"New Punitiveness" in Overseas Criminal Justice Systems: Features, Causes, and Implications

AO Bo[*]

Abstract: *Following the Enlightenment, the principle of human rights protection promoted the transition of criminal justice systems from "punitiveness" to "penal humanitarianism." However, in the second half of the 20th century, the United States and the United Kingdom witnessed the rise of "new punitiveness," which is characterized by mass incarceration, a punitive turn in community supervision, and numerous collateral consequences of criminal offences. New punitiveness did not emerge from a unified movement or agenda but was driven by changes in crime control philosophies, adjustments in criminal laws, and the initiation of criminal justice campaigns against a backdrop of perceived severe public safety deterioration. Its deeper causes can be traced to the dominance of neoliberalism in economics, the unprecedented alignment of political elites and public attitudes under electoral and partisan politics, and traditional class control mechanisms targeting specific identity groups. Studying new punitiveness can offer valuable insights for identifying potential risks in China's criminal justice system at both theoretical and practical levels, while providing methodological inspiration for advancing interdisciplinary research.*

Keywords: new punitiveness ♦ criminal justice system ♦ mass incarceration ♦ collateral consequences of criminal offences ♦ criminal law perspectives

I. Introduction

The protection of human rights constitutes a fundamental principle in the operation of the criminal justice systems, encompassing two major dimensions: From the victim's perspective, it provides the most basic moral justification for the exercise of penal power; from the offender's perspective, it demands that such power be exercised with moderation, restraint, proportionality, and procedural fairness. Since the Enlightenment, the latter dimension has been elevated to unprecedented prominence, prompting critical reflections on the severity of punishment. As Cesare Beccaria observed, "A punishment that is excessively cruel for humanity can only be a transient outburst of brutality, never a stable system of law."[1] This marked a decisive break with practices such as excessive sentencing, giving rise to a historical shift from "punitiveness" to "penal humanitarianism." However, since the latter half of the 20th century, the criminal justice systems of several countries have undergone a dramatic regression toward hyper-punitive practices: incarceration rates have surged, the role of community supervision has been reconfigured, and collateral consequences of criminal offences have further

[*] AO Bo (敖博), Assistant Researcher at the School of Criminal Law, East China University of Political Science and Law. This paper is a phased result of the "National Funded Postdoctoral Researchers Program" (GZC20230818).

[1] Cesare Beccaria, *On Crimes and Punishments*, translated by Huang Feng (Beijing: The Commercial Press, 2018), 47.

marginalized offenders. Scholars have termed this shift "new punitiveness."[2] This trend is particularly evident in the United States, with parallel developments in the United Kingdom, Australia, New Zealand, and Brazil. Such transnational convergence is neither coincidental nor a mere product of institutional mimicry. Rather, it stems partly from shared experiences of "common risks and insecurities, shared perceptions of ineffective social control, shared critiques of traditional criminal justice systems, and shared anxieties about social change and order"[3] — as well as the economic, political, and cultural processes that have reshaped domestic social relations in these countries.

In an era where criminal law is expected to constrain state penal power through its human rights function, understanding the resurgence of punitiveness poses a critical challenge for the academia of criminal law. A comprehensive examination of new punitiveness not only illuminates the deep-seated forces driving this shift but also offers a reflective lens to identify potential risks within China's criminal justice system, thereby safeguarding the hard-won consensus on human rights forged since the Enlightenment. Accordingly, this paper examines new punitiveness in overseas criminal justice systems, focusing on the United States while supplementing with insights from the United Kingdom (primarily England and Wales). It systematically analyzes the manifestations and underlying causes of this phenomenon before discussing its valuable lessons and implications for China.

II. The External Manifestations of "New Punitiveness"

Since the latter half of the 20th century, the criminal justice systems of the United States and the United Kingdom have increasingly exhibited the characteristics of mass incarceration, further manifested in the dramatic expansion of incarceration rates, the disproportionate concentration of racial and ethnic minorities in prisons, and the extension of prison sentences.

A. Mass incarceration

First, the detained population in countries embracing new punitiveness surged during this period. The rise of the detained population in the United States began in the early 1970s. By 2007-2008, its annual incarceration rate peaked at 760 per 100,000 people, five times the 1972 rate.[4] Although the incarceration rate later declined, it remained at a high of 630 per 100,000 in 2019, far exceeding most countries worldwide,[5] meaning the United States, with less than 5 percent of the global population, held one-quarter of the world's total prison population.[6] Moreover, since

---

[2] John Pratt et al., eds., *The New Punitiveness: Trends, Theories, Perspectives* (Devon: Willan Publishing, 2005), xii. The authors use "new punitiveness" primarily to describe the trend of mass incarceration.

[3] David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2002), ix.

[4] Kevin R. Reitz, "American Exceptionalism in Crime and Punishment: Broadly Defined," in *American Exceptionalism in Crime and Punishment* (New York: Oxford University Press, 2018), 3. Since there are two types of detention facilities in the United States, prisons and jails, we distinguish between incarceration/incarceration rate and detention/detention rate when discussing the situation in the United States. The former corresponds to the number of people in prisons, and the latter corresponds to the total number of people in prisons and jails. For simplicity, the term "prison" includes all places of detention unless otherwise specified.

[5] Todd D. Minton, Lauren G. Beatty and Zhen Zeng, *Correctional Populations in the United States*, 2019 (NCJ 300655, July 2021).

[6] State Council Information Office of China, "Report on Human Rights Violations in the United States in 2023," *People's Daily*, May 30, 2024.

recent criminal justice reforms in the United States have primarily targeted minor drug offences while maintaining a highly punitive stance toward violent crimes, the sustainability of this downward trend remains questionable.[7] Though the incarceration rate in the United Kingdom is less extreme than that in the United States, it remains the highest in Western Europe. The prison population in England and Wales nearly doubled between 1993 and 2012. In 1991, the incarceration rate was 112 per 100,000; by 2011, it had risen to 189 per 100,000.[8] The rapid growth in incarceration led to severe prison overcrowding, prompting both countries to construct new facilities — yet capacity was often stretched to its limits. In July 2024, the United Kingdom again considered early release for over 20,000 prisoners to alleviate the pressure on its prisons.

Second, mass incarceration disproportionately targets racial and ethnic minorities and puts them under control of the criminal justice systems. Criminologically, there is little evidence of a direct correlation between crime rates and ethnicity, yet minorities are vastly overrepresented in the criminal justice systems. In the United States, White Americans, who comprise 75 percent of the population, have relatively low incarceration rates, whereas racial minorities, especially Black Americans, face disproportionately high rates. At its peak in 2008, the incarceration rate for Black Americans was 6.5 times that of Whites,[9] with young minority men of low educational attainment particularly affected. In the United Kingdom, Black individuals are ten times more likely to be imprisoned than their White counterparts.[10] Countries like Australia also exhibit disproportionate incarceration of indigenous populations.

Third, sentence elongation is another hallmark of mass incarceration under new punitiveness. Longer sentences do not necessarily reduce crime or recidivism; in fact, longer sentences do not necessarily lead to lower crime and recidivism rates. Prisoners who have been incarcerated for a long time may even be more likely to commit crimes again after leaving the highly controlled prison environment due to their reduced social skills and independent decision-making ability.[11] Yet, from the late 20th to early 21st century, prisoners in the United States faced dramatically extended terms against the backdrop of mass incarceration. For example, the average federal prison sentence grew by 124 percent between 1986 and 1997.[12] Among the extensions of prison sentences, the expansion of the application of life imprisonment is particularly striking: as of 2020, the ratio of broadly defined life prisoners sentenced to life imprisonment and fixed-term imprisonment of 50 years or more in the total prison population in the United States was 1:7, and in some states the ratio even reached 1:3. Two-thirds of them are minorities, and nearly half are African Americans. In many states such as Georgia, African

---

[7] Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2016), 165–167.

[8] Georgina Sturge, *UK Prison Population Statistics*, UK Parliament, accessed August 3, 2024, https:/commonslibrary.parlia-ment.uk/research-briefings/sn04334/.

[9] James Forman Jr., "Racial Critiques of Mass Incarceration: Beyond the New Jim Crow," 87 *New York University Law Review* 1 (2012): 22.

[10] Andrew Ashworth, *Sentencing and Criminal Justice*, translated by Peng Haiqing and L ü Zehua (Beijing: China Social Sciences Press, 2019), 269.

