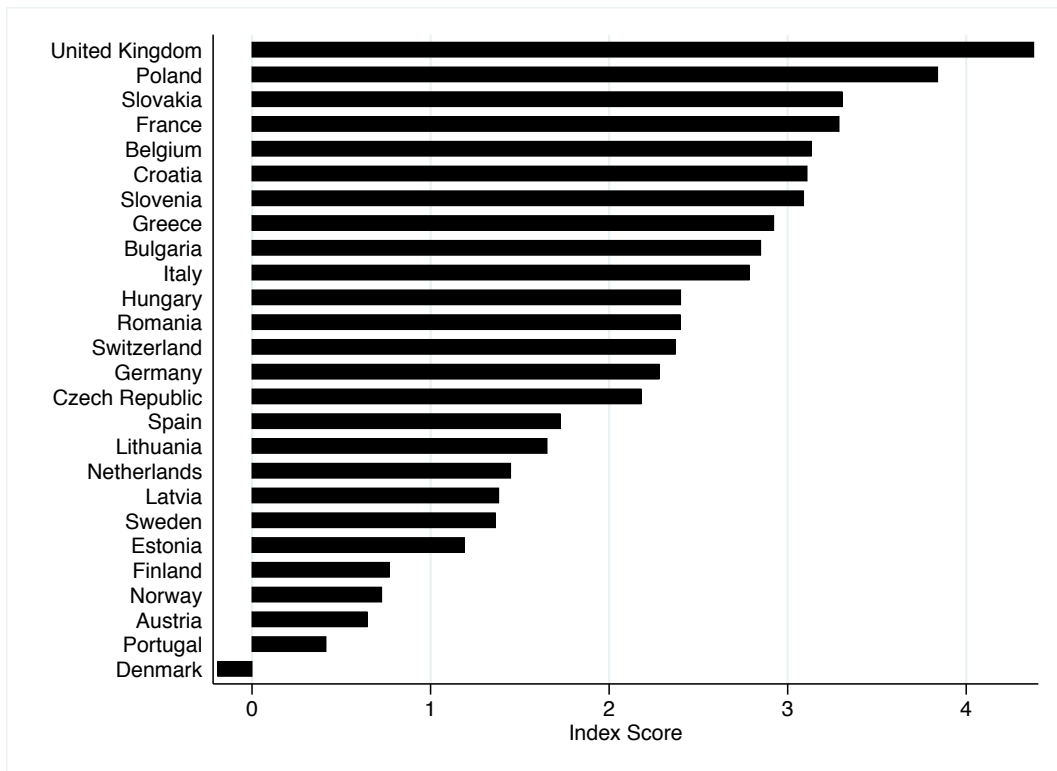


Figure 2.2: Punitiveness Scores in European Countries

observed mean. There is clearly great variation amongst European countries in terms of their legal approach to handling the six crimes covered by the index.

The contours of this variation are not immediately explicable by traditional factors such as geographic variation as Continental Europe and Eastern Europe, for example, both span the different ends of the index. Here, however, I generate four groups for easy reference to the different punitive regime types.

The categories are mapped visually in Figure 2.3. In the bottom quartile of the sample we find the least punitive countries: Denmark (-0.2), Portugal (0.4), Austria (0.6), Norway (0.7), Finland (0.8), Estonia (1.2) and Sweden (1.4).¹⁸ In the next quartile we find the middle-low punitive countries: Latvia (1.4), the Netherlands (1.4), Lithuania (1.7), Spain (1.7), the Czech Republic (2.2) and Germany (2.3). The third quartile shows the middle-high punitive countries:

¹⁸Figures have been rounded for presentation, but the order reflects countries' rank based on unrounded figures.

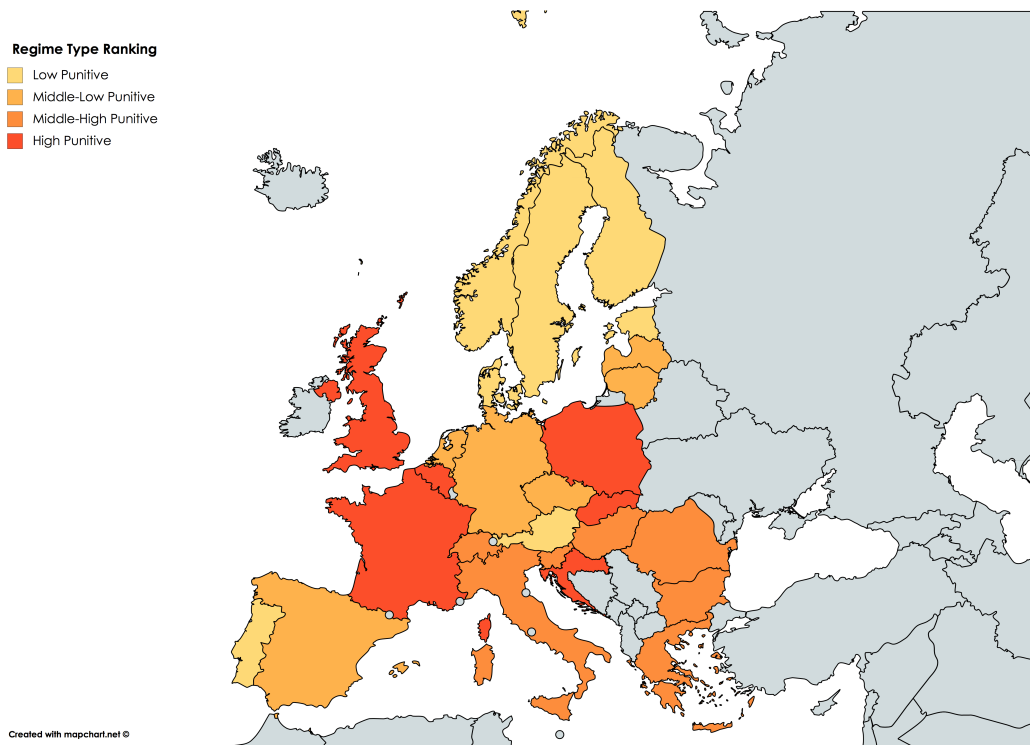


Figure 2.3: Mapped Punitiveness Scores

Switzerland (2.4), Romania (2.4), Hungary (2.4), Italy (2.8), Bulgaria (2.8), Greece (2.9) and Slovenia (3.1). In the top quartile we find the most punitive countries: Croatia (3.1), Belgium (3.1), France (3.3), Slovakia (3.3), Poland (3.8) and the United Kingdom (4.4).

Intention vs. Implementation?

How does this new measure compare with frequently utilized metrics? While it would be intuitive to think that prison population and punitiveness would be highly correlated, this is not necessarily the case. On the one hand, it makes sense that a punitive legal system would precipitate more people being in prison. However, the legal system implies intention whereas the prison population represents implementation and there are many stages between the

two such as police presence, the supply of crime, the observed harshness of judges (especially in cases with wider discretion) and even the profile of the offenders themselves. I therefore do not expect a uniformly perfect and positive correlation between the P-Index and prison population rates.¹⁹ The correlation will, however, give us a preliminary indicator of how predictive the measure is of outcomes and thus the importance of these implementation factors in different contexts.

There is a 0.1 pairwise correlation (statistically significant at the 99 percent level) between the average prison population²⁰ and the punitiveness score. In order to demonstrate that this is not a function of my aggregation method, but rather the underlying weakness of the correlation, I revisit some of the alternative aggregation methods discussed above and in Appendix C. When using the index without the range variables, the correlation with prison population falls to 0.02. A version of the index that prioritizes the importance of the average sentence by double weighting it correlates with prison population at 0.1, the same as my standard measure. Excluding the somewhat troublesome manslaughter component results in a correlation of 0.08. Finally, the relationship between punitiveness for robbery alone and the prison population actually reverses direction with a correlation of -0.13. These results show that the punitiveness score I am using provides the strongest effort at the positive relationship between punitiveness and prison population that would theoretically be expected.

Thus, there is clearly something driving this small relationship. I recode each of the countries according to whether they joined the European Union

¹⁹It is worth noting that a similar positive relationship could be expected between alternative measures of punitiveness and prison rates, but this is not the case, for example, in the Cavadino and Dignan (2006) sample.

²⁰Prison population is measured as the total per hundred thousand residents sourced yearly for 2008 through 2014 from Eurostat. In order to best represent the prison population of each country, I calculate the average rate.

Table 2.2: Punitiveness-Prison Population Correlations by Country Type

Prison Population	Punitiveness <i>All Countries</i>	Punitiveness <i>Older EU</i>	Punitiveness <i>Newer EU</i>
Average Rate	0.10***	0.47***	-0.64***

*** p<0.01, ** p<0.05, * p<0.1

prior to the 2004 accession (EU-15) or during or after 2004 (EU-19 and EU-28).²¹ This division also corresponds to a general grouping of Western and Eastern Europe.

Table 2.2 shows the results of pairwise correlations between the punitiveness scores and prison rates when separated by geographic grouping. There is a highly notable difference between the two subgroups. While Western European countries do, in fact, have a much stronger and positive relationship in the predicted direction with punitiveness, the Eastern European countries have an even more robust and negative relationship with the index. The countervailing forces explain the low correlation for the full sample and indicate that higher punitiveness of the legal system does precipitate higher incarceration rates in Western Europe. The converse is true, however, in Eastern Europe.

Figure 2.4 demonstrates how what could be seen as an inverse-U relationship between prison population and punitiveness is actually composed of two opposing linear relationships that correspond with the older-newer European Union country divide. While the most punitive countries in Western Europe have high within-sample levels of incarceration, the opposite is true in Eastern Europe. I believe that this is not a measurement issue, but rather due to structural differences in the way punishment systems operate across contexts. While the P-Index captures the institutional design and intention of a coun-

²¹Neither Norway nor Switzerland are part of the EU, but they are included as part of the older group of countries. The UK is also coded as part of this group although it is no longer a member of the EU as of 2020.

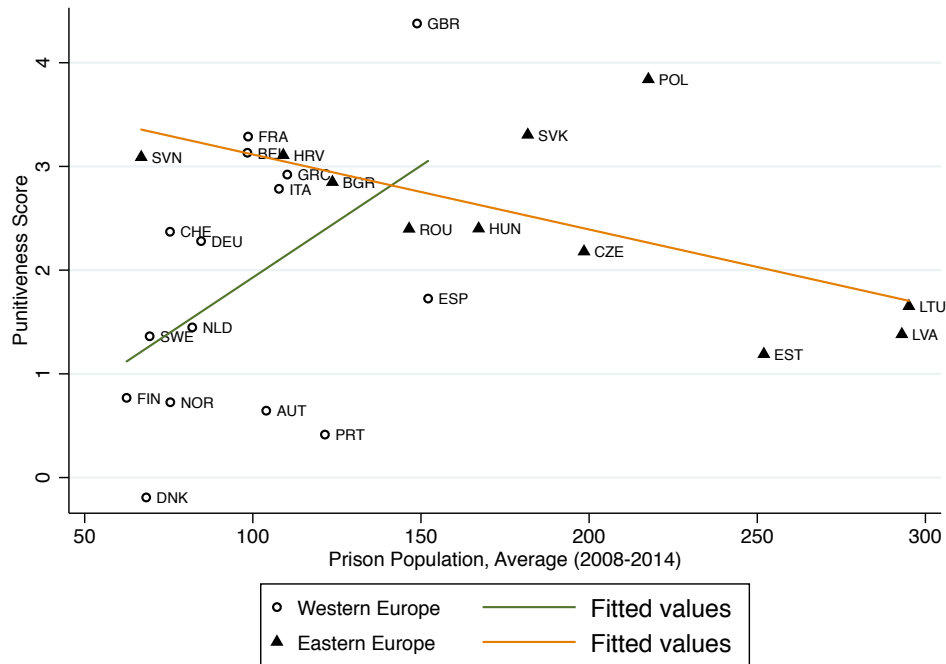


Figure 2.4: Relationship between Prison Population and Punitiveness

try’s system, the incarceration rate captures implementation of these rules. It is worth noting here another inverse U relationship found in the punishment literature. Lappi-Seppälä (2019) discovers a non-linear relationship between GDP per capita and incarceration rates worldwide.

The observed highs and lows in both punitiveness and prison population intersect to create the four types of penal regimes presented in Table 2.3.²² The two extreme cases are represented by Western Europe. Systems that are both highly punitive and characterized by large prison populations are found in the Continental and Anglo European countries with the United Kingdom,

²²It is important to note first that there are two different ways to discuss the scale of differences in prison population and punitiveness scores. The first is within the respective geographic group. For example, the United Kingdom has a high level of punitiveness and a high prison population when compared amongst the Western European countries. However, when compared with the full sample, the United Kingdom remains highly punitive, but has a middling incarceration rate measure in absolute values. Since my argument relies on the factors that drive different relationships in each group, I proceed with the former method of reference.

Table 2.3: Country Categories by Punitiveness and Prison Rate

	High Prison*	Low Prison*
High Punitive*	Continental & Anglo Europe	Eastern Europe
Low Punitive*	Baltic countries	Scandinavian countries

*Refers to high or low level within sample

France and Italy being typical examples. Systems that are minimally punitive, by contrast, that have small prison populations are found primarily in the Scandinavia with Denmark, Finland and Sweden as representative cases.

Eastern Europe sees two different combinations of low and high values. Systems that are minimally punitive, but have high prison populations are found in the Baltics, best represented by Lithuania, Latvia and Estonia. Systems that are high in punitiveness, but low in prison population are observed in the remainder of Eastern Europe in countries such as Slovenia, Hungary and Bulgaria.

I argue here that the reversal in the potentially expected relationship between incarceration and punitiveness in Eastern Europe needs further study, but may be due to three factors. First, there is an absolute difference in the supply of recorded crime. Second, this and institutional legacy cause the purpose of punishment to deviate from punishment's purpose as intended by Western European elites. Legal policy, crime levels and punitiveness outcomes emerge over time and particularly in the post-transition period in Eastern Europe, elites might utilize punishment for social control purposes. Third, the effect of the first two factors is mitigated by reduced state capacity in Eastern Europe, which hampers implementation and enforcement of the legal code. By contrast, in Western Europe, there is typically both higher recorded crime

and state capacity. This would be broadly consistent with Lappi-Seppälä's (2019) findings that in some contexts population or state wealth is used to establish prisons and social control whereas at higher levels it is used to limit incarceration.

By state capacity, I mean the ability to implement legal policy such that implementation of law closely matches intention. This concept captures levels of corruption, discretion given to judges and other factors that complicate implementation such as ethnic heterogeneity. The Fund for Peace collects data on these types of variables and aggregates them into an indicator called the Fragile State Index (FSI). Figure 2.5 shows the average FSI scores of all countries in the sample between 2006 and 2014 (the years for which data is available) and the relationship between the FSI and the punitiveness index. Two main things are evident. First, with the exception of Slovenia,²³ all of the Eastern European countries fall above the mean score of the Fragile State Index. Second, states with higher levels of fragility (and therefore arguably reduced state capacity) score higher in the P-Index.

This evidence shows that punitiveness need not be indicative of prison population. Capacity is not per se the ability to imprison individuals, but rather the ability to have implementation match intention. The Eastern European countries choose punishment over rehabilitation, harshness over leniency and disproportionate punishments, but limited resources and institutional transparency do not cause these tendencies to trickle down into criminal justice

²³Slovenia, though not an outlier in the P-Index, curiously has a very low prison population for the region. It is possible that the higher level of capacity (although only compared to Eastern Europe and not to the full sample) leads to greater ability of intention and implementation to match. There are other reasons too beyond the scope of this paper which might explain the prison population outlier status – for example, Slovenia is less electorally disproportionate than its neighbors, has had more time with the left in power, has the lowest ethnic fractionalization in Eastern Europe (Alesina et al measure) and, by some measures, has comparatively lower inequality and unemployment. There should be further research into Slovenian exceptionalism in the future.

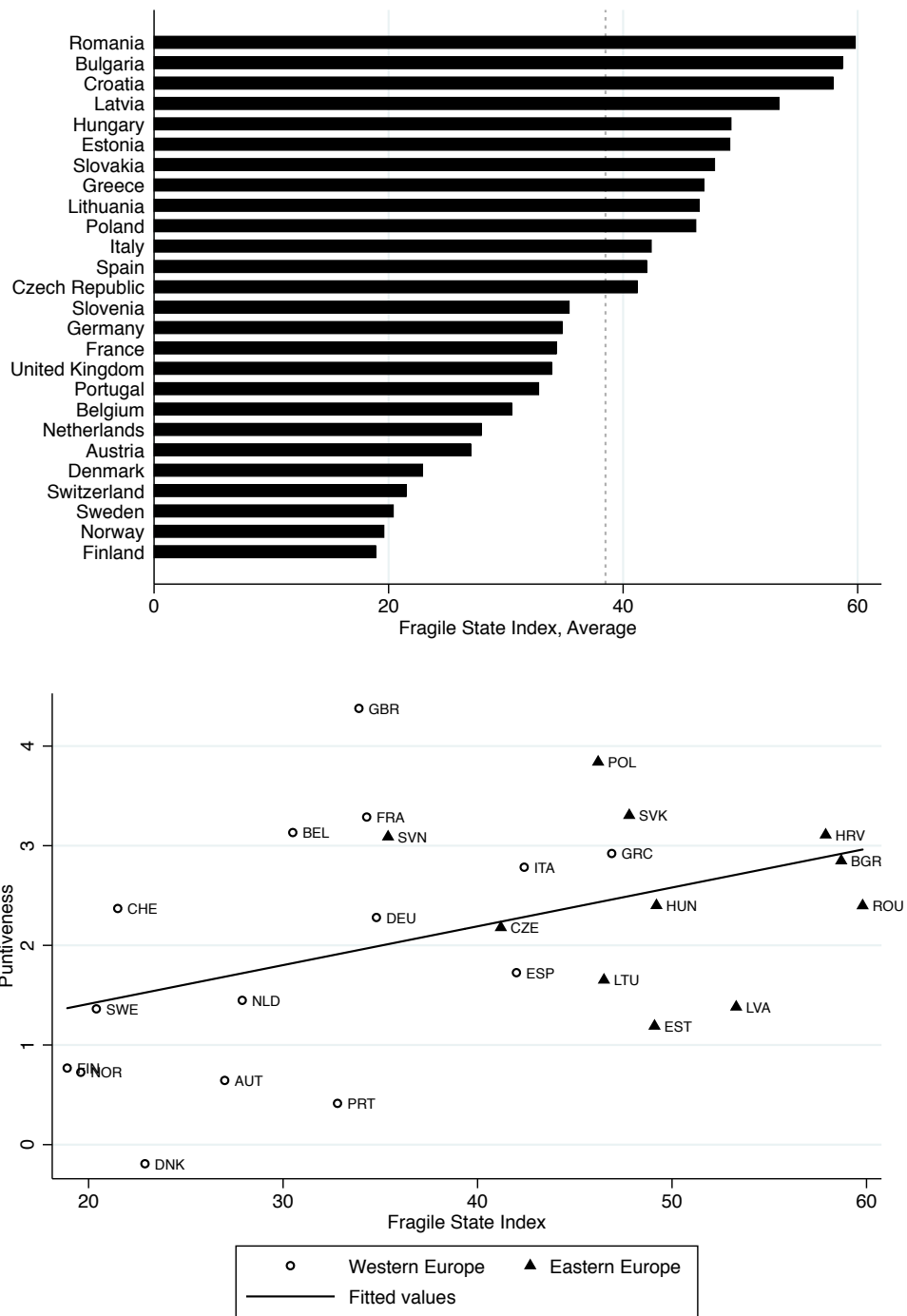


Figure 2.5: Fragile State Index, 2006-2014 and Punitiveness

outcomes. On the other hand, the lessened capacity in the Baltic countries causes higher prison population when the legal system would suggest leniency.

Further, we might consider the fluctuations in the prison population of Eastern Europe and the Baltics to be a symptom difficulty with implementation and a lack of stability. While a full review of the qualitative evidence regarding the punitive history of Western and Eastern Europe is beyond the scope of this paper, it is fair to say that these results broadly conform to expectations of the existing literature on the topic. There are copious sources, for example, confirming penal exceptionalism in the Scandinavian countries and high levels of punitiveness in Anglo systems like the United Kingdom (Lappi-Seppälä and Tonry 2011; Ugelvik and Dullum 2012; Subramanian and Shames 2013; Kommer 1994). The analysis here also broadly conforms with Lappi-Seppälä (2008) in his categorization of country types.

Investigation of Eastern Europe has been significantly more limited. For example, Lappi-Seppälä (2008) does suggest that Eastern Europe and the Baltics have higher incarceration rates, but does not elaborate significantly on the mechanisms. One of the most extensive studies, *Crime and Transition in Central and Eastern Europe* (2012) includes a chapter by editor Alenka Šelih, which offers a glimpse into these penal regimes and supports the findings of this paper. Šelih (2012) details how the democratic transitions in these countries consisted of a complete overhaul of legal and justice systems in ways that were both haphazard and monumental. In particular, she notes that legal institutions with new personnel needed to be built from the ground up, which would give reason for the problems of implementation discussed in this section. Finally, Šelih (2012) also notes that the countries are now among the more punitive in Europe although they were not initially, claiming the punitiveness emerged out of a general trend in Europe and issues of complying with

EU standards.

This section provides great support for the utility of measuring the punitiveness of legal systems. Traditional studies that assume convergence between intention and implementation by measuring punitiveness with prison population obscure this crucial variety, which drives the expected relationship in some places, but a divergent one in others. In particular, the punitiveness index is better equipped to consider the motivations of elites who design the system rather than an overall snapshot of the outcome, which incarceration rates provide.

Conclusion

This project distinguishes itself from one that is concerned mainly with explaining why some countries put more people in prison than others. While this question certainly underlies the work here, it minimizes the theoretical contribution I aim to make regarding the overall orientation of the state toward handling crime and poverty in the way it does. I have argued that the state's use of punishment to sop up social ills must be considered alongside other measures using the specificities of legal codes to indicate the supply side decisions of political elites.

The P-Index developed in this paper provides a unique opportunity for cross-country comparison of legal code punitiveness and analysis that identifies the dimensions along which these systemic elements vary. Through comparison, we can identify useful trends that precipitate a country being highly punitive or not and can group countries according to these factors. Importantly, comparison with the more traditional prison population rates demonstrates how these metrics can obscure underlying variation in the state's intention

for punitiveness and mask differences in the capacity for implementation vs. intention.

There is ample room for further research, particularly into how crime, punishing intentions and systemic implementation interact in a causal and time-contingent manner. Harking back to Tonry (2011), how might the state use punishment for different purposes depending on historical circumstances? Future analysis should also exploit the great variation presented by this index in a more contained cross-section of countries in the sample, questioning how the punitiveness related to a specific crime develops and what this might imply about the given society. This paper provides the political science and criminological fields with a more robust conceptualization of the formal punitiveness that sets the stage in criminal punishment systems and new methodological tools with which to conduct these analyses.

The Appendices for this paper are located as follows: Appendix A: Legal Code Sources on pg. 146, Appendix B: P-Index Codebook on pg. 148 and Appendix C: P-Index Robustness Checks on pg.156. This article is currently under revise and resubmit at Regulation & Governance.

3 | Safe and Sound? Evaluating Citizens' Interacting Demands for Punishment and Welfare

Abstract

Studies show that citizens form discrete preferences over criminal punishment policies according to factors like ideology, religiosity and race. However, few have considered how justice preferences are linked to material factors such as income and existing levels of support from state welfare programs. This paper thus asks under what conditions citizens prefer the government to pursue punishment and incarceration in response to crime as opposed to other types of policy. I establish a new static preference formation mechanism, arguing that a fear of crime victimization predicts punitive attitudes while fears of contact with the carceral system and income loss predict preferences for a more rehabilitative and redistributive approach to crime. I predict these risks will intersect to make income have an increasing effect on citizen punitiveness. Further, I examine how perceptions of social phenomena such as crime, inequality and austerity catalyze those attitudes along with whether citizens perceive they are the target or beneficiary of particular policy options. The hypotheses are tested within the case of the United Kingdom through an original survey fielded in April 2019. Results of the survey analysis support many proposed hypotheses and suggest that opportunities for cross-class coalitions may emerge when a) the anti-welfare rich align with the poor who do not perceive state benefits reaching them to support punishment or b) the anti-punishment poor align with the rich who perceive higher positive externalities from welfare when living in high crime and inequality regions. These findings have crucial implications for the study of politically responsive reforms in criminal punishment and other policy arenas.

