Penal policy and political economy

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Abstract

Globalization has not led, and is unlikely to lead, to a global homogenization of penal policy and practices. Drawing on a study of penal systems in 12 contemporary capitalist countries (the United States of America, England and Wales, Australia, New Zealand, South Africa, Germany, the Netherlands, France, Italy, Sweden, Finland and Japan), this article demonstrates that the political economies of such countries can be broadly categorized as neo-liberal, conservative corporatist, social democratic or oriental corporatist. This categorization is strongly related to the punitiveness of the penal culture and the rates of imprisonment to be found in each country. The reasons for this association are discussed. One crucial factor may be the degree to which societies with different types of political economy are ‘inclusive’ rather than ‘exclusive’ towards deviant individuals.

Key Words

Exclusivity • globalization • inclusivity • penal policy • political economy

Globalization notwithstanding, the fact that punishment varies between different societies is a truth with an Austenian status.¹ This is true both for modes of punishment—the methods employed—and for severity of punishment—the degree of relative harshness or leniency typically visited on offenders in different societies. Thus, for example—as famously explored by Michel Foucault in Discipline and Punish (1977)—the societies
of Europe and the United States switched from a predominantly ‘corporal’ mode of punishment (with capital and corporal penalties) to a predominantly ‘carceral’ one (employing imprisonment) between the late 18th and mid-19th centuries. While, on the subject of how much punishment is meted out, the most cursory glance at Roy Walmsley’s *World Prison Population List* (2005) reveals that at the present day prison population rates vary widely, indeed wildly, ranging from 714 per 100,000 population in the United States, through England and Wales’s 142, down to 29 in India and Nepal.

There has been no shortage of analysis and theorizing about what societal characteristics may have a hand in determining these variations in penalty. We have already mentioned Foucault’s *Discipline and Punish* (1977). Equally famously, Émile Durkheim was concerned with both issues, both in his major works (1950 and 1960) and in the pioneering article, ‘Two Laws of Penal Evolution’ (1973). Yet attempts to pin down the determinants of penal variation have had a tendency to run aground on the hard rocks of empirical reality. For example, Durkheim’s purported laws of penal evolution largely fail to fit the stubborn facts of history or to explain developments since he wrote (see, for example, Garland, 1990: 48–9; Greenberg, 1999: 286–7). Again—to mention yet another classic of the genre—David Downes (1982: 335–50, 1988: ch. 3) examined eight separate theories purporting to explain the Netherlands’ relatively lenient way with punishment in the 1970s and 1980s and found them all wanting to some extent, although a few of them had some plausibility as possible partial explanations.

This should not perhaps be surprising if we conceive of punishment as a complex phenomenon which is likely to be affected and influenced by a wide range of societal factors, many of them doubtless wrapped in the nebulously qualitative realm of the ‘cultural’. Nevertheless, this article will modestly contend that we can trace a definable and recognizable connection between differing types of modern political economy and the relative severity of punishment in different contemporary societies. First we shall briefly explore the relationship between globalization and the phenomenon of varying penal policy. Then—drawing on a study of punishment in 12 countries in Europe, Africa, Asia, North America and the Antipodes (Cavadino and Dignan, 2006)—we shall seek to discern and explain the link between penal policy and political economy.

**Globalization, penal convergence and the persistence of penal variation**

This article’s opening phrase (‘Globalization notwithstanding . . .’) does, admittedly, require some elaboration. Despite some recent reports of its demise (e.g. Saul, 2005), it is still generally reckoned that globalization is a prominent characteristic of late modern society. As the world continues to
modernize and globalization to progress (if it does), will this bring about penal convergence, or even a homogenization of punishment across the world?

A related question is whether any such convergence is likely to take the form of the rest of the world following the lead of the United States, leading to a globalized American penalty. This question assumes an even greater importance in the light of the single most salient trend in the American way with offenders since the 1970s, which is a spectacular increase in the harshness of punishment. One manifestation of this has been in the USA’s use of the death penalty, now on a scale unrivalled by any other developed capitalist country. But equally spectacular has been the quintupling of the numbers of inmates in US prisons and jails since the mid-1970s to a figure currently exceeding 2 million, giving the USA by far the highest proportionate prison population in the world. Such developments in penal practices have been matched, paralleled and facilitated by a shift in American penal ideology, away from a belief that the operations of the criminal justice system should be designed to reform and rehabilitate offenders and towards what has variously been termed ‘law and order ideology’ (Cavadino and Dignan, 2002: 24–6) and ‘populist punitiveness’ (Bottoms, 1995): the belief that offenders should be punished with great severity, whether in order to exact retribution or the better to control crime. This has been associated with an unprecedented politicization of punishment, as politicians have vied to present the voters with tough, populist and high-profile positions on ‘law and order’, aided and abetted by popular media which sensationalize crime and portray penalties as excessively lenient and an increased harshness as the effective response to crime. Is all of this to be—is all of this being—globalized?

Before attempting partial answers to these questions it is necessary to ponder on the meaning and nature of this phenomenon of ‘globalization’. To begin with, we need to bear in mind that ‘globalization’ has several different meanings and aspects that are not always synchronized. First, and undeniably, there has been and continues to be a massive increase in the international flow of information, and also of people and products of all kinds. This has been associated with the worldwide onward march of ‘neo-liberal’ free trade and free market ideology and practice, although it may be doubted whether such an association is an inevitable one. Ideas, and other aspects of culture—especially of politically and economically dominant cultures, pre-eminently the United States—have also been exported around the globe. But the progress of all of these ‘globalizations’ has been uneven, and in particular non-American cultures have remained in many ways stubbornly, even sometimes defiantly, non-American. In some countries national pride can provide an incentive to differentiate oneself from the USA sometimes rather than slavishly imitating it in all things. For although globalization enables people to gain a greater awareness of others, how people choose to use such information will be influenced by their own local cultures. To put it simply if banally, hardly anywhere is untouched by the
ever more rapid movement of ideas, culture, products and people around the world, yet localities remain distinct and different.