[11] Rachel E. Barkow, *Prisoners of Politics: Breaking the Cycle of Mass Incarceration* (Cambridge: Harvard University Press, 2019), 42-44.

[12] William J. Sabol and John C. McGready, *Time Served in Prison by Federal Offenders, 1986–97* (NCJ 171682, June 1999).

Americans accounted for more than 70 percent of life prisoners.[13] England and Wales mirrored this trend: between 2000 and 2004, determinate sentences lengthened by 2.1 months on average, and another 2 months from 2007 to 2011 (likely an underestimate due to the rise of indeterminate sentences rather than the other way around). At the same time, the extension of sentences for specific crimes is also worthy of attention. For example, between 2004 and 2011, the average sentence for sex offenders was extended by 13 months.[14]

B. The punitive turn in community supervision

Traditionally, community supervision approaches such as probation and parole have been viewed as a more lenient system aimed at overcoming the drawbacks of incarceration and as an alternative to imprisonment. However, since the second half of the 20th century, community supervision has become increasingly punitive in nature. Taking the United States as an example, it is mainly manifested in four aspects.

First, the scale of community supervision, particularly probation, has expanded dramatically. The probation population in the United States grew from 1.12 million in 1980 to 4.27 million in 2007 before declining to 3.05 million in 2020. Although the application of parole in the United States has become increasingly restricted since the second half of the last century, the number of people on parole has fluctuated from 220,000 in 1980 to 860,000 in 2020. At its peak, 1 in 45 U.S. adults was under community supervision.[15] Some may argue that the expansion of community supervision indicates that the criminal justice system tends to use a relatively non-punitive intervention model, but this proposition can only be verified if the incarceration rate decreases and the community supervision rate increases. The large-scale growth of community supervision and the number of incarcerations in the United States indicates that community supervision is not a substitute for incarceration but a supplement to it, and is part of the spectrum of excessive criminal control.[16]

Second, the obligations imposed under community supervision have proliferated. Mandatory legal requirements inherently entail the curtailment of rights and freedoms, so the punitiveness of supervision correlates with the scale and intensity of these obligations. Historically, individuals under supervision were simply required to behave well and obey the law, but since the late 20th century, these requirements have become increasingly concrete, with numerous rules introduced. On average, a probationer must comply with 18 to 20 obligations.[17] While most of these obligations may help prevent crime when taken in isolation, when taken together they place a heavy burden on many offenders, particularly since those drawn into the criminal justice systems are often drug addicts, economically destitute, less educated, or suffering from physical or mental illness. Other obligations, such as quitting bad habits, finding employment, and

---

[13] Ashley Nellis, *No End in Sight: America's Enduring Reliance on Life Imprisonment,* The Sentencing Project, accessed July 11, 2022, https:/www.sentencingproject.org/publications/no-end-in-sight-americas-enduring-reliance-on-life-imprisonment/.

[14] Andrew Ashworth, *Sentencing and Criminal Justice*, translated by Peng Haiqing and L ü Zehua (Beijing: China Social Sciences Press, 2019), 347-348.

[15] U.S. Bureau of Justice Statistics (BJS), *Probation and Parole in the United States* (various years).

[16] Fiona Doherty, "Obey All Laws and Be Good: Probation and the Meaning of Recidivism," 104 *Georgetown Law Journal* 2 (2016): 291.

[17] Ronald P. Corbett Jr., "The Burdens of Leniency: The Changing Face of Probation," 99 *Minnesota Law Review* 5 (2015): 1709-1710.

supporting the family, even if they are done with good intentions, will inevitably have the effect of restricting actions and reducing rights objectively, and become an obstacle to the successful completion of community corrections.

Third, revocations of community supervision have become frequent. In the United States, a significant proportion of new prisoners are incarcerated due to the revocation of probation or parole, which may result either from the commission of new criminal offences or from violations of general supervisory obligations known as "technical violations", such as failure to attend drug tests, breaches of curfew restrictions, or alcohol prohibition. Annually, community supervision revocations account for 45 percent of admissions to state prisons and 25 percent of national prison admissions (including prisons and jails), while a sampling survey indicates that purely technical violations constitute between 61 percent and 90 percent of all probation revocations across surveyed jurisdictions.[18] The prevalence of technical violations may be partially attributed to the broadly defined supervisory obligations at the substantive level and the application of the preponderance of evidence standard in procedural adjudication. Consequently, "given the high frequency of obligation breaches and the ease of proving such violations, the widespread revocation of probation and parole becomes unsurprising,"[19] perpetuating a "revolving door" cycle of incarceration — community supervision — re-incarceration for substantial numbers of probationers and parolees.

Fourth, supervisees are required to pay high fees. A 2022 study encompassing all 50 states revealed the prevalent imposition of probation and parole supervision fees, reaching up to $208 per month. Additionally, individuals under community supervision may be subjected to charges for drug testing and rehabilitation programs, mental health counseling, mandatory program participation, electronic monitoring, and halfway house residency fees. Given that most supervised populations experience unemployment or low-income status — with two-thirds of probationers nationwide earning less than $20,000 annually and nearly 40 percent below $10,000 — these financial obligations impose substantial economic burdens on probationers and parolees.[20] Delinquent payments may not only precipitate re-incarceration risks but also trigger collateral consequences including driver's license suspension, wage garnishment, property liens, and credit score deterioration, thereby paradoxically obstructing supervised individuals' reintegration into normal societal functioning.

Similarly, in England and Wales, the proportion of indictable adult offenders subject to community-based punishments incorporating supervision and surveillance increased from 14.4 percent in 1989 to 28.1 percent in 2004. However, this expansion did not result in the displacement of custodial sentences, as the imprisonment rate concurrently rose from 17.5 percent to 28.6 percent during the same period. This demonstrates that community supervision primarily served to replace less intrusive measures such as fines, effectively functioning as a "network-widening" mechanism of

---

[18] Jacob Schuman, "Criminal Violations," 108 *Virginia Law Review* 8 (2022): 1819 and 1822.

[19] Cecelia Klingele, "Rethinking the Use of Community Supervision," 103 *Journal of Criminal Law and Criminology* 4 (2013): 1041.

[20] 50 State Survey: *Probation and Parole Fees*, Fines and Fees Justice Center, accessed August 21, 2022, https:/finesandfeesjustice-center.org/articles/50-state-survey-probation-and-parole-fees/.

social control.[21] Regarding probation specifically, only 15 percent of probation orders included additional requirements in 1985, but this figure rose to 35 percent by the Conservative Party's electoral defeat in 1997, reaching 50 percent by 2004. The probation system became increasingly stringent, with more rigorous demands imposed on offenders. In 2000, the statutory duty of probation officers to "advise, assist, and befriend" offenders — established in 1907 — was abolished and replaced with a new set of objectives emphasizing public protection, including "the proper punishment of offenders" as one of its key tasks.[22] Paul Boateng, the Labour Party's Minister of State at the Home Office, unequivocally declared that "We are moving away from the social work model of probation where offenders were to be advised, assisted and befriended, and no one should be in any doubt about that... We intend to construct a national probation service on the basis of law enforcement."[23]

C. Invisible punishment: collateral consequences of criminal offences

Another crucial characteristic of new punitiveness is that punishment for offenders extends beyond incarceration or community supervision, with conviction triggering civil and administrative legal consequences that impose long-term, often permanent, statutory disabilities. These statutory disabilities differ from informal collateral consequences such as social stigma or employment discrimination, being formally codified in law. Termed "collateral consequences of criminal offences" and regarded as "invisible punishment", they represent an extension of punitive criminal justice systems.[24] The United States maintains an exceptionally extensive network of such invisible punishments, with over 40,000 potential collateral consequences of criminal offences at federal and state levels,[25] affecting civil rights, social welfare benefits, employment opportunities, privacy rights, family life, driver's licenses, and other fundamental aspects of citizenship for substantial portions of the population.