Introduction

Across countries, incarceration rates and institutions of punishment vary dramatically. Research has shown that this variation is at least partly explicable by differences in public demand for punitiveness both across countries and within countries over time. While previous work emphasizes various ideological and demographic factors that might explain such public demand, we lack a clear understanding of the precise material mechanisms through which such preferences may be constructed at a static level. Further, in silo-ing demands for punishment from other preferences for social provision from the state, we miss key interactions between policy areas.

This paper then asks when and why the public demands or fails to demand a harsh criminal justice system. I argue that citizens formulate their demands on the basis of material cost-benefit analyses that they make in relation to both their individual level risk and the policy options that they perceive state may provide. These may be either punishment or welfare. The article contends that the distributive consequences of such public policies matter greatly. Punishment, for example, can both imprison certain groups while liberating others from crime. Redistribution improves the material circumstances of some while soaking the wealth of others. The preferences for such policies must be understood as both group and context dependent since the trade-offs that citizens must make will be contingent upon factors such as the crime rate and levels of inequality. I argue that conceiving of preferences this way allows us to understand the cross-class coalitions that may form in response to shared risks and solidarity with respect to crime and welfare in ways that more broadly tap into evolving forms of party competition.

Preferences over punishment are variable and complex. Scholars of crimi-

nology and criminal justice have long highlighted the signaling power of punishment to anxious citizens (Tonry 2011) and the underlying populist punitiveness of the public (Garland 2001; Pratt et al 2005). Important contributions have previously considered the role of partisanship, values, morality, race, ethnicity and religion (Wacquant 2009; Kornhauser 2015; Cornwell 2014; Toch and Maguire 2014; Carvalho and Chamberlen 2018) in explaining such preferences and have given thermostatic measures of the mean level of support across contexts (Zimring and Johnson 2006 Farrall and Jennings 2012; Enns 2014). In addition to demographic factors, others argue that media consumption can prime punitive attitudes (Enns 2016) or that real rises in crime increase punitiveness and have a lagged effect on legislative attention (Farrall and Jennings 2012).

However, what we are unable to explain from existing work is the causality of these demographic factors, the pathways of informational updating and the numerous thorny puzzles about the conditions under which predicted relationships break down. For example, Fortner (2014) and Forman (2017) document how Black communities were key supporters of tough-on-crime policies during the crime boom in the US. In other contexts such as Scandinavian countries, we observe relatively non-politicized environments develop around justice policy across demographic groups even in contexts of increased crime.

Part of the struggle to explicitly conceptualize punitive attitudes can be explained by the challenges of existing survey data and measurement practices. For example, is punitiveness developed and expressed through spending priorities, policy demands or both? Enns (2016) writes that available cross-national data for Europe is limited to a 2001 question about whether crime should be fought more intensely in 15 countries.¹ While higher support here correlates

¹There is also a panel on justice in the 2010 ESS.

with larger prison populations, this hardly helps us conceive of what exactly citizens are demanding. Another common practice is to consider whether survey respondents rank crime as the most important issue faced by the country (or more important than another issue of theoretical interest such the economy, as is done by Farrall and Jennings (2012)). This method may mask the true level of crime concern (Enns 2014) and does not allow for the possibility that peoples' perceptions of crime and other issues may be interwoven and jointly determinative of how they prefer the government to act.

I aim to provide a complementary explanation of citizens' preferences over punishment that takes account of multiple policy domains at once. Here, I build on emerging work from Rueda and Stegmüller (2015) who argue that fear of crime can cause the rich in high inequality regions to prefer increased redistribution. Critically, I argue that citizen demand must be considered in a multidimensional context that accounts for the policy options citizens consider when developing their political attitudes to crime. Such contexts are also dependent on institutions of existing service provision (i.e. policy feedback) and how the experience of government through institutions like the criminal justice system might critically help determine demand.

To accomplish these aims, the article first develops a theoretical framework for demand in greater dialogue with existing literatures on punitive demands, redistribution, priority ordering and policy feedback in mass politics. Citizens who feel at risk from crime and fear for their safety should want the state to act punitively whereas those who do not fear being a victim of crime should demand less punishment. On the other hand, citizens who feel at risk of arrest (i.e. personally being target of the state's 'second face' (Soss and Weaver 2017; Owens and Walker 2018)) will have a welfare instinct while those who do not fear arrest will hesitate less about being punitive. Finally, following Rehm

(2016) and others, citizens with more risk of income loss will have a welfare instinct whereas those with less risk will prefer more minimal redistribution. Cues from the local environment such as levels of crime, austerity or inequality will help determine the effect of context on preferences. The article proceeds to discuss a test of this theory in the context of contemporary Great Britain and presents the findings of an original survey fielded through YouGov in 2019.

Crime and justice were particularly salient in the UK at the time of fielding (and remain so today). In August 2019, Prime Minister Boris Johnson announced the commission of a review of the criminal justice system, seeking to end the automatic license (parole) system for sentences of 14+ years, which would effectively lengthen criminal sentences (Dearden 2019a; 2019b). This announcement came even as former Justice Secretary David Gauke had recently recommended the elimination of short prison sentences (under 6 months) following a report from the Ministry of Justice in July detailing their ineffectiveness and annual price tag of £18 billion through the costs of subsequent reoffending (Dearden 2019a; 2019b). Johnson's plans formed part of a longer term strategy of the Conservative Party, which included 20,000 new police officer positions, £85 million more to the Crown Prosecution Service (as prosecution rates have dipped) and 10,000 additional prison spots (with a potential cost of £2.5 billion)(Dearden 2019a; 2019b). The analyses of the survey responses ultimately suggest that these proposals were likely quite popular with large groups of the public.

Theorizing Demand from Individual Risk

When thinking about demand for punishment, we often consider how we would like to see the average offender treated. For example, some individuals may prefer to see drug offenders go to rehab rather than prison, have a sentence of

12 months rather than 5 years or want possession sentenced more leniently than distribution according to a notion of proportionality. Conceiving of preferences this way can focus on the specifics of the offender to the detriment of theorizing what punishment achieves or does not achieve for the specific citizen who is lobbying their government. Here, I aim to more formally understand how individuals experience both the material and physical risks of crime and the externalities of policies which address them. Though punishment has many dimensions, I narrow in on three components related to the policies for and funding of prisons, sentencing and policing: 1) citizen agreement with the level of harshness practiced, b) opinions on the proportionality of punishment for different types of crime, and c) commitment to rehabilitation.

In particular, I argue that citizens are not ignorant of the constraints governments face in implementing various policies and agree to make trade-offs between ones that will better address their perspectives on the above issues. The inclusion of a policy trade-off in my theoretical framework is motivated also by a growing body of political economy literature that responds to the wisdom that survey data shows citizens overwhelmingly favor all new spending by introducing real priority trade-offs into the calculus that voters must make (Busemeyer and Garritzmann 2017; Häusermann et al 2018; Bremer and Bürger 2023; Barnes and Hicks forthcoming). It is important to note criminal justice service provision is not easily attributed the same public good connotation as welfare policy. While I aim to measure preferences toward a single desirable goal – safety and security – the deployment of coercive state action certainly does not impact or benefit all demographic groups and geographic locations equally.

Individuals seek to maximize their well-being, which includes both income and physical/economic security. The theoretical predictions depend on a stated

trade-off between redistribution and punishment, which are both potential solutions to the problem of crime. Each, however, is a unique dimension with punishment preferences ranging from rehabilitative to punitive and welfare preferences ranging from inclusive to exclusive. Both of these options have been presented as crime reduction preferences before, including by Rueda and Stegmüller (2016) who provide an important first contribution in establishing a link between redistribution and fear of crime. Their work sets out to offer an explanation of the differentiation in rich-poor redistributive preference variation by country and emerges with a compelling thesis about the rich being motivated by macro levels of inequality and specifically crime as an externality of inequality.

In this work, I explicitly consider demand for punishment and whether the rich are supportive of more redistribution because they see it as a means to ameliorate crime. There is a theoretical counterargument that the rich may instead prefer to hire private security or have the state pursue policing and imprisonment more strongly in the face of crime and remain opposed to redistribution. Additionally, in order to understand how diverse groups may come together to form coalitions around particular demands for punishment, I consider how preferences may vary across the income distribution. This is important as the negative externalities of inequality are actually experienced more by the poor and minority populations (see Soss and Weaver (2017) on “race-class subjugated communities”).

For example, while both Rueda and Stegmüller (2016) and Farrall and Jennings (2012) conceptualize the risk of being a victim of crime, I find it equally important to consider the risk of being entangled with the punishment system, especially as a function of your area of residence. Those with higher risk of crime victimization demand more punitive policies and vice versa. Those with

higher risk of arrest demand comparatively less punitive policies, though on a secondary basis from their risk of victimization. The main factor at work here is how citizens perceive the role of the state. For some, the state is a protector, for others it is a provider and for yet others it is an aggressor or controller. Citizens maximize their preferred role through criminal justice demands.

I argue that while pro-punishment and welfare preferences could coexist, we should not assume that they do unconditionally. The way people find themselves constrained either materially or in their level of safety by the political environment necessitates us considering them a trade-off in some cases. As Waquant (2009) and others have argued, the era of tough on crime politics coincided with the spread of the neoliberal order. There is a conflict here. How did the period of decreasing state intervention, especially in the United States, coexist with an increase in the carceral complex? At least part of the reason is that imprisonment was not billed in the same light as redistribution – it is coercive not redistributive.² In the face of rising crime, the two policies were not treated as akin to one another. Forman (2017) supports this viewpoint when he writes that Black citizens certainly wanted the government to provide welfare and tough on crime policy, but knowing the later was not feasible in the conservative era pursued demand of the former. The point is that trade-offs have historically been made and motivated by ideological, security-based and material preferences about social, racial and economic control at the levels of both demand and supply.

In formalizing the theory, I will first address *ceteris paribus* individual level risk-based preference formation and then consider how such pathways may be interrupted by state norms and the distribution of fear. I argue that preference formation begins with exposure to and experience of three main risks: the

²It is important to note here that welfare in itself can be coercive in its methods of controlling recipient groups (Soss and Weaver 2017).

risk of being the victim of a crime, the risk of being arrested by the police (and subsequent entanglement with the justice system) and the risk of income loss. The last risk could be interpreted either as the risk of being soaked by state taxation (the rich) or the risk of having precarious employment or other financial insecurity (the poor). I adapt the latter as is done by most of the literature. Preferences emerging from these risks will either be for punishment (“punitive instinct”) or redistribution and rehabilitation (“welfare instinct”).

H1: Citizens make demands for punitiveness (P) and redistribution (R) based on minimizing exposure to three main risks: 1) crime victimization (v) and 2) arrest probability (a) and 3) loss of or lower income.

- *Those with higher (lower) risk of victimization (v) demand more (less) P and less (more) R.*
- *Those with higher (lower) risk of arrest (a) demand less (more) P and more (less) R.*
- *Those with lower (higher) incomes demand more (less) R.*

We can thus see a differentiation in the demands of the poor and of the rich. Poor citizens will face more risk of victimization, arrest and income loss. Assuming that each risk has an equal impact on the aggregate preference, poor citizens’ preference for welfare (arrest and income) will outweigh their preference for punishment (victimization) relative to the rich. Rich citizens, on the other hand, will face less risk of victimization, arrest and income loss and their preference for punishment (arrest and income) will outweigh their preference for welfare (victimization) relative to the poor. Hypotheses 1 and 2 are visualized in Table 3.1 for clarity. The three dimensions of preference formation (v, a and i) normally drive behavior equally. The rich and poor thus exhibit different preferences.

	Risks			
	<i>Victimization</i>	<i>Arrest</i>	<i>Income</i>	<i>Overall Preference</i>
	<i>(+ Punitiveness/-Welfare)</i>	<i>(- Punitive/+ Welfare)</i>	<i>(- Punitive/+ Welfare)</i>	
Poor	Yes	Yes	Yes	Welfare
Rich	No	No	No	Punishment

Table 3.1: Theoretical Hypotheses 1-3

H2: The poor experience higher v (less R) and a (more R), but lower i (more R). All else equal, the poor will then demand R not P based on the majority of their preferences.

Due to the clustering of crime and residential segregation by class (and often race or ethnicity), the poor’s preferences, however, may be driven by both a fear of crime and a fear of arrest. The former would cause the poor to demand greater state protection while the later emphasizes the role the state is perceived to play as an aggressor or engine of social control. I argue that the later incentive outweighs the former complemented by the heightened propensity of the poor to demand greater social spending as an alternative to punishment, but also more generally due to strategic economic interests. This is a sort of “food first” logic (Rueda 2014).

The rich, conversely, experience less of each type of relevant risk (victim and arrest) and are thus less likely to see the punishing arm of the state as an aggressive agent. Further, driven by economic self interest, the rich are motivated to limit social spending and elements of caretaker state capacity. The rich may respond to contextual conditions differently, however. Typically, the rich are more antagonistic; they are Meltzer-Richard (1981) motivated and resist redistribution. They prefer for the costs of crime to get sopped up in prisons, which are a less visible expense (money taken out of taxes vs. explicit raising taxes). However, in cases where the rich live closer to centers of crime, reside in more homogeneous societies or have preexisting generous welfare institutions, they may act more altruistically and choose redistribu-

tion over punishment. The same “food first” logic allows the rich (who are more secure) to develop preferences that are not exclusive to their material self-interest. Altruism and race-based deservingness calculations both fit this model. For example, the literature shows lack of support for redistribution when it benefits those of an ethnic out-group. Extended here, reduced redistribution provides an impetus for more punishment due to the racial threat hypothesis, especially in non-homogeneous areas.

H3: The rich experience lower v (more R) and a (less R), but higher i (less R). All else equal, the rich will then demand P not R based on the majority of their preferences. The rich will only support R over P if they are altruistic, live closer to crime or live in homogeneous societies.

Societal Perceptions and Dynamic Demands

As is raised in Hypothesis 3, I argue that in addition to personal risk factors, the political and economic context citizens face are key to their preference formation. Given particular threats to income and security, I argue that citizens use the cues of economic perceptions and safety consciousness over time to determine the policy trade-offs they are willing to make at a given moment. This additional element helps explain why observed preferences do not always align along distinct demographic lines such as income as we might expect. For example, when the poor are both more likely to be victims of crime and arrested by the police, what contextual factors lead them to prioritize welfare or punishment? When the rich are overall less likely to face both risks, what factors can prime them to consider community policy efficacy over tax considerations?

I focus here on two main contextual factors: the levels of crime and the distribution of inequality. Crime is unique among social phenomena for its

geographic distribution and effect on individual persons and property in connection with the allocation of state resources. We know that a citizen's neighborhood or region can highly affect their perception of crime victimization likelihood. Quillian and Pager (2010, pg. 81) write, "Because actual crime rates are not typically known or fully observed... individuals are likely to look to other social or contextual factors associated with crime for additional information in forming risk estimates." Further, an emerging literature on the politics of housing and homeownership is beginning to demonstrate how housing is a measure of your economic resources or a long-term store of income (Ansell 2019) and your relationship with the state (Thurston 2018). If housing values are key to individuals' preferences towards economic and welfare policy, then their (perceived) shift should be part of the calculus for punishment preferences as well given that punitiveness could be a form of risk insurance against loss of property (i.e. theft) or property value (i.e. neighborhood blight).

In terms of inequality, existing work argues that the criminal justice system will be affected by austerity and the financial capacity of the state. Brown (2012), for example, finds that American states weakened by the Great Recession were more likely to decrease their usage of imprisonment while Gottschalk (2014) cites evidence that many states still have growing prison populations as they operate on quite fixed costs. These diverging accounts, however, neglect the demand side. There is reason to think though that such factors, especially factors that are place-based, will impact individuals' estimation of local risk to material and physical security from crime. Continuing with the example of housing, if the government can pursue exclusionary eligibility for publicly-backed loans (as per Thurston's (2018) discussion), the same boundaries may be relevant to the provision, experience and targeting of welfare more broadly, but also punishment in a critical way.

The beneficiaries of welfare and punishment are not randomly assigned. Neither for that matter are those targeted as funders or subjects. Existing literature led by Mettler (2011) has emphasized the “submerged state” – the phenomenon of private provision of public goods or invisible policies like tax subsidies masking the role of the state in welfare provision – and I consider this concept here though not in the sense of the public-private nexus.³ I argue instead that the visibility of different policy types stratified by demographic and geographic group is relevant to the formation of punitive preferences.

State policing, incarceration and welfare provision are distinct forms of public goods that have costs and benefits affecting the calculus of personal benefit. Normally, the costs of punishment are the increases in taxes or state resources spent pursuing safety in society and the benefits are greater security in neighborhoods, which lead to higher quality of life and material benefits like improved housing values and higher school achievement. However, given the unequal distribution of these resources, most noticeable in the heavy policing of “race-class subjugated communities” (Soss and Weaver 2017), the costs can also include an intrusive presence of state power in everyday life for minority and low-income citizens. Welfare also comes with costs and benefits. Redistribution must be funded by tax revenue or cuts in other spending, which affects taxpayers to different degrees depending on the tax structure, and the benefits may or may not be equally distributed depending on the policy (insurance vs. redistribution). Unequal tax burden and beneficiary status can lead to inter-personal and inter-regional resentment (Cramer 2016).

I expect that, all else equal, for the same amount of taxation the typical voter would prefer to receive a material benefit from the state than to not

³Most fears about a take over of private prisons are statistically overblown. For example, in the US in 2016, only 8.5 percent of all incarcerated people were housed in private facilities (The Sentencing Project 2018). The rate is much higher for immigrant detainees.

		Externality of Policy	
		<i>Benefit</i>	<i>Mitigated Benefit</i>
Policy Cost (Tax Liability)	<i>High Cost</i>	Rich calculation re: punishment	Rich calculate re: welfare
	<i>Low Cost</i>	Poor calculation re: welfare	Poor calculation re: punishment

Table 3.2: Externalities and Costs of Crime Policy by Income Group

receive a benefit. In effect this would mean a preference for the welfare side of the trade-off rather than the punishment side where tax money is targeted at people quite literally considered the “other” in society. Welfare leads to the positive externalities of reduced crime and material benefits from social support. These externalities may be conceived of personally (i.e. “I will not personally be the victim of a crime”) or geographically (i.e. “My neighborhood will be safer”). However, we know that punitiveness is popular and able to attract a broad coalition. Part of this is because the high income voter does not perceive a benefit from welfare. Existing literature shows how the perceived beneficiary or target status can be critical to these calculations. Cavaillé and Trump (2015), for example, argue that the framing of redistribution as “taking from the rich” primes an income and inequality-based calculation whereas “giving to the poor” activates attitudes about social affinity and contributions to out-groups.

In balancing which of the policies to support, the rich estimate the effect on their taxes and see punishment as a less intrusive expense. Preventative policy like welfare is by definition larger in scope and cost than a punishment policy that sops up the costs of crime after the fact. For the same reason that the welfare approach is more popular among the average voter (i.e. benefits are more diffuse), it is more opposed by the rich for being extensive and expensive.

Table 3.2 shows a simplified version of the cost-benefit calculations made by citizens in light of the trade-off discussed above between punishment and welfare. Considering both policy costs and externalities, rich citizens will per-

ceive a high cost to both punishment and welfare given the assumption that policies will be funded through increased taxation of their incomes or wealth. However, the rich perceive that punishment gives them a direct benefit of increased safety of their areas and assets while welfare can only give them a mitigated benefit (i.e. it will not be targeted to their income group or is otherwise unneeded). On the other hand, the poor will perceive a lower cost to each policy given the lower tax burden on their lower incomes. Here, poor citizens perceive a direct benefit of welfare to improve both their material situation and their community's safety while punishment provides a more mitigated benefit (i.e. only safety may be improved, but this comes at a cost of increased police surveillance and state control).

Of course, these calculations might change with variation in crime, heterogeneity and existing resource distribution, causing a shift between the boxes of Table 3.2. Geographic proximity to crime (conditioned by income and ethnic/racial segregation) conditions the experience of both types of risk, as does belonging to specific demographic minority groups. Following Beramendi (2012) and Rueda & Stegmueller (2015), I expect subnational variation, especially in federal cases where decentralization and risk heterogeneity will cause citizens to develop discrete preferences to either fear crime or display solidarity/altruism. Crime is typically geographically concentrated, which may explain an urban-rural divide on punitive preferences, especially as geographic distribution often acts as a proxy for partisan concentration. The regional separation of voters by partisanship can help explain why local actors in some systems are able to electorally afford reform while neighbors are not. Similarly, when disparate sentencing occurs by location, this should drive both public resistance to local punitive measures via resentment of neighbors and support for more punitive measures that would affect those farther away. Politicians

can effectively mobilize resentment in this way to win elections on ‘tough on crime’ platforms.

In addition to possible real increases in crime, I expect that periods of austerity or recession will make the public feel less safe or abandoned by the state and thus they will demand more services and protection from the government. Inequality should strengthen the predicted preference relationships as it reduces mobility between regions and neighborhoods and reinforces regional residential segregation. Further, the historical salience of racial/ethnic divisions will affect both the fear of arrest and the perceived out-group threats of employment competition and redistributive benefits. The preference for the average voter to prefer spending on punishment is thus strengthened here and endogenous to who is already seen as violent or criminal in society via channels such as the media.

Each of the main risks discussed above may not always have an equal impact on the aggregate preference. Forman (2017) argues that support for tough on crime politics emerged in African American communities during the crime wave even as they were disproportionately the target of police attention because street violence was just so extreme. Here the risk of victimization may simply have been larger than the other risks. Thus, while I expect the poor might be more punitive in periods of higher crime circumstances than would be expected, I argue the same conditions would cause the rich to prefer to be less punitive as both the risk of income loss (i.e. property crime) and the opportunity for social solidarity with the poor will increase. Following Luttmer (2001) and Rueda (2014), I predict these effects would be stronger in homogeneous areas where solidarity with an outgroup is not required.

Citizens who feel they may not benefit from welfare, even if poor, may prefer punishment when fearful of crime, especially if living in a rural area

where the externalities of welfare policy are less apparent or perceptions of resource allocation are low. Those who feel disproportionately targeted by punishment should be more against the policy. Poor minorities may also not feel the benefits of welfare due to systemic discrimination, but I expect will still prefer the welfare side of the trade-off given as it is the least bad option.

On the other hand, for the rich who live in high crime areas or regions with high inequality and believe both welfare and punishment could reduce crime, I expect they will prefer welfare. The externalities for the rich when living among the poor or in high crime areas are higher from welfare than the negative externality of residing in a police state. This is an important extension of the Rueda and Stegmüller (2016) argument about regional inequality given that it is premised on the assumption that the rich are faced with visible inequality. Rich citizens who live in more economically homogeneous areas may not be similarly effected. It is easier to be punitive when the effects are distant.

H4: An increase (decrease) in the crime rate will cause more (less) demand and incentives for P over R .

H5: An increase (decrease) in inequality will reinforce (weaken) the demands of the poor for greater R and the demands of the rich for greater P .

The Theory in Brief

To recap, I argue that citizens make material cost-benefit calculations in light of the punishment-redistribution trade-off based on their subjective beliefs of three main risks: 1) crime victimization, 2) arrest probability, 3) income instability. The rich maintain preferences for punishment due to their lower

probability of victimization and arrest while the poor maintain preferences for redistribution due to their higher probability of arrest and income risk.

Individuals develop their preferences based on whether they perceive being the target or a beneficiary of policy choices. Punishment can both imprison certain groups while liberating others from crime, and redistribution can both improve the material circumstances of certain groups while soaking the wealth of others. These judgments are made in the context of the regional distribution of crime, resource allocation and ethnic and economic heterogeneity. Opportunities for cross-class coalitions emerge when a) the anti-welfare rich align with the poor who do not perceive state benefits reaching them to support punishment or b) the anti-punishment poor align with the rich who perceive higher positive externalities from welfare when living in high crime and inequality regions.

