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TALKING ABOUT MONEY AND PUNISHMENT

This book maps and explores the impact of the financial crisis on the American correctional landscape and examines how scarcity and austerity, real and perceived, have changed the discourses and policies that characterized the past forty years of mass incarceration. The Great Recession catapulted financial scarcity to the top of the list of American concerns, yielding humonetarianism—a set of rhetorical arguments, political strategies, correctional policies, and cultural perceptions that focuses on cost-saving and financial prudence as its raison d'être. Assessing the extent to which this new discourse can achieve real and lasting change to the American penal system as its effects unfold is a challenging task and requires a deep theoretical understanding of large-scale predictions of economic conditions. I want to begin therefore by building on a rich body of literature examining the interaction between crime, punishment, and the economy. Much of this literature situates the American mass incarceration of the past forty years (and sometimes the events that preceded it) in the context of American neoliberal politics, attributing this punitive turn to privatization, alienation, increasing social gaps, and the retreat of the state from responsibilities to the lowest rungs in its social ladder. Against this backdrop, this chapter presents two theories that offer predictions regarding the impact of an economic downturn on punishment: Marxist social historical theories, which predict increased punitivism in eras of increased unemployment, and economic analysis of the criminal justice system, which predicts that the extent of punishment will conform to the ability to punish and therefore shrink during economic downturns.

NEOLIBERALISM, PUNITIVISM, AND THE PRISON INDUSTRIAL COMPLEX

Recent years have produced an explosion of macro-level critical analyses of the emergence of mass incarceration in America, many of which point to economic factors. Some of these powerful works focus on the shift to political conservatism as the turning point in the journey toward punitivism, such as Katherine Beckett's *Making Crime Pay*[1] and Marie Gottschalk's *The Prison and the Gallows.*[2] In these national-level accounts, a retreat from welfarism often contributes to punitive policies: in Beckett's account, punitivism is a top-down backlash against the civil rights movement's gains in racial and social justice; in Gottschalk's account, progressive actors, such as women's rights groups, inmate's rights groups, and death penalty abolitionists remain relatively muted in a political structure that allows economic elites to capture the reins of the correctional project, sometimes co-opting these groups by funding punitive initiatives that suit their narrow interests. Economic factors matter for accounts of local punitivism as well. Vanessa Barker's *The Politics of Imprisonment,*[3] which compares criminal justice legislation in California, New York, and Washington, addresses the political differences between the three states to account for California's punitivism, New York's neutral stance, and Washington's parsimony. Her analysis of the political cultures of the three states takes into account their economic structure and history. Mona Lynch's *Sunbelt Justice,*[4] which addresses the growth of the correctional apparatus in Arizona, is attentive to the change in that state's economic responsibilities and its move from "tough 'n' cheap" politics through a brief period of positivism and welfarism to a culture of punishment based on libertarian ideology. Robert Perkinson's *Texas Tough* focuses on Texas's heritage of a slavery-based economy as the explanation for its punitiveness, aimed particularly toward people of color,[5] an explanation echoed (on the national level) by Michelle Alexander's *The New Jim Crow.*[6] While Lynch, Perkinson, and Alexander all highlight the important role of racism and xenophobia in shaping penal policies, they do not ignore the ways in which economic self-sufficiency and free market ideology have become proxies for racism and xenophobia. Ruth Gilmore's *Golden Gulag,*[7] which provides an anatomy of the explosion of mass incarceration in California, addresses the financial instruments and economic mechanisms by which prison construction is funded and local cooperation guaranteed for new correctional institutions.

Some works rely even more explicitly on broad economic transformations—namely, on the American turn to neoliberal politics and free market ideology—to explain mass incarceration on a larger scale. David Garland's *The Culture of Control* attributes much of the current emphasis on crime control, victim-oriented vindictiveness, and an expansion of the punitive infrastructure to the demise of the penal welfare state and the turn to consumer capitalism.[8] Garland observes that the two last decades of the welfare state, the 1950s and 1960s, were characterized by economic growth and an improvement in living standards. As the oil crisis struck, leading to a rise in unemployment and to growing social stratification, social solidarity crumbled, manifested, among other ways, in "white flight" of the middle classes to the suburbs and in increased spatial segregation. The broad social conditions in late modernity, including increased inequality and increased opportunities and targets for crime, yielded an increase in crime rates, which was sensationalized in the media and generated an outcry against welfarist politics. Ironically, the welfare state was attacked by those who benefited most from the conditions it created. Coupled with an increasingly conservative political climate, the demise of the welfare state led to a government that is no longer perceived, by itself and by its subjects, as able to provide a holistic answer to the challenges of crime.