Among these numerous collateral consequences of criminal offences, some of the most punitive involve disqualification from social welfare programs. Under federal law, drug offences (including simple possession) may result in: (1) ineligibility for Temporary Assistance for Needy Families under the *Social Security Act* and nutrition assistance under the *Food and Nutrition Act*;[26] (2) exclusion from federally assisted public housing;[27] (3) suspension of financial aid for higher education;[28] and (4) disqualification from federal benefits and Medicaid/Medicare programs.[29] From the perspective of legislative reasons, these measures lack rational justification upon

---

[21] Michael Cavadino, James Dignan, George Mair, and Jamie Bennett, *The Penal System: An Introduction* (London: Sage Publishing, 2020), 162.
[22] Ibid., 146-147.
[23] Mick Ryan, "Engaging with Punitive Attitudes Towards Crime and Punishment: Some Strategic Lessons from England and Wales," in *The New Punitiveness: Trends, Theories, Perspectives* (Devon: Willan Publishing, 2005), 139.
[24] Jeremy Travis, "Invisible Punishment: An Instrument of Social Exclusion," in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (New York: The New Press, 2002), 15-17.
[25] Alessandro Corda and Johannes Kaspar, "Collateral Consequences of Criminal Conviction in the United States and Germany," in *Core Concepts in Criminal Law and Criminal Justice* (Cambridge: Cambridge University Press, 2022), 400-401.
[26] See 21 U. S. Code §862a.
[27] See 42 U. S. Code §13661.
[28] See 20 U. S. Code §1091.
[29] See 21 U. S. Code §862; 42 U. S. Code §1320a-7.

examination, as their crime prevention efficacy remains dubious and their deterrent value minimal, while the disproportionate focus on drug offences contradicts public perceptions of relative offence seriousness. These measures are largely a byproduct of the "War on Drugs." In other words, based on a massive criminal legislation and judicial movement, the punishment of drug offenders is extended beyond imprisonment and community supervision, even though such punishment is highly irrational. Simultaneously, they function as screening mechanisms against disadvantaged groups during periods of welfare retrenchment and declining public support for social assistance, effectively excluding rehabilitated offenders from the coverage of welfare and relegating them to "second-class citizenship status."

In reality, many collateral consequences of criminal offences in the United States profoundly and extensively impact offenders' post-release reintegration, imposing substantial restrictions on rights with distinctly punitive effects. By contrast, while countries such as the United Kingdom demonstrate similar punitive trends in incarceration and community supervision as the United States, their implementation of collateral consequences of criminal offences remains markedly more restrained.[30] Nevertheless, these countries still maintain widespread restrictions in areas including occupational bans, residence permit revocations, and criminal record disclosures.[31]

III. The Direct Causes of "New Punitiveness"

The emergence of new punitiveness did not stem from a unified movement or agenda, but rather resulted from the combined effect of multiple factors. These driving forces can be categorized into two types based on the strength of their causal relationships: direct causes with strong causality (as discussed in this section), and underlying narratives that, while exhibiting weaker direct causal links, possess strong explanatory power (to be discussed in the next section). Regarding the former, new punitiveness was closely associated with the severe deterioration of perceived public safety during this period, against which a series of concepts, institutions, and mechanisms began undergoing adaptive adjustments.

A. Environmental changes: rising crime rates, social disorder, and severe deterioration of perceived public safety

The punitive turn in the criminal justice system of the United States began in the 1970s and 1980s, while the nationwide political agenda of maintaining "law and order" started even earlier in the late 1960s. This period coincided with a significant worsening of American citizens' perceived public safety. During the latter half of the 20th century, the United States experienced a dramatic surge in crime rates, particularly from the late 1960s onward when various types of serious violent crimes showed increasing trends. Between 1965 and 1995, violent crime incidents increased by 36 percent, with murders, rapes, robberies, and aggravated assaults rising by 117 percent, 316 percent, 319 percent,

---

[30] Michael Pinard, "Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity," 85 *New York University Law Review* 2 (2010): 511.

[31] Alessandro Corda, Marti Rovira and Andrew Henley, "Collateral Consequences of Criminal Records from the Other Side of the Pond: How Exceptional is American Penal Exceptionalism?," 23 *Criminology & Criminal Justice* 4 (2023): 533-538.

and 410 percent respectively.[32] Concurrently, the social environment in the United States in the 1960s was highly tense, with large-scale racial riots erupting in many cities including Chicago, Philadelphia, New York, and Los Angeles, creating a state of social disorder that prompted the then-president to establish a "National Advisory Commission on Civil Disorders." Similarly, in England and Wales, recorded crime figures during the latter half of the 20th century rose from an annual average of 1 million in the 1960s to 2 million in the 1970s, and further to 3.5 million in the 1980s,[33] accompanied by major strikes, riots, and notorious criminal cases such as the James Bulger murder case during the 1980s. Consequently, violence, conflict, turmoil, and social division became significant components of the public's collective memory during that era, directly impacting people's perception of public safety and being further amplified by the proliferation of television media. To urgently address this situation, the crime control logic of "using harsh measures in troubled times" gradually came to the forefront, inaugurating a new chapter in the punitive turn of criminal justice systems.

B. Criminal justice ideology: rethinking crime control and the emergence of "criminology of the other"

For most of the 20th century, rehabilitation and reintegration constituted the dominant crime control paradigm in countries such as the United States and the United Kingdom. However, against the backdrop of deteriorating perceived public safety in the latter half of the century, this traditional approach began facing profound crises. Historically, the periods of greatest social disorder in these nations precisely coincided with the heyday of liberalism, welfare policies, and the civil rights movement in the United States. While establishing direct causality between liberal reforms and worsening perceived public safety remains problematic, their temporal coincidence meant criticism extended beyond crime and disorder per se to encompass the liberal crime control model deemed responsible. Within this context, conservative ideologies gained prominence, and the once-dominant rehabilitation paradigm was "suddenly dethroned from its orthodox and accepted position, assuming a different, diminished role in subsequent policy and practice,"[34] giving way to new frameworks centered on identifying, monitoring, and incapacitating "dangerous" populations.

To be clear, this ideological shift manifested through several key developments: (1) Growing disillusionment with rehabilitation crystallized in the "Nothing Works" doctrine, epitomized by a comprehensive review of 231 studies concluding that "with few and isolated exceptions, the rehabilitative efforts reported so far have had no appreciable effect on recidivism."[35] (2) Incapacitation emerged as the least contested penal function. A seminal report from the U.S. Department of Justice unequivocally declared "Prison works" and advocated expanded incarceration, arguing at the

---

[32] The Disaster Center, *United States Crime Rates 1960-2019*, accessed August 23, 2022, https:/www.disastercenter.com/crime/uscrime.htm.

[33] UK Parliament, *Crimes of the Century*, accessed August 4, 2024, https:/www.parliament.uk/business/publications/research/olympic-britain/crime-and-defence/crimes-of-the-century/.

[34] David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2002), 54.

[35] Robert Martinson, "What Works? — Questions and Answers About Prison Reform," *The Public Interest* 35 (1974): 22-54.

beginning of the report that while prisons' rehabilitative or deterrent effects might be debated, their capacity to physically prevent offenders from harming society during confinement was undeniable.[36] This sentiment found explicit expression in UK Home Secretary Michael Howard's iconic 1993 Conservative Party Conference declaration: "Prison works. It ensures we are protected from murderers, muggers and rapists...This may mean more people will go to prison. I do not flinch from that. We shall no longer judge the success of our criminal justice system by a fall in the prison population."[37] (3) Crime became increasingly framed as rational choice behavior of offenders, necessitating heightened costs to reduce offending. As Harvard scholar James Q. Wilson said, crime reduction required swifter, more certain, and more severe penalties.[38] (4) Epitomized by former UK Prime Minister John Major's attitude to "condemn more, understand less,"[39] offenders were progressively constructed as dangerous "others" — marginalized groups inspiring fear rather than understanding, giving rise to what scholars term the "criminology of the other."[40] As a result, this social division between law-abiding, kind "us" and hopeless, marginalized "them" rendered rehabilitation and reintegration ideologies increasingly untenable.

Against this backdrop, new punitiveness emerged as an almost inevitable phenomenon. First, incarceration and its punitive segregation function were vested with heightened expectations, while rehabilitation efforts were marginalized under the "Nothing Works" doctrine. The penal system primarily seeks to alter offenders' physical distribution within society to neutralize their capacity for harm. Second, the tension between finite prison capacity and public apprehension about offender reintegration has transformed community supervision. Traditionally rehabilitation-oriented, it now increasingly assumes surveillance and risk management functions. Third, regarding collateral consequences of criminal offences, certain measures (e.g., occupational bans) similarly aim to disable criminal capacity, while others (e.g., welfare eligibility restrictions) embody the result of "criminology of the other." These satisfy societal retributive impulses by proclaiming that "prior punishment proves insufficient — the offender's debt to society remains perpetually unpaid."[41]

C. **Criminal Law: Overcriminalization and Adjustments to Punishment Systems**

A nation's criminal laws provide the fundamental framework for the operation of its criminal justice system. In the latter half of the 20th century, criminal laws regarding conviction and sentencing in countries such as the United States and the United Kingdom underwent significant adjustments, primarily manifested through the expansion of criminalized conduct and increased severity of punishments, thereby subjecting more individuals to prolonged control by the criminal justice systems. From the perspective of overcriminalization, the scope of criminalized behavior in the United

---

[36] U.S. Department of Justice, *The Case for More Incarceration*, NCJ139583, October, 1992.

