

laws should be repealed and replaced by sentencing guidelines that allow judges to draw sensible distinctions among offenders. If that is not viable, all such laws should be amended to authorize judges to disregard them in appropriate cases. A variety of measures should be adopted to prevent enactment of ill-considered legislation, including requirements that all proposed new laws be accompanied by appropriations of whatever funds will be required to implement them and by disparity analyses that demonstrate their likely differential effects on minority and women offenders. To begin to lessen racial disparities in the courts and prisons, not only proposed new laws but also all existing practices should be subjected to disparity analyses. These would investigate whether and how new and current practices treat minority and women offenders worse than whites and men, and serve as the basis for deciding whether disparity-causing practices can be justified.

We know how to create a humane and effective criminal justice system. Experience with sentencing guidelines shows how to adopt comprehensive sentencing policies that treat offenders fairly and consistently, requiring severe punishments for those who deserve them and less severe but appropriate punishments for others. Accumulating evidence on the effectiveness of drug courts and drug treatment shows that greatly increased investment in drug treatment can prevent crime, save money, and rebuild lives. Accumulating evidence on the effectiveness of a wide range of other treatment programs has undermined the "nothing works" attitudes of the 1980s and 1990s and shows that diversion of public funds from prisons to treatment programs would pay financial and crime-prevention dividends. If American criminal justice systems would eliminate the worst policies of the last thirty years, we could re-create systems that were no longer out-of-step with our own history or with the practices of other Western countries.

2

Why So Many Americans Are in Prison

American imprisonment rates, more than 700 per 100,000 residents behind bars at the end of December 2002, have reached unprecedented levels compared with other times in U.S. history or with current times in other Western countries. In other Western countries between 50 and 150 residents per 100,000 are in prison or jail on an average day. In Sweden, one in every 2,000 people is locked up; that is the lowest rate. In Portugal, the highest, it is one in 650. By contrast, in the United States, one of every 120 people is in prison or jail; that is five to twelve times the rates in other Western countries (A. Kuhn 1998; Bureau of Justice Statistics 2003). When those under 16 and over 70 are disregarded, one in eighty Americans each day awakens inside a prison or jail. Nearly one of every seven black American men in their late twenties is among them.

American punishment policies are unusually severe in other respects. Only in the United States are constitutional and other safeguards of criminal defendants systematically being reduced; throughout Europe, under the influence of the European Human Rights Convention and Court, defendants' procedural protections have been expanding for the last twenty years (Kurki 2001). In the United States, legislatures and courts are cutting back on prisoners' rights and privileges; in Europe, they are steadily expanding under the influence of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Morgan 2001). Among advanced Western countries, only the United States retains and uses the death penalty, and with increasing frequency. Only the United States has adopted

broad three-strikes and extensive mandatory minimum sentencing laws.

Only in the United States is "prison gerontologist" an imaginable civil service career ladder. Only the United States uses life-without-possibility-of-parole sentences; elsewhere even murderers sentenced to life terms are eligible for parole or executive-branch pardon, and are typically released after eight to twelve years. In much of Europe, fourteen years is the longest prison sentence that may lawfully be imposed. Only in the United States are prison sentences longer than one or two years common; in most countries, fewer than 5 percent of sentences are for a year or longer. In the United States in 1994, the average sentence among people sent to state prisons for felonies was seventy-one months, and that was before the effects of three-strikes and truth-in-sentencing laws were being felt. Among those in prison in recent years, more than half were serving terms exceeding ten years (Bureau of Justice Statistics 1998, table 1.3). In 1997 the mean average sentence an inmate in a state prison would serve before release was ninety-one months (Bureau of Justice Statistics 2000, table 4.8).

All of this is a drastic change from earlier times. In the 1930s, for example, the United States had incarceration rates comparable to or lower than those of many European countries, including England, France, Switzerland, and Finland (Tony and Hatlestad 1997, chap. 3). Through the early 1970s, American rates were not much higher than those elsewhere.

More recently, in the 1960s, the United States was in the international mainstream of criminal justice policies. In many respects, it was leading the way toward creation of criminal justice practices that were humane and effective, setting standards that other countries tried to emulate. The death penalty was withering away, the incarceration rate was dropping and comparable to those in other Western countries (Blumstein and Cohen 1973; Zimring and Hawkins 1991), the courts were establishing, expanding, and refining defendants' procedural protections, a prisoners' rights movement was taking shape,

and crime control was not generally viewed as a partisan or ideological issue.

So what happened? Why did American crime control and punishment policies become so much harsher than in earlier American times or in other places now?

Eight different plausible stories can be told. The first is empirical. American crime rates are higher or have increased more than other countries', and punishment patterns and policies simply reflect that reality. Crime rates increased and carried punishments with them.

The second is psephological. No matter what the crime trends and rates, the public demanded tougher penalties, and elected officials bowed to that demand.

The third is cynically political. Conservative Republican politicians realized they could use crime, and also welfare, immigration, and affirmative action, as "wedge" issues designed to separate white working-class voters from the Democratic Party. The text of this story is about crime; the subtext is about race. Current policies are the result.

The fourth story is structurally political. Developments of the past quarter century have fragmented the electorate into a mélange of single-issue political groups. People have lost confidence in government's ability to achieve positive goals. Politicians have had to seek broad-based support around emotional but essentially negative issues, including opposition to crime, welfare, and immigration, that offend no politically powerful groups.

The fifth, the arrival of the "risk society," and the sixth, postmodernist angst, are related. I separate them somewhat artificially to isolate their central claims. The risk society story is that the insecurities and social isolation of our times have made us preoccupied with uncertainty, danger, and risk. Modern crime control and penal policies accordingly are concerned above all to identify, quantify, and reduce risk or the perception of risk. Insecurity is so profound and so pervasive that traditional concerns about fairness, justice, and equality have become unaffordable luxuries.

The sixth, the postmodernist angst story, is that a wide range of economic, social, and cultural changes have made people anxious, risk averse, and insecure, and desperate for comforting explanations and easy cures of what ails them. No simple and reassuring explanations exist, so politicians have provided scapegoats. Criminals are among the most vulnerable and viscerally plausible scapegoats and politicians have tried to placate voters' discomforts and win votes by being tough on criminals.

The seventh is historical and is based on comparison of social, political, and legal developments over the past three centuries in the United States, Germany, and France. It attempts to explain why American punishment policies and attitudes are so different from those in the two most powerful European countries. Its key themes are deep cultural differences in attitudes toward the degradation of prisoners and toward the application of egalitarian values to offenders. Eighteenth-century France and Germany were inegalitarian societies with well-developed social hierarchies, while eighteenth-century America already aspired to be an egalitarian society without established hierarchy.

Those differences, it is said, explain punishment practices and attitudes then and now. In France and Germany, high-status criminals in the eighteenth century were often treated with respect, housed decently and comfortably, and, if punished, punished in ways that seemed dignified. Common, low-status criminals were treated roughly and without respect. As part of the shift toward more egalitarian values, as part of the rejection of the social hierarchies of the past, France and Germany have "leveled up," have attempted to accord all offenders the dignity and respect previously granted only the elite.

Eighteenth-century America, by contrast, was a place that rejected notions of aristocratic or social hierarchy, and elite offenders often were dealt with in the same ways as were others. Fast-forwarded to the twentieth century, egalitarian ideas about punishment persist, but in the absence of cultural commitment to leveling up. Instead, something like leveling

down has occurred. Commitment to ideas that prisoners should be treated with respect and dignity translates into mild punishment practices. The absence of that commitment opens up possibilities of harshness, debasement, and lack of compassion.

The final story is historical: complex, regularly recurring, but poorly understood interactions among crime trends, public attitudes, and policy making shape our sensibilities and through them our thought, policy debates, and policies. A succession of upsetting incidents has produced a series of moral panics that, among other things, has led to artificially heightened anxieties and fierce overreactions. Current policies are a predictable and understandable, but regrettable, result. This is much the most plausible and complete story and I tell it in considerable detail in chapter 5.