This is as true in the realm of penality as it is true of globalization generally. There has certainly been an enormous increase in the international traffic of information about punishment, and much greater readiness to import ideas and practices from elsewhere. For example, even as recently as the 1970s it took several years before an American school of thought as influential as the ‘justice model’ started making much impact in England (Bottomley, 1980), whereas in the 1990s concepts such as ‘three strikes and you’re out’ and ‘zero tolerance’ have made the same Atlantic crossing with considerably greater speed. The same is true of practices such as privatized prisons and the electronic monitoring (‘tagging’) of offenders. But this increased swiftness of transit—although it has undoubtedly contributed to such developments as the increase in the prison population of England and Wales from under 45,000 in 1993 to 77,000 in September 2005—has hardly equalized US and English and Welsh imprisonment rates (which in late 2003 stood at 714 and 141 prisoners per 100,000 general population respectively: Walmsley, 2003, 2005), let alone led to the reintroduction of capital punishment in Western Europe. Indeed, should the USA continue to race ahead of the rest of the world in its increasing harshness towards offenders—as it so often does in many other ways—this could even mean that the distance between the USA and the rest actually increases as other nations are pulled along in the American slipstream, but with less velocity. We are still different countries. It therefore seems likely, to answer one of the questions posed at the beginning of this section, that while we may well see an acceleration of penal convergence in many ways, we are still a long way from global homogenization of punishment, which may never occur.

To the extent that ‘penal globalization’ does exist, its process and effects are uneven, but the influence of the USA undoubtedly retains predominance. This is clearly so in the realm of ideas, and in particular in the spread of a general ‘populist punitiveness’, of which there has been growing evidence in most countries in recent years. It is also true of a wide variety of more specific policies and practices. Andrew McLean Williams has said of Australia that:

Australian correctional practice closely parallels (particularly) American trends, to the extent that often unique aspects of the local system seem to be replaced with a generic product. Convergence may not even be the correct form of imagery (which suggests some kind of hybridised blending). Given the presence now in Australia of large American correctional companies, what we are seeing is more a kind of correctional imperialism than convergence, as American-style prison facilities are becoming the new uniform standard. At the same time, the politicisation of correctional policy is following an American lead (i.e. ‘truth in sentencing’; ‘boot camps’, ‘three strikes’ legislation, and so on).8
Important players in this process are not only policy makers in government and lobbying governments, but increasingly commercial concerns (often American-based multinationals) who have a vested interest in the export sale of their penal products (such as privatized prison facilities), giving rise to what has been called ‘a corrections-commercial complex’ (Lilly and Knepper, 1992) between private corporations, government agencies and professional organizations. The economic power of American capitalism allies with American cultural dominance to ensure that the USA has a substantial balance of payments surplus in penal ideas and practices. But countries can also take a lead from nations other than the USA, especially from politicians who are viewed as successful. Thus, centre-left politicians in the Netherlands, Germany, Sweden, Australia and New Zealand have all to some extent copied the ‘tough on crime, tough on the causes of crime’ approach of Tony Blair and New Labour in Britain.

Intergovernmental organizations and co-operation can also play a rôle in fostering both globalization and a degree of penal convergence (see Sim et al., 1995: 3–8). In general it must be said that to date there has been relatively little deliberate ‘harmonization’ between countries in the penal field, but there are already some notable examples. Perhaps the most remarkable single instance has been the discontinuance of capital punishment in Russia brought about by her desire to join the Council of Europe (which she did in 1996). (Council of Europe members are required to subscribe to the European Convention on Human Rights, which since 1983 requires the abolition of the death penalty.9) One interesting point about this development is that it took Russia in a penal direction opposite to that of the United States. Similarly, the operation of the European Convention on Human Rights has played a rôle in improving and harmonizing the rights of prisoners in European countries. Again this is interesting, partly because this development can be seen as an aspect of increasing modernization—being the application of an extrapolation of the modernist ideologies of human rights and the rule of law—and partly because it in some respects runs counter to other international trends towards dealing with offenders more harshly and denying them the normal rights of citizenship.

On the other hand, there are also examples where such harmonization and modernization seem to flow in the opposite direction. For example, until 1994 the Netherlands had a practice of putting lesser offenders sentenced to custody on a waiting list and not actually imprisoning them until a prison place became vacant, a policy that had helped maintain the Dutch prison population at a relatively low level. One reason for the abandonment of this policy was that it was seen as offending against the ‘rule of law’ principles internationally accepted in liberal democracies, since what had been legally ordered was not being carried out (Tak, 1998: 3; Cavadino and Dignan, 2006: 124). The rapid rise in the Dutch prison population which commenced in the mid-1980s was also clearly influenced by other international trends, including pressure from other countries to
toughen up the Netherlands’ traditionally liberal approach to drug use as part of the international ‘war on drugs’, and the more general global trend in the direction of harsher punishment (Cavadino and Dignan, 2006: 125). But conversely, a dramatic reduction in the prison population of Finland between 1976 and 1999 was partly engineered in response to evidence that her pre-existing imprisonment rate was incongruously high for a Western European nation (Cavadino and Dignan, 2006: 163–4). Clearly, the relationships between internationalization of penality and the actual directions that punishment may take as a result are by no means simple. At present, most of the movement is undeniably in the direction of a US-led rise in penal harshness, with nearly three-quarters of all countries having increased their imprisonment rates in recent years (Walmsley, 2005). But we should not miss the point that, by the same token, a quarter of countries have not. Even the most general trends are not all going in the same direction everywhere. And with the US imprisonment rate far exceeding that of any other country, the differences remain massive. Some convergence, yes; homogenization—far from it.