[37] Mick Ryan, "Engaging with Punitive Attitudes Towards Crime and Punishment: Some Strategic Lessons from England and Wales," in *The New Punitiveness: Trends, Theories, Perspectives* (Devon: Willan Publishing, 2005), 139.

[38] James Q. Wilson, "Thinking About Crime," *The Atlantic Monthly*, September 1983, 72-88.

[39] Donald Macintyre, *Major on Crime: "Condemn More, Understand Less*", Independent, 21 February 1993.

[40] David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2002), 137.

[41] Jeremy Travis, "Invisible Punishment: An Instrument of Social Exclusion," in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (New York: The New Press, 2002), 19.

States expanded dramatically during this period. For instance, 40 percent of the thousands of federal criminal statutes enacted since the Civil War were passed after 1970, and between 2000 and 2007, the US Congress created an average of 57 new criminal offences annually.[42] The expansion of criminalized conduct primarily shaped new punitiveness by creating more behavioral prohibitions and greater likelihood of conviction, while also providing prosecutors with enhanced bargaining leverage in plea negotiations. Moreover, the criminalization of specific behaviors (such as possession of certain drugs) demonstrated a clear correlation with punitive criminal justice policies. Similarly, the United Kingdom during this period exhibited a trend toward instrumentalist overcriminalization in its penal code. During Tony Blair's decade as prime minister alone, statutory laws passed by the UK Parliament added over 700 new criminal offences.[43]

Moreover, overcriminalization was neither the sole nor even the primary driver of prison population growth. The most significant factor contributing to prison overcrowding was the imposition of harsher sentencing.[44] In the United States, three pivotal sentencing reforms during this period significantly propelled the rise of new punitiveness: First, determinate sentencing systems emerged, whereby federal and state governments established fixed statutory penalties for various offences through sentencing guidelines or uniform sentencing acts. Against the backdrop of tough-on-crime rhetoric and penal populism, these systems institutionalized high rates of incarceration and lengthy prison terms for many offences. Second, mandatory minimum sentences drastically curtailed judicial discretion to mitigate punishments for specific categories of crimes. For instance, under "three-strikes" laws — which impose severe mandatory minimums for repeat offenders — some states with low thresholds for third offences produced cases where individuals received 25-year sentences for stealing a pizza, a $150 videotape, or three golf clubs.[45] Third, restrictions on early release substantially reduced opportunities for parole. The introduction of parole guidelines, elimination of discretionary parole, curtailment of "good time" credits, and extension of minimum service requirements before parole eligibility all contributed to this trend. The *Violent Crime Control and Law Enforcement Act* of 1994 further incentivized states to toughen penalties for violent offenders by conditioning federal funding on ensuring such offenders served at least 85 percent of their sentences. This further influenced the policy choice of each state. In addition, due to the potential political risks of pardon decisions, the application of executive pardon power held by the US president and governors has also shrunk significantly, almost closing the last channel for early release.[46]

Many sentencing reforms in the United States, including mandatory minimums

---

[42] Stephen F. Smith, "Overcoming Overcriminalization," 102 *Journal of Criminal Law and Criminology* 3 (2012): 538.
[43] Xie Wangyuan, "Guarding Against Excessive Instrumentalism in Criminal Law," *Jurist* 1 (2019): 91.
[44] Douglas Husak, *Overcriminalization and the Limits of Criminal Law*, translated by Min Jiang (Beijing: China Legal Publishing House, 2015), 25.
[45] Rachel E. Barkow, *Prisoners of Politics: Breaking the Cycle of Mass Incarceration* (Cambridge: Harvard University Press, 2019), 25.
[46] Barack Obama, "The President's Role in Advancing Criminal Justice Reform," 130 *Harvard Law Review* 3 (2017): 835-838.

and "three-strikes" policies, were subsequently emulated in the United Kingdom. The UK *Criminal Justice Act 2003* introduced a new form of indeterminate sentence — Imprisonment for Public Protection (IPP) — for offenders deemed dangerous yet ineligible for life sentences. This regime substantially impacted incarcerated people: the number of indeterminate sentences in England and Wales surged from 3,000 in 1992 to 13,836 (16 percent of the total prison population) by 2012 — a 3.6-fold increase — with 6,017 (43.5 percent) of these cases involving IPP sentences.[47] Against this backdrop, the phenomenon of growing prison populations serving increasingly lengthy sentences in these nations becomes eminently comprehensible.

D. Criminal justice campaigns: the drug crisis and the war on drugs

During the latter half of the 20th century, countries such as the United States and the United Kingdom launched multiple campaign-style legislative and law enforcement initiatives targeting specific crimes, particularly drug offences, violent crimes, and sex crimes. The most representative of these was the "War on Drugs", which played an especially significant role in shaping new punitiveness in the United States. As drug use and trafficking became increasingly prevalent, the United States declared a comprehensive war on drugs in the 1970s, relying more heavily on criminal justice measures throughout the 1980s. At the federal level, the U.S. Congress significantly amplified the role of criminal measures in drug enforcement. The *Comprehensive Crime Control Act* of 1984 substantially increased penalties for drug offences. Following the crack cocaine epidemic, the *Anti-Drug Abuse Act* of 1986 authorized $1.7 billion in funding for the "War on Drugs," establishing mandatory minimum sentences for various drug crimes and implementing the 1:100 quantity ratio — whereby just 5 grams of crack cocaine (more commonly used by Black communities due to its lower cost) triggered the same mandatory minimum sentence as 500 grams of powder cocaine. This period witnessed a dramatic intensification of drug law enforcement, with criminal measures becoming the predominant approach to drug control. Notably, behaviors traditionally viewed as public health matters — particularly simple possession and personal drug use — were increasingly subjected to severe criminal penalties.

The War on Drugs played a pivotal role in shaping the turn toward new punitiveness in the United States. On one hand, incarceration rates for drug offences skyrocketed more than tenfold, with particularly devastating consequences for racial minorities. Statistics reveal that between 1983 and 2000, the number of incarcerated white drug offenders increased eightfold, while African American and Latino populations saw 26-fold and 22-fold increases respectively. In seven states, African Americans constituted 80-90 percent of those imprisoned for drug crimes, making the War on Drugs the primary driver of systemic mass incarceration of minorities.[48] On the other hand, the War on Drugs became inextricably linked with collateral consequences of criminal offences. By the late 20th century, as narratives about "welfare queens" and "cycles of poverty" gained attention, the United States started to reflect on

---

[47] Michael Cavadino, James Dignan, George Mair, and Jamie Bennett, *The Penal System: An Introduction* (London: Sage Publishing, 2020), 275 and 278.

[48] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2020), 76 and 122-123.

its welfare policies, and the Clinton administration pursued welfare reform under the banner of "ending welfare as we know it." Policy measures such as *The Personal Responsibility and Work Opportunity Act* of 1996 were introduced to limit the traditional big government welfare provision and set higher screening "thresholds" for the provision of welfare. When this neoliberal welfare retrenchment coincided with the War on Drugs, and when media circulated parallel narratives about "welfare queens" and the "crack epidemic," drug offences became a natural criterion for excluding individuals from the social safety net, including public housing and educational funding.

IV. Deeper Roots of "New Punitiveness"

Criminal law scholars in countries such as the United States and the United Kingdom have sought to situate the turn to new punitiveness within broader economic, political, and class contexts. This scholarly endeavor stems not only from academic ambition but also from the recognition that previously identified direct causes provide incomplete explanations: Given the significant international and domestic heterogeneity in criminal justice systems, why did similar punitive shifts emerge in countries such as the United States and the United Kingdom? If merely collective experiences of deteriorating perceived public safety were to blame, why has new punitiveness persisted despite substantial declines in crime rates in these countries? How to understand the unfair treatment of minorities in new punitiveness? To effectively counter this trend, beyond piecemeal sentencing reforms, doesn't the fundamental systemic reflection become necessary? In addressing these questions, academia has developed three predominant narrative frameworks.