Other stories have been offered besides these eight, but they are so idiosyncratic or obviously inadequate that they can be dismissed out of hand. One, associated with German sociologist Zygmunt Bauman (1991) and Norwegian criminologist Nils Christie (2000) is that current policies are the inevitable outgrowth of "modernity." The modern state goes about its business in a depersonalized neutral way. The "punitive shift," according to criminologist Simon Hallsworth (2000, p. 148), "is born then out of the progressive development of ever more rational forms of organization and their application in the criminal justice system."

This ignores the commonplace realities that nothing like American penal policies exist in any other Western country—suggesting that the modernity thesis applies nowhere else, which would be odd. It also does not acknowledge that arguments in favor of current American policies almost always include ideas about accountability, personal responsibility, and moral culpability. Conservative American proponents of recent policies such as James Q. Wilson, John DiIulio, and William Bennett would be surprised to learn that their proposals were not predicated on normative premises.

Another dismissable story is that contemporary policies and practices, far from reflecting the onset of modernity,

reflect the erosion of modernity and "speak directly to punitive passions and are profoundly inspired by them" (2000, p. 156). Somewhat similarly, American sociologist Jonathan Simon argues that a long-term civilizing process has somehow been reversed, at least temporarily, and that "cruelty-seeking" has become a basic theme in "contemporary penalty" (2001). Like the modernity story, this one suffers from the difficulty that the phenomenon it explains primarily characterizes the United States, though it purportedly applies more generally. As chapters 3 and 5 show, people characterized by majority culture as seriously deviant always suffer from negative stereotypes and seldom benefit from others' empathy. That is not new, and it cannot explain why American policies were adopted when they were, and not earlier, or why similar policies were not adopted elsewhere. Rhetoric about cruelty and punitive passions does not a plausible story make.

The first of the eight main stories, about the effects of rising crime rates on imprisonment rates, is flatly wrong. There is no simple or direct relation between crime rates and punishment policies or imprisonment rates, though rising crime rates are important. Taken together, the first six stories, whatever their surface plausibility, suffer the same fundamental defect as the modernity and cruelty stories. They, or substantially comparable developments, characterize all wealthy Western countries but only the United States has adopted crime control policies and practices of unprecedented severity.

Most of the more familiar explanations for why contemporary U.S. crime control policies emerged as they did have some merit, but none by itself is convincing. No single factor could cause so massive a change in policy (Garland 1990, 2001a). A sophisticated and nuanced explanation would take all into account.

Sociologist David Garland has recently attempted to explain why English and American crime policies have evolved as they have, and he offers a rich, complex explanation, which I discuss below. His explanation confronts a major difficulty, however. American imprisonment rates grew by 400 percent

between 1970 and 2002. English rates grew by 80 percent and remained lower in 2002 (around 125 per 100,000) than American rates were in 1970 (140 per 100,000). The English imprisonment rate in 2002 was not significantly higher than the highest rates of other periods. The American rate is nearly four times higher than at any time in American history before the last thirty years' run-up. Similar social, economic, and cultural forces may have affected sensibilities, politics, and policies in both countries, but the consequences were fundamentally different.

Historian James Whitman's effort to explain differences between France and Germany, and the United States, is full of wisdom and insight, but it suffers from a temporal limitation that parallels the geographical limits of Garland's argument. Garland's analysis does not hold up across space; Whitman's fails across time. If comparisons of French and German practices with American ones today can be explained by reference to cultural attitudes toward egalitarianism and degradation, why did things look so differently for the first two-thirds of the twentieth century? Before 1970, American punishment practices were among the mildest in Western countries and the United States was at the forefront of efforts to rehabilitate offenders and advance offenders' and prisoners' rights. France and Germany lagged far behind.

Many explanations have been given for why American policies and practices developed as they did. Some are plainly wrong. Most are at best fragments of the whole explanation. Many people, however, subscribe to various of them and it seems to me useful to canvass them and show why they are inadequate before offering a better explanation.

Crime Rates and Trends

The first explanation for why so many Americans are in prison, that U.S. crime rates are higher or faster rising than other countries', has virtually no validity. Crime rates in the United States in the 1990s were, for the most part, not higher

than those in other Western countries. We know this from the International Crime Victimization Survey, conducted by national governments in most major Western countries since 1989 (e.g., Mayhew and van Dijk 1997; Kesteren, Mayhew, and Nieuwbeerta 2000). For property crimes, the United States is in the middle of the pack. Chances of being burglarized, having your pocket picked or your car stolen are considerably higher in England and several European countries. For violent crimes, American rates are among the highest, along with Australia, Canada, Spain, and France, but not the highest. Chances of being robbed, assaulted, or victim of a stranger rape are higher in several other Western countries. Where the United States stands out is in gun violence. Our rates of robberies and assaults involving guns, and of gun homicides, are substantially higher than elsewhere (Zimring and Hawkins 1997). That is important. However, less than a fourth of those sentenced to prison are convicted of violent crimes of any type, so that is not why U.S. prison patterns and penal policies are so different.

If absolutely higher crime rates do not explain the severity of American punishment policies, perhaps crime trends do. Perhaps there is a necessary connection between crime rates and imprisonment rates. When crime rates rise, imprisonment rates follow, and that is why the number of people locked up increased by nearly seven times in the past thirty years, from around 300,000 in 1972 to 2,000,000 at the end of 2002. There is a surface logic to this claim: more crime yields more arrests yields more convictions yields more prison sentences yields higher prison populations and imprisonment rates. Whatever the logic, however, comparisons of crime and punishment trends in the United States with those in other countries show that there is no inexorable relation between crime and punishment rates.

Figures 2.1–2.3 show trends in imprisonment, homicide, and violent crime rates in the United States, Germany, and Finland from the 1960s to the early 1990s. They stop then because crime rates in the United States began a steady de-

cline in 1990–91 and my aim is to compare national experiences while crime was rising. There are some differences in what the data represent in the three countries. The imprisonment rates, based on the numbers of convicted offenders in prison per 100,000 population, are comparable. The homicide rates are calculated somewhat differently; the Finns, for example, include both attempted and completed homicides whereas the United States counts only completed homicides. The violent crime rates include robbery, rape, and serious assaults, and there are differences in the legal definitions of these crimes in each country. For my purposes, the technical differences in how crimes are defined are unimportant, however, since my interest is not in comparing the rates of crime in the three countries but in comparing crime rate trends. The figures show trends in what each country counts as homicide and serious violent crime, and my interest is in the trends and how they compare with imprisonment trends.

In the United States from 1960 to 1993, as figure 2.1 shows, homicide, violent crime, and imprisonment rates rose together through 1980. Imprisonment rates, however, also rose in 1981–86 when crime rates fell, and rose continuously thereafter including after crime rates peaked in 1991. Between 1960 and 1991, and ignoring intermediate peaks and valleys, violent crime rates rose by a factor of four and homicide rates nearly doubled. On the face of it, this pattern supports the hypothesis that rising crime rates lead to rising prison populations. The German and Finnish experiences show the hypothesis to be false.

That there is no necessary connection between crime and imprisonment rates is shown in figures 2.2 and 2.3, which show comparable data for Germany and Finland during the same period. Violent crime rates overall and for homicide increased in both countries about as much as in the United States, but imprisonment rate patterns are completely different.

Figure 2.2 shows the German data. Violence rates increased by three or four times and homicide rates more than doubled.

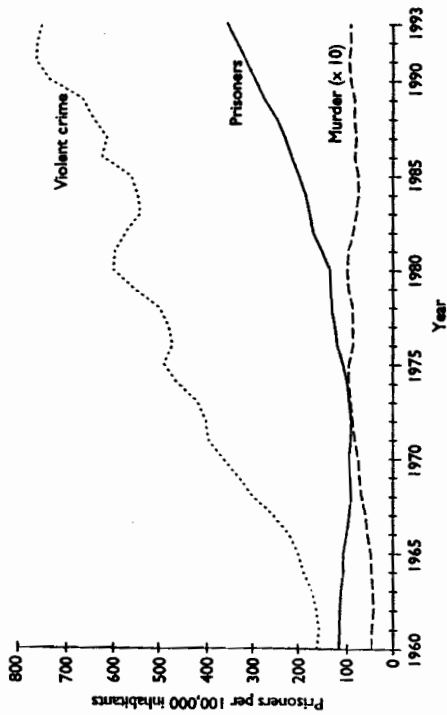


Figure 2.1 Imprisonment, violent crime, and murder rates in the United States, 1960–1993 (per 100,000 population)
 Note: Crime rates are somewhat differently calculated in the United States than in Finland and Germany; U.S. incarceration rates do not include jail inmates.
 Sources: Bureau of Justice Statistics, *Prisoners*, various years (Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics); Federal Bureau of Investigation, *Crime in the United States*, various years (Washington, D.C.: U.S. Government Printing Office).