Methodology

In order to test the theoretical predictions laid out above, I designed an original survey to be fielded by YouGov in Great Britain. I look at one case with static data because this design supports the hypotheses that need testing. At this stage, the question is not what effect demand has on policy design, but rather the mechanisms of preference development surrounding punishment and welfare. The full survey instrument can be found in Appendix D (pg. 159).

The dependent variable measures are matched to the conceptual framework of punitiveness developed in the concept and measure article, including the punishment-rehabilitative nexus, the harshness axis and the proportionality axis. To see how core preferences over welfare and punishment vary across contexts, I ask respondents about their preferences for increased sentences de-

lineated by violent and non-violent offenses along with questions of whether they would be willing to have their taxes increase for more spending on redistribution or punishment. These tax statements are used to assess whether people's elsewhere expressed policy preferences remain when their pocketbook is introduced to the matter. I intentionally include the warning here that taxes would increase with spending increases as is increasingly done in the literature.⁴ The majority of the survey questions utilize a Likert scale (i.e. strongly agree to strongly disagree), which I recode to binary and linear versions. Binary variables take the value 1 for strongly agree and agree and 0 for all other replies. The linear variables take a higher value for agreement and lower value for disagreement with 3 as neither agree nor disagree.⁵ Appendix E (pg. 160) contains a full description of the coding.

To explicitly prime respondents to conceptualize a trade-off, the survey also asks respondents to consider the types of policy they would like the government to utilize in fighting crime. They may pick a welfare option (“The Government should focus on preventing crime with investment in social programmes and rehabilitation of offenders”), a punishment option (“The Government should focus on investing in the police and imposing more prison sentences”) or both. The option to select both is included so as not to force citizens into an arbitrary trade-off where they might not see one. I expect theoretically to find that support for the welfare option will be higher as a function of lower income and vice versa. Here I code responses in linear (1 as welfare, 2 as punitive, 3 as both and 4 as neither) and binary (0 as welfare, 1 as punitive) versions.

Following Enns (2014; 2016; 2019), I also create two composite measures

⁴For Busemeyer and Garritzmann (2017), the trade-off is seen when other policies are cut, not necessarily when new spending would be financed by increased taxes or government deficit. For Barnes and Hicks (forthcoming), citizens make trade-offs to avoid deficits with decreased spending elsewhere in times of austerity. Given that budget deficits emerge as generally unpopular, I limit the constraint here to increased taxation.

⁵“Don’t know” replies are treated as missing in both the binary and linear versions.

based on all of the above variables to estimate a latent indicator of punitiveness. The first takes the average score for each respondent of their tax support, nonviolent sentence support and violent sentence support. As these all run on the Likert scale, a lower average means the respondent is less punitive and a higher average more punitive. The second composite includes the trade-off question as well. To fit with the scale of the other questions, the linear trade-off variable is recoded so the welfare response becomes 1 (strongly disagree with punitiveness elsewhere), the punishment response becomes 5 (strongly agree with punishment elsewhere) and the both and neither responses become 3. The new mean is generated across this value and the tax and sentence support to create a composite where higher numbers indicate more punitive attitudes.

In order to evaluate the hypotheses that risk based factors condition punitiveness, I also ask respondents to rate the types of crime they worry most about from 1 to 5 including drug crime, property crime, violent crime, sexual crime and financial crime.⁶ I then ask more broadly about their level of crime worry and fear of being falsely arrested.⁷ These questions are used to assess the expectations that increased fear of crime and fear of arrest will have opposing effects on punitiveness. Another question addresses estimations of safety in their area over the past 5 years to tap into feelings of neglect or increasing disorder over time. Finally, to address contextual factors such as the distribution of benefits and local inequality, I ask about respondents' confidence in justice system actors like the police and judges, whether they feel their areas

⁶For each individual type of crime, the value taken represents the rank this crime was given compared to other crimes (1 indicates this was the crime most worried about and 5 the crime least worried about).

⁷Fear of crime in other work such as Rueda and Stegmueller (2016) has been premised on a survey question about fear of walking alone at night. I diverge from this practice because safety on the street tends to imply violent crime whereas I want the respondent to have the option to think of crime more globally. The ranking question for different crime types is placed first as a sort of primer for respondents to consider the different types of crime that might make up their overall level of worry.

were disproportionately targeted by austerity and whether they feel property values have decreased. I expect that perceptions of failure in the existing system and feelings of location-based economic discontent will bolster support for more punitive reform.

The survey was fielded by YouGov to a sample of 1,976 respondents across England, Scotland and Wales in April 2019. With 189 unfinished surveys (9.6% unit nonresponse at this stage), the final number of respondents is 1,787.⁸ YouGov provides survey weights determined through quota estimates from the census, Office for National Statistics (ONS) population figures, the 2017 General Election results and other large-scale random probability surveys like the British Election Study. The weight variable itself is composed of demographics (age, gender, social class, education level and region) and political behavior (2017 General Election vote, EU referendum vote and political interest). I utilize two versions of income (quintiles and the mean of the income brackets set by YouGov) and a binary version of ethnicity where 0 is white and 1 is Black or minority ethnic (BME). Data from the ONS also provides regional crime rates.

In the models I subsequently run, a number of controls are included. In addition to the survey weights and regional fixed effects, I include age, age squared, educational group, gender, a rural-urban dummy and region itself. Toch and Maguire (2014) provide justification for the inclusion of age and gender while Piketty (2018) provides motivation to consider how education might mask the otherwise significant income effect. With education and the rural-urban measure, I aim to control for an underlying authoritarian attitude which might shift preferences to punishment.

⁸Due to the method in which YouGov conducts survey sampling, a precise response rate is not available, but the company estimates a 20-30% rate for surveys at that time. I additionally cannot conduct any comparative analysis between the responders and non-responders as none of their details are shared.

Results

Risks-Based Preferences and the Income Effect

Descriptive results of the survey show a significant level of punitiveness among the UK population. For example, 85.2% of respondents support the Government increasing existing sentences for violent offenses. Support for increased taxation to fund more policing and prison costs was higher (39.3%) than for increased taxation devoted to welfare and redistributive purposes (28.9%). Similarly, although 47.9% of respondents preferred the Government to pursue both welfare and punishment in addressing crime, those who subscribed to the trade-off were more likely to be punitive (24.7%) than welfare-oriented (21.4%).

Increasing existing sentences for non-violent sentences garnered lower but still significant support with 40.8% of respondents agreeing. This more tempered support might be due to the level of fear people attributed to non-violent crimes. In combining people's first and second place worries about crime, we can see that most people are concerned in this order (highest to lowest): a) violent, b) sexual, c) theft, d) financial, and e) drug crime. The percentage of people who selected violent crime as their primary concern (58.8%) was many multiples of the next closest crime (17%) while drugs were only the primary concern of 3.7% of respondents.⁹ As would be expected, the results vary by gender as higher proportions of women than men ranked violent and sexual crimes in their top two worries and lower proportions chose financial crime and theft.

For inferential analyses, I begin by testing the central hypothesis of the

⁹These results omit those who selected "don't know" for their crime rankings.

	(1)	
	Punitive Composite	
Income	0.00000148*	(0.000000607)
Age	0.0240*	(0.0104)
Age ²	-0.000189	(0.000103)
No Qualification	-	(.)
GCSE and Technical Degree	-0.0900	(0.171)
A Level	-0.430*	(0.146)
University Degree	-0.581*	(0.186)
Gender	-0.0211	(0.0482)
Urban	-	(.)
Town and Fringe	-0.0196	(0.0819)
Rural	-0.0769	(0.0961)
North East	-	(.)
North West	-0.0455	(0.0215)
Yorkshire	-0.152***	(0.0156)
East Midlands	-0.0000651	(0.0152)
West Midlands	0.122***	(0.0169)
East of England	-0.00126	(0.0208)
London	-0.123***	(0.0218)
South East	-0.0904***	(0.0122)
South West	-0.0304	(0.0215)
Wales	0.0981***	(0.0186)
Scotland	-0.0111	(0.0210)
Constant	3.116***	(0.358)
Observations	1281	
Adjusted R^2	0.110	

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table 3.3: The Effect of Income on Respondent Punitiveness

article (i.e. that increasing income should predict increasing punitiveness). I run a regression model of linear income¹⁰ on the punitive composite that includes the tax, trade-off and sentencing measures with the standard controls. The results indicate a positive and statistically significant relationship between income and punitiveness. Thus, as income increases, respondents' average level of preference for punishment also increased as was predicted theoretically. The full regression results are shown in Table 3.3 and also indicate statistically significant positive effects of age and negative effects of having a higher level of education and living in regions such as London and the South East. While the income effect is small¹¹, this is partly because of the small scale of the dependent variable and the large scale of the independent variable. There are also far fewer respondents making £65,000 or more (220 or 16.8% of those who indicated their income). The general effect can be seen more clearly in Figure 3.1.

The results of additional models are not included here for space. However, when income is tested against the individual indicators of punitiveness, the results are broadly similar though not always significant. The effect of income on support for increased taxes spent on policing and punishment is positive. Moving from the lowest income quintile (under £15,000) to the highest income quintile (£70,000 and above) increases the probability of tax support (binary) from 0.34 to 0.47. There is also a positive relationship between income and the probability of support for increased violent sentences. Moving from the lowest income quintile to the highest income quintile increases the probability of tax support (binary) from 0.84 to 0.9.¹²

¹⁰ Again, the values here are the mean of the income brackets set by YouGov.

¹¹ With a standard deviation of 0.77 in the punitiveness measure there is a beta coefficient on income of 0.06

¹² Results for non-violent sentence preferences show the same relationship although not at a statistically significant level and increases to these sentences are overall less supported.

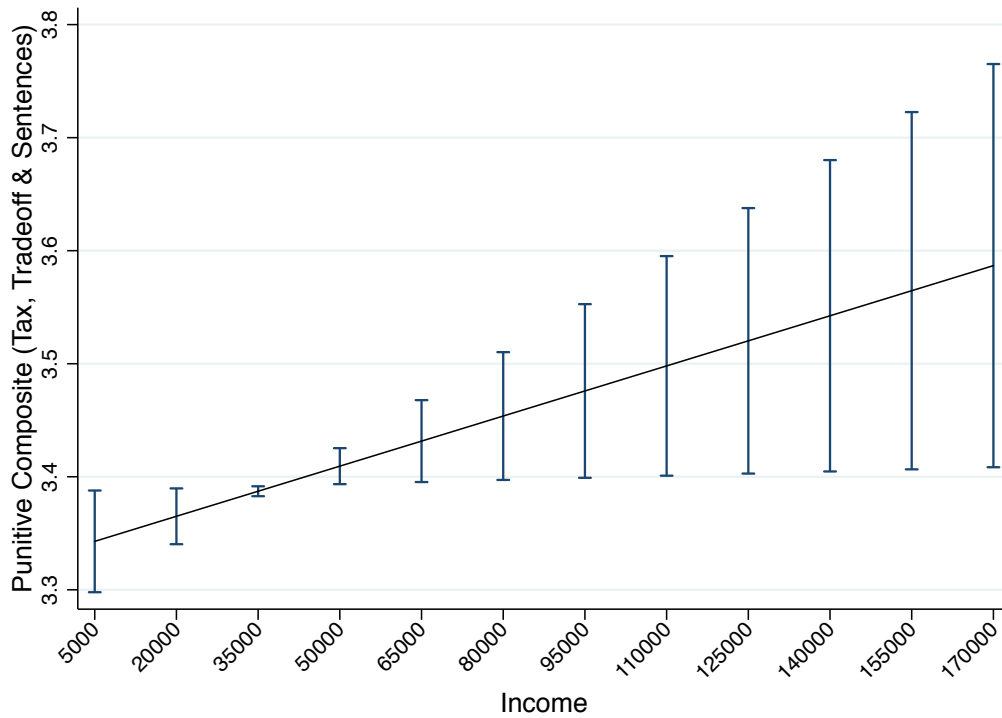


Figure 3.1: Regression of Income on Punitive Composite

Thus, these results show evidence supporting the hypothesis that relative to the rich, the poor will prefer welfare and relative to the poor, the rich will prefer punitiveness. It is worth noting here that support is also stratified by ethnic group.¹³ Across the lowest quintile of income, 72.7 percent of BME respondents indicated a fear of arrest compared with only 14.8 percent of white respondents. By contrast, in the fourth income quintile, 27.3 percent of BME respondents and 13.8 percent of white respondents indicated a fear of arrest. Among those who chose between the welfare and punishment options on the trade-off question (i.e. did not select “both”), respondents who feared

Tests of the trade-off question alone are not significant, but show the expected direction of the relationship (i.e. compared to choosing both, increased income raises the probability of choosing the punitive option).

¹³Across 1,787 respondents, 73 people or 4.1% reported being part of a minority ethnic group. This is a significant and noteworthy underrepresentation of national ethnic diversity. Another 55 respondents not included here reported no ethnicity or selected an unspecified ethnicity.

arrest were less punitive. The welfare response was the most popular selection among BME respondents at 37.5 percent, compared with 22 percent for white respondents. These findings lend credence to the importance of considering the intersecting effects of race and class or income as is advanced by Soss and Weaver (2017) when analyzing punishment attitudes.

Finally, given that the most popular selection on the trade-off question is emerging as “both”, I briefly consider whether particular characteristics systematically make some more likely to perceive a trade-off than others. I create a dummy variable called trade-off choice in which 0 indicates the selection of “both” or “neither” and 1 indicates the selection of the welfare or punishment option. In running logit models, I find that men have a statistically significant higher probability of perceiving a trade-off (0.55) than women (0.44)¹⁴ as do BME respondents (0.64) compared to white respondents (0.49). Additional factors like income, age, education and party identification do not have statistically significant effects.

However, my hypotheses have also proposed that underlying the main income effect are three risks expected to contribute to preference formation (i.e. that fear of crime will enhance punitiveness while fear of arrest and income risk will undermine punitiveness). Figure 3.2 shows a graphical representation of the relationship between each of the three main risks (victimization, arrest, income loss) and different measures of the dependent variable with 95% confidence intervals. The first three graphs show the results of logit models with binary outcome variables where 1 indicates greater support. The fourth graph utilizes a standard regression with linear income and linear support for a welfare-targeted tax where 5 indicates the most support and 1 indicates the least support.

¹⁴It is important to note here though that 30% of male respondents selected the punishment option while 22% of female respondents chose that option.

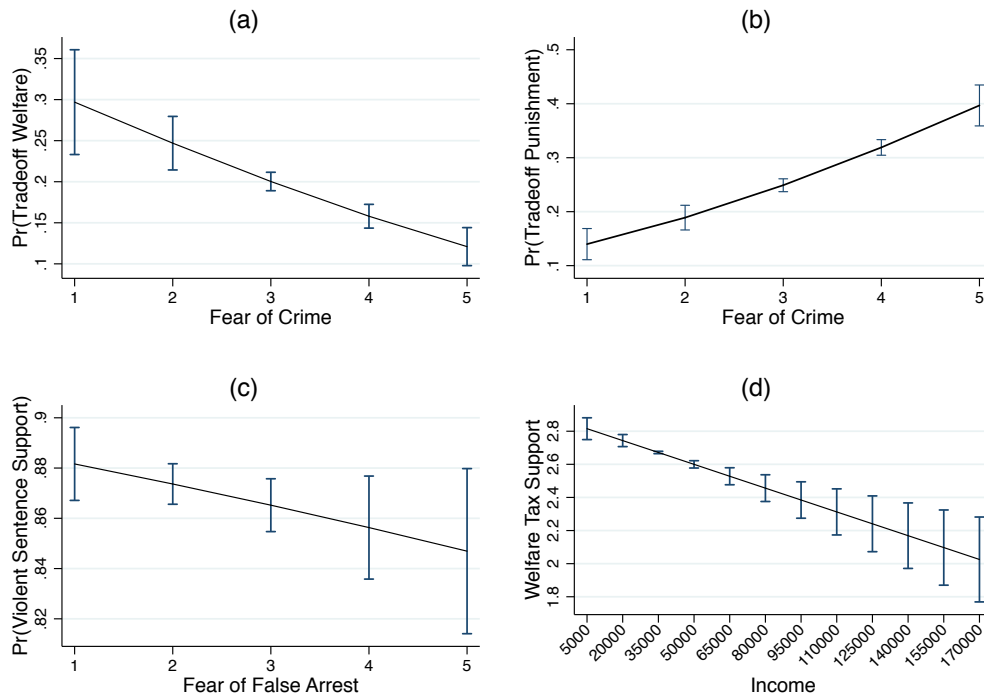


Figure 3.2: Three Risks and Preference Formation

In Graphs A and B, I test the hypothesis that those who are more fearful of crime will be more punitive measured via the trade-off question. Using a logit model with a base of the “both” option, the results show that compared to choosing “both”, the probability of choosing the welfare option was significant highest among those least fearful of crime.¹⁵ The probability of choosing the punitive option compared to “both” increased with fear of crime with significance.¹⁶ When measuring fear of crime as agreement respondents give to feeling their area is less safe than 5 years ago, the probability of choosing the punitive trade-off option compared to “both” rose with increased insecurity.¹⁷

¹⁵When I test how the interaction of fear of crime with income affects punitiveness, as per the hypotheses laid out in Rueda and Stegmüller (2015), the interaction is positive, but not significant.

¹⁶The relationship also holds when considering punitive tax or violent sentence increases as the dependent variable.

¹⁷This result is only significant for the punitive group, not the welfare group although the relationship is negative as would be expected.

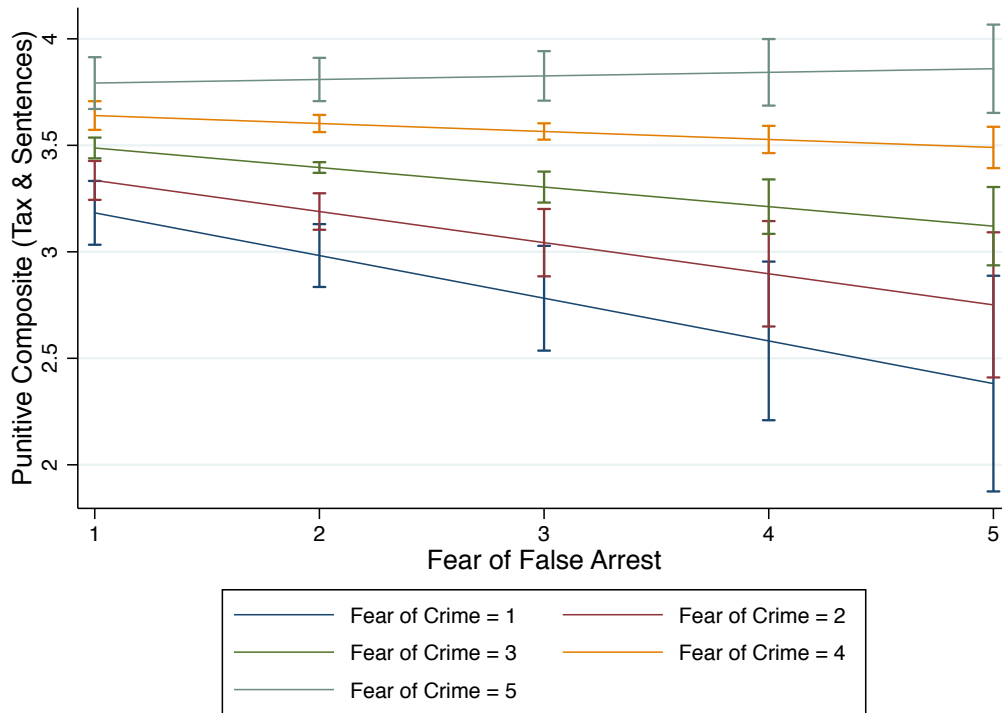


Figure 3.3: Effect of Fear of False Arrest and Crime Interaction on Punitiveness

For context, very few respondents (8.2%) agree or strongly agree that their area is safer than it was 5 years ago.

In the Graph C, I test the hypothesis that those who are more fearful of arrest will be less punitive. As respondents worry more about false arrest, their probability of supporting increased violent sentences decreased, though this result is only borderline significant ($p=0.112$), likely because only 50 people strongly agreed that they worry about false arrest.¹⁸ In Graph D, I test the hypothesis that those who have higher incomes will be more opposed to increased welfare tax. Utilizing the linear coding of welfare tax support, support for the tax decreases with income and is significant whether income is measured as quintiles or linearly.¹⁹

¹⁸Tests with the trade-off and punitive tax dependent variables are not significant.

¹⁹With the binary version of welfare tax support, the relationship holds, but is not significant.

Overall, these results support the theoretical expectations about the impact of the main risks on preference formation. Higher perceived risk of victimization leads to punitive attitudes while higher perceived risk of arrest and income loss leads to less punitive, welfare supportive attitudes. Further, fear of arrest and fear of crime interact in a significant and positive manner. Figure 3.3 shows the results of a model where both false arrest and crime worry achieve statistical significance in addition to their interaction. The plot shows that those who are most worried about crime are not affected by increasing fear of arrest whereas those least fearful of crime are more supportive of punitiveness when they are not worried about arrest. In other words, the negative effect of fearing false arrest is contingent on fearing crime. This makes sense. If you are really worried about crime, nothing else is likely to matter and you are likely to be more punitive regardless. If you do not worry much about crime (consider those who have methods to defend themselves, for instance), then you are from the start less punitive, but have a strong effect of becoming even less supportive of punishment as you fear arrest more given that this is the mechanism through which crime would hurt you. This supports the earlier theoretical note that the three risks may not necessarily be equally impactful on preference formation given environmental factors.

Finally, in the theoretical discussion, I reasoned that the connection between the underlying risk factors and income resulted from statistics which show that low income citizens will be at higher risk for crime victimization, arrest and income loss whereas high income citizens will be at lower risk of each. While I cannot directly test this link with the subjective data this survey gathers, I can make a preliminary comment using the regional crime rates from ONS. If we consider the actual regional crime rate as a proxy of exposure to both crime and arrest, I can ask whether higher income people live in lower

or higher crime areas. In practice, being in a higher income quintile correlates with living in a slightly lower crime region (- 0.096). The results here are muddled by the fact that the regional data provides quite a large level of abstraction.²⁰ Ideally, future work would map the concentration of crime and household income at a more local level.

Context-Based Preferences

Earlier in the article I discussed expectations related to the impact of contextual variables on preference formation. Specifically, I considered the mitigating or amplifying effects of levels of crime and inequality on income and risk-related preference formation. In this section, I briefly offer findings related to these issues. Given that the survey only records subjective perceptions and my expectation that perception would be the mechanism through which these variables affect preferences, I rely on respondents' reported feelings supplemented by ONS crime data. Crime level is thus measured through the subjective crime worry and area safety variables and the objective ONS data. Inequality level is measured through local austerity and property value perceptions.

Crime & Politicization

From existing work such as Farrall and Jennings (2012) and Rueda and Stegmueller (2016), there is reason to think that the subjective perception of crime matters to punitiveness. My results bear this out with conditions. Interestingly, there is practically no correlation between the actual crime rate in 2018 (or change in the crime rate from 2015-2018) and general worry about crime (or perceptions of safety over a 5 year period).²¹ A regression shows that the effect

²⁰YouGov is not able to provide any more fine-grained location indicators for this survey.