A. Economic narrative: neoliberalism and punitive criminal justice systems

Comparative studies linking political-economic models to incarceration rates reveal that neoliberal countries and regions (e.g., the United States, South Africa, New Zealand, Australia, England and Wales) exhibit significantly higher imprisonment rates than conservative corporatist states (e.g., Italy, Germany) or social democratic systems (e.g., Sweden, Finland).[49] Consequently, neoliberalism has been identified as a foundational logic underlying new punitiveness. Characterized by market fundamentalism, individualism, and anti-welfare state ideology, neoliberalism's comprehensive adoption by countries such as the United States and the United Kingdom in the late 20th century fundamentally reconfigured their criminal justice systems, primarily in two aspects, as follows.

First, neoliberalism fundamentally shifted the primary means of managing marginalized populations from welfare provision to penal control. All societies contain relatively affluent upper and middle classes alongside impoverished lower classes and marginalized groups — populations that traditionally constitute both potential threats to social stability and recipients of welfare benefits designed to mitigate disorder through wealth redistribution. During the late 20th century, amid automation, de-industrialization and global labor market competition, countries such as the United States and the United Kingdom confronted economic recessions and labor market

[49] Michael Cavadino, James Dignan, George Mair, and Jamie Bennett, *The Penal System: An Introduction* (London: Sage Publishing, 2020), 90.

transformations. Their neoliberal response to the lower class arising from the trends — welfare retrenchment — marked a decisive break from previous Keynesian approaches to welfare provision, coinciding precisely with the rapid rise of new punitiveness. These developments demonstrate two critical correlations: (1) Substantial overlap in target populations, where those removed from welfare rolls and those entering prisons overwhelmingly represent impoverished, undereducated and socially marginalized groups who have been "pushed off public assistance and into jail cells," , in Loïc Wacquant's words.[50] (2) An inverse relationship whereby U.S. states with reduced welfare spending demonstrated significantly higher incarceration rates, and vice versa, revealing punishment and welfare as complementary mechanisms for managing marginalized groups.[51] These findings have led scholars to interpret new punitiveness as a neoliberal instrument for controlling the lower class — where deregulated markets, precarious employment and the return of a punitive state operate in tandem. What supplements the market's "invisible hand" is no longer macro-control and social supply, but a sharp criminal law system to manage the chaos caused by the spread of social insecurity, which is becoming increasingly active and invasive at the bottom of society.[52]

Second, neoliberalism has shaped the operational logic of criminal justice systems at the micro level, exhibiting distinct marketization and exploitation characteristics. Regarding marketization, the 1980s witnessed the rapid privatization and commercialization of criminal justice functions in both the United States and the United Kingdom. Numerous penal system responsibilities were outsourced to for-profit third-party companies, reflecting a trend toward the "commodification of justice" that aligned neatly with neoliberal fiscal and ideological principles.[53] For instance, in England and Wales, private corporations operate over 10 percent of the 119 prisons, housing nearly one-fifth of the incarcerated population.[54] Even within public prisons, essential services including food provision, sanitation, communications, accommodation, and medical care — along with various external correlated processes — have been extensively contracted to private enterprises. Consequently, market forces have increasingly penetrated the state-monopolized criminal justice domain, transforming private actors into stakeholders who actively sustain and lobby for new punitive policies. In terms of exploitation, what is closely related to marketization is that neoliberalism "strengthens rather than eliminates the exploitative factors in production relations by placing finance at the top."[55] The imposition of incarceration fees, community supervision costs, fines, and asset forfeitures creates crushing financial burdens for

---

[50] Lo ̈c Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham: Duke University Press, 2009), 288.

[51] Katherine Beckett and Bruce Western, "Governing Social Marginality: Welfare, Incarceration, and the Transformation of State Policy," 3 *Punishment & Society* 1 (2001), 43-55.

[52] Lo ̈c Wacquant, "The Penalisation of Poverty and the Rise of Neo-Liberalism," 9 *European Journal on Criminal Policy and Research* 4 (2001): 401-404.

[53] David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2002), 116.

[54] Michael Cavadino, James Dignan, George Mair, and Jamie Bennett, *The Penal System: An Introduction* (London: Sage Publishing, 2020), 199.

[55] Wang Pengquan, "The Collapse of Neoliberal Myths and the Evolution of Western Capitalism," *Leading Journal of Ideological & Theoretical Education* 11 (2020): 87.

offenders. Scholars characterize this as a "predatory strategy" whereby "state and market forces coercively extract resources from vulnerable subordinate groups,"[56] a practice that gains legitimacy through neoliberalism's emphasis on individual responsibility coupled with the public's innate aversion to crime.

B. Political narrative: bottom-up responses and top-down reshaping

New punitiveness is closely intertwined with the political systems of countries such as the United States and the United Kingdom. On one hand, electoral mechanisms compel elected officials to actively address issues of paramount public concern during periods of social disorder; on the other, political elites strategically amplify populist punitive sentiments, weaponizing crime-related anxieties for electoral gain. This dual dynamic of bottom-up responses and top-down reshaping creates what Randolph Roth describes as "an unprecedented convergence of elite and mass positions across the political spectrum that enabled criminal justice systems' punitive turn".[57]

1. Bottom-Up responses

Under electoral systems, when crime and public safety emerge as salient voter concerns, elected officials face imperative demands for responses. When elected officials address crime, it does not necessarily imply that they must initiate a vigorous offensive against it (a penal response). As the saying goes, "The best social policy is the best criminal policy," and addressing the root causes of crime is also a viable response (a social response). However, during the latter half of the last century, rising crime and recidivism rates, coupled with a comprehensive reevaluation of the rehabilitation concept and a prevailing sentiment of "Nothing Works," led voters to demand that officials adopt a different approach to social governance than previously employed. The increasing prevalence of neoliberalism further marginalized welfare provision as a mainstream concern. These transformations have constrained the opportunities for social responses. Punitive measures, by contrast, offered unparalleled advantages. As Garland observes, when confronting public outrage, media scrutiny, and electoral pressures on crime topics, elected officials find that harsh state actions provide immediate, visible proof of "getting things done" and is easy for rapid implementation.[58] In contrast, social responses necessitate more explanatory efforts to clarify their effectiveness, making it challenging to achieve cross-party consensus or yield immediate results. In the United States, these responses are also influenced by the framework of federal and local power distribution. Consequently, officials' apprehensions about electoral losses, voters' urgent demands for immediate action from officials, the complexities of implementing social responses, and the widespread collective disappointment regarding these responses have all manifested concurrently in the United States, the United Kingdom, and some other nations, prompting officials focused on electoral gains to fully embrace new punitiveness approach. Given that many policymakers and implementers within the US criminal justice system are

---

[56] Joshua Page and Joe Soss, "Criminal Justice Predation and Neoliberal Governance", in *Rethinking Neoliberalism: Resisting the Disciplinary Regime* (New York: Routledge Press, 2018), 144.

[57] Randolph Roth, "How Exceptional Is the History of Violence and Criminal Justice in the United States? — Variation across Time and Space as the Keys to Understanding Homicide and Punitiveness," in *American Exceptionalism in Crime and Punishment* (New York: Oxford University Press, 2018), 290.

[58] David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2002), 134-135 and 200.

typically elected by the public, the punitive response tends to be more stringent than in other countries and regions embracing new punitiveness.