The imprisonment rate, however, fell through the mid-1970s and remained essentially stable thereafter, fluctuating within a narrow band.

Figure 2.3 shows the Finnish data. The crime trend pattern is the same as in the United States and Germany: homicide rates more than doubled and violent crime rates grew by a factor of three or four. The Finnish imprisonment rate, however, 160 per 100,000 at the start, equal to or higher than the American rate at the time, fell continuously to 60–70 per 100,000.

I could have used data from other countries to make the same point (A. Kuhn 2001). Crime rate trends in France in the same period were about the same as those in the United States, Germany, and Finland. Imprisonment rates zigzagged,

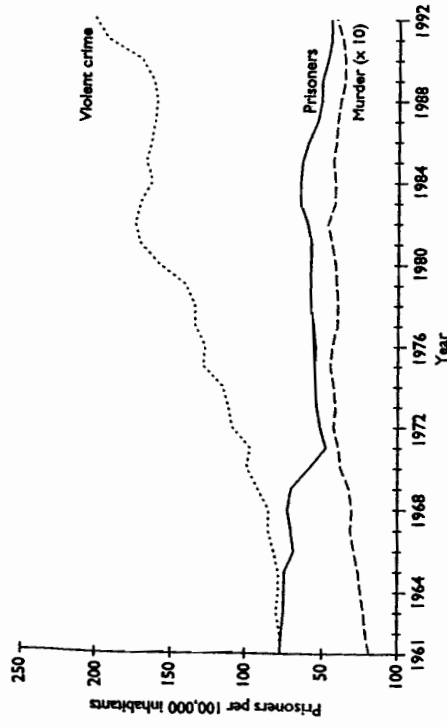


Figure 2.2 Imprisonment, violent crime, and murder rates in Germany, 1961–1992 (per 100,000 population)
 Note: Violent crime and murder rates are somewhat differently calculated in Germany than in the United States; the German imprisonment rate excludes pretrial detainees.
 Source: German Ministry of Justice (unpublished data provided to author).

with periods of steep increase alternating with steep declines. In France, large-scale pardons and commutations generally accompany national celebrations like the inauguration of a new president or the two-hundredth anniversary of the storming of the Bastille. There were also a series of policy decisions to reduce use of imprisonment by means of newly authorized community penalties (Kensey and Tournier 2001).

It is well known why German imprisonment rates held steady and Finnish rates fell. German governments in the late 1960s and early 1970s decided that prison sentences under six months serve no valid purpose. By separating offenders from jobs, families, and loved ones, and stigmatizing them with the label “ex-convict,” short prison sentences damaged prisoners’ prospects of later living a law-abiding life. At the same time, a prison sentence of a few months is too short for treatment programs to have much effect. As a result, the

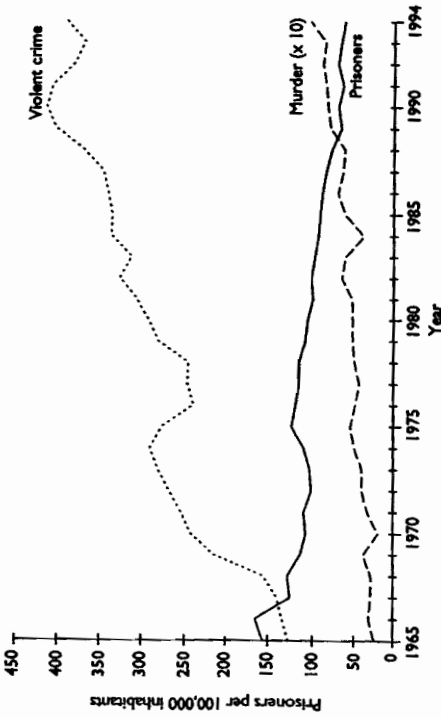


Figure 2.3 Imprisonment, violent crime, and murder rates in Finland, 1965–1994 (per 100,000 population)
 Note: Violent crime and murder rates are somewhat differently calculated in Finland than in the United States; the Finnish imprisonment rate includes pretrial detainees.
 Source: Finnish Ministry of Justice (unpublished data provided to author).

German parliament enacted laws discouraging use of short prison sentences and authorizing expanded use of community penalties. In particular, a system of day fines was established, enabling judges to impose burdensome punishments that were simultaneously scaled to the seriousness of the crime and calibrated to the offender's wealth and income. (One "day-fine unit" is usually one day's net after-tax income, with upward adjustments to take account of wealth.) The government also established a program under which prosecutors could dismiss charges against suspects who accepted responsibility and agreed to pay the fine or perform the community service that would have been ordered had they been convicted. No subsequent German government, including Helmut Kohl's conservative Christian Democrats, felt a need to change those policies. The day-fine system and the prose-

curatorial diversion schemes have several times been broadened to apply to more cases (Weigend 2001).

Government officials in Finland in the 1960s observed that Finnish crime rates were approximately the same as those in Denmark, Norway, and Sweden but that the Finnish incarceration rate was two-to-three times higher. That must mean, they concluded, that too many people were in prison. Patrik Tornudd (1993, p. 4), a participant in the discussions at the time but writing a quarter century later explained: Finnish officials, policy analysts, and academics "shared an almost unanimous conviction that Finland's internationally high prisoner rate was a disgrace and that it would be possible to significantly reduce the amount and length of prison sentences without serious repercussions on the crime situation." They decided to reduce the use of imprisonment, and Finnish governments ever since have held to that decision. Over a quarter century, year-by-year, the incarceration rate fell until, by the 1990s, Finnish crime *and* imprisonment rates were comparable to those of other Scandinavian countries (Lappi-Seppälä 2001).

There are two important points to be made about the contrast between the United States and the German, Finnish, and French experiences. First, violent crime rates increased rapidly in all four countries over several decades but only in the United States did imprisonment rates increase continuously or substantially. Second, the German, Finnish, and French patterns resulted from policy decisions that increased incarceration was neither an appropriate nor an effective response to rising crime rates. American politicians decided otherwise. American imprisonment rates did not rise because crime rose. They rose because American politicians *wanted* them to rise.

A benign account of the formulation of recent American punishment policies is that policy makers believed that something had to be done to stop the increases in crime rates and adopted deterrence and incapacitation as their strategies. The only problem with this is that the most drastic policies were adopted long after crime rates began to fall. As figure 2.1

showed, crime rates for most crimes peaked around 1980, fell through the mid-1980s, rose for a while for reasons largely associated with the crack cocaine epidemic, and have since fallen sharply. The first three-strikes laws, however, were enacted in Washington state and California only in 1993–94 and the federal “truth-in-sentencing” law authorizing \$8 billion for state prison construction was passed in 1994. The meanings of these data comparing U.S. crime and imprisonment patterns to those of other countries are complex but, whatever else they may show, they do not show any simple interaction between crime trends and imprisonment patterns.

Public Opinion

The second explanation for why American punishment policies are so harsh is that public opinion wished it so. Survey results sometimes in the 1980s and 1990s showed that “crime” and “drugs” were “America’s most pressing problem,” that large majorities thought sentencing is too lenient, and that the people wanted tougher punishments. On this account, elected officials merely respected the public will and adopted harsher policies. Imprisonment rose as a result. If that is wrong, blame the public.

There are two serious and well-known deficiencies in this story. The first relates to what “the public” wants. The answer is complicated, but it is not very different from what practitioners want—penalties no more severe than are now imposed and substantial efforts to rehabilitate offenders. The second relates to whether politicians follow or lead public opinion. The answer is that they lead it, but claim to follow it.