Political economy and penality

In this section, we draw on a comparative study of punishment in 12 different countries (Cavadino and Dignan, 2006) in a quest to identify a link between penal policies and political economy. The 12 countries are: the United States of America, England and Wales, Australia, New Zealand, South Africa, Germany, the Netherlands, France, Italy, Sweden, Finland and Japan. These are all contemporary capitalist countries, but they exhibit significant differences in the relationships that exist between the State, citizens and interest groups. Based on the analysis of Esping-Andersen (1990; see also Lash and Urry, 1987, 1994), it is possible to divide our 12 countries into four ‘family groups’ of nations: neo-liberal, conservative corporatist, social democratic corporatist and oriental corporatist, groups that (as we shall see) exhibit significantly differing penal tendencies. (This typology is presented in tabular form in Table 1.) The four ‘family groups’ will first be discussed in general terms, before we turn to the relationship between their differing political economies and their penalties.

Neo-liberalism

One type of modern capitalist society (on the political right) is ‘neo-liberalism’, exemplified by the USA. ‘Neo-liberalism’ refers to the (politically conservative) late 20th-century revival of the 19th-century approach of economic liberalism, based on free-market capitalism. The general ethos is one of individualism rather than communitarianism or collectivism. Under neo-liberalism the welfare state is minimalistic and residual, consisting mainly of means-tested welfare benefits, entitlement to which is often heavily stigmatized. Consequently the status and economic well-being of
### Table 1. Typology of political economies and their penal tendencies

<table>
<thead>
<tr>
<th>Socio-economic &amp; penal indices</th>
<th>Neoliberalism</th>
<th>Conservative corporatism</th>
<th>Social democratic corporatism</th>
<th>Oriental corporatism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic and social policy organization</td>
<td>Free market; minimalist or residual welfare state</td>
<td>Status-related, moderately generous welfare state</td>
<td>Universalistic, generous welfare state</td>
<td>Private-sector-based ‘welfare corporatism’; bureaucratic, paternalistic</td>
</tr>
<tr>
<td>Income differentials</td>
<td>Extreme</td>
<td>Pronounced but not extreme</td>
<td>Relatively limited</td>
<td>Very limited</td>
</tr>
<tr>
<td>Status differentials</td>
<td>Formally egalitarian</td>
<td>Moderately hierarchical, based on traditional occupational rankings</td>
<td>Broadly egalitarian; only limited occupational status differentials</td>
<td>Markedly hierarchical, based on traditional patriarchal ranking</td>
</tr>
<tr>
<td>Citizen–state relations</td>
<td>Individualized, atomized; limited social rights</td>
<td>Conditionally &amp; moderate social rights</td>
<td>Relatively unconditional &amp; generous social rights</td>
<td>Quasi-feudal corporatism; strong sense of duty</td>
</tr>
<tr>
<td>Social inclusivity/exclusivity</td>
<td>Pronounced tendency towards social exclusion, ghetto-formation, etc.</td>
<td>Some exclusion in form of limited participation in civil society for some</td>
<td>Very limited tendency towards ‘social exclusion’</td>
<td>Alienation of ‘outsiders’, but otherwise little social exclusion</td>
</tr>
<tr>
<td>Political orientation</td>
<td>Right-wing</td>
<td>Centrist</td>
<td>Left-wing</td>
<td>Centre-right</td>
</tr>
<tr>
<td>Dominant penal ideology</td>
<td>‘Law and order’</td>
<td>Rehabilitation/resocialization</td>
<td>Rights-based</td>
<td>Apology-based restoration &amp; rehabilitation</td>
</tr>
<tr>
<td>Mode of punishment</td>
<td>Exclusionary</td>
<td>Mixed</td>
<td>Inclusionary</td>
<td>Inclusionary</td>
</tr>
<tr>
<td>Imprisonment rate</td>
<td>High</td>
<td>Medium</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Receptiveness to prison privatization</td>
<td>High</td>
<td>Moderate</td>
<td>Low</td>
<td>Low</td>
</tr>
<tr>
<td>Archetypal examples</td>
<td>United States</td>
<td>Germany</td>
<td>Sweden</td>
<td>Japan</td>
</tr>
<tr>
<td>Other examples</td>
<td>England &amp; Wales, Australia, New Zealand, South Africa</td>
<td>France, Italy, the Netherlands</td>
<td>Finland</td>
<td></td>
</tr>
</tbody>
</table>
Citizens is heavily dependent on how well they can succeed in the (free) marketplace of the economy.

Although social relationships in neo-liberal societies are formally egalitarian, this economic system results in extremely marked (and currently still widening) income differentials. This material inequality, combined with a lack of social entitlements afforded to individuals as of right, results in the social exclusion of many who find themselves marginalized by the markets in which they cannot compete effectively or afford to operate, particularly the labour and housing markets (Lash and Urry, 1994: 156ff.). The term ‘social exclusion’ is not merely a synonym for poverty, but is used to refer to the denial of full effective rights of citizenship and participation in civil, political and social life. In neo-liberal states it is common for whole communities to experience the effects of social exclusion, one symptom of which is a withdrawal from their localities of a variety of institutions, ranging from commodity markets (in the form of neighbourhood shops), employment markets (in the form of job opportunities), welfare state institutions and trade unions. Moreover, the most important remaining traditional institution—the family—may also be severely dislocated as a result of the economic and social changes brought about by the effects of unregulated deindustrialization. In the United States, this phenomenon of social exclusion is often discussed in terms of an ‘underclass’, associated with local ‘ghettos’ of acute deprivation.