2. Top-Down reshaping

The punitive turn of criminal justice systems was further propelled during this period by political elites' conscious efforts to capture, exploit, shape, and amplify populist punitive sentiments. Research demonstrates that public concern about crime and drugs in the United States during the late 20th century was substantially constructed — shaped more by political and media definition-oriented interaction than by actual crime trends or drug use patterns.[59] This phenomenon becomes comprehensible within the historical context of partisan competition: The failure of conservatives in the civil rights movement and the Great Society in the 1960s did not cause their power and ideology to disappear. Instead, they turned to mobilizing new issues, emphasizing "law and order" and implicitly linking it to minorities, linking the outcomes of old conflicts (civil rights movement and the Great Society) with the emergence of new problems (crime and unrest) to promote the realization of political goals.[60] This strategic choice was closely linked to the social environment in the United States at that time: the triumph of the civil rights movement and the abolition of the Jim Crow Laws dealt a significant blow to white supremacy. African Americans were permitted to compete with whites for limited social resources amid the context of deindustrialization. The transfer of social wealth and status to African Americans was largely orchestrated by affluent Democrats, yet it was "funded" by poorer and more conservative working-class whites. Concurrently, the shifts in the cultural atmosphere during this period also led the white middle class to perceive a collapse of the traditional moral order and an erosion of their established lifestyle.[61] Southern white men were the primary victims of the upheavals of the 1960s. "Jim Crow laws were abolished, white supremacy was challenged, traditional values regarding family, women's domestic roles, and religion were undermined, and voicing opposition to these changes resulted in accusations of racism, sexism, and bigotry."[62] This phenomenon was seized upon by the Republicans and evolved into their "Southern Strategy" for the election, which crafted the narrative of a "silent majority," accused liberals of condoning disorder, and advocated for "law and order" to garner the support of southern states. The strategy proved effective, as "after nearly 100 years of steadfast Democratic support, white Southern voters shifted en masse to the Republican Party and remained there for the subsequent 30 years."[63]

In the United Kingdom, Margaret Thatcher's Conservative Party strategically positioned crime as a central campaign issue during the 1979 general election, accusing Labour of excessive leniency that had fostered social disorder and pledging to restore the rule of law broken by Labour as one of five key missions. Research confirms that no other policy area gave the Conservatives greater electoral advantage in 1979 than

---

[59] Katherine Beckett, "Setting the Public Agenda: 'Street Crime' and Drug Use in American Politics," 41 *Social Problems* 3 (1994): 425-444.

[60] Vesla M. Weaver, "Frontlash: Race and the Development of Punitive Crime Policy," 21 *Studies in American Political Development* 2 (2007): 230-265.

[61] David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Cambridge: Harvard University Press, 2010), 236-241.

[62] Ibid., 242.

[63] Ibid., 243.

the maintenance of "law and order."[64] However, throughout most of her administration, Thatcher's tough-on-crime rhetoric primarily served to maintain political advantage. This dynamic shifted in the early 1990s as rising crime rates, a series of riots, and Tony Blair's repositioning of Labour as tough on crime through his shadow cabinet leadership gradually eroded the Conservative lead on law-and-order issues.[65] In 1993, the UK criminal law system began to turn to new punitiveness: in 1993, the Conservative administration, which had low poll support, was determined to regain its popularity through the traditional advantage of "law and order". The slogan "Prison works" at the Conservative Party conference kicked off the doubling of the number of prisoners in the following 15 years.[66] Labour under Blair responded by aggressively promoting its "tough on crime, tough on the causes of crime" mantra to shed its soft-on-crime image. Therefore, "by the 1997 election, the two main parties were locked in competition over who could sound toughest on law and order."[67] As a UK scholar has commented, "Despite falling crime rates and more or less stable convictions, the prison population has continued to increase for almost 17 consecutive years, a trend that is entirely consistent with the so-called 'arms race' of 'tough on crime' policies in which successive governments have been involved."[68]

C. Class narrative: racism and the "New Jim Crow"

Social stratification emerges from "differential distribution patterns of social resources and opportunities among groups,"[69] while identity groups based on race and other factors often develop typical forms of stratification and even evolve into castes.[70] In societies with strong inclusivity, inter-strata mobility remains possible; conversely, where stratification becomes entrenched, criminal justice systems may objectively function to maintain rigid social hierarchies. From the aforementioned economic narrative, we can already observe the intrusive nature of the criminal justice systems at the lower echelons of society. The prominent scholar who has adeptly integrated the class narrative into the contemporary penal discourse is Michelle Alexander. Her central thesis posits that by initiating a War on Drugs predominantly targeting African Americans, the criminal justice system of the United States have effectively taken on the role of marginalizing minorities, akin to the former Jim Crow laws. She asserts that "the current system of control permanently excludes a significant portion of the African American community from mainstream society and the economy. The system operates through our criminal justice institutions, yet it resembles a caste system more than a mechanism of crime control," thereby "ensuring the subordination of a group defined

---

[64] David Downes and Rod Morganin, "Overtaking on the Left? The Politics of Law and Order in the 'Big Society'," in *Oxford Handbook of Criminology* (Oxford: Oxford University Press, 2012), 184-185.

[65] Stephen Farrall and Colin Hay, "Not So Tough on Crime? Why Weren't the Thatcher Governments More Radical in Reforming the Criminal Justice System?," 50 *British Journal of Criminology* 3 (2010): 551-553.

[66] David Downes and Rod Morganin, "Overtaking on the Left? The Politics of Law and Order in the 'Big Society'," in *Oxford Handbook of Criminology* (Oxford: Oxford University Press, 2012), 195.

[67] Michael Cavadino, James Dignan, George Mair, and Jamie Bennett, *The Penal System: An Introduction* (London: Sage Publishing, 2020), 355.

[68] David Downes and Rod Morganin, "Overtaking on the Left? The Politics of Law and Order in the 'Big Society'," in *Oxford Handbook of Criminology* (Oxford: Oxford University Press, 2012), 196.

[69] Zheng Hangsheng, "Several Issues on the New Changes in China's Social Class Structure," *Journal of Central China Normal University (Humanities and Social Sciences)* 4 (2022): 7.

[70] Max Weber, *Economy and Society*, vol. 2, translated by Yan Kewen (Shanghai: Shanghai People's Publishing House, 2019), 1292-1295.

primarily by race."[71]

To elaborate, this system is driven by the War on Drugs and operates through three links: (1) Roundup — A significant number of minorities become entangled in the criminal justice systems due to police actions. Given that police actions are often subject to minimal constraints and oversight, and that race frequently plays a role in stop-and-search procedures, impoverished minority communities are disproportionately impacted by drug enforcement, despite the fact that minorities are not inherently more likely to engage in drug-related offences than their white counterparts. (2) Formal control — Prior to conviction, drug offenders find themselves in a relatively vulnerable position due to inadequate legal defence and the immense pressure associated with plea bargaining. In this context, prosecutors are permitted to introduce additional charges, and it is challenging to use racial discrimination as a basis for contesting the prosecutor's decision. Following conviction, offenders are subjected to stringent sentencing laws pertaining to drug offences, which can result in prolonged incarceration or intensive community supervision. Furthermore, there is a swift escalation of sanctions for those who fail to comply with supervision measures. (3) Invisible punishment — Following their release, drug offenders continue to encounter limitations on their rights and face disqualifications across various domains, including employment, housing, education, and public welfare. This situation renders their reintegration into mainstream white society exceedingly challenging. Such restrictions and deprivations compel ex-offenders to occupy an isolated space, often overlooked by the public, where they are subjected to a series of oppressive and discriminatory laws and regulations, predominantly consisting of ethnic minorities. Furthermore, should they struggle to surmount obstacles in securing employment and other essential services, these individuals may find themselves re-arrested and further marginalized.[72] Although this overtly racist class narrative has faced criticism, particularly for neglecting the impact of economic and other factors on class divisions within identity groups, it has also, both directly and indirectly, fostered significant progressive changes in the realm of drug crime in the United States in recent years.

V. Lessons and Inspirations from New Punitiveness

Crime is inherently challenging to eradicate entirely within any nation or at any point in time. The manner in which one responds to criminal activities and addresses "deviant" offenders will reveal the essence of justice as well as the governance capacity and level of a country. The objective of thoroughly understanding the concept of new punitiveness is to utilize it as a lens through which to reflectively examine the functioning of China's criminal justice system and criminal law research, while also summarize some lessons and inspirations.