A mountain of public opinion scholarship and research shows that the belief that the public is monolithically and unqualifiedly harsh is fundamentally mistaken (Roberts et al. 2002). Most people necessarily base their opinions about punishment on what they know about crime from the mass media. As a result, many people regard heinous crimes and

bizarre sentences as the norms, many believe sentences are much softer than they are, and many believe crime rates are rising when they are falling. As a result, majorities nearly always report that judges’ sentences are too lenient. Yet, and this is true not only in the United States but also in Australia, Canada, and England, when people are asked to propose appropriate sentences for individual cases, they generally propose sentences shorter than are actually imposed (Roberts et al. 2002).

A different body of research powerfully demonstrates why results of opinion polls sometimes should not be taken at face value. Dan Yankelovich (1991), long-time head of a large public opinion survey firm, urged that readers of polls never lose track of the difference between public *opinion* and public *judgment*.

Public opinion is what people say off the top of the head as a first reaction. It may be uninformed or misinformed, ignorant or insightful. For some purposes evidence of this sort is useful. On simple subjects where only preferences matter (Will you vote for Bush or Gore?), it may be all we need to know, though even there we know that preferences change quickly and often can not be taken at face value (for example, throughout the 1990s, more people told interviewers they would vote for black candidates than did). On complex matters (How should the United States balance environmental concerns with energy needs? Should criminal penalties be increased or decreased?), ordinary public opinion surveys tell us what is on people’s minds, or what they know or think they know, but not what their informed opinion would be.

Public judgment is what people say when they know enough to have an informed opinion. A great deal of opinion research on many subjects has been premised on this distinction. Here is how it typically works. At the outset a group of people are asked to answer a series of questions about a subject. The results are a measure of their opinion. They then participate over a few hours or a few days in seminars and discussions about the subject. The people running the project try hard to be sure the information presented is balanced and

evenhanded, and participants discuss the subject at length. Participants are then asked for their views. The results are an indication of public judgment.

The results of the before and after surveys can be compared and it can be seen what difference knowledge makes to what people think. This has been done on numerous subjects, including the environment, nuclear power, the death penalty, and criminal punishment. Public judgment is nearly always substantially different from public opinion. Having more and better information often changes what we think. There is nothing surprising about this. That is everyone's experience in day-to-day life—it is why we try to avoid making rash decisions about things that are important to us—but it is easy to forget when thinking about surveys of public opinion.

Research of this type on punishment often begins by giving people vignettes that describe the characteristics of a crime and a criminal. They are then asked what sentence they would impose, provided information on sentencing practices and options, and asked again—a few hours later or the next day—what sentences they would impose. This has been done in at least a dozen American states and, though the details vary, in outline the results are always the same. Many hypothetical offenders who at the outset would have been sentenced to prison are instead sentenced to various community punishments.

Another major and recurring finding is that when public judgment is wanted, when ordinary citizens have the information to reach informed conclusions, they have the same complex and ambivalent attitudes toward criminals that judges and lawyers have. They believe crimes are the products of bad moral choices, disadvantaged backgrounds, and substance abuse. They want offenders to be punished and to be rehabilitated. They are much more often willing to pay more taxes for treatment programs than for prison building. They insist on prison sentences only for the most violent crimes (Tony and Hatlestad 1997, chap. 5; Roberts et al. 2002).

Public opinion surveys show that crime is no longer widely numbered among the country's most pressing problems.

Crime ranked in the top three from 1980 to 1990, but by March 2002 had fallen to fifteenth. In 1994 less than half of Americans preferred policies that address the underlying causes of crime over stricter sentencing. By 2001 nearly two-thirds of Americans favored approaches that address the root causes of crime (Peter D. Hart Research Associates, Inc. 2002).

A final point about public opinion on punishment is also important. Prevalent sensibilities in recent decades have predisposed Americans to heightened intolerance of crime and criminals. Nonetheless, public opinion findings showing that Americans regard crime or drugs as the nation's most pressing problem typically follow, not precede, media and political concentration on crime. Politicians who attempt to win favor by demonstrating their toughness nearly always say that they are honoring citizens' wishes. The evidence shows, however, that emphasis by politicians and the media on crime issues is what causes public anxiety to increase. This is best shown in a book by Katherine Beckett (1997), who analyzed interactions among media attention to crime and drug issues, politicians' relative emphasis on those issues, and the results of opinion surveys. She did this in relation to crime policy in the 1970s and drug policy in the 1980s. Content analyses of newspaper and television coverage were compared with public opinion survey results and showed a recurring pattern. Politicians focused on crime policy, or the media increased their crime coverage, or both, and then, after those things happened, opinion surveys showed heightened public concern about crime or drugs, and heightened support for tough policies.

So public support for harsh policies has coincided with their adoption. However, it is not public opinion per se that leads to harsher policies, but politicians' proposals and posturing and sensational media crime coverage that lead to changes in public opinion. Americans were prepared to support the crime control policies of the 1980s and 1990s. Evidence on public judgment, however, shows that they would also have supported policies that aimed to enhance offenders' chances of achieving law-abiding lives. Responsibility for re-

cent policies lies not with the public but with the public officials who failed to provide balanced and humane leadership.

This leads to the third explanation for why American punishment policies are so harsh—that conservative politicians for partisan advantage banked the fires of public fear of crime and then offered harsh policies to dampen those fires. I refer to conservative politicians even though by the 1990s moderate and some liberal Democrats were equally outspoken in their anti-crime toughness. No one seems seriously to question that Bill Clinton's decision never to let the Republicans get to his right on crime was a tactical response designed to check Republicans' partisan use of the crime issue. It worked for Clinton, but not for the tens of thousands of people whose lives were changed for the worse by the consequences of his strategy.

Partisan Politics

Crime and punishment have been high on American political agendas since the late 1960s. Before Republican Barry Goldwater raised "crime in the streets" as a partisan issue in his unsuccessful 1964 presidential campaign, public safety was generally seen as one among many important but unglamorous core functions of government, like public health, public transit, and public education. Public officials were expected to do their work conscientiously and well, and systematic knowledge was widely seen as relevant to the formulation of policies and the improvement of institutions and practices. Reasonable people differed over the best approaches for addressing particular problems. As American Law Institute deliberations in the 1950s of provisions of the proposed Model Penal Code demonstrate, however, the debates were seldom partisan or ideological (this is discussed in detail in chapter 7). Criminal justice policy was a subject for practitioners and technocrats, and sentencing was the specialized case-by-case business of judges and corrections officials.

In recent decades, however, crime control has been at the center of partisan politics, and policies have been shaped more by symbols and rhetoric than by substance and knowledge. Political scientists and journalists tell the story of how that happened. Until the 1960s, the Democratic Party had dominated electoral politics in most of the South since the end of Reconstruction. Policy differences and personal rivalries were fought over within a state's Democratic Party, rather than between parties. The civil rights movement, however, created a fissure between racial and social policy liberals and racial and social policy conservatives, initially in the South but eventually nationally.

Republican strategists seized the opportunity in the 1970s and 1980s to appeal to "Nixon [later Reagan] Democrats" by defining sharp differences between the parties on three "wedge issues": crime control, welfare, and affirmative action. Those issues were meant to separate Democrats from their traditional white working-class supporters by speaking to legitimate anxieties in ways that, beneath the surface, also appealed to racial enmity and stereotype. On the surface, these three issues are about protecting citizens from crime, public funds from cheating, and workers from unfair treatment. Below the surface, they were largely about race, and in political imagery were given black faces. Illustrations include George Bush's 1988 use of black Willie Horton to personify the dangers of soft crime policies; Ronald Reagan's 1980 use of black Linda Taylor, Chicago's "welfare queen," to embody welfare fraud; and Jessie Helms's television ads in his 1990 Senate campaign against black Charlotte mayor Harvey Gantt illustrating the dangers of affirmative action with images of an unemployed white worker's wringing hands.

On crime control, conservatives blamed rising crime rates on lenient judges and soft punishments, and demanded "toughness." On welfare, conservatives blamed rising welfare rolls on "welfare cheats" and laziness, and demanded budget cuts. On affirmative action, conservatives blamed white unemployment on "quotas," and urged elimination of af-

firmative action (Edsall and Edsall 1991; Applebome 1996; Gest 2001).