Among our 12 countries, the United States is the archetypal example of a neo-liberal society. The other ‘Anglo-Saxon’ nations (England and Wales, Australia and New Zealand) also feature in this group because—at least since the 1980s—the attenuated nature of the social rights possessed by their citizens also makes them highly dependent on the market for their status and well-being, and these countries have seen marked increases in material inequality with the introduction of free-market economic policies. However, none of these countries can be regarded as prime examples of neo-liberalism, due to their having moved significantly in the direction of social democracy prior to the 1980s. Up to and including the 1970s, they could all be described as broadly social-democratic nations. In the United Kingdom the construction of the welfare state following the Second World War embodied a clear commitment to the notion of universal social rights of citizenship and a concomitant weakening of people’s dependence on market forces. However, this was always far removed from the Nordic-style social democracy to be discussed shortly. On the one hand, the British welfare state was never so generous and universalistic as that in Sweden, nor were taxation levels as high. On the other hand, trade unions and other interest groups were not integrated into decision-making institutions in the way they are in both conservative corporatist countries and Nordic social democracies—partly because British trade unions resisted the attenuation of their independence and the wage restraint inherent in such incorporation and insisted instead on retaining ‘free collective bargaining’. The overall picture was one of social democracy without corporatism.11 This absence
of corporatist institutions arguably left British social democracy vulnerable when the winds of the neo-liberal revival began blowing strongly in the late 20th century. A state in which a variety of powerful interest groups were more strongly entrenched within policy-making processes might have offered more effective resistance to the tide of free market ideology which was channelled into public policy by the Conservative governments of 1979–97. Social democratic elements of the political economy and culture were by no means obliterated during this time, but they were severely eroded. Nor were they restored thereafter: the ‘New Labour’ government of Tony Blair which has governed since 1997 is committed to a ‘Third Way’ in politics which retains a great deal of Thatcherite free market ideology and policy.

Very similar stories—of the post-war creation of social democracy without corporatism followed by a strong turn towards neo-liberalism—can be told of Australia and New Zealand, with the difference that in the Antipodes the first major steps in the neo-liberal direction were taken not by politicians of the right but by the Labour governments of Bob Hawke in Australia (1983–91) and David Lange in New Zealand (1984–9). Again, both countries can now broadly be described as ‘neo-liberal’, but with certain remaining social democratic trace elements.

South Africa’s story, however, is dramatically different. Under the apartheid régime prevailing prior to the first democratic elections in 1994 one could almost say that there were two separate societies, one parasitic upon the labour and poverty of the other. White society was almost social democratic in its level of public services, whereas for the black majority whose cheap labour made this possible welfare provision was minimal. The African National Congress, which has ruled since 1994, has generally espoused a left of centre ideology, but has faced a formidable challenge putting it into practice in a country with massive entrenched disparities in wealth, income and social provision in a ‘globalizing’ world. In general terms and in most respects South Africa is today a de facto neo-liberal state espousing free market economic policies which have become increasingly unambiguous since the replacement of Nelson Mandela as President by Thabo Mbeki in 1999.

The conservative corporatist welfare state

A second type of modern society (in the political centre) is the conservative version of ‘corporatism’ whose standard case is the Federal Republic of Germany. Under corporatism, in contrast to neo-liberalism, important national interest groups (notably organizations representing employers and workers) are integrated with the national state and granted a degree of control over those they represent on condition that this control is exercised in line with a consensual ‘national interest’. In return, members of those national interest groups enjoy welfare benefits that are more generous than those associated with neo-liberal states. These benefits are enjoyed as a
The overall philosophy and ethos of conservative corporatism is a *communitarian* one which seeks to *include* and integrate all citizens within the nation, with individuals’ membership of interest groups and other social groupings providing a vital link between the individual and the nation state.

The conservative corporatist model tends to generate significantly less inequality than does neo-liberalism; but it is not strongly egalitarian since its welfare state enshrines and perpetuates traditional class, status and economic divisions between different groups of citizens. The system is based on a hierarchical ordering of occupational groups (with civil servants at the apex) whose members are subject to different régimes of social insurance. In comparison with neo-liberal states, conservative corporatist ones offer their citizens greater protection against the vagaries of market forces; but the social rights they bestow are nevertheless conditional on beneficiaries’ observance of the reciprocal obligations that are placed upon them.

Another typical feature of the conservative corporatist state is its strong support for, and reliance upon, other traditional institutions such as churches. In Europe, the typical form of conservative corporatism has been ‘Christian Democracy’, based upon Christian moral values (including the Christian obligations to feed the hungry and take care of the sick), and predicated upon the assumed existence of a Christian community and a Christian moral consensus in the nation as a whole. In some countries (such as Italy) this has been founded upon a single church to which the great majority of the population traditionally belong, while in others (such as Germany, Belgium and the Netherlands) Christian Democracy has embraced more than one denomination. Corporatism also relies heavily upon the traditional institution of the family, including expecting the family to discharge some of the welfare functions that might otherwise be undertaken by the State itself.

The Federal Republic of Germany is acknowledged as the prime exemplar of the conservative corporatist approach. Other countries in our sample that can be placed in this broad category include France and Italy. The Netherlands is slightly more difficult to place within the typology. Although the Netherlands can be seen as an essentially Christian Democratic country, it for a long time had much in common with the Nordic social democratic model which we describe next, although more recently it has moved with some swiftness in the direction of neo-liberalism.