²¹This does echo estimation distortions established with regard to crime in Quillian and Pager (2010) and elsewhere in the political economy literature (see Gimpelson and Treisman

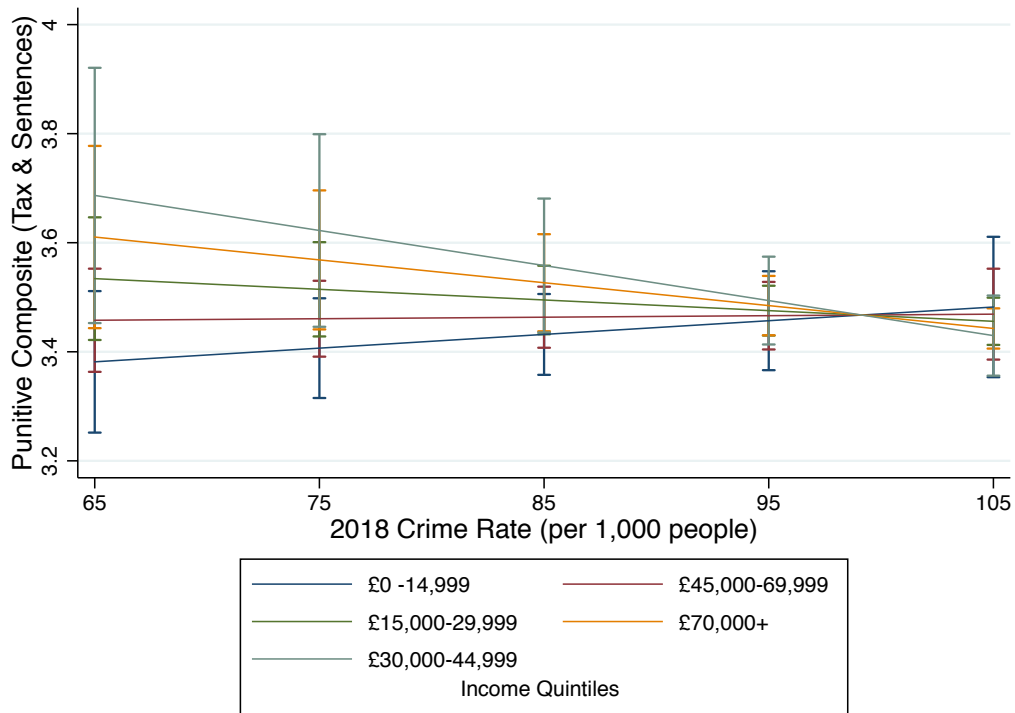


Figure 3.4: Effect of Crime Rate-Income Interaction on Punitiveness

of a one-unit increase in crime worry is a 0.19 significant increase in punitive support measured as the tax and sentencing composite. The significant effect is 0.07 for an increase in agreement that your area is less safe than it was 5 years ago. Testing the same indicators with actual crime though suggests very little effect although both are significant. The coefficient is -0.004 for the 2018 crime rate regressed on the composite and -0.004 for the change in crime rate from 2015-2018.

To test the hypothesis that the rich in high crime areas might be inclined toward altruism and welfare while the poor veer more toward punitiveness, however, we need an interaction term. Here, curiously, neither of the subjective safety measures produces a significant effect interacted with income on punitiveness (measured by the composite) or on welfare tax support. However, (2015)).

objective crime measures did produce significant results. Interacting the 2018 crime rate with income quintile shows that as crime increases (i.e. moving to a higher crime region), the rich decrease their support for punishment while the poor increase their support. The results are reported in Figure 3.4 with a p-value for the interaction term at 0.071.²² The hypothesis is further draw out testing the same interaction on support for welfare tax though the results are not quite significant (p=0.107). Here, the poor are equally likely to support the tax regardless of crime level, whereas rich support increases with crime.

These results thus suggest that the rich may indeed become less punitive and more welfare-oriented when living in high crime areas while the poor may become more punitive. It is interesting that the interaction effect of income on punitiveness filters through actual rather than perceived crime even as the direct effect of actual crime was insignificant. This adds to a longstanding tension in the literature about the best method to capture crime as critical to public attitudes. Existing arguments are made for fear of crime (Farrall and Jennings 2012; Rueda and Stegmüller 2016), (perceived) victimization (Quillian and Pager 2010) and actual crime (Enns 2014 and 2016; Fortner 2014).

Inequality & Politicization

I next test whether the relationships predicted will be stronger in more unequal places as measured by the subjective indicators of whether the respondent thinks their area has been unfairly targeted by austerity or that property values have fallen. Descriptively, respondents in Wales and the North of the country feel worst affected by austerity while in the North, London and Scotland, respondents feel most strongly that local property values are decreasing.

²²The model also controls for age, age squared, education, gender and urban-rural area.

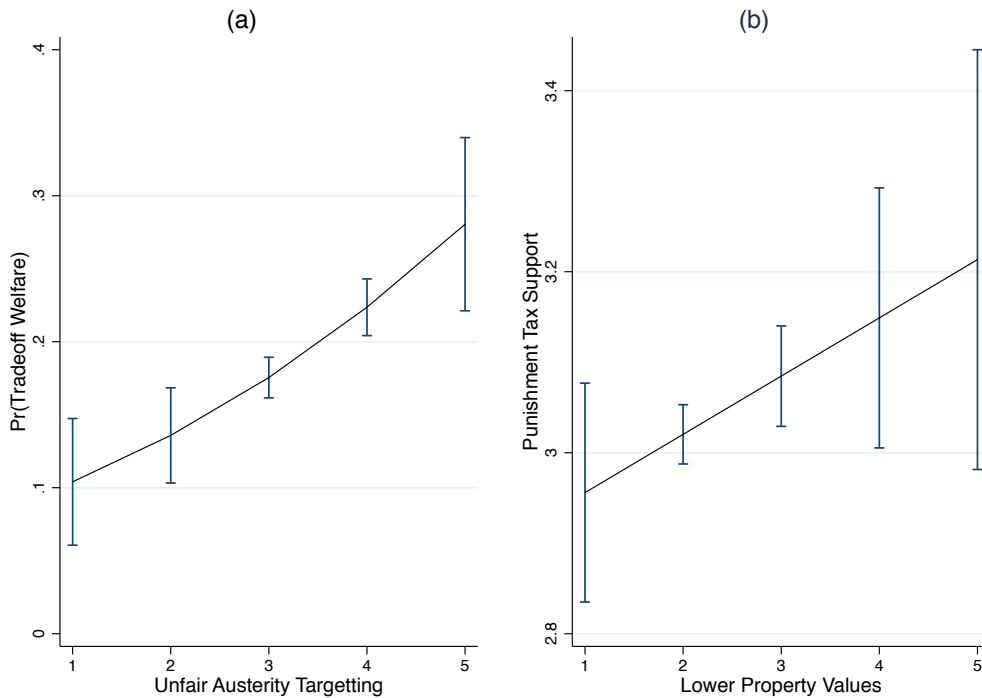


Figure 3.5: Effect of Economic Perceptions on Punitiveness

I expect that higher feelings of location-based discontent and loss of area economic value will increase punitiveness.

The results of the analysis are graphed in Figure 3.5. Graph A shows that respondents have an increasing and significant probability of supporting the welfare solution in the trade-off question compared to selecting “both” if they feel their area was negatively targeted by austerity.²³ Additionally, though not graphed due to space, as respondents think their area has been unfairly impacted by austerity, they are more supportive of the increased tax for punishment spending at a significant level.²⁴ Tests of the property value perceptions yield conflicting results. Graph B shows that there is a positive relationship between feeling property values have decreased and support for

²³There is also a decreasing probability of supporting the punitive option though this is not significant.

²⁴Tests with the composite and sentences are not significant.

the punishment tax, but the effect is not significant ($p=0.135$). By contrast, there is a statistically significant effect when tested with increasing sentences, but it is negative (i.e. as you agree that property values have decreased, you are less supportive of higher violent sentences). This caveat may be related to the fact that sentencing is not as visible to respondents as a symptom of insufficient punitive control as increased police presence would be. Interacting either of the above variables with income to see if there is an amplifying effect yields no significant results.

In all, the graphs in Figure 3.5 show a nuanced story about the impact of economic inequality. It appears that the perception of chronic community underinvestment does not lead respondents to lose hope that a more just government distribution is possible and these citizens then prefer such investments in response to crime as opposed to punitive solutions. On the other hand, observations of decreasing property values follow the expected relationship with punitiveness as regards taxation for the police, probably due to the assumption that the restoration of “order” in a neighborhood will improve perceived wealth and value in such areas.

Conclusion

This article has asked what influences the construction of punitive demands. How do individuals make sense of the risks they face? How do they use these perceptions to decide what policies they prefer? To what extent are citizens willing to make trade-offs in terms of policy options and taxation levels? I proposed a theory which argues that we need a stronger understanding of the direct preference formation mechanism, especially in light of existing service provision. I argue that three main risks (victimization, arrest and income loss)

condition the formation of preferences along a punishment-welfare trade-off and that because these risks are concentrated by income, increased earnings should have a positive effect on punitiveness. Here, I intentionally push the existing literature to contend with preferences outside the redistributive framework and across the spectrum of income and ethnic heterogeneity.

Results from the original survey show many interesting findings in support of the theoretical hypotheses. First, a fear of crime precipitates increased punitive attitudes while a fear of false arrest conditions a less punitive response (though the later effect is just insignificant). A critical positive interaction effect of the two attitudes has shown that in cases where fear of crime is highest, the positive effect on punitiveness can outweigh the negative effect of fearing arrest. This broadly comports with empirical findings over time discussed in historical reviews such as Forman (2017). The results also support the well-established findings that support for redistributive taxation declines with income. Given these effects, the main hypothesis is supported. With increasing income, preferences for punishment over welfare also increase.

Extensions of the theory also provide important results. Though subjective crime perceptions seem important to the direct formation of punitive attitudes, there is a mitigating impact of actual crime on the above income-based effect. Here, the effect of living in a higher crime area makes the rich decrease their support for punishment. This finding is line with my theory that the rich would both find themselves facing more risk of income loss from property crime and that they would gain greater positive externalities from finding solidarity with the poor through welfare to avoid living in a police state. On the other hand, the poor in high crime areas have a higher probability of punitive attitudes, in line with the findings above that fear of crime at its highest levels can outweigh the risk of arrest in these communities. I also find that perceptions of place-

based inequality can increase support for welfare policy over punitiveness in addressing crime.²⁵

In the case of the UK and Boris Johnson's proposed reforms, the vast majority of respondents (85.2%) did indicate a demand for the Government to implement higher sentences for violent crime and over a third were willing to be taxed more to see resources directed to increased policing as was proposed. Further, Johnson's rhetoric of keeping "dangerous criminals off the streets" (Dearden 2019a) tapped directly into the higher levels of fear of violent crime and the higher support for a punitive approach to these crimes. We now have a sense of which groups in which regions are most likely to carry punitive attitudes, which is a critical support base for the Prime Minister's pursuit of this policy proposal. UK prisons are already occupied at the 95% level and developments are slow on new prison construction (Dearden 2019a; 2019b). If carried out, the UK could see a marked escalation in the prison population rate given that the length of sentences will increase even if the Government follows the Ministry of Justice's council regarding short sentences. We could thus see an increasing dualization between community sentences and long prison sentences with simultaneous leniency on many non-violent crimes and increasing punitiveness on violent crimes.²⁶

I have tested the theory presented in this article with one static case so as to look under the hood of the preference formation mechanisms. While Great Britain provides an important test for the hypotheses given governmental action, the results can be situated within the context of advanced industrial democratic politics more generally. Moments of tough-on-crime politics have materialized periodically and this analysis demonstrates that the causes of

²⁵This last effect is found with the austerity measurement. Property value perceptions seem to have a more mixed effect depending on how the dependent variable is measured.

²⁶See work by John Pfaff and Lisa Miller on the critical role of violent crime imprisonment in the US context.

public punitiveness are not merely ideology or value-driven. There are political economic cost-benefit calculations that go into public support for these kinds of policies and many citizens do perceive a trade-off between different approaches to the management of crime.

The results here are critical for understanding the supply side pathways to punitive legislation and state action. Politicians may capitalize on groups who support greater punishment and those who do not. I propose that the political institutions themselves form a critical part of this mobilization calculus. In many cases, those who are themselves targets of punishment policies (i.e. people in prison) are often effectively disenfranchised and go untargeted as an electoral constituency. In elite-led political systems where the rich have outsized influence over elections, we can reasonably predict that politicians will be responding to the demands of a more punitive group. However, the results here suggest another possibility for a cross-class coalition to emerge where rich citizens who live in high crime areas align with the poor (and particularly poor minorities) to demand a more rehabilitative approach to crime control. The analysis of these coalitions together with the evaluation of crime, inequality and capacity at the local level gives direction to the necessary conditions for reform.

The Appendices for this paper are located as follows: Appendix D: Survey Questions, Fielded April 2019 on pg. 159 and Appendix E: Coding for Survey Variables and ONS Crime Data on pg. 160.

4 | Electoral Determinants of Criminal Punishment across Europe

Abstract

This paper seeks to answer the following question: why are some countries more punitive than others in handling crime within their borders? This inquiry follows directly from empirical evidence that suggests even as crime rates have fallen in recent decades, incarceration rates have not followed the same trajectory in all cases. There is substantial variation in the rate of imprisonment between countries as well within countries over time, which is not explained away by divergences in the crime rates. I develop a political economy driven approach to examining the institutional structures behind different punishment equilibria. I argue that criminal justice system punitiveness is in part a function of the constraints imposed on legislators by electoral (proportional representation vs. majoritarian) institutions. These constraints present different incentives for politicians to design policies that shift or absorb the costs of crime in connection with the extent of welfare state targeting to the electorate. These decisions, all in the context of broader country-specific factors such as ethnic and racial heterogeneity, form a kind of resource trade-off between prison budgets and rehabilitative or proactive social spending. I test these theoretical claims through cross-country quantitative analysis using the Manifesto Project Dataset complemented by case studies of Finland and England & Wales that employ elite interviews and process tracing. The findings have crucial implications as both populist politicians campaigning on issues of law and order and their opponents who seek reform on levels both national and local surge in popularity with electorates worldwide.

Introduction

Punishment is one of the fundamental responsibilities of the state in democracies where the rule of law is sacrosanct. The legal system shapes responses to criminal activity and is in turn shaped by it. Despite the centrality of this concern, however, we know relatively little about why certain countries adopt particularly punitive measures while others diverge from those choices. Further, as shown in the other papers here, there is significant variation in what is considered an appropriate punishment for a given crime. Additionally, those studies that concentrate on punishment often consider only imprisonment rates themselves whereas I argue that by interrogating “punitiveness” we can conceptualize a broader range of state intention, activity and implementation.

What explains diversity in punitiveness across contexts? Perhaps the most intuitive explanation is that some countries are just inherently more crime-ridden than others, necessitating more punishment. However, empirical evidence and a well-established literature suggest that even as crime rates have fallen in recent decades from a post-WWII peak (admittedly to different extents), incarceration rates have not followed the same trajectory in all cases (Zimring 2007; Kurian 2006; Enns 2016). Even countries with comparable crime rates often have different levels of punitiveness. Further, crime rates themselves may be inherently biased. Kurian (2006), for example, describes the prevalence of unreported crime and intentional police neglect, both of which represent the differential deployment of system power that is itself worth studying.

Figure 4.1 shows preliminary evidence of this puzzling relationship within a small sample of countries that broadly represent different regions in Europe. The blue lines show the prison population per 100,000 people between 2008 and

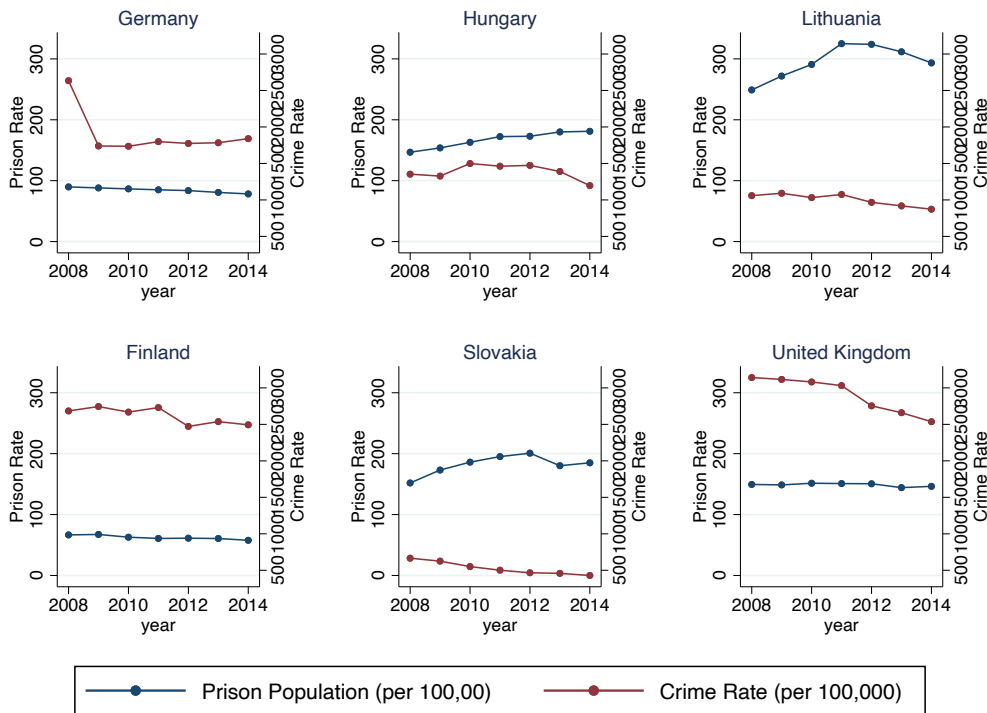


Figure 4.1: Prison and Crime Rates, 2008-2014 (Source: Eurostat)

2014, while the red lines indicate the crime rate per 100,000 residents for the same period. These graphs elucidate two points. First, incarceration indeed does not track crime. For example, Germany experienced a large reduction in crime between 2008 and 2009 yet the prison population did not drop over subsequent years. Second, there is both substantial stability and variation in the prison rates over time depending on the country and also incredible variation between countries. By way of illustration, the average prison population rate in Lithuania is at times threefold that in Germany. Finland and Germany have relatively similar prison rates, but recorded crime rates are significantly higher in Finland.

These empirics point to diversity in the underlying arrangements of criminal justice systems and offer motivation for questioning the political determinants of this variation. I will argue that this question demands us to view

punitiveness, at least in part, as a system encapsulated in the development of legal codes and sentencing policies, not just the incarceration rate. This approach lends itself more effectively to considering the incentive structures and mechanisms guiding policymakers from the supply side.

Theoretically, I will argue that institutions create unique electoral geographies, which in turn lead to the development of different varieties of punitive regimes. Specifically, this paper will test the hypothesis that variation in electoral systems precipitates punitive variation. Analysis of the full sample following a brief review of the literature and a theory section will motivate the necessity of considering such electoral institutions as creating incentives for or against punitiveness. This is supplemented in the remainder of the paper by case studies selected on the independent variable (proportional vs. majoritarian systems). Through a series of elite interviews and legislative process tracing, the cases will demonstrate the mechanisms through which the distribution of votes and political and/or budgetary power impact the desire of policy actors to form coalitions, set agendas for punitiveness and target these “public goods”.

Existing Arguments in the Literature

Punitiveness is an inherently contested concept with little agreement among its users on definitional qualities and measurement strategies. Defining punitiveness perhaps begins most naturally with an evaluation of the many different purposes of punishment (Tonry 2011), which include reinforcing community norms, deterring crime, winning elections and communicating state order (Tonry 2011). Others see punishment as a method of conflict resolution and focus on ‘restorative justice’ or mercy (Cornwell 2014; Tonry 2011). Additionally, some focus on differences between state punitiveness and public or

individual punitiveness (Kutateladze 2010) although they may be interrelated. There is only some agreement on the technicalities of proportional punishment as more “reasonable” (Ashworth and Roberts 2012; Pratt et al 2005; Tonry 2011) and “excessive” punishment as more punitive (Matthews 2005). Despite these disagreement, the literature does recognize the remarkable variation present across penal regimes.

There are three traditional kinds of explanations for why countries enact their carceral apparatuses: crime and demand, social and racial order, and institutional variation. Classic demand side arguments posit that citizens have become more punitive over time as crime rises, leading to higher rates of punishment. It has long been established, however, that prison populations do not track changes in the crime rate (Hamilton 2014; Lappi-Seppälä 2008). Recent work by Enns (2016) shows this is due to differences between the stock and flow of prison populations: in the United States, crime has indeed declined, but the unusually long sentences have masked this effect, keeping prison populations high. Enns (2016) argues that prison populations are thus better explained by a lagged crime rate. However, while demand might explain within-country evolution (specifically in the US context), it cannot alone explain cross-national variation that actually emerges from institutional variation or instances where crime less publicly salient.¹

Second, many maintain that punitiveness is not a function of demand and crime, but rather a measure of the way the state exercises control over citizens to reach certain aims of economic, racial and state order. For example, Garland (2001) suggests that the government utilizes punitive institutions to maintain state capacity and ease public anxiety in an age of new risks (Hamilton 2014; Tonry 2011). Officials target punishment to minorities and the poor

¹Zimring and Johnson (2006), for example, examine how the salience of crime is actually sparked by politicians.

who are politically powerless so that the government can maintain electoral support (Tonry 2011). Wacquant (2009), on the other hand, emphasizes the macro-level pursuit of neoliberalism as corresponding with more incarceration as poverty instituted by unfavorable economic inequality was criminalized. Wacquant has faced substantial criticism from the political economy literature, however; for example, Lacey (2010) finds his work severely hindered by its lack of portability beyond the United States' liberal welfare state context.

Others in this group argue that efforts to control heterogeneous populations explain punitiveness. Lacey and Soskice (2013) find racial segregation to be indicative of greater punitiveness and Lappi-Seppälä (2008) suggests greater demographic heterogeneity leads to the same via the mechanism of “social threat.”² Within the US context, scholars such as Vesla Weaver and Amy Lerman find that incarceration rates are explained by racial politics and institutionalized efforts at disenfranchising minority citizens. Empirical evidence shows that the imprisonment rate of black citizens is disproportionately high in the particularly punitive United States (Hochschild et al 2011) and aids in the creation of “race-class subjugated communities” (Soss and Weaver 2017). Weaver (2007) shows how historical factors such as the passage of the Civil Rights Act of 1964 precipitated renewed efforts to politically and socially disenfranchise black citizens through crime control.

Finally, others posit that we must consider the impact of political and economic institutions on variation in criminal punishment systems. Lacey (2010) and Lacey and Soskice (2013) propose that criminal justice systems can be divided along the lines of Hall and Soskice's (2001) Varieties of Capitalism framework with liberal market economies (LMEs) having traditionally larger correctional apparatuses than coordinated market economies (CMEs). It re-

²This might be why we observe such low incarceration rates in Scandinavia, for example (Lappi-Seppälä 2008).

mains sometimes unclear, however, how these political economies precipitate changes in crime level, criminal policy or both.

I draw on these arguments that prioritize the relationship between markets and voters to explain punishment, and consider which institutional channels matter to supply-side actors. Lacey and Soskice (2013; 2015; 2021) and Lacey et al (2018) advance many explanations ranging from the existence of decentralization to levels of local autonomy and democracy as explanatory of harsh policy environments, especially in the context of the US. Miller (2008) too suggests systemic harshness is a result of federalized policy, which allows uneven translation of political demands especially via local interest groups. Still further, Tonry (2007) and Lappi-Seppälä (2008, 2011) add to the list of institutions with the former suggesting the political appointment of judges and a sensationalist media cause greater punitiveness while the latter argues consensual democracies with corporatist and solidaristic political culture are less punitive.

This paper adopts an institutional approach to the question of what drives punitiveness while suggesting areas that have gone unaddressed in existing work or lack reach beyond the United States case. While many of the proposed relationships between political variables and punitiveness are plausible, the mechanisms of the institutional effects sometimes remain underspecified (i.e. “all good things go together”). In particular, we tend to think of punishment as a task of governance that is separate from the rest. The focus on broad conceptions of political culture (i.e. consensus, CME or corporatist systems) minimizes the concrete incentives and behavior of politicians who respond to specific institutions such as electoral systems and federalism as well as voters operating within multi-dimensional policy spaces. Though numerous contributions in mainstream political science focus on the effects of institu-

tional design on policy outcomes (i.e. Iversen and Soskice 2006; Beramendi 2012), these works are frequently brought to bear on topics such as economic policy, welfare and inequality while rarely being applied to the comparative politics of criminal justice. Emerging work from Rueda and Stegmueller (2016) does establish a critical link here, suggesting wealthy individuals are more likely to back redistributive policies if they live in a more unequal area of Western Europe because they fear crime. However, it is important to note that the variable of interest for Rueda and Stegmueller (2016) is redistribution preferences rather than punitiveness itself.