Crime's role as a wedge issue had important consequences. Issues that are debated on television and examined in fifteen- and thirty-second commercials necessarily are presented in simplistic and emotional terms. The appeal palpably is to public opinion, not public judgment. Matters about which judges and prosecutors agonize in individual cases are addressed in slogans and symbols, which often lead later to adoption of ham-fisted and poorly considered policies.

Few corrections officials, judges, or informed scholars, for example, support broadly defined three-strikes laws, mandatory minimum sentence laws, or sexual psychopath laws in the forms in which they are typically adopted. This is not because they do not want criminals to be punished, or are unsympathetic to victims' suffering, or are indifferent to public safety needs, but for practical reasons. Such laws seldom achieve their nominal purposes—there is no credible evidence that they are significant deterrents to crime—but generally generate serious unintended consequences. They are too rigid and often result in unjustly harsh penalties. They result in circumvention by judges and lawyers who believe their application inappropriate and unjust in many cases. They are often redundant because people who commit serious crimes almost always receive severe penalties anyway (Tonry 1996, chap. 4).

Many more practitioners and scholars would support such laws if they were narrowly drawn and carefully crafted to encompass only genuinely serious crimes and genuinely threatening offenders. However, in a "sound-bite politics" era, few politicians were prepared to act as voices of moderation and parsimony, and as a result new sentencing laws often lacked those qualities.

As important, when crime control became one of the central issues in American politics, it ceased being a specialized policy subject and became instead a symbol or metaphor for, broadly, concepts like "personal responsibility" and vindication of victims' interests, and, more narrowly, ideas about

criminals' immorality and irresponsibility. Analysts of contemporary crime control policy often say that its principal aims are "expressive" rather than functional (J. Kennedy 2000; Garland 2001a). A broadly defined sexual psychopath law, three-strikes law, or mandatory minimum sentence law may be ineffective or cruel or unduly costly, but none of that may matter. If the law's proponents, and voters, view it as an expression of revulsion with crime and outrage toward criminals, whether it will work or achieve just results in individual cases is often politically irrelevant. When issues are defined in polar terms of morality and immorality or responsibility and irresponsibility, few elected officials want to be found at the wrong pole.

Few informed people will disagree with the broad outlines of this account. Many liberals might say that the conservative emphasis on toughness was cynical and intellectually dishonest. Many conservatives might respond that they believe that tougher penalties reduce crime rates and, through public opinion polls and electoral support for "tough-on-crime" candidates, citizens have shown they support such policies; what better basis for policy making can there be?

Of the explanations offered so far for the severity of current punishment policies, this is the most plausible. Current American imprisonment policies, and the avoidable damage they do to prisoners, their families, and their communities, and the fiscal and opportunity costs they impose on governments (Hagan and Dinovitzer 1999), may merely be by-products of an effective political strategy for winning elections. However, that the Right won, whether cynically or honestly motivated, does not explain why such political appeals were successfully made and such policies adopted in the United States, and not in other countries, and now, and not at other times.

Political Reconfiguration

So what is needed is an explanation for why crime and punishment served so nicely as a wedge issue, and why so many

elected officials were prepared in recent decades to behave in ways that opponents and many observers perceived as demagogic. Social scientists have offered analyses of political and governmental trends of recent decades that attempt to explain why crime has received so much more and more sustained attention from governments and politicians than have other equally important public policy issues.

Sociologist David Garland has argued that American and English politicians and governments came to focus so much on crime almost by default, and that vigorous anticrime efforts should be seen as expressions of the weakness, not the strength, of the state (Garland 2001a). Since the 1960s, Garland argued, external forces have made it difficult for the state demonstrably to solve its citizens' problems. The state's credibility has suffered as a result. Governments cannot insulate their citizens from the disruptive effects of economic recessions, globalization, and multiculturalism.

But crime is different: "The essential and abiding attractiveness of the 'sovereign' response to crime . . . is that it can be represented as an immediate, authoritative intervention. . . . Like the decision to wage war, the decision to inflict harsh punishment or extend police powers exemplifies the sovereign mode of state action" (Garland 2001a, pp. 134-45). Garland explains that evidence—of what works, of foreseeable effects—is irrelevant because the goal is not crime reduction per se, but the credibility of the state. Whether policy initiatives have any effect on crime rates or not is beside the point. What matters is that policy-makers be seen to be doing *something*, and that policies express anger and outrage with crime, and the people who commit it, and its consequences for victims (Garland, 2001a, p. 110).

Sociologists Theodore Caplow and Jonathan Simon (1999) offer two interconnected reasons (among others) why U.S. crime policy developed as it did. One, paralleling Garland's ideas about the weakness of the state, is the anomaly that enormous expansion over the last thirty years in the role of government, particularly the federal government, coincided

with sharp and continuous decline in public confidence in government. The second is the weakening of broad-based political coalitions and the growth and influence of single-issue political movements.

The scope of federal government activity has expanded greatly. Before the 1960s, for example, many subjects now seen as important federal responsibilities received little federal attention. These include health care, education, street crime, consumer protection, occupational safety, employment practices, child care, environmental protection, the arts, and discrimination on grounds of age, race, sex, and disability. Few people any longer argue that any of these subjects is not the Congress's business. The enormous expansion of the federal government's agenda transformed American politics.

The result, Caplow and Simon (1999) argue, was a spiral of failure. Declining student performance was attributed to lack of discipline and intellectual rigor in schools. Illegitimacy and chronic poverty were blamed on perverse incentives provided by the main federal income support program, Aid to Families with Dependent Children. Rising crime was blamed on lenient judges and parole boards.

As evidence of government failure, Caplow and Simon cite the massive escalation of costs of federal government programs between 1970 and 1995 without corresponding benefits. Federal expenditures for health care outpaced inflation by five to one, for education by three and a half to one, for Aid to Families with Dependent Children (AFDC) by three to one, and for criminal justice by six to one. None of these systems was widely credited as being conspicuously successful, but they are interconnected and their defects are mutually reinforcing. The extraordinary costs of the health care system prevented any serious effort to alleviate poverty. The deficiencies of the antipoverty programs undermined the public schools. The failures of the schools poured into the criminal justice system.

All of this led, they say, to a remarkable collapse of confidence in government. In response to the survey question,

"How much of the time do you trust the government in Washington to do the right thing," 75 percent of a representative national sample in 1964 answered "just about always" or "most of the time." When the same question was put to a similar sample in 1995, only 25 percent gave those answers (Caplow and Simon 1999).

For Caplow and Simon, as for Garland, penal policies and politics are primarily about other things. Government can express outrage and appear to respond to the public by taking drastic and dramatic action against crime and criminals. Enforcement of harsh policies serves as an end, not a means.

The inherently expressive character of much crime control policy distinguishes it from other policy subjects. Government and government leaders get credit in most realms for policies that achieve results, and lose credibility when policies fail. Announcement of new educational or health care policies by itself is insufficient. What matters is whether they satisfy their aims, or demonstrably move in that direction. In recent years, the expressive content of crime control policies has been enough.

Caplow and Simon's second observation is that American politics after the 1960s moved away from broad-based parties with traditional class and regional constituencies toward "single issue" movements. The proportions of the electorate with strong loyalties to the Republican or Democratic parties steadily fell and the proportion of voters with no attachment to either party grew. Elections increasingly are won, or lost, not because voters support the values or platforms of a party, but because of the ways they react to media imagery and particular issues. In an era in which few people believe strongly in government's ability to do good, it is difficult to base political campaigns on broad positive agendas. Some popular subjects—national defense, antiterrorism programs, and environmental protection are examples—attract such wide support that they seldom distinguish parties or candidates.

What is left are candidates' images and personalities, issues of overriding importance to single-issue groups, and things

to be against. About images and personalities I have nothing special to say; candidates try to present themselves favorably and modern electronic media make those efforts ever more effective.

The single-issue groups, however, have transformed politics. Elections are won and lost over such issues as abortion, affirmative action, gun control, school prayer, gay rights, and capital punishment. These controversies, Caplow and Simon (1999) note, do not lend themselves to the compromise and horse-trading that long characterized American politics.