Another account of punitivism as the outcome of the collapse of the welfare state is Jonathan Simon's seminal *Governing through Crime.*[9] It examines the process by which crime and crime control have become the main metaphors for all social problems and government intervention, infecting areas of life as diverse as the home, the workplace, and schools and yielding a culture of fear and isolation. Simon attributes the rise of the "war on crime" metaphor to the decline of New Deal governance in the 1960s. While Simon's focus is mainly political, he also points out that the quintessential New Deal citizen was the industrial worker, and later the vulnerable consumer, whom the government sought to protect. These perceptions of the subject of legislation were supplanted, after the collapse of the New Deal, by a perception of the citizen as, first and foremost, a potential victim, yielding an increased focus on crime control as the primary mode of protection for the individual and creating discourses and policies that addressed a variety of social problems through the tools and techniques of crime control.

Perhaps the most explicit recent attribution of crime control policies to neoliberal ideology can be found in Loic Wacquant's *Punishing the Poor*[10] and in Joe Soss, Richard Fording, and Sanford Schram's *Disciplining the Poor.*[11] Both works blame neoliberal politics for America's alienation from its weakest citizens, poor people of color, and situate crime control and punishment within this political and economic structure to argue that the criminal justice system is the primary mechanism through which discipline and punishment are administered against these populations. Wacquant argues that the retreat from welfarism and the punitive turn are two arms of the same phenomenon, namely, neoliberal governance. The increasingly privatized state shrinks its social and economic responsibilities to its less fortunate citizens but chooses to impose its full force against them, shifting its energetic, political, and financial investment from "workfare" to "prisonfare." The combination of a free, unregulated market ideology and a powerful, intrusive criminal justice apparatus is aimed directly at oppressing poor people of color.

Wacquant's argument, as some critics have observed, fails to acknowledge local nuances that contradict it.[12] Similarly, Soss, Fording, and Schram argue that the increased discipline and oppression, directed primarily at people of color, stem from the convergence of a neoliberal market ideology and the rise of paternalism. The combination of the loss of welfare responsibility and the push to incorporate vulnerable populations into the ungoverned market leads to greater oppression on the basis of race.

Wacquant and Soss, Fording, and Schram are hardly alone in observing the immense economic potential of the industries related to crime management. Indeed, many critical writings on mass incarceration refer to the profitability of the correctional industry as the "prison industrial complex"[13] and highlight the economic pressures that keep oppressive structures and policies in place.[14]

While privatization, the shrinking responsibility of the state to its weaker citizens, and the immense profiteering by the prison business explain the punitive turn and transformation of punishment in the past forty years, they are less helpful in predicting the relationship between punishment and the recession-era economy. The need exists to engage in a deeper investigation of the ways in which they affect each other. In an economic system governed by free markets, in which punishment is arguably the combined product of state toughness and corporate profiteering, how do fluctuations in the market influence crime rates and the scope of punishment? Do periods of plenty and of austerity give rise to different crime rates or to different punishment structures, or both? To what extent do the legislative, executive, and adjudicative institutions internalize economic pressures in decision making? How, and under which conditions, can periods of austerity and a call for fiscal responsibility counter the profitability of the prison industry? And if an economic downturn produces changes in our correctional policies, do they last when the market recovers?

An important theoretical caveat is appropriate. To the extent that the American correctional apparatus has undergone change since 2008 (and this book argues that it has), it would be simplistic to attribute it solely to fluctuations in the economy. Some of the patterns examined in this book preceded the recession, which only made them more salient or easier to implement. Moreover, several of the recession-era patterns highlighted here can be partly explained by noneconomic factors, such as a greater emphasis on racial justice,[15] more sensitivity to the question of innocence and wrongful convictions in the era of DNA exonerations,[16] and changing public attitudes toward various social phenomena, such as the prevalent use of marijuana.[17] However, the common mechanisms behind these changes—a new, cost-centered discourse; new political alliances based on fiscal rationales; new policies; and a new perception of inmates, focusing on the expense involved in warehousing and handling them—draw attention to the power of economic concerns to shift the seemingly established camps formed around criminal justice policy. Without this important explanatory component, any "history of the present,"[18] after the 2008 financial crisis, would have to rely on a deep ideological shift toward nonpunitive solutions to crime and humane treatment of inmates, when there are plenty of examples in the correctional universe that undermine such an explanation and suggest that American society has not undergone a seismic shift in its perception of crime and punishment. Tempting as it is to hope that we are in the process of developing a more progressive and empathetic political culture, this book shows how the roots of some policies, both benign and malignant, can be more thoroughly and clearly explained by the explicit references of policy makers to economic scarcity and the shrinking allure of mass incarceration for revenue enhancement and private profit.