I argue that it is crucial we consider the trade-offs that politicians are making, not only because this impacts the policies citizens live with, but also because it teaches us about the incentives that are defined by our institutional environment to prioritize certain aims over others. When bundles of disparate policies are grouped together, as is often the case in welfare, rehabilitation and punishment policy, we need greater theorization of the linkages across domains in different institutional set ups.

In this paper, I particularly engage with the work of Persson and Tabellini (2005) in *The Economic Effects of Constitutions*. They write: “Existing theoretical arguments, emphasizing different aspects of electoral rules, predict that majoritarian elections induce smaller welfare states than proportional elections; some, but not all, theories also predict smaller governments and smaller deficits in countries with majoritarian election rules. In the data, we find that welfare states are indeed smaller in majoritarian countries; so are overall government spending and deficits, which sharpens our fuzzy theoretical priors” (pg. 270).

For Persson and Tabellini, the reason for this decreased size of government in majoritarian systems is the existence of size-limited districts operating un-

der plurality, which “drive spending targeted toward small, but pivotal, geographic constituencies. Proportional elections instead induce political parties to seek consensus in broad groups of the population and hence naturally lead to programs with many beneficiaries” (pg. 156). And yet, while cross-country evidence is provided, the authors remain neutral about the mechanism through which these effects operate, acknowledging that electoral systems could be proxies for the effects of different numbers of parties or the likelihood of coalitions.

Iversen and Soskice’s (2006) argument that proportional systems tend to be more left and have greater incentives for redistribution is also a jumping off point. I bring these arguments to bear in the newer domain of criminal justice politics and consider why and how welfare benefits might operate differently from the provision of punitiveness (or prison spending) by the state.

Theoretical Expectations

Understanding Punitiveness and Trade-Offs

Assuming the presence of a certain amount crime and social ills (i.e. drug addiction, poverty, racial conflict, unemployment) in society, legislators are forced to confront trade-offs in how best to tackle these issues. I argue that these actors may choose from two fundamental options, which vary along an axis from punitive to rehabilitative and preventative.³ The former option incorporates a reactive logic that retributive consequences are appropriate for crimes already committed and deter future crime. The later option incorporates a proactive

³This perspective employs a similar logic to that of Rueda and Stegmueller (2016) who suggest people believe redistribution will fix a crime problem, but differs in that crime rates themselves are held constant and the object of inquiry is punishment rather than redistribution.

logic that current offenders are most effectively rehabilitated and reintegrated into society and that the way to stop future crime is by addressing its root causes through social support and investment. The associated policy choices with these aims are punishment and social welfare, respectively. Punishment is a type of public provision, albeit different from what is normally given this title (Weaver and Lerman 2010), and is thus a function of the state's decisions about how to handle crime in the midst of a larger set of choices over spending priorities and systemic treatment of citizens at risk (i.e. minorities and the poor). Each option is costly for different reasons. Prisons are expensive to upkeep, though once constructed, the marginal cost of one additional prisoner is not highly significant. Welfare programs are also expensive and, unless very specifically targeted, typically cover more people than prisons. Both options can be politically costly as publics take issue with both stances in different contexts.

I argue the policies are a trade-off for legislators for two main reasons. First, the underlying logic is different in consideration of the merits and pitfalls of each policy. If a given legislator believes a drug offender must serve a debt to society in prison for breaking the law, this is inconsistent with a diversion to a treatment program. By contrast, if a given legislator believes a thief is more likely to act out of material necessity, the preferred policy option may become social support rather than deepening financial difficulties through the costly judicial process. Second, although both options operate with the same goal of enhancing public safety indicating they could coexist, governments operate under conditions of limited resources and legislative time. I argue, therefore, that legislators must think of the punishment-welfare relationship as a trade-off, i.e. pursuing more of one means pursuing less of the other. The trade-off should thus only be tempered in cases of coalitional governments where both

methods of achieving public safety may be necessarily on the legislative agenda.

H1. Redistribution (R) and punitiveness (P) are policy substitutes for rational actors.

Ultimately, the level at which costs are observed matters greatly. The cost (or tax) burden placed on citizens affects the strategic gains of politicians through decreased electoral support. Although institutional context will determine which fork of the trade-off politicians pursue, I start with the assumption that devoid of institutional context politicians naturally prefer welfare spending over prison spending as it is more electorally beneficial. While the punishment-welfare trade-off does not feature as strongly at the level of citizens due to fewer constraints, one side may be relatively more valued or salient.

In an institutions-neutral context, I argue the average voter would prefer more welfare given the differences between welfare and punishment as two distinct forms of public good. Assuming that both types of policy are funded via the same mechanisms, they become distinct in their different distributions of costs and benefits. Welfare is naturally more diffuse than punishment. Most people only experience the criminal justice system via its externalities (i.e. safer streets), which means that when done effectively and fairly, it is far more invisible than the provision of welfare – in itself sometimes invisible. Services and benefits like health, education and even unemployment insurance have the potential to cut across more social, geographical and economic groups. These benefits have tangible impacts on the pocketbooks of many lower and middle income citizens while criminal offenders are never defined as pivotal voters.⁴ Thus, preferring welfare to punishment is rational as welfare policies can result

⁴In many cases, they are disenfranchised within prison and sometimes even after.

in 1) the positive externalities of crime reduction and 2) the material benefits of social support.

Determinants of Punitiveness

In the previous section, I assumed an institution-neutral context to establish baseline preferences. Here, however, I expand upon my supply side theory of institutional incentives in the context of constant citizen demand. All else equal, I expect politicians in environments that allow cost-shifting of welfare to other regions or levels of government will prefer to be less punitive. This is based on the assumption discussed above that politicians pursue greater welfare (less punishment) when possible.

Politicians seek to minimize costs and gain electoral advantages. Their actions, however, are constrained by the institutional environment. I expect that in cases where the costs of welfare can be externalized on other levels of government, legislators prefer less incarceration and the state will be more rehabilitative and proactive in handling social problems. Not only is the state less punitive in this case, but it also may have less reason to be (i.e. with time factored in, there will be less social ills in the future affecting the demand for punishment). By contrast, in cases where the burdens of welfare spending fall locally, but prison are paid for centrally out of an existing budget, I predict a more punitive system. Consider, for example, a politician who faces a choice between raising local taxes to pay for more significant welfare programs or allowing the national government to pick up the tab of incarcerating criminals at a prison located far away. That politician is likely to pick the later option given its reduced visibility for the local electorate. This can also lead to the self-fulfilling prophesy of having more reason for punitiveness down the line in a more antagonistic society. The cost-shifting explanation here follows from

works such as Beramendi (2012) which consider redistribution as a function of sub-national differences in inequality.

But why in the absence of potential for cost-shifting do politicians pursue punishment? I base this section on the assumption that in cases where electorally-minded politicians face citizens averse to tax increases, coalitions are easier to build around punishment than welfare because the costs of imprisonment for a subsection of society are cheaper than broad welfare expenditure for all in society. Similarly, prison expenditure is less visible to the average citizen than welfare spending and thus less problematic to pocketbook voters.

To apply this logic to actual institutional arrangements, I expect variance in punitiveness to result from differences in electoral systems and, specifically, electoral disproportionality. I expect the disproportionality of votes to seats to positively affect levels of punitiveness. This is partly because politicians respond variably across these contexts to local vs. national median voters who may express different preferences. My expectations can be formalized adapting the framework presented by Persson and Tabellini (2003) who discuss how benefits may or may not be targeted depending on the institutional context.⁵ In PR electoral systems, there are lower incentives for punitiveness. The opinions of the regional median voter—who is traditionally blamed for anti-crime attitudes—are less salient to politicians due to the incentives in proportional systems to be representative of the whole population. Welfare benefits are geographically diffuse and the cost burden is equalized across citizens. There is thus no incentive for politicians to shift the costs of incarceration to another level of government and so welfare trumps punitiveness. The propensity for higher welfare spending due to the dominance of the left in PR systems

⁵They suggest that politicians in proportional representation (PR) electoral systems do not target benefits geographically because their party will better gain seats through a wider distribution of general benefits. In majoritarian (M) systems, by contrast, geographic targeting is necessary to ensure the loyalty of the median voter to gain legislative control.

reinforces the relationship.

In majoritarian electoral systems, there are higher incentives for punitiveness. The regional median voter is more pivotal. Politicians target benefits to electorally crucial areas and reduce the cost burden to individuals by maintaining (or reducing) taxes. Majoritarian systems are associated with higher income inequality so the tax base to pay for local welfare initiatives does not necessarily exist in the areas most affected by current levels of incarceration. In these cases, punitiveness trumps welfare. The propensity for lower welfare spending due to the dominance of the right in majoritarian systems reinforces the relationship. Additionally, politicians may try to place the costs of managing social ills through prison spending at other levels of government. It is advantageous to make the national government pay for prisons out of an existing budget rather than increase the local taxes to pay for benefits that would address the root causes of crime such as unemployment.

It is critical to consider the geography of both crime and the provision of justice services here. Crime is rarely evenly distributed – consider natural divergences between urban and rural areas, for example. Punishment and punitiveness could thus be considered a “good” more naturally geographically targeted. For example, parties in majoritarian systems may be targeting those who have serious concerns about crime with policies that would not be as desirable for more diffuse groups of the public who do not face crime concentration, but would benefit from social welfare. Further, considering that punishment is often delivered in a biased fashion, the geographic residential segregation of different social and ethnic groups could make demands for social order more concentrated than diffuse. In that sense, a regional median voter may prefer a good that is more targeted (i.e. punishment) than diffuse (i.e. welfare).

H2: In PR systems, politicians do not need to target constituents so benefits are diffuse and the median voter is less pivotal. Governments veer left and prioritize R over P. In M systems, politicians target constituents with benefits and the median voter is more pivotal. Governments veer right and prioritize P over R.

Further, the timing of these developments is also relevant. Following the diverse processes of state-building in the 19th and early 20th centuries, countries across Europe underwent a period of simultaneous justice system reforms between the 1960s and 1990s. Some countries pursued punitive reforms while others did not. Persson and Tabellini write that “the worldwide growth of welfare state spending and total government spending in the 1970s and 1980s was much more pronounced in proportional than in majoritarian countries” (pg. 271). Considering this was also the period of the global rise in crime, the fact that only certain countries were simultaneously ramping up their welfare provision is highly relevant in light of the proposed trade-off. Given the diffuseness of welfare and the concentration of punishment, a more limited budgetary expenditure is reinforced here in the more majoritarian and punitive systems.

A Word on Partisanship

Given that the above-described theory both relies on and has implications for partisan politics, it is worth saying a word on partisan preferences both at the party and voter level. The baseline assumption is that, all other things equal, left parties and their legislators will prefer a less punitive system that replaces punishment with flagship liberal policies like welfare provision while right parties and their legislators prefer more punitive systems that emphasize individual responsibility, crime-reduction and minimal state support. However, history has shown that these *ceteris paribus* assumptions do not hold under myriad conditions. In New Zealand (Clark), the United Kingdom (Blair) and

the United States (Clinton), it was left-led governments or coalitions that implemented many of the most punitive policies in recent history (Lynch 2013). In the high punitive equilibria systems, it makes sense that the left may realign toward the right with law and order as an electoral strategy to effectively compete against existing punitive actors and/or follow public opinion, especially when right-wing populists are popular. It can also be that left actors agree to become more punitive to more effectively compete on first-dimension issues. For example, austerity has made it politically advantageous for the Labour party in the UK to embrace punitive outcomes as a result of arguing for more government spending and benefits generally (see Payne 2018).

This explains why left actors might cede ground to the right, but we also observe the reverse. What is the rationale here? First, there could be a shift in public opinion so substantial that the legislative agenda must follow. This is relatively rare. Instead, I argue that more moderate changes to public opinion coupled with opportune moments fiscally might see conservatives embracing less punitive policy. For example, while the Democrats are certainly leading the charge to reduce mass incarceration in the United States, the Republicans have compromised on certain modest legal reforms leading to the passage of the First Step Act in 2018. Perhaps this is representative of a conservative desire to reduce government (i.e. reign in the carceral apparatus) or perhaps it is fiscally advantageous to reduce the prison population, especially given President Trump's enacted tax cuts.

Part of the intervention with this theory is that partisanship may be secondary to the incentives that politicians across the aisle have to punish or not given electoral institutions. It is worth noting that the above Anglo cases are majoritarian and thus left parties are susceptible to the more punitive-leaning incentives as well.

Methodology

If my research hypotheses discussed above are correct, I should find that countries with proportional representation are less punitive than countries with majoritarian electoral systems. Further, I predict that the salience of crime in party politics will vary by electoral system design with average punitiveness (redistribution) over time being higher (lower) in majoritarian systems. Crime legislation should be either non-politically divisive or technocratic in proportional representation systems, but originated and contested by one (or more) dominant parties in majoritarian systems. Additionally, representatives from areas with higher crime (or higher fear of crime) will propose or push crime legislation in majoritarian systems while diverse coalitions will propose these in proportional systems.

I utilize a mixed methods design to evaluate 1) when/why some political parties take up crime as an electoral issue while others do not and 2) when/why cost-shifting is possible and incentivized among particular actors for either punishment or welfare policies. The remainder of the paper proceeds as follows: first, I look at the relationship between electoral system and incarceration; second, I test the mechanism of crime politicization as a feeder of incarceration; and third, I trace these relationships within two cases in which rising crime was handled by politicians differently.

Data & Case Selection

In a quantitative analysis section, I utilize time series data from the Comparative Manifesto Project, the Comparative Political Data Set and the World Prison Brief to measure key trends and estimate relationships. Specifically, given that coding a system as majoritarian or proportional results in some-

what limited variation across European countries, I include the additional countries of Australia, Canada, New Zealand and the United States for a total of 36 countries in the sample.⁶ Historical prison population figures and rates of incarceration per 100,000 people are gathered from the World Prison Brief from around 1950 to the present with some variation in coverage.

The Manifesto Project Dataset provides an account of the number of mentions in party manifestos by country and election for key political topics. I particularly survey positive mentions of law and order⁷ and positive mentions of the welfare state.⁸ To evaluate the overall politicization of these topics in an election cycle, I generate a value of total mentions across parties weighted by the size of the parties. To understand the trade-off between the punitive and rehabilitative instincts of legislators, I also generate a ratio of mentions of law and order to mentions of welfare where higher values indicate a more punitive approach to crime.

This analysis is complemented by and integrated into two case studies: Finland and England & Wales. Each of the cases draws upon structured process tracing to uncover the legislative and the implementation trajectories of their respective criminal justice systems through observation of a) the impact of constitutional structures and electoral systems, b) the main coalitions which emerge or drive each carceral equilibria and c) the causes and pathways of institutional change. The cases are selected on the institutional independent variables – England & Wales for majoritarian and Finland for proportional.

⁶Data here is sourced from the Comparative Political Data Set 1960-2014 (CPDS) by Armingeon et al.

⁷From the codebook: “Favourable mentions of strict law enforcement, and tougher actions against domestic crime. Only refers to the enforcement of the status quo of the manifesto country’s law code. May include: Increasing support and resources for the police; Tougher attitudes in courts; Importance of internal security.”

⁸From the codebook: “Favourable mentions of need to introduce, maintain or expand any public social service or social security scheme. This includes, for example, government funding of: Health care; Child care; Elder care and pensions; Social housing.”

As other forthcoming work will address the salience of federalism, the selected countries here are both unitary countries to allow for institutional consistence on at least one axis.⁹ Apart from the institutional selection criteria, these cases were selected as ones with enough critical scholarship on issues of criminal justice to engage in relevant debates and due to other interesting characteristics.

In each case, I review the theoretical predictions for the case and then schematize punitiveness over time using the prison rate. This is complemented by an overview of the main legislative developments from the 1950s onward situated in descriptive statistics. I ground the developments in their political context so as to identify the actors that do or do not matter to the creation and maintenance of the justice systems. Drawing on elite interviews, primary legal texts and secondary literature supplemented by Manifesto Project data, I am able to evaluate the salience and politicization of crime and justice vs. welfare among the public and politicians. Critically, results are compared across contexts as I would not expect that Finland, for example, would have zero politicization of crime, just that it would have significantly less than a case such as England & Wales.

Results

Prison Rates and Electoral Systems

I start by examining the correlation between electoral system and incarceration with the expectation that countries with proportional representation will have lower punitiveness when compared to those that are majoritarian. Note that for purposes of a dichotomized analysis, countries are coded as proportional

⁹The focus in this chapter is England and Wales rather than the entire United Kingdom as Scotland has its own legal system.

vs. other. In other words, countries with mixed systems such as France are together with those that are fully majoritarian. The reason for this is that I expect only a fully proportional structure will de-politicize the incentives for targeting punishment to particular localities. In order to evaluate this central hypothesis, I run a multivariate regression with robust standard errors clustered at the level of the country examining the effect of proportionality on the prison rate per 100,000 people. The results are shown in Table 4.1.

In Model 1, which is a simple univariate regression, we find a negative effect as predicted, which is not statistically significant. Over the next six models, control variables are added one at a time for the following factors: in Model 2, we add a measure of the homicide rate to control for variation in crime¹⁰, which is lagged by one year; in Model 3, we add a dummy variable for whether the country is part of the post-Communist block or not (1 is post-Communist) under the assumption that there may be heterogeneous relationships according to such major historical factors; in Model 4, we add a variable controlling for the composition of government cabinets held by right parties under the assumption that right parties tend to be blamed more for “hard-on-crime” rhetoric and policies; in Model 5, we add a dummy variable for federalism (the reference category is non-federal and there are categories for a weak and strong federal system) following the literature that federal countries are more punitive; in Model 6, we control for the unemployment rate following the literature that indicates a two-way relationship between incarceration and employment; and in Model 7, we add a variable for social expenditure as a percentage of GDP under the assumption that we must control for environments which have more generous welfare provision. Given that time is a clear confounder, in the final Model (8), we see the full model with the addition of fixed effects for year (i.e.

¹⁰This data is sourced from WHO Mortality Database

Table 4.1: Effect of Electoral System on Prison Rate

Model	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
								w/FE (year)
PR	-77.52 (58.40)	-57.18 (38.67)	-64.97* (36.11)	-64.28* (36.15)	-54.82* (30.82)	-54.53* (30.45)	-61.57* (34.92)	-79.57** (37.43)
Homicide Rate (Lag)		23.84*** (6.170)	21.42*** (7.782)	21.42*** (7.790)	20.16*** (6.352)	20.15*** (6.498)	29.61*** (9.057)	28.19*** (7.292)
Post-Communist			37.06 (28.01)	36.57 (27.90)	53.05** (21.04)	53.54** (19.97)	46.56** (21.28)	12.81 (29.57)
Right Government				0.0451 (0.0753)	0.0920 (0.0714)	0.0851 (0.0714)	0.0453 (0.0948)	0.0125 (0.121)
Federalism (Weak)					3.240 (23.99)	2.633 (24.26)	-4.111 (24.70)	-6.448 (39.77)
Federalism (Strong)					63.55 (43.01)	63.47 (45.31)	57.12 (42.15)	75.88 (47.06)
Unemployment						-0.161 (1.495)	-1.150 (2.079)	-1.318 (2.049)
Social Expenditure							1.145 (1.842)	-2.885* (1.454)
Constant	184.7*** (57.28)	125.7*** (33.73)	126.9*** (33.65)	124.7*** (33.64)	102.2*** (23.60)	103.7*** (27.97)	87.27* (45.51)	119.6*** (39.88)
Observations	551	514	514	514	514	509	416	416
R-squared	0.093	0.420	0.438	0.438	0.481	0.479	0.539	0.636

Robust standard errors in parentheses.
*** p<0.01, ** p<0.05, * p<0.1

year dummies for 1982 to 2020¹¹).

The full model shows a number of important results. First, as per the primary hypothesis, as a system gets more proportional, the prison rate decreases even when accounting for variation in levels of crime and social expenditure. Specifically, there is a negative and statistically significant effect such that moving from a majoritarian or mixed system to a PR system on average decreases the prison population by 79.6 points per 100,000. This is more than two-thirds of one standard deviation in prison rate (110.8). Further, there is a positive and statistically significant effect of the homicide rate on the prison rate, which computes with expectation that crime at least in part drives incarceration. There is also a negative, statistically significant effect of social expenditure on the prison rate, which follows theoretical expectations that more investment in welfare can substitute for incarceration. Finally, although not statistically significant, the effects are as would be predicted in a num-

¹¹Data availability constrains the period of investigation.

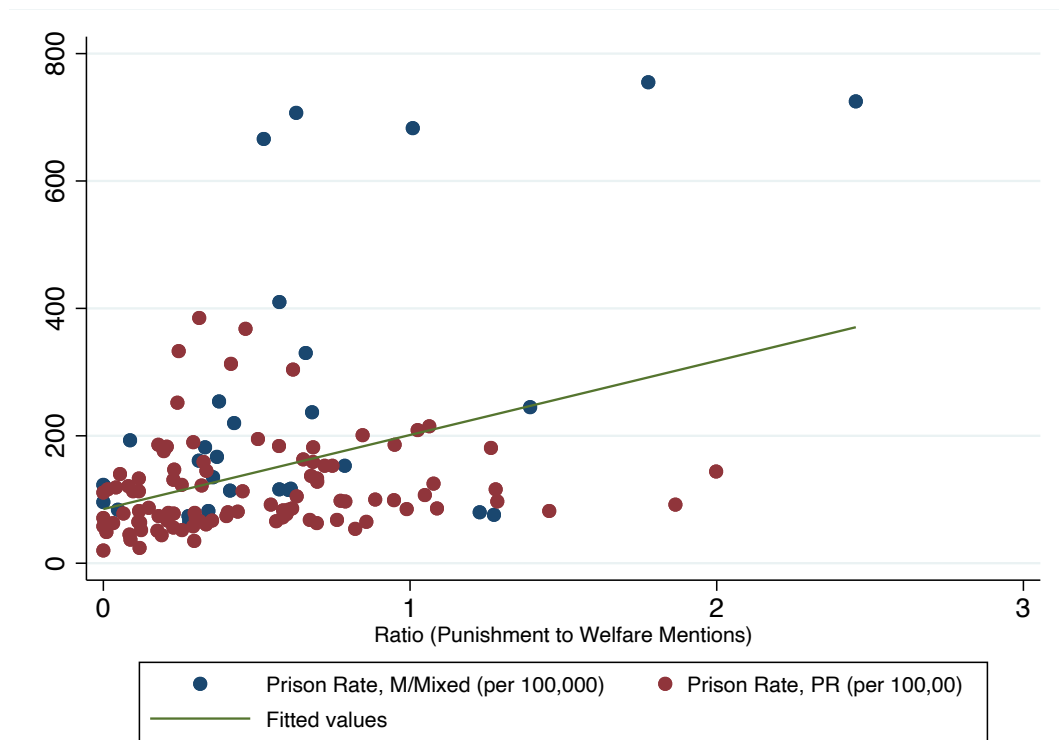


Figure 4.2: Relationship between Ratio of Mentions and Incarceration

ber of other cases. For example, being a post-communist country or having a strong federal structure increases the prison rate. The coefficient on the right government variable is quite small (and insignificant) leading us to be able to conclude that the size of a prison population is not a mere reflection of the partisanship of government as discussed theoretically. Finally, this model has an R-squared of 0.64, showing that a substantial degree of variation is explained by this model. This is convincing evidence for the impact of the electoral system in driving state punitiveness.