Single-issue organizations and campaigns invite people to join the side of good against evil. To antiabortion activists, abortion is cold-blooded murder. To their adversaries, the issue is women's ownership of their own bodies. To advocates of strict gun control, the private possession of firearms is foolish and dangerous; to their adversaries it is the keystone of liberty. To proponents of gay rights, the issues are equality and human rights; to opponents, traditional values and the sanctity of the family. School prayer for proponents is about belief in God and respect for private faith; for opponents, about cultural hegemony, intolerance, and subtle coercion.

Candidates and parties are loath to take sides in any of these conflicts. The well-organized pressure groups that represent such interests have few means of achieving their goals outside of federal courts, Congress, and the state legislatures. They want to prevent other people from doing things, or to require other people to do things, and only courts and lawmakers have the power to do that. Supporters of these groups will reliably vote against candidates on the wrong side of the issue. Only a small minority of voters may care deeply about the issue, but in a close election they can make the difference.

Faced with voters who split on so many issues and are profoundly skeptical about the ability of government to improve their lives, parties and politicians have been required to emphasize policy initiatives that command broad support. In our time, these initiatives are generally negative. Opposition to communism and the Soviet Union long played this role. Early in the twenty-first century, opposition to terror-

ism and other countries' fundamentalist regimes may be used in this way, but it will seldom differentiate parties or candidates. What is left are domestic initiatives—such as crime, welfare, and immigration—that can be debated in moral terms, respond to broad-based anxieties and empathies, and affront no powerful constituency.

Like some of the other explanations for American punishment policies, this is plausible and probably valid. Confidence in government is low and single-issue groups are powerful. These developments to some extent distinguish American politics and government from those of other Western countries. Faith in government is higher in other countries as is acceptance of the view that government has positive obligations to improve citizens' lives. Disagreements about values and morals exist in every country, but galvanizing single-issue movements like the National Rifle Association or the National Abortion Rights Action League are not common. Anti-immigrant movements are the closest equivalent, but that is more akin to U.S. anti-immigrant or crime movements than to American single-issue movements. Nor in most other countries are issues such as school prayer, capital punishment, and affirmative action the subjects of great controversy.

The question remains, though, why alone among Western countries has the United States adopted penal policies of unprecedented severity?

Risk Society

One explanation builds on literatures in sociology and anthropology on "risk" and "the risk society." These literatures have only recently been applied to crime and crime control policy. The anthropological literature, most famously associated with Mary Douglas (1985, 1992), concerns the social construction of risks and such questions as why in a particular place and time something is seen as unacceptably risky

and how to understand and evaluate actors' differing perceptions of risk.

The sociological literature is most famously associated with Anthony Giddens (1990, 1991, 1998) and Ulrich Beck (1992, 1996). Part of the backdrop for each is concern for the environmental risks created by modern industry and technology, and how those risks are assessed at individual and social levels. Giddens, after noting the secularism and uncertainty of our time, described contemporary society as a "risk culture" (1991, p. 3), in which all of life is subject to "contingencies." "Living in a 'risk society' means," he wrote, "living with a calculative attitude to the open possibilities of action, positive and negative, with which, as individuals and globally, we are confronted in a continuous way in our contemporary social existence" (1991, p. 28). For Giddens, this does not mean that people living in contemporary societies are more exposed to risk than people living in other times, or are more anxious about risk, but are more self-aware.

Beck bridges Douglas's interest in the social construction of risk and Giddens's interest in how the greater fluidity of contemporary life influences our lives. As social structures have weakened, and work, family, and gender roles become less fixed, individuals have more control over their lives, more choices to make, and less certainty about the future. He refers to this evolving aspect of contemporary life as "individualization" and it is fraught with risk (Beck and Gersheim 1995). As with Giddens, there is neither necessarily more nor worse risk now but greater awareness of it.

Deborah Lupton (1999), in a recent survey of writing on risk, synthesizes the main themes:

[T]he contemporary obsession with risk has its roots in the changes inherent in the transformation of societies from pre-modern to modern and then to late modern (or postmodern, as some theorists prefer to describe the contemporary era). Late or postmodernity generally refers to broader socioeconomic and political changes that have-

taken place in Western societies since World War II, producing the sense for many people that we are 'living in new times.' . . . For the individual, it is argued, these changes are associated with an intensifying sense of uncertainty, complexity, ambivalence, and disorder, a growing distrust of social institutions and traditional authorities, and an increasing awareness of the threats inherent in everyday life. (Lupton 1999, pp. 10-12)

So far, so good. Stripped of jargon, there is nothing here that any regular newspaper reader will find surprising or unfamiliar. What is the relevance of the risk literature for understanding crime control or punishment policies? Not much.

Lupton offers three observations about the implications of risk analysis for crime. First, situational crime prevention strategies focus on prevention of crime rather than on rehabilitation of offenders (1999, p. 94). This is true, but neither momentous nor new. Situational crime prevention is a complement to law enforcement techniques and not inconsistent with rehabilitation efforts. The idea is that much crime is opportunistic and spur-of-the-moment, and it can be reduced by changing situations to make opportunities less attractive. Examples include increased street lighting, use of CCTV, redesign of public spaces, and substitution of paper or electronic tickets for cash payments. Such initiatives make crimes more difficult, more likely to be observed, and less likely to succeed. People have, however, always tried to lessen their chances of victimization by locking doors, buying dogs, hiring guards, carrying weapons, and avoiding dark alleys at night. Modern prevention techniques are larger in scale and more sophisticated in technology but not different in kind. Situational crime prevention in any case is but a tiny part of contemporary crime prevention efforts.

Second, emphasis on risk or dangerousness treats offenders not as individuals but as members of "risk groups" (1999, pp. 94-95). This also is true, and nothing new. Incapacitation has always been the flip side of rehabilitation. The converse

of the belief that an offender has been rehabilitated and is capable of living a crimefree life, and hence should be released from prison, is that he has not, is not, and should not.

Until recent decades, such decisions were usually based on individualized assessments of rehabilitation and predictions of risk, but they were intuitive and subjective, and less reliable than are such decisions when based on validated risk prediction instruments (Clear and Cadora 2001). Beginning in the 1920s, sociologists and others began developing base expectancy tables to predict offenders', prisoners', and parolees' likelihood of future offending (e.g., Burgess 1928; Ohlin 1951; Gottfredson, Wilkins, and Hoffman 1978). These are actuarial calculations aimed at identifying groups, on the bases of particular characteristics, whose members have greater or lesser probabilities of reoffending. Contemporary risks and needs assessments, prediction instruments, and targeted incapacitation policies are applications of that long-established technology. Surveillance and punishment policies based on actuarial calculations do raise questions concerning whether, when, and within what limits such information may justly be used in individual cases. There is nothing intrinsically new about any of this. The relevant conceptual, jurisprudential, and empirical literatures all date back at least a half century.

Third, "the figure of the criminal is frequently positioned as risky and needing exclusion from others" (Lupton 1999, p. 144). Among the implications of this are that people assess some places—"the inner city, the shopping mall, housing estates [public housing]"—where criminals are likely to be as dangerous, and avoid those places, and that members of some groups, such as "injecting drug users," are stereotyped as potential criminals. All true, and often regrettable, but the discovery neither needed nor awaited the appearance of the risk society literature.

Lupton, however, is a specialist in "cultural studies," not a crime specialist. The criminologists do no better a job of demonstrating how risk society analysis aids understanding of crime policy changes (Hope and Sparks 2000; Stenson and

Sullivan 2001). The best work on the subject, most of it qualitative, examines the interacting ways objective risk, anxiety, and fear of crime affect people's daily lives in different settings and circumstances (e.g., Jefferson and Holloway 2000). The worst of it is jargon-ridden and obscure (e.g., Stanko 2000), or ideological and polemical (e.g., Stenson 2000).

Social scientists not working in the risk society framework also worry about increased use of prediction instruments throughout the criminal justice system. Sir Anthony Bottoms (1995) includes this as part of a new "managerialism," and Malcolm Feeley and Jonathan Simon (1992) portray it as "actuarial justice." Both works emphasize increased use of risk prediction, but neither claims that risk is a new consideration in criminal justice decision making.