**Social democratic corporatism**

A third arrangement (on the political left) is the ‘social democratic’ version of corporatism—both more egalitarian and more secular than Christian Democracy. The prime example is Sweden. Here, social policy was driven to a great extent on the one hand by a powerful trade union movement committed to the principle of ‘universalism’ and on the other by a
willingness on the part of employers to accept high levels of investment in return for wage restraint by the unions. For its part, the state undertook a commitment to promote full employment, the pursuit of profit, the funding of generous welfare provision and an active labour market programme that sought to minimize the disruptive effects of deindustrialization and changes in economic conditions.

This approach combines corporatism with an egalitarian ethos and generous universal welfare benefits. Thus, all citizens are covered by one universal insurance programme. Benefit levels are substantial, though graduated to some extent according to accustomed earnings. This model goes furthest in acknowledging unrestricted rights of social citizenship, and also in assuming the direct responsibility of the State for the care of the very young, the elderly and the infirm. In contrast to conservative corporatist countries and Japan’s oriental corporatism, however—which tend to delegate responsibility for citizens’ welfare to non-state institutions such as the family, church, employers and voluntary organizations—in social democracies the state itself assumes a much more active rôle in this respect.

Among the countries in our sample, Sweden and Finland are corporatist social democracies; the other ‘Nordic’ countries (Denmark and Norway) also fall into this category. All of these countries have largely avoided any serious ‘social exclusion’ problems, despite substantial increases in unemployment in recent decades.

**The oriental corporatist state**

The fourth type of society is yet another variant of the corporatist approach—the oriental corporatist society found in Japan. While in many respects Japan appears to come within the family cluster of conservative corporatism, the social and political context in which this operates is so distinctive as to place it in a separate category that combines elements of both the corporatist and neo-liberal systems.

Japanese capitalism has been described (Hill, 1981) as a form of bureaucratized corporate paternalism with some distinctive features. For the core labour force employed by the larger private-sector corporations there is a high degree of job security and a hierarchical but progressive career structure. This ensures that wages and a wide range of other occupational benefits (such as company housing and medical, educational and leisure facilities) are related to an employee’s age and increasing social responsibilities (including family commitments) rather than their productivity or the market value of their skills. For their part employees are both dependent on and loyal to their employers. The welfare function is largely fulfilled not by the State but by large private-sector employers, and also by traditional extended family and community-based systems of mutual support. Between the Second World War and the 1970s the national policy was to build a western, corporatist welfare state alongside these support systems, although state welfare expenditure in Japan has always
been relatively modest when compared with Western European countries. Following the dramatic slowdown in economic growth from the late 1970s onwards, the aspiration to create a European-style welfare state was abandoned and replaced with a purportedly ‘Japanese-type welfare society’ approach (Tabata, 1990: 2), this time owing more to the neo-liberal strategies being pursued in the USA and Britain in the 1980s.

Despite this neo-liberal influence, Japan still has a much less unequal income distribution than the United States, and in this respect at least resembles much more closely the pattern found in such European welfare states as the Netherlands, Sweden and Norway. At the same time, however, Japan is a much more hierarchical society than any of the others we have been describing, and is much more highly ‘relational’ in the sense that people are likely to belong to a relatively complex, dense and inter-locking set of relationships whether at home or in work and social settings. Moreover, Japanese institutions of all kinds are in general much more ‘inclusive’ in seeking to foster and maintain such relationships where possible. ‘Authoritarian communitarianism’ sums it up well. Compared with their neo-liberal counterparts, Japanese citizens are imbued with a much more highly developed sense of ‘social duties’ with respect to their families, teachers, class and work-mates, friends and social superiors. These sharp contrasts between the oriental corporatist and neo-liberal models render the former much less vulnerable than the latter to the more extreme forms of social exclusion and their attendant symptoms of alienation, despite the fact that sections of Japanese society do experience an increasingly high degree of economic, social and cultural deprivation.

Welfare state types and penality

Table 2 sets out the rates of imprisonment for the 12 countries surveyed. It suggests a significant association between these different types of political economy and penality. At the beginning of the 21st century there are almost watertight dividing lines between the different types of political economy as regards imprisonment rates in these countries. With one exception, all the neo-liberal countries have higher rates than all the conservative corporatist countries (the single exception being that the Netherlands’ rate is currently higher than Australia’s); next come our Nordic social democracies, with our single oriental corporatist country (Japan) having the lowest imprisonment rate of all. Admittedly, this result becomes less neat if one compares a greater range of countries, or even some of the same countries at different points in history. (For example, in the 1970s social democratic Finland had a very high imprisonment rate by contemporary Western European standards. And conversely, in the 1970s and 1980s the conservative corporatist Netherlands had a rate of imprisonment lower than the Nordic social democracies.) But it is striking none the less.
Thus, at least on this measure, it is the neo-liberal states that are the most punitive. And it is of course the United States—the archetypal and increasingly neo-liberal polity—which has in many ways been a world leader in escalating harshness of punishment in recent years. But why should there be this relationship between neo-liberalism and harsh punishment?