Crime Politicization

Next, I unpack the theoretical expectation that criminal punishment is less contested and politicized in electoral systems with more proportionality and that these systems thus remain less punitive. In Figure 4.2, I plot the prison

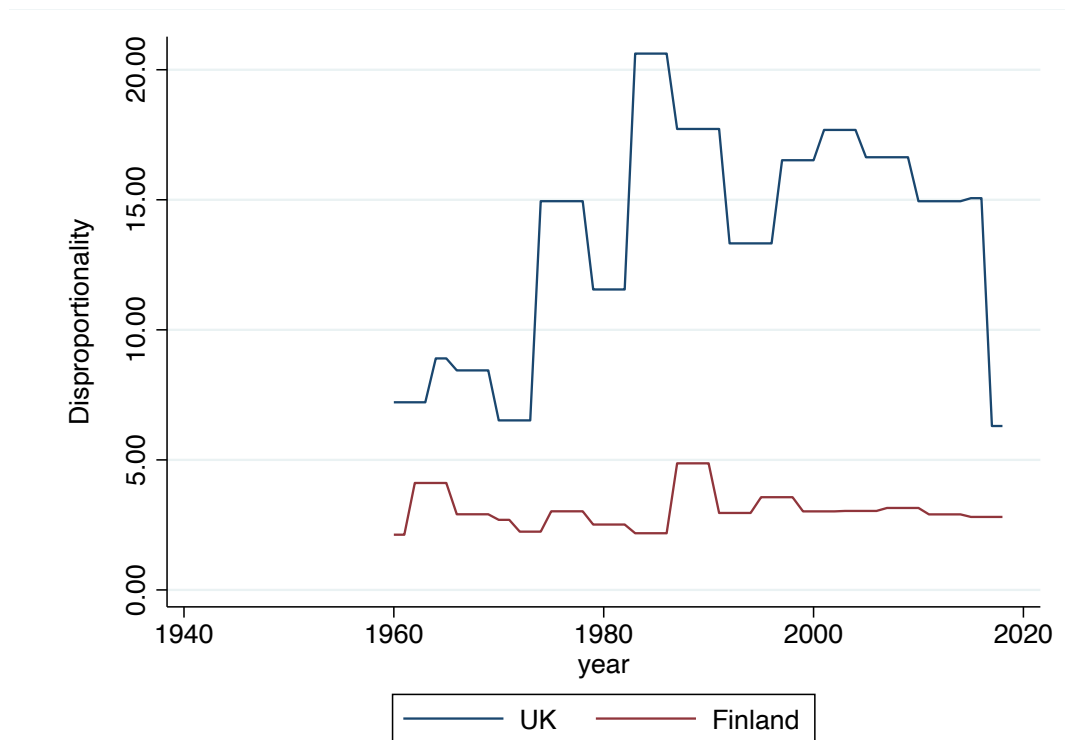


Figure 4.3: Disproportionality Trends (Source: Comparative Political Data Set)

rate over the ratio of law and order to welfare mentions in party manifestos where higher numbers indicate a more punitive rhetoric. The figure shows two interesting things. First, the positive relationship displayed indicates support for the theory that countries which prioritize law and order rhetoric over welfare rhetoric generally have higher incarceration rates. As the ratio increases, we see generally higher levels of incarceration. Second, the figure shows that those countries with PR systems are clustered toward the lower end of the ratio, suggesting a more equal balance between punitive and welfare-oriented rhetoric in those systems.

Comparative Case Analysis

To complement the full sample quantitative analysis above, this section will explore the cases of Finland and England & Wales, a proportional representation and a majoritarian system. In addition to the categorical difference in electoral system, it is also worth showing that since the 1960s, the UK has been significantly more disproportional than Finland according to Gallagher's formulation with increasing disproportionality during key decades of the widespread "tough on crime" turn in the 1980s and 1990s. A schematic of these trends is shown in Figure 4.3.

It is then important to ask the extent to which this electoral system difference, and indeed increasing disproportionality divergence, between the sample countries has reflected in divergent policy outcomes. If my theoretical hypotheses are correct, I should expect to see electoral system features funnel through to an increasingly politicized criminal punishment policy space that has a more meager emphasis on welfare solutions to crime, resulting finally in a more punitive system as indicated by legislation and the prison population.

Figure 4.4 shows the collapsed manifesto mentions of law and order and welfare in each country by election (weighted by the size of the parties). As would be expected, Finland shows relatively muted law and order rhetoric over the last 70 years while displaying much higher rates of welfare mentions. The UK law and order mentions, by contrast, have been significantly increasing over time. Unsurprisingly, rates of welfare mentions have lagged behind the traditional Nordic welfare state from 1960 until just recently.

These graphs also show some examples of the proposition that legislators conceive of a trade-off between welfare and punitiveness in the policy space. In the 1960s, a crucial period of Finnish penal development that will be discussed

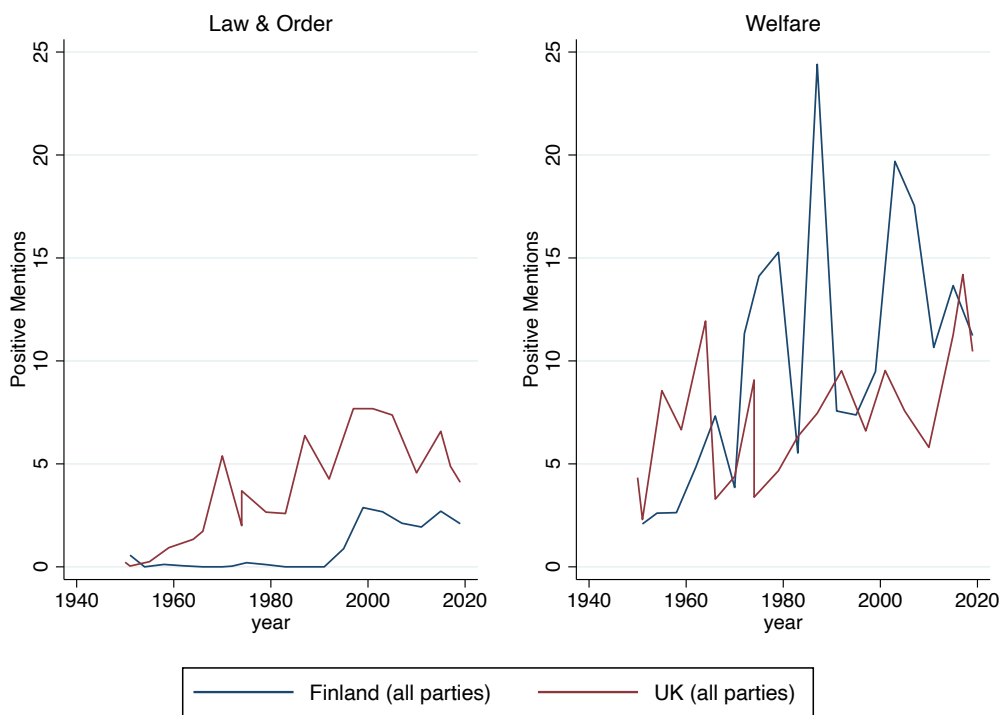


Figure 4.4: Average Manifesto Mentions (Weighted by Party Size) of Policy Areas

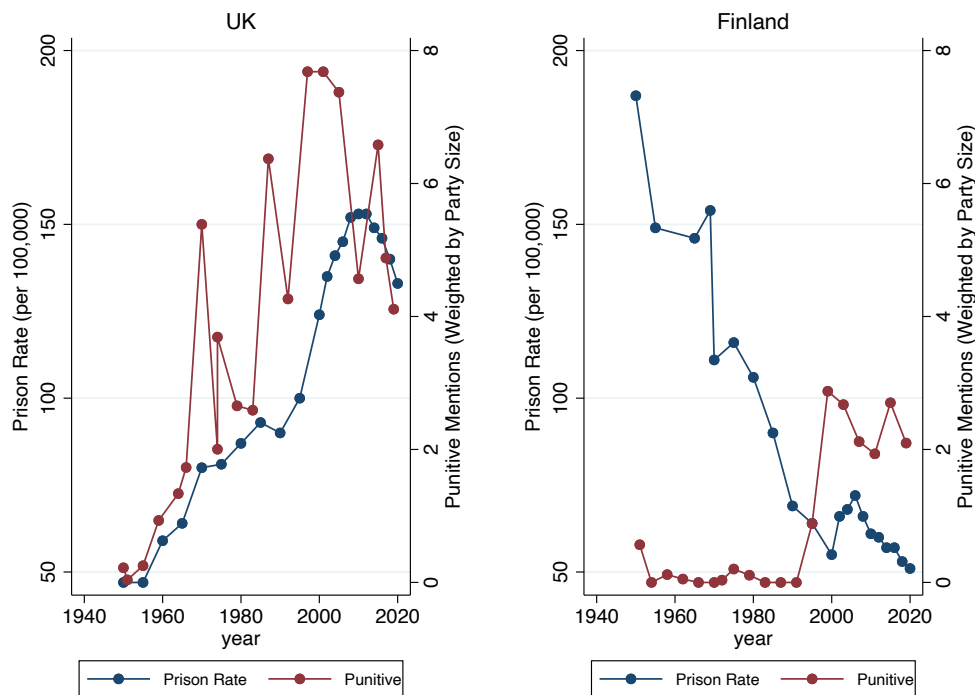


Figure 4.5: Manifesto Mentions and the Prison Rate

in more detail below, we can see limited law and order rhetoric while welfare mentions steadily increased. This is representative of the tone of the new penal state being created. Similarly, in a period of increasing punitiveness for Finland, the 1990s, we witness a regression in positive mentions of welfare.

How then do such trends track onto punishment outcomes? In Figure 4.5, we can see the number of punishment mentions mapped at the same time as the prison rate per 100,000 in each country.¹² In the left panel, we observe an exponential growth in the prison rate from the mid-1950s until just recently in the UK, which tracks the growth in disproportionality we saw in Figure 4.3. More importantly, we observe what appeared to be a parallel trend between increased politicization of crime (as evidenced by higher numbers of mentions) and increases in the prison population. With a slight downtick in the number

¹²Prison rate data for the UK is for England and Wales.

Table 4.2: Case Study Theoretical Expectations

	Finland	England & Wales
Carceral Variety	Low Punitive	High Punitive
Electoral System	Proportional Representation	Majoritarian
Electoral Incentives	Spread benefits diffusely to a nationally representative welfare-minded median voter	Target benefits geographically to a regionally specific crime-concerned median voter
Politicization	Low politicization of crime allowing technocratic consensus to emerge	High politicization of crime prohibiting technocratic consensus from filtering to policy impact
Cost Shifting	No incentives to shift the costs of crime	Incentives to prioritize spending from non-local sources
Policy Provision	Welfare approach to social ills possible	Welfare approach to social ills questioned or contingent

of mentions in the 2000s, we also observe a drop in the prison rate.

The right panel tells a much different story of development in Finland. Here we see a period of great decline in the prison rate coincide with practically zero politicization of crime as evidenced by the minute mentions of law and order. This data is further borne out in the literature of Finnish penal development, which indicates a shift in rhetoric and policy toward alternatives to incarceration. While the mentions then increase in the 1990s and the prison population bumps upward, it still remains below that of the UK and with a much lower prison rate.

In order to further unpack the politics behind these trends, I next present qualitative evidence of the impact of electoral systems on punitiveness for the Finnish and British cases, drawing on fieldwork and documentary sources. To first review the theoretical priors once more, I include Table 4.2. This shows that in Finland, we expect to see politicians respond to a nationally representative median voter who is motivated by diffuse welfare benefits. In such cases, in the face of rising crime, incentives to politicize are avoidable and instead politicians may defer to a technocratic consensus where there is no need to shift the costs of crime and where welfare is viewed as a suitable policy to counter social ills. In England & Wales, we expect to see politicians respond to a regionally specific median voter who is motivated by fear of crime

and goods that will help their local area. In such cases, in the face of rising crime, incentives to politicize are unavoidable and politicians are unable to defer to a technocratic consensus, instead trying to shift the costs of crime and viewing welfare as either wholly or partly insufficient.

Finland

Finland joins other Nordic countries in having a relatively modest percentage of the population in prison today. For Finland, however, this represents an extraordinary shift in policy from imprisonment levels in the 1960s and 1970s, which were often double the current rate. This change provides an interesting opportunity to examine whether the incentives I expect to cause politicians to maintain status quo punitiveness can break down under certain conditions.

According to my theoretical priors, I would anticipate a case such as Finland to emerge as low punitive. At the national level, legislators and parties should not be motivated to pursue punishment, but rather to provide welfare instead. At the local level, there should be no incentives to shift costs of punishment elsewhere as the costs are either already borne at the national level or are borne locally, but through extensive central subsidization. Thus, with an increase in crime, there is no expectation for the issue to be politicized nearly to the extent of other cases and reforms should be handled in a more bureaucratic and technocratic manner.

The Finnish Criminal Code was first drafted in 1894 and trickled down to result in a very high level of incarceration, which was more in line with that of Finland's Eastern European neighbors than that of other countries in the Nordic region. Explanations for this vary, but many emphasize Finland's history as an agrarian society. Crime rates were also high following the 1918 Civil War, WWII and the 1969 alcohol laws (Vuorela 2017; Lappi-Seppälä 2012).

However, between the mid-1970s and the early 1990s, the prison population in Finland was halved to 3,000 from 6,000 (Kääriäinen 1997), achieving parity with the other Nordics after having four times the others' populations in 1950 (Lappi-Seppälä 2000). From 1999-2005 there was a rise in the prison population, which later abated (Lappi-Seppälä 2012).

Primary Legislative and Political Developments: 1950-present Beginning in the 1960s, the Finnish political system underwent significant reforms. Chief amongst these were widespread efforts to reduce the country's incarceration rate, primarily through reforms that allowed property crimes to be sentenced with fines and conditional sentences. With a left wing coalition in government, there was a period of normalization given a commitment to a variety of social policies that were democratizing in nature and improved the lot of marginalized citizens across the country. New criminological research was encouraged and the Nordic Criminal Law Committee was formed in 1962, helping to draft bills emphasizing harmonization across the Nordic neighbors. Rape entered the criminal code for the first time and political participation reached its highest rates at around 90% turnout.

Why were the reforms pursued at this moment? Many argue that the overall package of political and social changes resulted from Finnish leaders' decision to model the country on the other Nordics and avoid the legacies of their Soviet and Eastern European neighbors. The country was liberalizing as new interests were born from the transition between an agrarian and an urbanized society. Simultaneous changes in education and welfare policy to increase the role of the state spilled over into the protection and punishment sector.

While the power of the left is certainly considered an enabling factor in

reform, most argue that crime policy was more ideological and social than political and in fact only emerged in the party manifesto of the Social Democratic Party (SDP) in 1969. Lappi-Seppälä (2000) argues that reforms were possible due to court activism, political consensus, expert-driven processes and low media coverage. In his 2012 work, Lappi-Seppälä suggests that the simultaneous expansion of the welfare state allowed for growth and a reduction in inequality helpful to carceral reform.

The country's system of penal fines also preceded the realization of overimprisonment by Finnish officials and thus was an established alternative to incarceration to encourage during the reform era. However, this alone does not necessarily mean reform was less punitive, just less custodial. Actually, many fines were increased to make them as strong a deterrent as incarceration and yet principles of equity were upheld throughout as fines were based on the financial circumstances of the offender. Thus, the means-based differentiation meant their increased deployment did not become a disproportionately punitive tool against the poor as occurred elsewhere.

Similarly, at the time, the public were very concerned about so-called "morality offenses" (i.e. public drinking) rather than violent crime. This limited salience of such crimes likely has had lasting effects on policy to the present, later observable in higher punitiveness in the Finnish context for offenses such as drunk driving and drug crime. This was especially true as Finland opened to new import sources with accession to the EU. Criminologists often cite divergent agrarian vs. urban population preferences during this period, which is broadly congruous with other examples of rural inequality raised in literature about Finland (see Lynch 2020 on health).

Penal policy in the 1970s focused on the implementation of expanded early release programs, de-punitivization of property crime law (1972 larceny law)

and increasingly restricted use of prison for unpaid fines. In 1972, drug laws lost their status as a separate statute and were integrated into the main criminal code. Crime policy remained non-political as expert committees drafted legislation.

Efficiency and uniformity emerged as goals driving criminal policy development moving forward, reflecting both the unitary state structure and broader political economic trends such as international liberalization (Lynch 2020). Zagaris (1977), for example, writes, “Because of limited resources, Finnish crime policy has necessarily taken a pragmatic approach. This pragmatism is reflected in a cost benefit analysis approach. For instance, Finnish crime policy considers support given to families of inmates and after-care services provided to a newly released offender to be part of the cost of institutionalization. As a result, Finnish crime policy is often based on an efficient expenditure of its penal and social resources.”

Such uniformity and efficiency principles reflect ideals written into official reports about how punishment must emphasize setting societal standards not punishing individual deviance. Specifically, this is seen in reforms to the prison labor system and increased use of fines. I believe this results in a sort of equilibrium where spending on prisons is not really controversial or even expensive as it is often self-funding or generating economic output.

The expert committees, which functioned as part of or in cooperation with the Ministry of Justice, continued their work into the 1980s and 1990s with relatively open mandates from government and limited political intrusion. Committees would draft proposed legislation, solicit impact from critical interest groups, revise the proposals and then write them in the name of the government for parliamentary debate. They were also responsible for incorporating all of this political feedback and presenting a revised piece of legislation, which

would ultimately pass.

In the 1990s, Finland experienced a recession, which drove more fear of crime and resulted in somewhat increased punitiveness via new domestic violence provisions and mandatory minimum increases from legislation such as the 1991 theft law, 1996 action plan on economic crime and 1999 rape mandatory minimum reforms (Alvesalo & Tombs 2004; Lappi-Seppälä 2012). As a result, the prison population rose to a certain degree again.

Some of these mandatory minimum increases were for drug crimes where legislators followed elements of the model set out by the United States, tackling consumption rather than supply. A conservative ideology led the Ministry of Justice in the mid-1990s. Ultimately, the Ministry formed the 1997 National Drug Strategy. The committee was tasked to respond not only to increased drug offenses, but also to related diseases such as HIV, which were not largely present in Finland, but nonetheless caused a lot of public concern. The committee weighed both a harm reduction model and the Swedish zero tolerance model, ultimately encouraging the education, health and police systems to cooperate more closely. Despite initial opposition from the police, measures like needle exchanges were implemented at the municipal level although no formal legal code changes ensued.

Since the 2000s, experts agree that while the committee system still dominates, the process of crime policy formation has become more political as working groups are given more specific mandates and ministers work more closely within the government agenda. There were numerous policy developments in the period including changes to mandatory minimums for aggravated assault (2001), human trafficking and child pornography (2004) and domestic violence (2010).

As of 2019, the last government pursued centralized education cuts, which

particularly harmed vocational education at the municipal level. As the cuts were not particularly geographically targeted, welfare remained highly popular even amidst the populist Finns Party (with certain restrictions) and taxes are mostly non-consequential politically.

Nonetheless, sentences increased by 4.4% in 2017-2018 and in the election of April 2019 a high profile sexual abuse of a child by an asylum seeker garnered media attention. The offense occurred in Oulu, which was the then Prime Minister's home city and the left had to cede to the right's strength on the issue although it did not represent any overall increase in crime. While the Finns Party did campaign for longer sentences, the biggest issues of public concern in the election remained health care followed by immigration and climate change.

Under the then current coalition government headed by the SDP, experts suggest that migration firmly replaced drug crime as the main perceived criminal threat with typical inequalities of perception according to country of origin. There is a view among many that while murder and manslaughter are not large issues (with very few occurring each year), violent crimes are not treated as seriously in proportion to drug crime. The coalition government program included the aim to revise sexual offense provisions and a citizen petition to legalize cannabis recently garnered 50,000 signatures although most agree the drug laws are unlikely to change. Finally, starting in 2021, unpaid legal fines were once again eligible for short prison sentence penalties. Some suggest that in the current climate, people and the media do not conceive of criminal policy as a trade-off with welfare in the same sense as they might have in the 1960s-70s, especially given the maintained popularity of welfare and the emergence of some punitive attitudes at the fringe of the political sphere.

Institutional Structures and Mitigating Factors The Finnish political system results in a consensual political culture characterized by coalition governments the majority of the time. There are four types of elections: European Union, parliamentary, presidential and municipal (covering things such as education, health and social services). The legal system is completely nationalized and very professionalized. There is one police force, which achieves high levels of trust, run by the Ministry of the Interior while districts maintain their local functioning. Prosecutors are legally-trained, appointed bureaucrats who have authority to impose fines. Judges are appointed not elected and local courts function as part of the Ministry of Justice umbrella with additional courts of appeal and supreme courts.

Researchers suggest that sentencing itself is very legalistic and non-discretionary with individual offender characteristics treated as irrelevant given how sentence standardization is emphasized in the legal code. The main institute of criminological research itself used to be based at the Ministry of Justice while it is now separately constituted under the University of Helsinki. As discussed above, the Ministry of Justice civil servants have a large role in drafting legislation and while the parliament has a Legal Committee, the agenda of the government in power tends to supersede its function. Prisons (31 total) are state run and funded with privatization constitutionally prohibited (Lappi-Seppälä 2012).

There is harmonization between the welfare and punishment arms of the state as well. Within the Ministry of Justice there is actually a Criminal Welfare Association that receives some national budget provisions, though it is run by a consortium of voluntary organizations. Further, as of 1973 a new budget line in the Ministry for Health and Social Affairs was created for compensation for crime victims.

Across Finland, municipalities exist as legally autonomous units that sometimes join together for efficient service provision. The country's regional layer was eliminated in the late 1990s and municipal borders have changed dramatically over time. Southern municipalities, which contribute substantially to the national budget, tend to be industrially focused economically while northern municipalities engage in forestry. The municipalities are mainly responsible for providing education (not higher education), social services and health services. The only municipally provided criminal justice service is occasional post-release care of inmates such as psychiatric treatment. Emergency subsistence and unemployment benefits used to be either municipal or district based, but are now nationally provided.

The municipal budgets themselves are largely and increasingly funded through central subsidies allocated by population and demographic characteristics. Citizens pay a flat tax to their municipality and a progressive tax to the central government. This explains much of the reason that local-based budgetary conflict and cost-shifting incentives are lacking here. Further, the government has undergone an extensive effort to centralize government services in an effort to decrease redundancy. The aim is to manage only one organization per sector centrally, an effort typified by the former local, county and central tax offices that have now been rolled into one agency. Further, these centralizing efforts can be seen in the justice system itself. Researchers report that any instances of regional variation in court results or regional crime and penal inequality are not well documented or discussed and that there are significant efforts to minimize the total number of offense categories, supplementing instead with extensive penalty scales for complex cases.

Finally, it is worth noting that Finland does not have overly salient mitigating factors in areas such as geographic differentiation and ethnic heterogeneity.

As previously mentioned, welfare provision is all around very popular and the state enjoys high levels of trust. While drug use is identified highest in cities such as Helsinki, Turku and Tampere, none of the interview subjects identified specific regions of the country as particularly crime-ridden. There was limited immigration to the country until the 1990s and even then the topic has only been politicized recently and following the accession of Eastern European countries to the EU in 2004. Historical ethnic minorities like the Roma have been subjected to greater police attention although most migrants are now from Estonia and Sweden and thus both have good access to the labor market and are often considered as “deserving” of state benefits (Alho & Sippola 2019). Residents are eligible to vote in municipal elections and the national statistical agency does not even keep data by ethnicity, only by citizenship and language.

This too has justice consequences as the mandatory minimums put in place in Finland were not generally distorted against the poor or minorities, unlike in other contexts. As a policy to reduce incarceration, their introduction actually coincided with (or may have been a contributing cause of) reduction in incarceration rates. I would argue that this again relates to how mobilization on inter-population divisions was not incentivized due to proportional representation and the lessened extent of targeted goods.

Summary: Actors and Incentives The literature on Finland mainly discusses reform as a byproduct of a major ideological shift to emphasize prevention and moral regeneration, which then took practical form in a growing use of conditional sentences and shortened custodial sentences especially for drunk driving (Lappi-Seppälä 2000). There was a huge embrace of fines in the 1970s and later community service in the 1990s (Lappi-Seppälä 2012).

My argument differs from those that emphasize ideology and cross-country harmonization in suggesting that explanations of the reform and maintenance of a new system must re-concentrate on the incentives driven by political institutions. Crime has been relatively evenly distributed across the country and due to its unitary structure, there is limited inter-regional resentment or differentiation in the dispersal of benefits. Thus, crime has not been differentially salient in different regions of the country and because of the proportional electoral system, crime never emerged as a cross-cutting nationally salient issue for political parties. This is helped by the fact that neither judges nor prosecutors are elected. Similarly, none of the spending or mechanics of criminal justice are or have ever in modern history been at the local level. Thus, there are no incentives for local actors to a) try to shift the costs of either welfare or justice elsewhere (as one is funded through central subsidies and the other completely centrally) or b) link the local outcomes of welfare and justice provision in a trade-off world. In the absence of these incentives for national parties and local actors, a technocratic and bureaucratic system can emerge where expertise in policy is valued and utilized.