Most of the risk society literature discusses punishment policies in England and the United States, as if the phenomena to be explained are the same in both countries. Though most who write on this subject are based in England, it does not seem to have occurred to them that American penal policies are incomparably harsher than the English and imprisonment rates are five times higher. A theory that applies equally to both cannot explain those differences and is invalidated by them.

By this point, the explanation for contemporary American crime control and punishment policies has gotten pretty complicated. Crime rate levels and changes by themselves do not have much explanatory power. Rising crime rates and mass media developments provide a plausible basis for heightened public concern, but ordinary people's views are more complex, ambivalent, and temperate than is widely recognized. Frightening stereotypes and valid fears provide an intelligible reason why voters respond to "tough-on-crime" rhetoric and appeals, but do not explain why politicians in our time chose to campaign on those issues rather than others. The account of structural changes in American politics is part of the explanation—there is little support in the early twenty-first century for ambitious broad-based policy initiatives by

government, and it is always easier to mobilize support against something than for something. Social, economic, and cultural changes in American life in the past thirty years have made life more uncertain and, in the Giddens/Beck sense, risky.

Like the dots in a pointillist painting, all of these claims provide points of understanding, but they lack a pattern that provides an intelligible picture. Three more complex stories try to do that. One is David Garland's story, discussed in the next section, of the force of postmodernist angst. The second is James Whitman's explanation for why American punishment policies and practices differ so greatly from those in France and Germany. The last, best, and most complete story is that the pattern can best be understood in relation to the intertwining of cyclical changes in sensibilities with recent moral panics and political opportunism.

Postmodernist Angst

This story overlaps the risk society story, but is more complex, comprehensive, and sophisticated. The final third of the twentieth century was a period of disruption, uncertainty, and change. Few people were unaffected by recessions, globalism, or economic restructuring; nor by social changes associated with the women's, civil rights, and gay rights movements; nor by increased immigration, ethnic diversity, and cultural pluralism. Routines and expectations had to change. Peoples' lives became less constrained and predetermined but greater autonomy and wider possibilities brought greater uncertainty. Values and certainties were undermined and questioned. And, for much of the last thirty years, crime rates increased and fear of crime penetrated into more people's lives, and more deeply. Most crimes, especially the street and violent crimes that are most feared, are committed by people at the social and economic margins, and disproportionately by members of racial and ethnic minorities. Because most of the forces and developments that destabilize

our lives are distant and impersonal, but criminals are near at hand and identifiable, broad-based anxieties are displaced onto blamable criminals. Politicians know that government action cannot fundamentally affect crime rates and patterns but want to be seen to be doing something, and accordingly promote and enact policies meant primarily to express disdain for offenders and hurt them.

"Underlying the debate about crime and punishment," Garland wrote, "was a fundamental shift in interests" (2001a, p. 76). Sir Anthony Bottoms of Cambridge University in 1995 famously characterized the sensibilities to which expressive policies are a putative response as "populist punitiveness." He, like Garland, attributes populist punitiveness to increased crime rates and the uncertainties associated with what he, like Garland, calls "late modernity." Populist punitiveness exists, Bottoms says, and it explains why governments adopt harsh policies and why harsh policies are well received. Garland's story, however, goes further and explains both why governments adopted particular policies and why they won public favor.

Garland's story, rich, subtle, and multifaceted, is told in what he calls a "history of the present." He sketches the origins of modern criminal justice institutions, traces the 1970s loss of faith in individualized and relatively nonpoliticized practices, describes social and cultural changes, surveys changes in criminology, crime prevention, and crime control policies, and then explains why policies changed as they did. It is an ambitious work, and much the most distinguished of its kind. What follows is not a review of the entire work and cannot do it justice, but is an effort to distill central themes.

Garland's story has four main components. The first is the salience of "high crime rates as a social fact" (2001a, p. 106). The second is the use of expressive punishments as a demonstration of state sovereignty. The third is the risk society story of instability, change, risk, insecurity, anxiety, and displacement. The fourth is the "criminology of

the other." I summarize these components briefly, quoting Garland extensively, rather than paraphrase wordily and imprecisely.

First, crime has become a "normal social fact," more widely distributed, and avoidance of crime a ubiquitous feature of everyday life:

[B]y the 1970s society's vulnerability to high rates of crime came to be viewed for what it was—a normal social fact. At the end of the 1990s, despite much publicized decreases, American and British rates of crime and violence remain at an historically high level. . . . Whatever successes police and politicians may claim, crime avoidance remains a prominent organizing principle of every day life. (2001a, p. 194)

Garland describes how political campaigns and the mass media amplified awareness of crime. Independently of that, he argues that victimization is more widespread than in earlier times. No longer primarily localized in low-income, disadvantaged, and minority neighborhoods, victimization has become in a sense more fairly distributed and threatens affluent and middle-class people.

Second, crime's status as a new social fact exposed the "myth that the sovereign state is capable of delivering 'law and order' and controlling crime" (2001a, p. 109). This created a predicament for policy makers. They can accept and adapt to the limits of sovereign power, or they can pretend not to know it and retreat into an *expressive* mode.

"[T]he essential and abiding attractiveness of the 'sovereign' response to crime (and above all of retaliatory laws that create stronger penal sanctions or police powers)," Garland writes, "is that it can be represented as an immediate, authoritative intervention. Such action gives the impression that *something is being done*—here, now, swiftly and decisively" (2001a, pp. 134–35; emphasis in original).

Third, the new social fact of crime, particularly as it impinges on the middle class, importantly exacerbates the "sense of ontological insecurity" of late modern society:

[T]his new element of precariousness and insecurity is built into the fabric of everyday life. . . . Little surprise too that people increasingly demand to know about the risks to which they are exposed by the criminal justice system and are increasingly impatient when the system fails to control "dangerous" individuals. . . . Crime has become one of the threats that the contemporary middle-class household must take seriously—another problem to manage, another possibility that must be anticipated and controlled. (2001a, p. 155)

The vulnerability of the middle class is doubly important. It provides receptivity to politicians' populist appeals. Perhaps as importantly, middle-class prosecutors, judges, probation officers, and prison officials shared the widespread sense of precariousness and danger. Previously, these peoples' social distance from "the poor people's problem" of crime, and their low levels of victimization, made compassion easy to express and others' vulgar punitiveness easy to disdain. Their own sense of personal insecurity, however, made many "more supportive of punitive responses to crime" (2001a, p. 150) and less committed to the more humane and constructive policies that in earlier times they supported. A group that might have been expected to resist expressive policies became less inclined to do so.

Fourth, is Garland's "*criminology of the other*, of the threatening outcast, the fearsome stranger, the excluded and the embittered [which] . . . functions to demonize the criminal, to act out popular fears, and to promote support for state punishment" (2001a, p. 137; emphasis in original). The outcasts in the social and political climates of the 1980s and 1990s inevitably were the welfare poor, urban blacks, and marginalized working-class boys.

So, putting all this together, why are harsh expressive policies adopted? "Because," Garland writes, "the groups most affected lack political power and are widely regarded as dangerous and undeserving; because the groups least affected could be reassured that something is being done and lawlessness is not tolerated; and because few politicians are willing to oppose a policy when there is so little political advantage to be gained by doing so" (2001a, p. 132).

This snapshot of Garland's argument omits much that is creative and insightful but does, I believe, capture its flavor. The important question is whether it adds anything importantly new to the five stories already told. I think not. The salience of the new fact of crime is part of every story, as are the insecurities of "late modernity." Garland's sovereignty argument bears strong resemblance to Jonathan Simon's governing-through-crime thesis. The centrality of expressive punishments, and their frequent disengagement from substantive crime prevention, is common ground. And along the way, Garland develops, albeit less extensively, the political cynicism and ideological subplots of the other stories.