One possibility might be that neo-liberalism is criminogenic—the political economy begets higher crime rates, meaning that there are more criminals to imprison. The individualism and inequality of neo-liberal societies could reduce social cohesion, excluding and marginalizing many individuals (and indeed large groups), engendering anomie and alienation, with increased crime as a result. On the other hand, more developed welfare states and more inclusive, cohesive communities could function as effective means of social control. And indeed, there is mounting evidence that unequal societies with weak community relationships do suffer from worse rates of crime compared with those where more citizens have a sense of belonging and where strong community ties allow for more effective informal social control (see, for example, Ormerod, 1997; Wilkinson, 2005). However, the second link in the purported chain between political economy and punishment—the link between crime rates and imprisonment rates—seems much weaker. For, perhaps remarkably, there is not very much good evidence of any such strong association.15

It seems likely that the association of different kinds of political economy with differing rates of imprisonment is more to do with the cultural attitudes towards our deviant and marginalized fellow citizens, which are

<table>
<thead>
<tr>
<th>Neoliberal countries</th>
<th>Imprisonment rate (per 100,000 population)</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>714</td>
<td>2003</td>
</tr>
<tr>
<td>South Africa</td>
<td>413</td>
<td>2004</td>
</tr>
<tr>
<td>New Zealand</td>
<td>168</td>
<td>2004</td>
</tr>
<tr>
<td>England and Wales</td>
<td>142</td>
<td>2005</td>
</tr>
<tr>
<td>Australia</td>
<td>117</td>
<td>2004</td>
</tr>
<tr>
<td>Conservative corporatist countries</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Netherlands</td>
<td>123</td>
<td>2004</td>
</tr>
<tr>
<td>Italy</td>
<td>98</td>
<td>2004</td>
</tr>
<tr>
<td>Germany</td>
<td>96</td>
<td>2004</td>
</tr>
<tr>
<td>France</td>
<td>91</td>
<td>2004</td>
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<tr>
<td>Social democracies</td>
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<td>Sweden</td>
<td>75</td>
<td>2003</td>
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<td>Finland</td>
<td>71</td>
<td>2004</td>
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<td>Oriental corporatism</td>
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<td>Japan</td>
<td>58</td>
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embodied in the political economy (and as a result, to some extent embedded in society, helping to reinforce and reproduce the same cultural attitudes). The neo-liberal society tends to exclude both those who fail in the economic marketplace and those who fail to abide by the law—in the latter case by means of imprisonment, or even more radically by execution. This is no coincidence. Both types of exclusion are associated with a highly individualistic social ethos. This individualistic ethos leads a society to adopt a neo-liberal economy in the first place, but conversely the existence of such an economy in return fosters the social belief that individuals are solely responsible for looking after themselves. In neo-liberal society, economic failure is seen as being the fault of the atomized, free-willed individual, not any responsibility of society—hence the minimal, safety-net welfare state. Crime is likewise seen as entirely the responsibility of the offending individual. The social soil is fertile ground for a harsh ‘law and order ideology’. Indeed, in general neo-liberal societies are particularly prone to nurture the ‘culture of control’ which Garland (2001) has so plausibly portrayed and analysed (Cavadino and Dignan, 2006: 46–7). And as neo-liberal societies have become even more neo-liberal in recent decades, so have they become more punitive. Speaking of the United States, Greenberg (1999: 306) refers to the toughening of criminal justice and penal policies during the Reagan and Bush (senior) presidencies, which accompanied a systematic reversal of various ‘incorporative’ social policy initiatives in other spheres. Similar observations could be made in respect of parallel penal and social policy developments during the Conservative governments led by Prime Ministers Thatcher and Major in the United Kingdom during the same period, and of Australia and New Zealand since the 1980s.¹⁶

On the other hand, corporatist societies like Germany—and to an even greater extent, social democratic ones like Sweden—have traditionally had a different culture and a different attitude. These other late capitalist countries differ greatly from neo-liberal states in the attitude towards the failing or deviant citizen. Corporatist and social democratic states tend to pursue more inclusionary economic and social policies that offer their citizens a far greater degree of protection against the vicissitudes of market forces, binding citizens to the state via national interest groups and ensuring the provision of welfare benefits and care of various kinds to ensure that all citizens are looked after. The communitarian ethos which gives rise to these policies—and which is in return shaped by them—also finds expression in a less individualistic attitude towards the offender, who is regarded not as an isolated culpable individual who must be rejected and excluded from law-abiding society, but as a social being who should still be included in society but who needs rehabilitation and resocialization, which is the responsibility of the community as a whole. The corporate citizen, unlike the neo-liberal, is much more his brother’s keeper—even if he has done wrong—with a stronger sense that ‘there but for the grace of God go I’—in terms of both economic failure and criminal activity. A more
developed welfare state goes along with a less punitive penal culture. Such a culture typically, although not invariably and never in a pure form, takes the form of a *penal welfarism* (Garland, 1985) which seeks to respond to crime with measures aimed at improving the lot of the offender and thereby to effect his or her reformation and reintegration into society. Thus ‘welfare’ is the response to the offender as well as the economically disadvantaged citizen. Of course, the two categories in any event overlap to a significant extent, and providing welfare to impoverished non-offenders can also be seen as a way of trying to prevent them from becoming offenders. As Greenberg puts it, ‘locking people up or giving them money might be considered alternative ways of handling marginal poor populations—repressive in one case, generous in the other’ (2001: 81).

In conservative corporatist countries, the political economy is designed to prevent the social and economic exclusion of those who fail in the marketplace. With regard to those who break the law, there is a greater emphasis on rehabilitation and resocialization than on exclusionary punishment. Social democracies are also ‘inclusive’, having a relatively egalitarian concept of citizenship that affords extensive protection against a variety of economic, social and also biological and physical misfortunes. Social democratic nations in general have rates of imprisonment which are even lower than those found in conservative corporatist countries. It is not entirely clear why this might be, although it could be linked to their very strong emphasis on inclusiveness, the feeling that everyone is a part of the same society. Perhaps it is also associated with the principle of egalitarianism, since most forms of exclusionary punishment will tend to make offenders worse off than the rest of society, which is inconsistent with this ideal. The social democratic society is the one that ‘cares’ the most about those at the bottom of the heap. It is also possible that in a social democratic culture people are not so ruthlessly held responsible for the offences they have committed, which are less likely to be attributed to the free will of the individual offender. Without necessarily going so far as to say that ‘society is to blame’ for all crime, there could nevertheless be a greater willingness to assume a degree of collective responsibility for the fact that an offence has been committed.