This is an interesting finding particularly in the Finnish case as the country both underwent substantial reform and also remains among the highest in its conviction rate. This indicates that while the justice system is not loathe to catch crime, the subsequent punishment is neither politicized nor retributive. In addition to the robust welfare state that exists as diversion, Finland has invested heavily in conditional sentences, likely as a method to consciously reduce punitiveness. I also expect that part of the reason the country has efficient policing and is thus able to convict at high rates is that trust in police is high and the main punishment inflicted on criminals is fines so the system can be more fiscally self-supported. In the case of the unitary proportional

system, a national bureaucracy is largely able to outweigh interests toward politicized policymaking that accounts for local actors even as researchers hint at anxiety that this elite-led consensus is starting to ebb.

England & Wales

A review of the British penal system reveals a different story. According to my theoretical priors, I would anticipate a case such as England & Wales to emerge as highly punitive. At the national level, legislators and parties should be motivated to target punishment over the broader provision of welfare. With an increase in crime, there is a greater expectation for the issue to be politicized to a larger extent than in other cases and reforms should be highly contested and electorally salient.

By all measures, Britain has historically been seen as a particularly punitive country in the European context (Kommer 1994). Nationally, crime in the UK rose extensively post-WWII through until the 1990s before dropping (Newburn 2007). The prison population increased almost without interruption over that period, though not as severely as the rate in the United States during the 1970s and 1980s (Newburn 2007).

Broadly, with a greater spatial concentration of crime and poverty (often linked to low-income housing policy), it was and is easier for politicians to target punishment without broad consequences being faced by a more affluent voter base. In majoritarian systems like England & Wales, there is no need electorally for a coalition that covers these populations. Politicians are thus not incentivized to target crime with welfare, which is necessarily more diffuse, given that the politically active wealthy are not in the highest crime areas. Economic policymaking in the 1980s only furthered the crime problem, which when politicized as such led to a certain amount of path dependence toward

punitiveness in successive cabinets.

Structurally, policing is not nationalized in England & Wales though funding is primarily through the Home Office budget with 43 individual forces in addition to the London Metropolitan Police Service (Hostettler & Child 2009). This was revised slightly in the Police Reform Act of 2002, which empowered the Home Secretary with some discretion over firing officers and limiting local powers (Hostettler & Child 2009). Newburn (2007) writes “the structure of judicial appointments and the absence of direct electoral pressures provide a significant degree of insulation compared with the situation in the United States...judicial, governmental and academic elites still provide something of a buffer between public opinion and penal policy making.” That said, the Criminal Justice Act of 2003 gave prosecutors more power via mostly procedural changes (Hostettler & Child 2009). Main actors in the system include the Home Office, the Crown Court, the Sentencing Advisory Panel and the British Crime Survey.

Primary Legislative and Political Developments: 1950-present Early critical moments in the penal history of England and Wales include the establishment of a unified national prison authority in 1877-8 whereby previously local and regional facilities now reported to the Prison Commission and a Parliamentary minister (Bottoms 1987; Ryan and Sim 1995). The period’s initial population of 31,000 prisoners eventually wavered to around 22,000 by 1905-8, around the time when probation was first established (Bottoms 1987). Over the period of the First and Second World Wars, prison populations significantly decreased then rose, but only modestly given the increasing use of probation alongside fines and fewer prosecutions for morality offenses such as begging and drunkenness (Bottoms 1987).

There was an explosion of crime and incarceration through the mid-1960s, despite the conclusion of the war and construction of the welfare state, and prison populations ballooned from 11,100 in 1938 to 32,500 in 1968 (Bottoms 1987). Sentences were increasing in length as alternatives to incarceration became favorable, especially following a 1957 government report on “Alternatives to Short Terms of Imprisonment”, which allowed the remaining sentences to be longer (Bottoms 1987).

In 1963, the Prison Commission became a department within the Home Office and incarceration rates began to fall through the early 1980s (Ryan and Sim 1995; Jennings et al 2012). This was due to an unsustainable status quo by the mid-1960s in which both the Government and Opposition agreed there was a problem of prison over-capacity (see 1967 Criminal Justice Bill). Bottoms (1987) writes “Assuming that crime would probably continue to increase, policy-makers faced the apparent choice: *either* to accept a continually escalating prison population, *or* to seek to develop some new policy initiatives to reduce custody. They chose the latter option.”

Several innovations within the criminal justice system followed, as England and Wales developed a reputation for attempting to reduce custodial sentences and limit their length with limited success (Bottoms 1987). First, the suspended sentence was introduced in 1967, becoming operative in 1968 and statute in 1972 (Bottoms 1987). The change allowed suspension of sentences up to two years where a custodial sentence was otherwise reasonable, but went unenforced unless the offender committed another imprisonable crime during the period (Bottoms 1987). Although this was intended as an alternative to incarceration, observations of use seem to imply it was also substituted for fines and probation against intention (Bottoms 1987). Around the same time, parole was created in 1968, but was not yet significantly used (Bottoms

1987). Meanwhile, immigrant detention centers began to crop up under private management, cosigned by a Labour Government seeking to stem Black Commonwealth migration (Ryan and Sim 1995), showing that alternatives to custody were sought only in the case of the native British population.

In the 1970s, efforts continued to investigate alternatives to custody. In speaking of the period, the Commonwealth Law Bulletin from 1981 states, “the public interest would not suffer from a diminished use of imprisonment, but by the frequency of committal and by length of sentence.” For example, the Criminal Justice Act in 1972 introduced probation with special conditions, including such initiatives as day training centres, which offered training for the unemployed (Bottoms 1987). These centres failed, however, during the experimental period as a centrally-funded expense (Bottoms 1987), hinting at the looming nature of reforms which would no longer be welfarist and aimed at the root causes of crime. Other day centres emerged in their place, but these were dependent on adoption by the local probation service (Bottoms 1987) rather than a centralized mandate.

In general, the 1970s were a period of innovation with additional measures such as Community Service Orders, parole and partly suspended sentences being trialed, but results in reducing incarceration were mixed at best (Bottoms 1987). According to a study by Warren Young in 1979, this is at least in part due to large amounts of variation in the application of new measures by locality (Bottoms 1987). We can contrast this with the more unitary and uniform structure of Finland where initiatives from the non-political elite core were more easily taken up in a consistent manner across different parts of the country.

Interest groups such as the Radical Alternatives to Prison (RAP) and Howard League were active on the scene, especially regarding the limited ef-

fectiveness of prison for reducing offender recidivism (Ryan and Sim 1995). Additional pressure for change emerged from the Prison Officers Association (POA) who were dissatisfied with prison conditions and from prisoners themselves in the form of penal movements (see Hull prison event 1976) (Ryan and Sim 1995).

Altogether, the makings of a different pathway were possible, but the incoming Thatcher government failed to capitalize on an agenda that, while imperfectly realized, was part of a broader European consensus on the appropriate ways to handle crime. The post-War welfare consensus was coming to an end.

The 1980s saw Thatcher's government come in from an election where law and order was highly politicized and considered the possession of the Conservative party, picking up from 1970s voters' penal populism (Farrall & Jennings 2012). Thatcher's election eve speech trafficked in law and order rhetoric and the New Right increased punitiveness across the board including new measures reducing evidentiary proof standards and eligible cases for bail (O'Malley 2002; Farrall et al 2016; Farrall & Jennings 2012). Fines also started to be used less as Labour clung to a more rehabilitative/welfarist view of punishment (Newburn 2007). Despite such focus on law and order from Thatcher, crime rose, which Farrall & Jennings (2012) attribute both to natural demographic and economic changes, but also to the politicization of crime and punitization of society.

Additionally, evidence has been mixed on the true punitive nature of Thatcher's 1979-1990 Governments. Farrall et al (2016), for example, present evidence that her Government partook in rhetorical toughness, only to be matched with flagging legislative action. Instead, they report, this rhetorical punitive slant matched with harsh anti-welfarist social policy set up the perfect con-

ditions for Major (1990-1997) then Blair (1997) to step into a high crime, punitively-primed public in the 1990s.

Specifically, we can see the electoral system incentives at play here. With a primary agenda of limiting inflation, weakening trade unions, reducing income tax and increasing home ownership (Farrall et al 2016), crime was an easy political punching bag as the social safety net in England & Wales retracted. However, with a political need to defer to the left of the Conservative Party for cabinet appointments in the first several years, the Home Secretary position was held by those more inclined to welfarist approaches to crime and action in the criminal justice system maintained a slant towards incarceration alternatives (Farrall et al 2016).

A slew of new legislation (The Criminal Justice Act (1982), The Police and Criminal Evidence Act (1984), The Prosecution of Offences Act (1985), The Drug Trafficking Offences Act (1986), The Criminal Justice Act (1988)) made a series of non-trivial, but neither concretely punitive nor lax contributions to the justice system (Farrall et al 2016).

What laid the foundation of the punitive turn, however, was both the familiarity of the law and order rhetoric from Thatcher's era and the socio-economic conditions her policies laid in place which increased precarity and crime in a geographically concentrated way. A series of statistical endeavours were conducted, including the launch of the British Crime Survey in 1982, which showed increasing fear of crime (Farrall et al 2016). Its results in the 1988 iteration showed significantly higher risks from crime to those in council tenure (Murie 1997).

With Thatcher's policy prioritization of home ownership, there was what Murie (1997) refers to as increasing "privatization" and "residualization" of council estates whereby those who could afford to bought out their homes, cre-

ating more affluent mixed neighborhoods. Simultaneously, those in the most precarious social strata, including many unemployed citizens, were grouped together in increasingly dangerous and undesirable accommodation. These clusters of high crime, poor neighborhoods are perfect fodder for punishment oriented politicians in majoritarian electoral systems. Given the socio-economic homogeneity, there are limited incentives for cross-class coalitions and in the increasing disdain for welfare spending, especially on the “idle”, politicians have incentives to target punishment to such areas far away from pivotal voters.

Further, following the lead of the carceral state and political economy literatures, I would argue that demographics were a mitigating factor that structured the punishment-welfare trade-off politicians considered. First, racial hostility and stereotyping about public danger caused politicians to observe gains from designing more punitive states. Like crime itself, heterogeneity’s effect on punitiveness is endogenous to the political cycle as politicians could increase the salience of particular topics and link them to geographic centers. Policymakers mobilized support by responding to the presence of racial heterogeneity with racial animosity, creating an “us vs. them” threat. Additionally, the literature shows that heterogeneity decreases redistribution (i.e. Gilens 1995), partly due to the fact that a given individual is unlikely to be the recipient of poverty-targeted benefits (Moene and Wallerstein 2003) and thus will prefer to be taxed to the benefit of those most like them. Thus, the decreased commitment to redistribution also lead politicians to design more punitive systems.

The 1990s saw a critical mass of new punitive legislation including The Criminal Justice Act 1991 (which reformed sentencing guidelines), The Criminal Justice Act 1993, The Criminal Justice and Public Order Act 1994, The

Criminal Procedure and Investigations Act 1996, The Crime (Sentences) Act 1997 and The Crime and Disorder Act 1998 (Farrall et al 2016). Crucially, Home Secretary Michael Howard emerged as a “critical nomination” and a important force for punitiveness, breaking from Home Office tradition (Farrall et al 2016).

The Conservatives’ exclusive ownership of law and order also waned in the 1990s, especially following the high profile killing of James Bulger in Liverpool in 1993, which mobilized the public on violent crime (Lynch 2013; Farrall & Jennings 2012; Farrall et al 2016). Following additional penal populism from the public, the country continued to move in a punitive direction under Blair as the political space narrowed on law and order and Labour moved to the right (Lynch 2013; Newburn 2007).

Under New Labour, Barker & Lamble (2009) argue that welfare reform criminalized certain social behaviors and this was complemented by increased prison spending. In particular, Home Secretary Michael Howard was a strong proponent of custodial sentences (Newburn 2007) and major legislation, the Crime and Disorder Act of 1998, revisited sentencing rules and former protections for juvenile offenders (Lynch 2013). Additional legislation followed in the Powers of Criminal Courts (Sentencing) Act of 2000, the Criminal Justice and Court Services Act of 2000, the Police Reform Act of 2002, the Criminal Justice Act of 2003 (which expanded prosecutorial power (Hostettler & Child 2009)) and the Correctional Services Review of 2003. The Ministry of Justice enacted a prison expansion project to add 20 thousand additional beds by 2014 amid £3.2-4.6 billion of new spending (Barker & Lambe 2009).

Further, New Labour was also engaged in a redefinition of the welfare state, particularly through the Welfare Reform Bill of 2009’s emphasis on workfare and the individualization of risk (Barker & Lambe 2009). They write, “These

latest welfare reforms should therefore be considered alongside punitive provisions in related branches of civil law such as: the Child Support, Pensions, and Social Security Act 2000, which allows financial sanctions against benefit recipients who break community service orders; the Nationality, Immigration and Asylum Act 2002, which allows the DWP to withdraw benefits to asylum claimants who have not submitted their asylum claim in a timely manner; and the Welfare Reform Act 2007, which allows for the reduction of housing benefits to those who fail to comply with warnings against anti-social behaviour. These reforms not only enable civil laws to function like criminal ones, but increasingly draw together welfare and penal systems in an ever-tightening nexus.”

Ultimately, funding for all justice and police branches was dramatically cut during the Coalition Government of 2010-2015 amid lowering (fear of and recorded) crime, though only modest privatization was undertaken (Fox et al 2016). Lacey (2012) has suggested that a coalitional government structure can be more conducive to carceral reform, in this case because moving to the left was not as risky. However, the late 2010s saw criminal justice debates center on rising crime, particularly knife crime, amidst austerity and Labour took the Conservatives to task over perceived weak policing and those same budget cuts (Payne 2018). In particular, critique of Theresa May’s actions in what is generally considered the Conservative wheelhouse allowed for increased securitization rhetoric from Labour’s Jeremy Corbyn (Payne 2018), a result of such rhetoric becoming electorally beneficial.

In August 2019, Prime Minister Boris Johnson reclaimed the mantle of punitiveness with a system review aimed at ending the automatic license (parole) system for sentences of 14+ years, which would have the effect of lengthening criminal sentences (Dearden 2019a; 2019b). This was despite former Jus-

tice Secretary David Gauke's recommendation that sentences under 6 months be eliminated in the wake of a Ministry of Justice report that July showing their ineffectiveness and high cost (Dearden 2019a; 2019b). This is an example of crime politicization winning over technocratic consensus. Johnson's plans, part of the broader Conservative agenda, also included 20,000 new police officers, a significant rise in revenue for the Crown Prosecution Service and 10,000 new prison beds (Dearden 2019a; 2019b).

Further, Johnson's "[keep] dangerous criminals off the streets" rhetoric fed off of high fear of violent crime despite UK prisons remaining 95% occupied (Dearden 2019a; 2019b). If Conservative plans are implemented (sentence length is increasingly publicly salient since the Tower Bridge terror attack in late November 2019), England & Wales might experience a spike in incarceration and sentence length. If the Government also follows Ministry of Justice recommendations regarding short sentences, the country could be in for an increasing dualization between community sentences and leniency for non-violent crimes and long, increasingly punitive prison sentences for violent crimes.

In all, the England & Wales case demonstrates how politicians are incentivized by electoral dynamics to politicize crime. Politicians are forced to make calculations for electoral gain about the demands of localized median voters who are concerned about crime. In a context where welfare is fiscally costly and citizens are punitive (especially given that the costs of incarceration are often distant), politicians act punitively. Although, like Finland, a technocratic consensus did exist for the benefit of alternatives to incarceration, particularly during the 1960s, British politicians have trouble deferring to these expert agencies and options. This is especially the case when crime rises or when fiscal policy limits opportunities for a welfare approach to crime given the strategic benefits of politicization.

Conclusion

In this paper, I have investigated diversity in criminal justice systems and interrogated the political determinants that make some countries more versus less strict in handling crime. I argue that there is a perceived trade-off between the provision of welfare and punishment by the state and propose a theory identifying the effects of electoral institutions on punishment arrangements.

The paper interrogates the political and institutional environments in which harsh or lenient criminal justice systems exist and the active supply side choices political actors make to invest in punitive policies as opposed to other state functions. I suggest that political elites may deal with social problems through rehabilitation and forward-looking welfare or harsher sentencing laws and greater incarceration.

Through paired case studies of the UK and Finland and broader quantitative analysis of party rhetoric and electoral systems across Europe and other advanced democracies, we have been able to see how legislators prioritize their use of state power. We can evaluate whether they choose to punish or provide and specifically, how they capitalize on public opinion. Legislators may target salient median voters or can turn the levers of power over to non-political bureaucrats more concerned with efficiency and uniformity. Electorally, alternating party ownership of law and order both broadly and in the specifics of punitiveness from sentencing guidelines to the use of fines can help us understand the observed prison population variation.

The results give us traction on the question of why criminal justice systems are harsher in some countries than in others and speak to broader literatures about constraints actors face in the policy space from political institutions, population heterogeneity and perceived or actual policy trade-offs. Further,

the different pathways of reform observed may provide some generalizable patterns. High-cost systems appear partially tolerated in punitive systems due to the economic interests supported by them (i.e. police, prison guards, private prison companies). On the other hand, less punitive systems can be less expensive in reduced legal fees, prison expenditure and, in some cases, policing. In Finland, for example, I have suggested that part of the reason the country has efficient policing is that the main punishment inflicted on criminals is fines and thus the system can be more fiscally self-supported.

Such lessons are critical as crime and punishment itself has intense political consequences. A growing literature tracks the implications of punitive justice systems on socio-economic and civic health (Weaver and Lerman 2010; Weaver 2014; Owens and Walker 2018; White 2019), particularly among “race-class subjugated communities” (Soss and Weaver 2017). Uncovering the determinants of punitiveness becomes even more salient as the issue comes increasingly to the fore amongst liberals and far-right populists alike amidst global protest movements.

5 | Conclusion

In this thesis, I argue that we must conceive of punishment as a provision of the state which has alternatives in welfare and rehabilitation from a conceptual and policy level. The orientation of the law, the public and the political elite toward this trade-off is the subject of this work. I argue that those designing punishment systems always face a constrained policy space where multiple options are available at once. In the first paper, I present a new conceptualization of punitiveness' components and build an original index measuring the phenomenon across Europe. The resultant variation is evidence for the diversity of approaches across countries. The second paper then considers why and how citizens form their preferences surrounding punishment and incarceration, particularly in the context of a multi-dimensional policy space where existing levels of inequality and welfare state institutions condition citizen cost-benefit calculations. I present the results of an original survey fielded in the UK, which supports many of the hypothesized preference mechanisms. Finally, in the supply-focused paper, I offer an explanation for variation in punitiveness across countries which builds on citizen demand filtered through the institutional context of majoritarian vs. proportional representation electoral systems. Quantitative analyses complement two case studies of Finland and England & Wales, which show the different incentives to politicize crime (and provide punishment over welfare) or to allow a technocratic consensus for

reform to emerge.

There are numerous extensions of this work we might consider as the basis for future research. Chief amongst these is a further investigation of the differences between legislative intention and implementation when discussing the norms and varieties of punitiveness. For example, the Western vs. Eastern European divide could be the subject of significantly more attention moving forward, focusing particularly on the roles of state capacity, corruption and institutional history throughout democratization in explaining variation. For example, I would argue that reduced institutional strength weakens the ability of politicians to choose between punitiveness and redistribution so legal rules can be harsher without being costly as their implementation is limited. Further, state capacity itself deserves greater attention in the discussion of not only how legislators are empowered to carry out their legislative goals, but also how these get (intentionally or unintentionally) co-opted at the street level. Citizen preferences for punishment may indeed depend on how competently and credibly they perceive the justice system to operate or may depend on additional risks not considered here which emerge from a post-industrial economy. Similarly, future work will need to engage with the mechanisms through which politicians are incentivized to act in the context of other institutions such as federalism. In federal countries, there are even greater opportunities for cost-shifting to emerge and for unfunded mandates to allow a particular divergence between intention and policy experimentation. Further, the impact of ethnic and racial heterogeneity should continue to be centralized in the study of the punishment-welfare nexus, even outside the United States.

This work's contribution to the field will include: an increasingly robust conceptualization and systematic measurement of the dependent variable; exploration of hypotheses beyond their origination primarily in the US context;

and a conscious effort to bridge the gap between the existing political economy literature and the field of punishment in European countries and other advanced industrialized economies. While I investigate the purpose of punishment for various actors (i.e. who gains from punishment), I interrogate the political and institutional environments in which harsh or lenient criminal justice systems exist and the active supply side choices political actors make to invest in punitive policies as opposed to other state functions. I propose new interventions and evidence for how political elites deal with social problems through rehabilitation and forward-looking welfare or harsher sentencing laws and greater incarceration, conditional on the interplay of institutional context and citizen demand mechanisms.

Crime and punishment itself has intense political consequences. Scholars have begun to investigate the wide range of implications of having a more punitive criminal justice system such as the challenges of reintegration for the formerly incarcerated and unstable civic engagement among the “custodial citizenship” (Weaver and Lerman 2010; Weaver 2014; Owens and Walker 2018). Higher rates of turnout have been found among crime victims (Bateson 2012) while even indirect interaction with the justice system can (temporarily) impact political mobilization (White 2019) and mental health (Bor et al 2018). Of course, these effects are rarely evenly distributed across demographic groups and Soss and Weaver’s (2017) pioneering work draws attention to the consequences for “race-class subjugated communities.” These effects are critical, especially in the United States where some estimates find as much as 45 percent (64 percent) of the country has a history of an incarcerated immediate (extended) family member. Incarceration is thus a costly project and understanding the dimensions of punitiveness may help avoid some of these negative externalities.

These questions also take on urgency as punishment regimes are increasingly under scrutiny. Political rhetoric on the criminal risks posed by migrants has increased during migration crises (Bennhold 2018) and debates continue on the ethics of private prisons, which are often used especially to hold migrant detainees (Haberman 2018). As the United States inches toward piecemeal reform in some limited areas (i.e. the First Step Act of 2018 and activist district attorneys) and the European Union considers the development of a common drug policy (Chatwin 2008), understanding the determinants of punitiveness becomes more salient. Further, the lingering effects of fiscal austerity have enhanced budgetary trade-offs around public policies, bringing the question of punishment relative to other forms of public provision to the fore. At the same time, resurgent calls for criminal justice reform have clashed with demands for more punitive approaches to deviance. Long before the COVID-19 pandemic¹, far-right populists narrowed in on ‘law and order’ agendas, while progressives found new coalitional allies for reform. These shifts raise questions about why the state’s reach in policing and controlling communities through carceral institutions varies – in ways that are only magnified as the pandemic’s full political economic effects are felt.

¹New work also shows that early reductions in US incarceration rates during the pandemic were heavily racialized (Klein et al 2023).