In the context of a neoliberal economy, how might an economic downturn affect the criminal justice apparatus? Two bodies of literature offer very different insights into this inquiry: social historical studies and economic literature. These perspectives originate from very different political standpoints; social historians of punishment and the economy frequently examine the world under the assumption of social conflict, class struggle, and a considerable degree of determinism stemming from the mode of production, whereas economists of crime and public choice theorists, when not politically committed to law enforcement perspectives, tend to assume at least partial rationality and free choice on the part of the offenders and to overlook issues of class and power inequalities. But the questions these perspectives raise address similar questions, and both are pertinent for an examination of the impact of economic downturns on criminal justice policy.

HOW DOES THE ECONOMY IMPACT PUNISHMENT? SOCIOHISTORICAL STUDIES OF INCARCERATION AND THE ECONOMIC STRUCTURE

A large body of sociohistorical literature, mostly written within a Marxist tradition, examines the premise that the mode of production, which dictates the economic climate and conditions at a given time, has a profound impact on the methods of criminal justice and punishment practiced. The first large-scale exploration of this theme was Georg Rusche and Otto Kirchheimer's groundbreaking text, *Punishment and Social Structure*.[19] The book's examination of historical punishment methods is based on the premise that the prevalent forms and rates of criminal punishment are crafted to cater to the mode of production prevailing at the time, and particularly to the demand for labor. For Rusche and Kirchheimer, punishment as such has no ontological existence; it functions as one more form of controlling the lower classes and serving the interests of economic elites. They theorize that, since punishment tends to target the poor and underserved, the methods used can provide an index of the needs of the ruling class in any given historical period. Rusche and Kirchheimer divide their historical survey into three periods: the early Middle Ages, the late Middle Ages, and the rise of capitalism in the early modern period. In each of these periods, they argue, the preferred methods of punishment—fines and religious penance in the early Middle Ages, corporal punishment of various types in the late Middle Ages, and the birth of the prison with the advent of modern capitalism—corresponded to the prevalent mode of production. Corporal punishment was more prevalent in periods of surplus labor, whereas incarceration, with its accompanying forced labor aspects, became prevalent when working hands were necessary to the capitalist project. Given that criminal enforcement was, and still is, geared almost invariably to the poor, it served as a tool for managing surplus labor or providing access to forced working hands. The uniqueness of criminal law in serving this function lies in its dual role: not only does enforcement and punishment constitute an effective instrument of oppression, but they also come with seemingly class-neutral, moral, ideological justifications, thus giving legitimacy to the prevailing mode of production and quelling protest and uprising.

Rusche and Kirchheimer's work was rediscovered in the 1960s and beyond by critical criminologists and social historians and yielded a rich literature explaining trends in criminal justice as a function of the economic structure. Several macrotheorists have refined and analyzed the crime-labor relationship,[20] and some have examined it in particular historical contexts. William Chambliss's analysis of antivagrancy laws, for example, attributed their emergence to the demand for labor created by the decimation of the workforce by the Black Plague and their reemergence in the sixteenth century as a means to preempt property crime committed by the poor against wealthy merchants.[21] Similarly, E. P. Thompson's *Whigs and Hunters*[22] ascribed the emergence of the Black Act, a draconian criminal code administering the death penalty for a large number of petty offenses, to the need to protect the king's property. An interesting example of the law's dual role in oppressing the lower classes is presented in Douglas Hay's *Property, Authority and the Criminal Law*,[23] in which he argues that the administration of the death penalty in early modern England served as a means of domination and terror and at the same time, when applied against members of the ruling class and when dispensed with occasional mercy in the form of royal pardons, served to create the illusion of fairness and hope so as to quell rebellion. Looking at more recent history, Troy Duster's work on the emergence of drug prohibition demonstrates that the criminal stigma attached to some drugs but not to others was crafted to address economic xenophobia and concerns about labor scarcity prompted by the immigration of certain ethnic groups: marijuana to the Latino population, opium to the Chinese population, and cocaine to the African American population.[24] Other works, exploring the history of juvenile justice and incarceration,[25] the institution of probation,[26] and the growth of noncarceral sentencing alternatives that "widened the net" of criminal justice to capture people beyond those serving prison terms,[27] ranging from the benign[28] to the malignant,[29] all accept the premise that the focus on the poor and downtrodden is no coincidence and invariably serves the interests of the ruling class and the perpetuation of the economic status quo.