Japan’s oriental corporatist society has retained a much more traditional hierarchical social structure than obtains in modern developed western societies. This social structure shapes the strong relations, marked by reciprocal obligations, between those connected by ties of kinship, membership of informal social groupings and the employer–employee bond. The relatively weak sense of personal individuality, and the strong desire to remain accepted within the group, help to account for the significant rôle of the apology, both within Japanese society at large, and also as one of the most salient characteristics of the criminal justice system. The willingness of Japanese wrongdoers to confess and voluntarily apologize for what they have done springs from a desire to maintain or restore positive relations not
only with the individual victim of the offence, but perhaps more importantly with the collectivity. The apology will be interpreted by others—including criminal justice officials such as police officers, prosecutors and judges—as evidence of the wrongdoer’s capacity for resocialization, based on their commitment to the preservation or restoration of harmonious relationships with those around them. Apology makes it possible for no formal action to be taken, even in the case of relatively serious wrongdoing. (For example, in Japan 99 percent of all juvenile offenders under the age of 20 are diverted from formal prosecution.) On the other hand, where an apology is not forthcoming or where persistent wrongdoing casts doubt on its likely sincerity or effectiveness, extremely harsh measures may be taken—but only against those who are deemed to have incorrigibly rejected the authoritarian norms of Japanese society. Japan’s broadly ‘inclusionary’ approach to criminal justice and social policies contrasts strongly with the ‘exclusionary’ approach associated with neo-liberal countries in general, and the United States in particular. The result, as can be seen from Table 1, is an imprisonment rate that even undercuts those of social democracies such as Sweden and Finland.

What is also noticeable is a general tendency for changes in these countries’ punishment levels over time to fit the same pattern. We tend to find that as a society moves in the direction of neo-liberalism, its punishment becomes harsher—as has occurred in all the sampled countries with the exception of Finland (whose imprisonment rate has decreased since 1976), and the arguable and highly individual exception of South Africa.18 The Netherlands, whose imprisonment rate has gone from 17 prisoners per 100,000 population in 1975 to 123 in 2004, is the most dramatic example. Conversely, it is possible that a move in the direction of corporatism or social democracy (not that many countries have experienced strong developments like this recently) might make punishment more lenient or at least mitigate trends towards greater harshness.

This thesis broadly concurs with that of David Greenberg, who also suggests that corporatist and especially social democratic countries tend to be relatively lenient in terms of their penalty as well as being relatively generous and supportive in other aspects of their social policies, both of these tendencies being ‘manifestations of a high degree of empathic identification and concern for the well-being of others’ (1999: 297). Greenberg also goes further, however, proposing that it is possible to demonstrate statistically a significant inverse correlation between a country’s level of punishment and a single unidimensional factor, namely the country’s degree of ‘corporatism’: that ‘the more corporatist societies are less punitive’ (p. 322). This may be more doubtful. Greenberg uses a complex quantitative measure of ‘corporatism’ derived from the work of Pampel et al. (1990), one limitation of which is that it does not distinguish national characteristics which may be identified as social-democratic from those which are more generally corporatist. In particular, the measure places a very heavy emphasis on state-funded public retirement benefits—the more generous,
the more ‘corporatist’ the country is taken to be. Consequently, countries that are both social democratic and corporatist (such as Sweden) find themselves rated highest on this scale of ‘corporatism’. (These are indeed among the least punitive of our countries, doubtless because both corporatism and social democracy tend to lessen rates of punishment, and the Nordic combination of the two leads to particularly low rates.) On the other hand, Japan has a relatively low ranking on Pampel et al.’s ‘corporatist score’, at 10th place out of 18 countries surveyed, making its low imprisonment rate a serious anomaly in terms of Greenberg’s thesis. This is almost certainly because the ‘corporatism’ measure’s emphasis on state-funded benefits means that the measure fails to capture the distinctive contribution made by Japanese corporate enterprises in providing some of the benefits that in other countries (and particularly in social democracies) are considered to be primarily the responsibility of the State. France and Italy also rank lower than they should on this score, appearing to be less ‘corporatist’ than New Zealand and Australia, a result which again over-emphasizes the financial quantum of state provision rather than national ethos as the touchstone of corporatism. A better touchstone than ‘corporatism’ for differentiating low punishment from high punishment societies might be one based on an index of ‘social inclusiveness’, were it possible to operationalize such a measure.

This analysis, and these specific findings, also have much in common with the work of Beckett and Western (2001) and Downes and Hansen (2006). Downes and Hansen found that countries with relatively high welfare spending as a proportion of gross domestic product had relatively low imprisonment rates (although Japan was a major exception); Beckett and Western found something very similar when comparing different American states. Intriguingly, both studies found that this statistical relationship has become much stronger in recent years (and specifically since the 1990s). Again, these facts fit the theory. More corporatist countries, and especially social democracies, generally have higher welfare spending and lower punishment levels. Japan, however, has low state welfare expenditure and lesser punishment—because the important factor is not state welfare as such but the inclusiveness of the society’s culture towards its members. The reason for the inverse welfare–punishment ratio becoming stronger over time is perhaps because the differences between different countries and different states in both these respects were not so marked in the past: for example, the USA was not at all a consistently low spender on all aspects of public welfare in previous decades (Downes, 2001: 72). The worlds of welfare and of penality are in many respects actually becoming more polarized, not globally homogenized, making the relationship between the two more marked.