A. Lessons for values building

First, maintaining a rational perspective on criminal law. Contrasting with passive conceptions of criminal law, recent years have seen growing advocacy for more

[71] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2020), 16.
[72] Ibid., 230-234.

proactive criminal law involvement in risk governance. The moderate proactive view supports earlier criminal law intervention and limited criminalization,[73] while the strong proactive position argues criminal law should serve as a regulatory mechanism and vanguard when other laws are absent or ineffective.[74] The global turn toward new punitiveness provides an observable case study on the proactive criminal law perspective: The legislative trends observed in the United States, the United Kingdom, and some other countries, which include the introduction of new crimes, an inclination to extend sentences, and a criminal policy characterized by severe punishment, are evidently proactive. However, these measures have not only yielded minimal results but have also precipitated a human rights crisis. The core value underpinning the proactive concept of criminal law is safety; yet, the demand for safety is insatiable. The limited resources available for the rule of law in criminal matters dictate that, at best, it can only ensure the maximum security of essential interests.[75] Furthermore, each emphasis on the value of safety signifies a corresponding retreat from the value of freedom. In this context, an overly proactive approach to criminal law is undesirable, and it is essential to underscore the terminal nature of criminal law's role in social governance as a fundamental value. Only by reasonably delineating the levels of intervention associated with various treatment measures and preserving the modest nature of criminal law can we uphold the principle of proportionality in the exercise of public power while maximizing governance effectiveness. At the same time, it is essential to adopt a rational perspective on the role of criminal law. Issues related to crime have never been solely about the crimes themselves. After all, punishment serves merely as a reactive measure aimed at addressing crime, violence, and similar issues. Its preventive governance function is, in fact, quite limited. Effective social governance necessitates a focus on the processes that give rise to social problems such as crime and violence, as well as the underlying factors, including social insecurity stemming from poverty and unemployment. Based on this understanding, it is imperative to implement systematic governance, source governance, and comprehensive measures.

Second, adopting a rational approach to public opinion. Crime and punishment should remain "in a semi-independent sphere in which rational thought about crime has the opportunity to transcend the short-term emotional and unthinking beliefs that arise from casual feelings."[76] The shift towards new punitiveness is partly attributable to the influence of public opinion on the functioning of the criminal justice systems within the electoral framework, as well as the intentional shaping of public sentiment by political elites. Countries that have been relatively "immune" to new punitiveness over the past half century are often those that maintain a moderate distinction from penal populism within their criminal justice systems. In China, para. 1, Article 2 of the *Constitution* states that "All power in the People's Republic of China belongs to the

---

[73] Fu Liqing, "On the Proactive View of Criminal Law," *Tribune of Political Science and Law* 1 (2019): 99-111.
[74] Gao Yandong, "From Punitive Law to Regulatory Law: The Functional Transformation of Criminal Law in the Digital Economy," *Journal of National Prosecutors College* 3 (2024): 3-17.
[75] Shi Yan'an, "Proportion and Structure: The Basic Elements and Model Selection of Criminal Legal Systems," *Law Science* 5 (2022): 95.
[76] Michael Cavadino and James Dignan, "Penal Comparisons: Puzzling Relations," in *International and Comparative Criminal Justice and Urban Governance: Convergence and Divergence in Global, National and Local Settings* (Cambridge: Cambridge University Press, 2011), 209.

people." The position of the people should be respected to the greatest extent possible. However, public opinion can be volatile, irrational, lacking in decision-making information, and susceptible to manipulation. Reversals in public opinion are not uncommon. Relying on this to guide judicial decisions will inevitably undermine the authority and stability of the rule of law. Furthermore, since public opinion has been thoroughly considered in the legislative process, judicial rulings should prioritize independence and professionalism. Only in this manner can public opinion be genuinely reflected.[77] It is undeniable that in recent years, public opinion has played a constructive role in influencing judicial decisions on matters such as self-defence; however, it should be viewed as a correction of prior judgments that contravened legislative intent and provisions, with its essence rooted in loyalty to the law.

Third, rationally understanding fear. The turn towards new punitiveness is partly a result of the fear of crime among "collective victims," Specifically, when individuals learn about particular incidents through news reports and other channels, they instinctively perceive themselves as potential victims. This fear also serves as a tool for policymakers to enhance social control.[78] However, fear, as a subjective emotional response, is not always an accurate reflection of reality: on the one hand, fear stemming from particularly harmful individual cases may provoke anxiety over less harmful similar situations. For instance, the kidnapping and murder of a 12-year-old child by a repeat offender in California immediately incited fear of repeat offenders in general, leading to the enactment of the "three-strikes" law, which applies even to those who commit minor offences such as stealing food or videotapes. Similarly, the public's fear of violent and sexual crimes is often based on the empirical image of extremely dangerous criminals; however, it is important to recognize that many such crimes involve harmful behaviors in which both parties share responsibility, as well as indecent and insulting actions that are evidently less socially damaging than rape. On the other hand, fear of crime can be constructed and persistent. For example, whether stemming from exaggerated claims made by politicians for electoral advantage, cognitive biases regarding crime, or the heightened awareness triggered by highly publicized cases, many Americans continue to believe that the crime problem in the United States is extremely severe, despite data indicating a significant decline in serious violent crime since the early 21st century. Taking this as a cautionary note, we should analyze the crime situation and its underlying causes rationally, adopting a policy-making model grounded in data and evidence rather than in isolated, abnormal cases, so that rationality can triumph over fear. Simultaneously, we should better utilize the media's intermediary role to restore a sense of rationality to our understanding of fear.

B. Lessons for practice

First, guarding against excessive instrumentalization in criminal legislation. An important driving force behind the turn towards new punitiveness has been the systematic expansion of criminal justice systems, encompassing both criminalization and the penal system, which reflects the instrumentalist nature of criminal law. Viewing

---

[77] Sun Wanhuai, "On the Deconstruction of Public Opinion in Criminal Justice," *Peking University Law Journal* 1 (2011): 145-148.

[78] Li Huaisheng, "The Origin, Position, and Strategy of Western Penal Populism," *Tribune of Political Science and Law* 4 (2015): 108-109.

new punitiveness as a lens, there are at least two significant risks associated with large-scale criminal legislation that warrant attention: First, the "radiation effect" of criminal legislation. This refers to the phenomenon whereby crime and sentencing norms are often significantly influenced by individual cases or similar cases during their initial formulation; however, the impact of such legislation will inevitably extend to other cases, exemplified by the "three-strikes" law. Similarly, in recent years, some scholars in China have argued for the inclusion of assault as a crime based on highly publicized cases of severe violence that did not result in minor injuries. It is, however, foreseeable that this legislative proposal will extend its reach to a considerable number of neighborhood disputes, occasional conflicts, and altercations in which both parties share blame, which are currently resolved through civil mediation or administrative penalties. Therefore, whether viewed from the perspective of the formal and informal legal consequences of crime identification, or from the standpoint of China's limited prison capacity and judicial resources, the criminalization of assault should be approached with caution. Second, the "signal effect" of criminal legislation. Criminal law serves as a text with a communicative function, which anticipates that citizens will adhere to established norms by transmitting communication signals. This effect is frequently considered the foundational logic behind criminalization; however, it is crucial to recognize that modifications to criminal legislation often convey messages to the external environment, complicating the process of implementing decriminalization adjustments once the norms of crime and punishment have been firmly established. A notable example of this is the "1:100" conversion rule instituted by the United States for crack cocaine and powder cocaine.[79] It is evident that revoking a criminal and penal norm is significantly more challenging than formulating one. This is because the communication signal inherent in the revocation of such a norm may result in a surge of certain behaviors, potentially undermining social governance. It serves as a reminder that we must exercise caution when proposing criminalization, rather than relegating the responsibility of limiting the scope of punishment solely to practitioners.

Second, being vigilant against the functional alienation of criminal justice systems. Cesare Beccaria issued a profound warning regarding the alienation of the function of criminal law: "When we reflect on history, we find that laws, which ought to serve as conventions among free individuals, frequently become mere instruments of the desires of a select few, or transform into responses to some incidental or temporary needs."[80] While the rise of new punitiveness has practical motivations, it has also, whether intentionally or unintentionally, transformed the power of punishment into a mechanism for advancing neoliberalism, pursuing electoral gains, and entrenching social stratification based on race. This functional alienation of criminal justice systems persists to this day, and it remains commonplace to witness foreign politicians leveraging the pretext of combating drug-related crimes, illegal immigration, and other issues to justify the agendas of the interest groups they represent. The primary objective of criminal law is to safeguard goods-in-law, which are defined based on personal

[79] Even under pressure, the *Fair Sentencing Act of 2010* only reduced the sentencing disparity ratio to 1:18, partly due to concerns that a 1:1 ratio might lead to a surge in crack cocaine use and render the act unfair.

[80] Cesare Beccaria, *On Crimes and Punishments*, translated by Huang Feng (Beijing: The Commercial Press, 2018), 6.

freedom and individual subjectivity.[81] Any functional alienation within the criminal law systems risks transforming individuals into mere instruments of that law, thereby straying from its fundamental aim of protecting goods-in-law and eroding human values and dignity. Consequently, we must exercise caution against the potential recoding of the criminal justice systems into instrumental strategic frameworks, such as "profit-driven law enforcement and justice," in particular contexts. Only by adhering to this principle can criminal law genuinely return to its original purpose of being people-centered and dedicated to the protection of freedom.