The postmodernist angst story by itself is not enough. There have been other equally unsettled periods in American history that produced widespread dislocation and insecurity but did not produce the kind of sensibilities that led to contemporary crime control and punishment policies. It is easy and not unnatural for people living of a time to think that time uniquely challenged or troubled, but that is a reflection merely of chronocentrism, the temporal equivalent of ethnocentrism. Both where and when we stand, observe, and generalize shape what we see and think. Anyone who thinks the three decades 1970–2000 were uniquely unsettling has forgotten the three decades 1920–1950. That period experienced the rise of Nazism, fascism, and Soviet communism, as well as the Roaring '20s, the Great Depression, World War II, the Iron Curtain, and the onset of the Cold War. Nothing very dramatic happened to crime control and penal policy

during those thirty years and the American system of individualized and indeterminate punishment that had taken shape by 1930 looked much the same in 1950.

More eloquently and comprehensively than anyone else, Garland puts all the stories into one mosaic, but the whole is not greater than the sum of its parts. What is still needed is an explanation for why the United States adopted crime control and punishment policies of unprecedented severity, but neither England nor any other Western country that experienced comparable crime, social, economic, and cultural changes and trends did so.

Garland's story has real power, but ultimately does not offer a convincing explanation, and he himself seems not entirely convinced. Having explained how crime trends, social and cultural changes, recognition of the limits of state power, and the "criminology of the other" all shaped the development of current policies, in the end he reduces those developments to background conditions; they are not singly or jointly causes. He insists that he does not mean "to imply that political decisions and policies are determined, or made inevitable, by events and circumstances occurring elsewhere" (2001a, p. 139), and that contemporary crime control policies were "not inevitable" (2001a, pp. 76 and 201). He also insists that "public attitudes about crime and control are deeply ambivalent" (2001a, p. 203) and that "[t]he populist current in contemporary crime policy is, to some extent, a political posture or tactic, adopted for short-term political advantage. As such it can quickly be reversed" (2001a, p. 172).

Garland's account of the relationship between postmodernist angst, crime control policies, and punishment practices, notwithstanding its many merits, does not explain why U.S. policies are as they are.

Earlier I quoted a passage from Garland about the changing sensibilities and interests that underlay the construction of contemporary crime control and punishment policies. But where do the sensibilities and interests come from? The seventh and eighth stories answer that question.

Democracy and Degradation

The challenge historian James Whitman set for himself was to understand why "over the last quarter century, America has shown a systematic drive toward increased harshness by most measures, while continental Europe has not" (Whitman 2003, p. 38). One explanation is that, "for the most part, though, American-style politics has failed to exert an American-style influence in German or French criminal justice," and, as a result, "bureaucrats have succeeded in keeping control of the punishment process, without becoming subject to decisive pressure from a stirred-up public" (2003, p. 15).

That last observation, if warranted, and lots of evidence suggests it is, powerfully refutes most of the preceding stories about increasing punitiveness in America. France and Germany have experienced rising crime rates, economic destabilization, more punitive public opinion, ethnic tensions, and postmodernist angst no less than the United States, and yet "as of the year 2000, mildness is still, at heart, the watchword of punishment practices in each country" (p. 70).

Whitman's *description* of contemporary differences between continental Europe and America is not an *explanation*. For that he goes back two centuries and identifies two differences between Europe and America that reverberate in our time. The first is the American distrust of government and government officials that developed in the fifty-year build-up to the American Revolution and has characterized Americans ever since. This he contrasts to the strong European states of the eighteenth century and the continuation of support for strong states today. Germany and France have state apparatuses that, compared with American government, are relatively powerful and relatively autonomous.

The second difference relates to the alternate ways European and Anglo-American cultures ameliorated the consequences of eighteenth-century status differentiation. Social hierarchy and status differences were, of course, marked in Europe, Britain, and the American colonies, and extended to

the ways people who committed crimes were dealt with. Status mattered, and it can be illustrated by the forms of execution and imprisonment. Hangings are unattractive: the victim slowly asphyxiates, the bowels let loose, and the body wracks with spasms. Beheadings are nearly instantaneous and the headless body, if supported, stays in place. In Britain and Europe, low-status people were hanged; high-status people were beheaded. And so with prisons: low-status people were kept in crowded, squalid places, while high-status people were allowed comfortable facilities to which visitors and personal servants had access.

Whitman describes starkly different ways that Europe and Anglo-America responded to the status hierarchy in punishment: Europe leveled up, aspiring to treat all offenders with respect and civility, at least in principle like high-status prisoners; England and America leveled down, treating all prisoners in principle like low-status prisoners. In this framework, Whitman argues that much American punishment is degrading, as low-status punishment has always been degrading, while French and German punishment is premised on treating prisoners with respect and sympathy. Similarly, American egalitarianism leads to beliefs in uniform and mandatory punishments, while the European response to historic anti-egalitarianism leads to beliefs in individualization and mercy. This is why, Whitman argues, the French regularly and the Germans occasionally announce broad-based amnesties and commutations, without enraged public outcry, and it is why the trend in recent decades has been toward greater mildness in punishments.

Whitman's two theories, about strong and weak states, and punishment systems that level up or level down, fit nicely with contemporary differences in punishment systems. France and Germany grant autonomous officials substantial authority to individualize mild punishments. America, and to a lesser extent, England, attempt through legislation to limit the discretion of officials to deviate from comparatively uniform systems of harsh punishments.

Whitman's analysis is creative and original and genuinely enriches efforts to understand differences between legal systems. What it does not do, alas, is explain American policies of the past quarter century. The difficulty is that three properties of French and German punishment practice that his theory explains—moderation in punishment, individualization, and mercy—until twenty-five years ago were more characteristic of the United States than of Europe. Individualization of punishment was the reigning premise of American sentencing and punishment systems for a hundred years beginning in the 1870s.

Parole is the starkest example. First established in America as a means to let prisoners out when they had become rehabilitated, parole systems were established in most Western countries, including by 1930 in every American state (Rothman 1980). American parole boards had broad discretion, at narrowest to release any prisoner who had served a third of his or her sentence. The extreme cases were California and Washington State, where every sentence was "one year to the statutory maximum" and the parole board decided all release dates. The English parole board was not established until the late 1960s. Parole systems in most European countries had only narrow scope: prisoners typically became eligible for release only after serving half the sentence and had to be released when they had served two-thirds (Bottomley 1990).

So Whitman's argument, elegant though it is, fits 1975–2002, but not 1875–1975. A different explanation is required that can explain not only why American punishment practices and policies are as harsh as they are, but why they have changed so dramatically in a quarter century. The final story provides that explanation.

Cycles and Sensibilities

Each of the preceding seven stories helps explain the origins of American crime control and penal policies. However, four

of them—rising crime rates, toughening public opinion, the emergence of the risk society, and postmodernist angst—characterize all Western countries and accordingly cannot explain why U.S. policies are so much harsher than those elsewhere. The democracy and degradation story offers an imaginative theory to explain why American punishment differs so greatly from French and German. Unfortunately, however plausible it would be if only the past quarter century needed explaining, its plausibility disappears in the face of the preceding hundred years when the United States spearheaded the movement toward humane and respectful handling of offenders.

The two remaining stories—about cynical politics and structural changes in governance—are a bit more distinctively American, but not entirely. The particular racial subtext of American politics is ours alone, but nearly every Western country has recently experienced nativist, xenophobic, and anti-immigrant political movements that could have manifested themselves as law-and-order movements. Jonathan Simon's account of the disproportionate influence of single-issue interest groups describes a distinctively American phenomenon, but the larger arguments that he and Garland offer about governance apply to, at least, all the English-speaking countries. But none of Australia, England, or Canada has so far done more than flirt with American-style crime policies and punishment practices, so those stories also do not explain why here and not there.

The distinctive and overarching story of cycles, sensibilities, and moral panics has already been sketched. Sensibilities associated with the developments described in the other stories coincided unhappily with a downswing in recurring patterns of tolerance and intolerance of deviance to produce widespread public susceptibility to calls for adoption of unprecedentedly repressive policies. The emotional force of ubiquitous mass media coverage of such events as the crimes of Willie Horton, the murders of Megan Kanka and Polly Klaas, and the crack overdose death of Len Bias produced moral panics that provided occasion for such calls. And

American governmental institutions and political culture provided many fewer buffers to the force of that emotionalism than do the governmental institutions and political cultures of other countries. This large and complicated story is told in chapter 5. Before that, chapters 3 and 4 provide fuller accounts of cycles, sensibilities, and moral panics.