Another empirical finding which fits well with this analysis is that, as a general rule, economic inequality is related to penal severity: the greater the inequality in a society the higher the overall level of punishment (Wilkins and Pease, 1987; Young and Brown, 1993: 41–3; Beckett and Western,
2001: 50). (Interestingly, Japan with its relatively low inequality of income but low expenditure on state welfare fits this pattern although not fitting the state welfare–punishment pattern discussed in the last paragraph.) One theory is that punishment is a sort of ‘negative reward’: societies that are prepared to reward success with higher incomes and greater social status are also more willing to punish failure with both poverty and formal sanctions. Or one could say, perhaps preferably, that a more egalitarian society is both more inclusive and less willing to consign offenders to an even more unequally low level of existence. In any event, as we have seen, the typology of nations put forward in this article will also yield this general association between inequality and punishment.

To conclude: this article has sought to establish, first, that differences in penalty are likely to persist despite globalization, and second, that one important reason for such differences is strongly linked to differing types of political economy. This link cannot of course explain all variations in punishment; there are other factors as well. We have mentioned, for example, the influence of penal ideologies from other countries and the operations of commercial interests in encouraging certain penal policies at the expense of others. But however many factors we incorporate into our theory, it will still not give us the whole story. Individual nations, and their cultures, histories and politics, can be just as quirky and esoteric as individual human beings. All of which makes life, and punishment, more interesting.

Notes

This article draws on a study of 12 countries (Cavadino and Dignan, 2006). Grateful thanks are due to those who took part in this study: Don Anspach, Robert Cario, Frieder Dünkel, Raimo Lahti, Tadashi Moriyama, Vania Patané, John Pratt, Wim Valkenburg, Dirk van Zyl Smit, Hanns von Hofer and Andrew McLean Williams. Thanks also to David Downes, Julian Roberts and David Greenberg.

1 Meaning, of course, that it is universally acknowledged.
2 The ‘imprisonment rate’ of a country—the number of prisoners per 100,000 of the country’s general population—is a crude but often useful measure of the relative harshness of penalty in different nations. See further Cavadino and Dignan (2006: 4–5).
3 ‘Penality’ is a word used to refer not only to practices of punishment, but also to the institutions, ideas and discourse relating to it (see for example Garland, 1990: 10n).
4 Following a Supreme Court decision in 1972 there were no executions in the USA at all until 1977, but by 1 July 2003 there had been 859 executions, and 3374 people were on death row at the end of 2003.
5 The current US imprisonment rate (see note 2) is 714 prisoners per 100,000 general population. The next highest figure (for Russia, Belarus and Bermuda) is 532. In total 58 per cent of all countries have rates below 150.
(Walmsley, 2005). With 5 per cent of the world’s population, the USA accounts for one-quarter of the globe’s prisoners.

6 This is the school of thought which proposes that offenders should receive their ‘just deserts’ fitting to the crime committed rather than treating them in the manner thought most likely to achieve their effective rehabilitation.

7 The term ‘three strikes and you’re out’ refers to legislation providing for mandatory or minimum sentences for offenders who are convicted of one of a specified range of offences on a third occasion, the most famous such provision being the California law, adopted in 1994, mandating a sentence of ‘25 years to life’ for a third offence. ‘Three strikes’ and ‘two strikes’ sentences were introduced in England and Wales by the Crime (Sentences) Act 1997.

8 Andrew McLean Williams, personal communication. ‘Truth in sentencing’ refers to a trend to reduce prisoners’ eligibility for early release; for ‘three strikes’ see note 7.

9 And in turn, countries wishing to join or remain in the European Union must be members of the Council of Europe and therefore subscribe to the Convention. Consequently, Turkey has also abolished capital punishment (in 2003) for similar reasons.

10 England and Wales are dealt with as a single country, as they share a single legal system and criminal justice system.

11 A looser form of ‘corporatism’ did make some headway in Britain for a time, embodied in such ‘tripartite’ arrangements (bringing together government and both sides of industry) in bodies such as the National Economic Development Council. This attenuated corporatism reached its highest point during the ‘social contract’ between the Labour government and the trade unions in the mid-1970s.

12 An exception here is France—conservative corporatist in most other respects—with its strong republican tradition of ‘anti-clericalism’.

13 France and Italy differ from Germany in that their trade unions are not formally incorporated into the State and its provision of welfare benefits, but their unions are powerful and influential in other ways. Both countries can be said to have a generally corporatist ethos and culture.

14 Denmark (70) and Norway (65) have similar imprisonment rates to Sweden and Finland.

15 See, for example, Young and Brown (1993: 23–33); Beckett and Western (2001: 49–50); Greenberg (2001: 82) and works cited therein.

16 Accompanying and facilitating the increasing harshness of penal policy and practice has been the politicization of punishment and increasing concentration on issues of crime and punishment by privately owned popular media. Again, such phenomena are more strongly associated with neoliberal political economies.

17 An exception is the acceptance of the ‘just deserts’ principle (see note 6) in Sweden and Finland (see Cavadino and Dignan, 2006: ch. 10).

18 It is a moot point whether one should describe South Africa as more or less neo-liberal now than under apartheid. But what is true is that material
inequality remains as high as ever; that the ANC government is committed to free-market policies; and that imprisonment rates currently rival those seen under apartheid (Cavadino and Dignan, 2006: ch. 6).

19 Similarly, Downes (1988: 78–9), when trying to explain the relative leniency of the Netherlands in the 1970s and 1980s, failed to find any correlation between the proportion of GDP spent on welfare by different Western European countries and their imprisonment rates at that time.

References


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