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Appendices

1. Appendix A: Legal Code Sources

Country	Source(s)	Date
Austria	Criminal Code of the Republic of Austria	1974, amended 2015
Belgium	Criminal Code of the Kingdom of Belgium	1867, as of 2016
Bulgaria	Criminal Code of the Republic of Bulgaria	1968, amended 2010
Croatia	Criminal Code of the Republic of Croatia	1997, amended 2003
Czech Republic	Criminal Code of the Czech Republic	2009, amended 2011
Denmark	The Criminal Code	amended 2005
Estonia	Criminal Code of the Republic of Estonia	2001, amended 2014
Finland	Criminal Code of the Republic of Finland	1889, amended 2015
France	Criminal Code of the French Republic	as of 2005
Germany	German Criminal Code	1998, amended 2013
Greece	<i>The American Series of Foreign Penal Codes 18</i> HEUNI The European Institute for Crime Prevention and Control UNODC (SHERLOC) Database of Legislation	1973 1999 undated
Hungary	Criminal Code of the Republic of Hungary	2012
Iceland	General Penal Code of Iceland	1940, amended 2015
Ireland	No. 50 Criminal Justice (Theft and Fraud Offences) Act No. 32 Criminal Law (Rape) (Amendment) Act Criminal Justice Act	2001 1990 1990
Italy	<i>The American Series of Foreign Penal Codes 23</i> Legge 15 febbraio 1996, n. 66. Norme contro la violenza sessuale UNODC (SHERLOC) Database of Legislation	1978 1996 undated
Latvia	Criminal Law of the Republic of Latvia	2000, amended 2013
Lithuania	Criminal Code of Lithuania	2000, amended 2010
Luxembourg	Criminal Code of the Grand-Duchy of Luxembourg	1879, amended 2016
Malta	Criminal Code of the Republic of Malta	1854, amended 2016
Netherlands	Criminal Code of the Kingdom of Netherlands	1881, amended 2012
Norway	Criminal Code of the Kingdom of Norway	1902, amended 2005
Poland	Criminal Code of the Republic Poland	1997, amended 2004
Portugal	Law No. 59/2007 of 4 September (Twenty-third Amendment to the Penal Code)	2007
Romania	Criminal Code of the Republic of Romania	2009, amended 2012
Slovakia	Criminal Code of the Slovak Republic	2005
Slovenia	Criminal Code of the Republic of Slovenia	2008
Spain	Criminal Code of the Kingdom of Spain	1995, as of 2013
Sweden	Criminal Code of the Kingdom of Sweden	1962, amended 1999
Switzerland	Criminal Code of the Swiss Confederation	1937, amended 2016
United Kingdom	Sentencing Council Definitive Guidelines Sentencing Guidelines Council: Manslaughter by Reason of Provocation Sentencing Council: Sentencing for Manslaughter	2016, 2014 and 2013 2005 undated

2. Appendix B: P-Index Codebook

*Robbery*²

rob_manmin1	Mandatory minimum, first offense (0=no, 1=yes)
rob_average	Average of range given for robbery, first offense (in months). Notes: If only one number is given instead of a range, the number is treated as the average. If a number + is given (as in 6+ months), the high end of the range is calculated as the average of all other countries' high ends. If the range includes a life sentence, this is quantified as 20 percent higher than the maximum observed among countries in the category.
rob_avsent1	Standardized version of rob_average
rob_range	Absolute value of range given for robbery, first offense (in months) (maximum sentence - minimum sentence). Notes: If only one number is given instead of a range, the range is treated as 0. If a number + or a life sentence is given, the values found for rob_average are used to calculate the range.
rob_rangesent1	Standardized version of rob_range
rob_option	Existence of other options: fine, rehabilitation or probation (0=yes, 1=no). Notes: This is coded as 1 if the fine or rehabilitation is in addition to a prison sentence rather than an alternative.
rob_recid	Recidivism penalty specified (0=yes, 1=no)
rob_aggrav	Specified differential treatment with aggravating circumstances (0=yes, 1=no). Notes: Aggravating circumstances may include: large scale, conspiracy/gang, significant bodily harm, weapon use. Murder and attempted murder are not included in this measure. If coded as 1, values for rob_manmin2, rob_average_aggrav and rob_range_aggrav are taken from rob_manmin1, rob_average and rob_range, respectively.

²Rules established for robbery in the notes sections are the same for all other crime types. For brevity, they are not repeated under each subsequent crime and indicator unless there is a qualitative change.

rob_manmin2	Mandatory minimum, aggravated offense (0=no, 1=yes)
rob_average_aggrav	Average of range given for robbery, aggravated offense (in months). Notes: If a number + is given (as in 6+ months), the high end of the range is calculated as the average of all other countries' high ends. If the language "up to" is used before a number (as in up to 6 months), the range is given as starting at 0 (as in 0-6 months).
rob_avsent2	Standardized version of rob_average_aggrav
rob_range_aggrav	Absolute value of range given for robbery, aggravated offense (in months) (maximum sentence - minimum sentence). Notes: If a number + is given, the values found for rob_average_aggrav are used to calculate the range. If the language "up to" is used before a number, the minimum sentence is 0.
rob_rangesent2	Standardized version of rob_range_aggrav
rob_weapon	Specified differential treatment when weapon <i>Country</i> -utilized (0=yes, 1=no)

Specific Notes: In France, robbery is not formally separated from theft so theft with violence is used. In Norway, regulations give "a term not exceeding;" the range here is coded as starting at zero months. In the United Kingdom, sentencing guidelines for robbery and subsequent crime types officially allow for life sentences, but a much more restricted sentence range is also provided. This later range is utilized due to the low implementation of life sentences for minor crimes. The alternative method would unreasonable skew all results and the UK still emerges as the most punitive country with the former method. In Ireland, life term liability is translated to a zero to life range with no mandatory minimum. All forms of aggravated robbery are collapsed into one category, but exclude death of the victim as an aggravator except in the case of Slovakia and Norway where murder could not be separated out. In Greece, the definition for standard robbery is more closely aligned with the definitions of aggravated offenses in all other cases thus the data is used in both categories. In Iceland, a recidivism penalty is not included within the aggravating factors.

<i>Rape</i>	
rape_manmin1	Mandatory minimum, first offense (0=no, 1=yes)

rape__average	Average of range given for rape, first offense (in months))
rape__avsent1	Standardized version of rape__average
rape__range	Absolute value of range given for rape, first offense (in months) (maximum sentence - minimum sentence)
rape__rangesent1	Standardized version of rape__range
rape__option	Existence of other options: fine, rehabilitation or probation (0=yes, 1=no)
rape__recid	Recidivism penalty specified (0=yes, 1=no)
rape__aggrav	Specified differential treatment with aggravating circumstances (0=yes, 1=no). Notes: Aggravating circumstances may include: multiple assailants, bodily harm, weapon use. Death of victim is not included in this measure.
rape__manmin2	Mandatory minimum, aggravated offense (0=no, 1=yes)
rape__average__aggrav	Average of range given for rape, aggravated offense (in months).
rape__avsent2	Standardized version of rape__average__aggrav
rape__range__aggrav	Absolute value of range given for rape, aggravated offense (in months) (maximum sentence - minimum sentence)
rape__rangesent2	Standardized version of rape__range__aggrav
rape__weapon	Specified differential treatment when weapon utilized (0=yes, 1=no)
rape__age	Specified differential treatment by age of victim (0=yes, 1=no)

Country-Specific Notes: In Hungary, the offense is specified as sexual violence in the legal code rather than rape. In Italy, lessened sentencing for cases of minor gravity is provided for in the code, but this is ignored due to a lack of equivalent category elsewhere. In Ireland, life term liability is translated to a zero to life range with no mandatory minimum. Like robbery, aggravated categories are collapsed but do not include barbarity or death. The aggravated variables for Estonia and Norway, however, include death, which could not be

separated. In Slovenia, rape for blackmail or under the threat of theft are not counted as aggravating circumstances. In Portugal, aggravating circumstances as defined in the rest of the cases are punished with a lower minimum than the basic rape offense. In Iceland, the same sentence range is given for aggravated and non-aggravated rape simply giving leeway to swing toward the higher end of the scale. In Malta, aggravating circumstances are more encompassing than most other cases.

Manslaughter

mans_manmin1	Mandatory minimum, first offense (0=no, 1=yes)
mans_average	Average of range given for manslaughter, first offense (in months)
mans_avsent1	Standardized version of mans_average
mans_range	Absolute value of range given for manslaughter, first offense (in months) (maximum sentence - minimum sentence)
mans_rangesent1	Standardized version of mans_range
mans_option	Existence of other options: fine, rehabilitation or probation (0=yes, 1=no)
mans_recid	Recidivism penalty specified (0=yes, 1=no)

Country-Specific Notes: Manslaughter provided the most complex of crimes to code as this offense was not always clearly specified with differential treatment than other kinds of crime resulting in death of the victim. Manslaughter is used when possible, but in cases where there is no distinction or manslaughter equivalent such as Denmark, Iceland, Ireland, Italy, Malta, Norway, Slovakia and others, involuntary homicide or negligent homicide are used as a proxy. The baseline definition in any case must not include language signifying intention to kill. Special cases such as infanticide are also excluded.

Fraud

fraud_manmin1	Mandatory minimum, first offense (0=no, 1=yes)
fraud_average	Average of range given for fraud, first offense (in months)
fraud_avsent1	Standardized version of fraud_average

fraud_range	Absolute value of range given for fraud, first offense (in months) (maximum sentence - minimum sentence)
fraud_rangesent1	Standardized version of fraud_range
fraud_option	Existence of other options: fine, asset seize, rehabilitation or probation (0=yes, 1=no)
fraud_recid	Recidivism penalty specified (0=yes, 1=no)
fraud_aggrav	Specified differential treatment with aggravating circumstances (0=yes, 1=no). Notes: Aggravating circumstances may include: substantial damage, high value, protected status of victim, conspiracy, position of power, commercial element. Violence is not included in this measure.
fraud_manmin2	Mandatory minimum, aggravated offense (0=no, 1=yes)
fraud_average_aggrav	Average of range given for fraud, aggravated offense (in months) (maximum sentence - minimum sentence)
fraud_avsent2	Standardized version of fraud_average_aggrav
fraud_range_aggrav	Absolute value of range given for fraud, aggravated offense (in months) (maximum sentence - minimum sentence)
fraud_rangesent2	Standardized version of fraud_range_aggrav

Country-Specific Notes: In cases where a standard definition for fraud was not given or could not be separated from typically aggravating factors, computer or electronic fraud was substituted. This provision affected Greece, Italy, Lithuania and Poland. In Bulgaria, coding does not include fraud related to movable or immovable property. Fraud_option is coded as yes even when the crime must be considered petty for fines to be considered sufficient punishment. In Croatia, for example, fraud with especially minimal gain that results in a fine is not coded in the sentencing categories, but is treated as evidence of an option existing. Aggravating circumstances are collapsed into one category, but do not include terrorist-related activity. In Iceland, recidivism is exceptionally not coded as a type of aggravating factor.

Drug Possession

drugp_manmin1	Mandatory minimum, first offense (0=no, 1=yes)
drugp_average	Average of range given for drug possession, first offense (in months)
drugp_avsent1	Standardized version of drugp_average
drugp_range	Absolute value of range given for drug possession, first offense (in months) (maximum sentence - minimum sentence). Notes: Where the range includes days, this is converted into a proportion of a month using 30 days to a month.
drugp_rangesent1	Standardized version of drugp_range
drugp_option	Existence of other options: fine, rehabilitation (pre- or post-sentence) or probation (0=yes, 1=no)
drugp_recid	Recidivism penalty specified (0=yes, 1=no). The variable is coded as 0 only if the penalty involves more prison time, not a change in the fine, eligibility for waived prosecution or other options.
drugp_marij	Specified differential treatment when drug is marijuana (i.e. decriminalized, low priority prosecution) (0=yes, 1=no)

Country-Specific Notes: In Iceland, the definition of possession implies some intent to distribute. In Italy, personal possession is non-criminal and only disciplined with administrative sanctions. In Ireland, conviction on indictment guidelines are used rather than those for summary conviction. In Malta, punishment varies based on court type (Court of Magistrates or Criminal Court), but are collapsed into one range for purposes of coding. In Belgium, Luxembourg, Malta and Romania, there are alternative options for punishment, but when jail time is given, there is a minimum sentence. In these cases, drugp_manmin1 is coded as yes. Penalties for different (classes of) drugs and different quantities varied in some cases, but were collapsed into one category for equivalence across countries. For this reason, marijuana specifically had to be mentioned by the EMCDDA website for drugp_marij to be coded as yes rather than more general classes of drugs. In the Netherlands, option is coded as no as contact with rehabilitation programs is not described as a substitution for other punishment. Additionally, there is greater detail given for punishment standards in the country's prosecutor's guidelines, which are not considered here.

Drug Distribution

drugd_manmin1	Mandatory minimum, first offense (0=no, 1=yes)
drugd_average	Average of range given for drug distribution, first offense (in months)
drugd_avsent1	Standardized version of drugd_average
drugd_range	Absolute value of range given for drug distribution, first offense (in months) (maximum sentence - minimum sentence).
drugd_rangesent1	Standardized version of drugd_range
drugd_option	Existence of other options: fine, rehabilitation, counselling or probation (0=yes, 1=no)
drugd_recid	Recidivism penalty specified (0=yes, 1=no)
drugd_marij	Specified differential treatment when drug is marijuana (i.e. decriminalized, low priority prosecution) (0=yes, 1=no)

Country-Specific Notes: Drug distribution offenses do not include aggravating circumstances such as gang relation, importation and large quantities. Thus, unless generalized in the code, quantities are typically taken as small, but penalties for different types of drugs are collapsed. In Poland, circulation (wholesale) and supply are both used. In Spain, for purposes of equivalence across countries, “drugs causing serious damage to health” are treated as a drug type and thus part of the ordinary sentencing rather than as aggravating circumstances. In Iceland, the basic offense contains what could be considered aggravators such as “substantial payment” and “many persons” as they could not be separated. In Hungary, normal and small supply penalties are combined, but substantial quantities are left out. Recidivism is also coded as yes if different penalties are specified for a repeated offense more broadly in the legal code as is the case in France and Spain, rather than specifically for drug crime. The same is true for generalized alternative options. In the Czech Republic, the recidivism penalty is contingent on a three year or less period between crimes.

Sums

sum_rob	Average of rob_manmin1, rob_avsent1, rob_rangesent1, rob_option, rob_recid, rob_aggrav, rob_manmin2, rob_avsent2, rob_rangesent2 and rob_weapon
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sum_rape	Average of rape_manmin1, rape_avsent1, rape_rangesent1, rape_option, rape_recid, rape_aggrav, rape_manmin2, rape_avsent2, rape_rangesent2, rape_weapon and rape_age
sum_mans	Average of mans_manmin1, mans_avsent1, mans_rangesent1, mans_option and mans_recid
sum_fraud	Average of fraud_manmin1, fraud_avsent1, fraud_rangesent1, fraud_option, fraud_recid, fraud_aggrav, fraud_manmin2, fraud_avsent2 and fraud_rangesent2
sum_drugp	Average of drugp_manmin1, drugp_avsent1, drugp_rangesent1, drugp_option, drugp_recid and drugp_marij
sum_drugd	Average of drugd_manmin1, drugd_avsent1, drugd_rangesent1, drugd_option, drugd_recid and drugd_marij
sum_total	Sum of sum_rob, sum_rape, sum_mans, sum_fraud, sum_drugp and sum_drugd

3. Appendix C: P-Index Robustness Checks

It is worth addressing several challenges raised from the methodology of the index creation: consistency of crime definitions, continuity across crime type, static measurement and the lack of outcomes and implementation. I discuss the drawbacks, test the robustness of the measure and outline how I deal with the challenges here.

As discussed previously, criminologists have suggested that crime definitions are not particularly consistent across countries and have promoted discussion of robbery alone as the solution for this. I found, however, that definitions were characterized by a great commonality in the types of dimensions of punishment specified by the law. These commonalities iteratively drove the indicators chosen for each crime in the index and all exceptional cases that required individual judgments are noted in Appendix B. For completeness, I consider the robbery sum alone, which is 0.73 correlated with the sum for all crimes. Using robbery only, countries only move one quartile up or down from the ranking discussed above except for Austria and Estonia, which move from the first to the third quartile. Ultimately, I feel the robbery only measure unnecessarily compresses the wider expanse along which criminal justice policy is formed.

The only crime for which I had any concerns about definitional equivalence across countries was manslaughter as it was sometimes necessary to substitute negligent homicide or involuntary homicide when these were the closest approximations of manslaughter. For this reason, I also calculate the total sum leaving out the manslaughter values. The result demonstrates little cause for concern over leaving manslaughter in the totals. There is a 0.92 correlation between the total sums with and without manslaughter. There is even less

movement between quartile categories when using the total index or the total without manslaughter. The maximum movement for a given country is up or down one category.

It could also be argued that countries develop different kinds of responses to different types of crime and that by adding all types together, this complexity is minimized. This is a valid point and I predict that there is indeed variation in punitive attitudes toward crime that is violent and crime that is non-violent. Future work will need to consider this and other dimensions along which crime might be categorized, and the implications of these categories. For example, arguments that suggest neoliberalism as a precursor to punitiveness may be better suited to explain property crime responses than drug crime laws.

One of the more serious drawbacks of the index is that it is a static measure of legal codes at one point in time and thus does not account for change or variation over time. While the field would benefit from tracking changes in legal codes in the future, I find that my measure remains constructive for two main reasons. First, there is a remarkable stickiness among legal systems with piecemeal change occurring around the edges in the majority of cases. Consider, for example, the third column of Table ?? in Appendix A, which details information on dates of the legal codes utilized. Most of the legal codes have been in force for decades with more recent amendments changing provisions here and there. Even these amendments, however, are not always within the last five years. Even if the sentencing guidelines for one crime are altered, this is unlikely to change the overall ranking of a country due to the numerous indicators across crime types that are included in the index.

Second, though I am concerned with concretely identifying each detail, my measure of the overall contours of the system has more explanatory power and is much less susceptible to trends. In a way similar to Iversen and Soskice

(2001) on asset specificity and Iversen and Soskice (2006) on electoral systems, I am able to use time specific dependent variable data to provide a snapshot look at broad institutional complementarities and system contours. Further, legal codes are perhaps the most institutionalized component of the criminal justice system and, in the face of incentives for status quo politics, are much more stable than other elements I do not seek to explain here such as judges' punitiveness.

This last point relates to the final challenge considered here, namely that the index does not tap into issues of implementation or criminal justice outcomes. For example, the measure does not indicate judges' sentencing behavior or the actual number of people incarcerated. For these reasons, we do not necessarily know if leeway is a good or bad thing for judges to have³ and whether fines are actually a less punitive option when implemented.⁴ These are conscious choices, however, and not overly problematic given the scope of inquiry the measure is meant to cover. I am analyzing supply side dynamics and institutional complementarities that contribute to state provision of punitiveness. The index gives me purchase on the intentions and legal underpinnings of the system.

Other elements, such as judge behavior, may be better suited to arguments that prioritize demand side explanations as public demand could condition implementation behavior. Though this is not what I seek to explain, I do not deny that this constitutes part of the equation when thinking about outcomes.

³Though we do not know what part of the sentence range a judge imposes, by including the full range in each country all estimates are biased in the same way.

⁴Ideally, the fine amount would also be considered in the index, but this was not possible with the given data. Fines are treated as less punitive namely because they do not require incarceration and this is the main punitive outcome of interest in the current analysis.

4. Appendix D: Survey Questions, Fielded April 2019

Please rank the following options in order of the types of crime that you worry about most, where 1 is the crime that you worry about most and 5 is the crime that you worry about least.

- Drug crime (possession, distribution)
- Theft and property crime
- Violent crime (knife crime, assault, robbery, homicide)
- Sexual crime (rape, sexual abuse)
- Financial crime (fraud, embezzlement)

Please indicate how much you agree or disagree with the below statements about crime, policing and the justice system in this country.

	Strongly agree	Tend to agree	Neither agree nor disagree	Tend to disagree	Strongly disagree	Don't know
I worry about crime						
I have confidence that the police have the resources they need to catch crime						
I worry about being arrested for a crime I did not commit						
My area feels safer than it did 5 years ago						
I believe judges and prosecutors use their power in line with public sentiment in my area						
I am in favour of the Government increasing sentences for violent crime						
I am in favour of the Government increasing sentences for non-violent crime						

Which of the following statements comes closest to your view on how the Government should address crime and disorder in this country?

- The Government should focus on preventing crime with investment in social programmes and rehabilitation of offenders
- The Government should focus on investing in the police and imposing more prison sentences
- The Government should focus on both equally
- Neither of these
- Don't know

Please indicate how much you agree or disagree with the below statements about taxation and economic prospects in this country.

	Strongly agree	Tend to agree	Neither agree nor disagree	Tend to disagree	Strongly disagree	Don't know
My area has been unfairly impacted by austerity measures						
Property values in my area are lower than they were five years ago						
I would be willing to be taxed more to increase benefits and reduce inequality						
I would be willing to be taxed more to increase policing and prison spending						

5. Appendix E: Coding for Survey Variables and ONS Crime Data

All Likert variables:

- *worrycrime* (I worry about crime)
- *policeres* (I have confidence that the police have the resources they need to catch crime)
- *falsearr* (I worry about being arrested for a crime I did not commit)
- *safearea* (My area feels safer than it did 5 years ago)
- *judprossent* (I believe judges and prosecutors use their power in line with public sentiment in my area)
- *incsent_v* (I am in favour of the Government increasing sentences for violent crime)
- *incsent_nv* (I am in favour of the Government increasing sentences for non-violent crime)
- *austunfair* (My area has been unfairly impacted by austerity measures)
- *lowpropval* (Property values in my area are lower than they were five years ago)
- *moretax_w* (I would be willing to be taxed more to increase benefits and reduce inequality)
- *moretax_p* (I would be willing to be taxed more to increase policing and prison spending)

VAR → plain renaming from YouGov convention

VAR_lin → linear recoding excluding the “don’t knows” (1 is strongly agree, 5 is strongly disagree)

VAR_lin2 → linear recoding excluding the “don’t knows” in opposite direction (1 is SD, 5 is SA)

VAR_bin → binary recoding (SA and A are 1, all others are 0, “don’t knows” are missing)

Trade-off variable: Which of the following statements comes closest to your view on how the Government should address crime and disorder in this country?

- The Government should focus on preventing crime with investment in social programmes and rehabilitation of offenders [WELF]

- The Government should focus on investing in the police and imposing more prison sentences [PUN]
- The Government should focus on both equally [BOTH]
- Neither of these [NEITHER]
- Don't know [DK]

tradeoff → plain renaming from YouGov convention

tradeoff_lin → recoding excluding the “don't knows” (1 is WELF, 2 is PUN, 3 is BOTH, 4 is NEITHER)

tradeoff_bin → binary recoding (0 is WELF, 1 is PUN)

tradeoff_tri → recoding for meaningful answers (1 is WELF, 2 is PUN, 3 is BOTH, others missing)

Crime type worry variables:

Please rank the following options in order of the types of crime that you worry about most, where 1 is the crime that you worry about most and 5 is the crime that you worry about least.

- *worry_drugcrime* (possession, distribution)
- *worry_theftcrime* (theft and property crime)
- *worry_violentcrime* (knife crime, assault, robbery, homicide)
- *worry_sexualcrime* (rape, sexual abuse)
- *worry_financial* (fraud, embezzlement)

For each variable, 1 indicates this was the crime most worried about, 5 the crime least worried about.

Control variables:

Region

- *region* → coded by YouGov (11 categories)
- *region_name* → 1= North East, 2= North West, 3= Yorkshire, 4= East Midlands, 5= West Midlands, 6= East of England, 7= London, 8= South East, 9= South West, 10= Wales, 11= Scotland

Region type

- *ons_urban* → coded by YouGov (1= urban, 2= town and fringe, 3= rural)

Education

- *education_level* → coded by YouGov (20 categories)
- *edu_group* → 1= no qualification, 2= GCSE and technical school, 3= A level and nursing/teaching certificates, 4= university degree +

Income

- *household_income* → coded by YouGov (17 categories)
- *income_quin* → 1= £0 -14,999, 2= £15,000-29,999, 3= £30,000-44,999, 4= £45,000-69,999, 5= £70,000+
- *income* → £5000, £7500, £12500, £17500, £22500, £27500, £32500, £37500, £42500, £47500, £55000, £65000, £85000, £125000, £175000

Ethnicity

- *ethnicity* → coded by YouGov (18 categories)
- *ethnicity_bin* → 0= white, 1= BME, missing= any other ethnic group, prefer not to answer and no response

Age

- *age* → coded by YouGov (continuous – 18-118)
- *age2* → age squared

Gender

- *gender* → coded by YouGov (1= male, 2= female)

Other available controls

- *social_grade*, *religion*, *marital_status*, *work_status*, *citizenship*, *voted2017*, *pastvote_2017*, *pastvote_EURef*, *partyid*, *political_attention*, *politics_scale_profile_update*

Crime (annual regional data from the Office for National Statistics)

- *crime_rate_YYYY* → Rate is per 1,000 people. YYYY runs 2015-2018
- *crime_ratechange_1518* → Change in crime rate from 2015-2018. A higher number means a greater spike in crime
- *crime_perchange_1415* → Percent change in crime between years. Options are 2014-15, 2015-16, 2016-17, 2017-18.

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