Third, upholding the significance of social reintegration. The vast majority of criminals will ultimately return to society. The generally lenient sentencing practices in China have expedited this process. Therefore, promoting the smooth reintegration of criminals into society is of paramount importance in preventing recidivism, and it can also be viewed as the "gold standard" for assessing the effectiveness of the criminal justice system. The widespread application of collateral consequences of criminal offences under new punitiveness may not enhance public safety; rather, it raises the barriers for criminals seeking to reintegrate into society, ensnaring them in a cycle of "prison to prison." In this context, it is especially crucial to mitigate the potential effects of crime on individuals and their families at the institutional level. To enhance security measures, it is essential to establish clearer limitations and procedural constraints concerning the purpose and necessity of implementing such measures. The introduction of new types of security measures should be minimized to the greatest extent possible. Additionally, any security provisions in existing laws that are more stringent than those outlined in criminal law should be revised, and a corresponding restoration system should be established. Regarding the collateral consequences of criminal offences, a systematic review of similar measures should be conducted, evaluating each one individually to determine its relevance, proportionality, and specificity to the crime, while minimizing any improper infringement on citizens' rights by these collateral measures. Furthermore, it is imperative to further consider how to mitigate implicit discrimination against offenders through societal efforts. In fact, most people's perceptions of criminals are shaped not by direct experience but rather by media portrayals and anecdotal reports, often using serious offenders as a reference point. This phenomenon contributes to the widespread fear and discrimination against criminals. Consequently, the media plays a crucial role in alleviating social discrimination.

Fourth, being vigilant against campaign-style law enforcement and adjudication. The turn toward new punitiveness can be partially attributed to the War on Drugs, a phenomenon particularly evident in the United States and other nations embracing new punitiveness such as Brazil. This approach has engendered disproportionate criminal justice responses targeting ethnic minorities and imposing excessive collateral consequences on drug offenders, revealing the counterproductive nature of campaign-style law enforcement and adjudication. The underlying rationale of such campaigns lies in launching intensive crackdowns on specific crimes within limited timeframes to suppress criminal trends, provide society with "a sense of (subjective) security" as a

[81] Claus Roxin, "The Legislation Critical Concept of Goods-in-law under Scrutiny," translated by Xuan Chen, *Law Review* 1 (2015): 55.

public good, and mold normative citizen behavior. However, their inherent flaws are manifest: these operations frequently lead to irrational practices like overbroad enforcement and quota-driven prosecutions, often resulting in sentencing disparities and judicial inequities[82] that undermine rule-of-law principles. Moreover, their deterrent effects prove ephemera — once relaxed or ceased, targeted crimes typically resurge. It is evident that campaign-style law enforcement should be undertaken with caution and a strict adherence to the rule of law. Simultaneously, it should, whenever possible, focus on safeguarding the fundamental personal and legal interests of citizens.

C. Methodological inspirations

In recent years, criminal law research, primarily grounded in doctrinal analysis, has exhibited a notably self-sufficient character. This self-sufficiency arises from the necessity to first delineate a relatively closed domain and to apply an internally consistent methodology, thereby enabling the summarization and refinement of a mature system of knowledge. However, the functioning of the criminal justice systems transcends mere deductive reasoning from major premises to minor premises; it is fundamentally rooted in and serves the broader economic, political, and social structures. This approach simplifies the complex social issue of crime into the technical operations of specific institutions, framing criminal law as a closed theoretical system. While this ensures the integrity of the research, it simultaneously establishes the foundation for a limited perspective characterized by the notion of "being blinded by one leaf."[83] In contrast, the interdisciplinary approach inherent in new punitiveness "suggests that knowledge is something warm, mutually reinforcing, and negotiable,"[84] offering paradigmatic methodological inspirations for broadening the horizons of criminal law research.

The inspiring interdisciplinary research encapsulated in new punitiveness is prominently expressed through three key aspects: First, the intersection of criminal law and sociology. Here, crime is not merely perceived as a "noun" linked to the closure of crime and punishment norms; rather, it is conceptualized as a "verb" deeply rooted in social reality, shaped throughout the life course, and influenced by governance needs. Within this research paradigm, criminal law transcends mere statutory application, instead emerging as both vehicle and manifestation of a novel social control culture shaped by structural disorder and class stratification. Correspondingly, punishment evolves beyond traditional retributive or preventive frameworks predicated on free will assumptions, acquiring instead the deeper sociological motivations and cultural dynamics characteristic of Foucauldian discipline and Durkheimian social solidarity. This research paradigm holds significant importance for achieving a more comprehensive understanding of crime and punishment. Second, the intersection between criminal law and political economy, particularly in utilizing neoliberalism as a lens to comprehend the punitive turn in criminal law. As Garland noted, the criminal

---

[82] Jia Yu, "From 'Severe Strikes' to 'Balancing Leniency and Severity'," *Journal of National Prosecutors College* 2 (2008): 154.

[83] Shi Yan'an, "The Path to a 'Common Criminal Jurisprudence': History, Power, Culture, or Communicative Consensus?," *Journal of Shanghai University of Political Science and Law* 4 (2024): 34-35.

[84] Roberta Frank, "'Interdisciplinary': The First Half-Century," in *Words: For Robert Burchfield's Sixty-Fifth Birthday* (Cambridge: D. S. Brewer, 1988), 100.

justice system is invariably "embedded in the political and economic system and to a certain extent constructed by it."[85] The role of Marxist political economics within China's criminal justice system may emerge as a new avenue for the establishment of an independent knowledge framework in the future. Third, the intersection between criminal law and economics. For instance, in recent years, certain foreign scholars have identified cost-benefit analysis as a vital instrument for elucidating and addressing the principles of new punitiveness. The criminal justice system constitutes a scarce resource; however, this scarcity should not be perceived as a problem or a flaw; rather, it is a characteristic — or even a "gift" — that compels individuals to make trade-offs and manage resources judiciously.[86] Regrettably, for an extended period, cost-benefit analysis has not been thoroughly integrated into the realm of criminal law theory research. The influence of economics on criminal law has predominantly concentrated on the rational actor assumption, which objectively impedes the introduction of effective regulatory tools and the achievement of optimal governance efficacy. Concerning the challenges associated with quantifying the implicit costs linked to crime and punishment, as well as the potential impact on the value of justice, there is no need for excessive concern. On one hand, economics has developed mature methodologies for measuring implicit costs — including willingness-to-accept models and revealed preference approaches — that are readily applicable to criminal justice analysis. On the other hand, cost-benefit analysis in penal contexts functions primarily as an informational instrument rather than an ethical benchmark. Its purpose is to support decision-making and to render the operation of the criminal justice system as rational as possible.[87]

VI. Conclusion

To many observers, the criminal justice systems of countries such as the United States and the United Kingdom appear to embody robust rule-of-law principles while institutionally safeguarding human rights. However, a closer examination of new punitiveness — particularly its manifestations since the late 20th century, including mass incarceration, the punitive turn in community supervision, and the proliferation of collateral consequences of criminal offences — yields a different conclusion. This turn stems from a complex interplay of factors: the deterioration of the perceived public safety, subsequent transformations in crime governance philosophies, legislative adjustments in criminal law, and the emergence of punitive campaigns. These developments require deeper contextualization through economic, political, and sociological lenses. A rigorous analysis of new punitiveness — systematically examining its value-critical and practical implications for China's criminal justice system while assessing its methodological inspirations for domestic criminal law studies — proves essential for preserving our hard-earned consensus on fundamental

---

[85] David Garland, "Punishment and Welfare: Social Structure and Social Problems," in *Oxford Handbook of Criminology* (Oxford: Oxford University Press, 2017), 89. For a similar discussion in China, see Shi Yan'an, "The Influence of Neoliberalism on Criminal Justice Systems in the U.S. and UK and Reflections," *Criminal Research* 1 (2021): 28.

[86] Richard A. Bierschbach and Stephanos Bibas, "Rationing Criminal Justice," 116 *Michigan Law Review* 2 (2017): 232 and 233.

[87] Ibid., 211.

legal values.

(Translated by *CHEN Feng*)