Rusche and Kirchheimer's analysis has also been the subject of serious critique. For example, it is difficult to accept the labor-punishment link without wholesale acceptance of a Marxian understanding of the world, which some perceive as a reduction of any nuanced perception of the political process as the function of multiple coalitions and conflicts. Ascribing so much explanatory power to economic factors, without examining alternative variables, has also been regarded as highly problematic.[30] Moreover, even within the universe of Marxist explanations, *Punishment and Social Structure* is a fairly extreme example. Rather than see law as having relative autonomy within the social structure, it is perceived as merely a tool in the hands of the elites for maintaining the capitalist status quo.[31] Indeed, for Rusche and Kirchheimer, "punishment as such [did] not exist; only concrete systems of punishment and specific criminal practices exist[ed]," making punishment merely one more variation on class domination. Some of these theoretical shortcomings were refined and addressed in later works.[32]

Moreover, over the years, as is often the case with macro-level sociological and criminological analyses, historians of punishment have found inaccuracies in Rusche and Kirchheimer's historical account, as well as particular settings in which their logic did not apply.[33] The same critique was leveled at some Marxist historians' studies of the 1960s that were inspired by their work; for example, Chambliss's account of the antivagrancy laws was criticized as being too general and as providing an inadequate explanation in some settings.[34]

The extent to which the link between economic conditions and punishment is valid largely depends on how one understands Rusche and Kirchheimer's thesis. In their metaanalysis of later works, Ted Chiricos and Miriam Delone provide three theoretical explanations for the linkage between labor surplus and harsher punishment.[35] The first suggests that labor surplus reduces the value of labor. As the profit obtained from prison labor decreases, the motivation and means to maintain reasonable work conditions in prison also decrease. As minimum wages for free labor outside prisons decline, the value and worth of forced labor need to fall beneath those minimal amounts. Also, harsher conditions of labor increase the motivation to commit crime, which in turn produces harsher punishment.[36] The second explanation suggests that harsher punishment is the reaction of the state apparatus to the threat and fear produced by a growing underclass and predicts that marginalized workers and lower-class people of color will more likely be the target of harsher punishment. And the third explanation, advanced by David Greenberg[37] and Steven Box and Chris Hale,[38] ascribes the higher levels of incarceration to the agency of judges and other criminal justice decision makers, who might be more likely to assume that unemployment causes more crime and thus to punish potentially unemployed defendants more harshly. Dario Melossi expands this third explanation to a social animus of concern and moral panic about scarcity-driven crime: "In periods of economic decline, a 'discursive chain' of punitiveness and severity spreads across society, linking the attitude of 'moral panic' expressed by business leaders and 'moral entrepreneurs' to the ways in which citizens, police, courts and correctional authorities perceive behavior as deviant and/or criminal."[39]

Chiricos and Delone's analysis of forty-four empirical studies of the relationship between labor and crime shows a robust "empirical plausibility" for the connection. Labor surplus was found to be consistently and significantly related to an increase in prison population, across methodologies and aggregation levels, even when controlling for crime rates. The findings suggest that jails, which were understudied, may be even more responsive to unemployment levels but notably and explicitly leave open the question whether the correlation between labor and punishment would hold under conditions in which periods of budgetary shortage prompt a shift toward noncarceral punishment options. And newer macro-level research also lends support to the thesis, improving our understanding of the relationship between economic cycles and punishment, particularly through careful operationalization. Raymond Michalowski and Susan Carlson conducted an analysis of the American economy from the 1930s to the 1990s, controlling for rates of violent crime, and found a strong correlation between unemployment and incarceration.[40] David Barlow, Melissa Barlow, and Ted Chiricos found linkages between long cycles of capitalist development and the historical formation of criminal justice policy in the United States.[41] In 1993, as Richard Freeman observed, the number of incarcerated men exceeded the number of unemployed men.[42] And as James Inverarity and Daniel McCarthy found, the relationship between demand for labor and level of imprisonment remains robust even when controlling for alternative explanations and persists across geographic and national settings.[43] One of the latest exceptional contributions to this literature, Alessandro de Giorgi's *Rethinking the Political Economy of Punishment,*[44] masterfully analyzes the impact of new trends in the capitalist economy in the post-Fordist era, arguing that the emergence of a flexible labor force constitutes a new system of production that has prompted nations to use their punitive apparatuses to control this new disenfranchised and fear-inducing population.

But beyond the fact that the linkage between surplus labor and harsher punishment is empirically plausible, Rusche and Kirchheimer's work raises some important questions that are highly pertinent to this inquiry into the recession's effect on criminal justice policy. Its novelty lies in the notion that punishment can be framed in the context of the economic universe and addressed as a product of market forces rather than as a detached phenomenon stemming solely from political and moral considerations. Specifically, economic conditions affect punishment irrespective of crime rates. This notion goes against the grain of the natural assumption that crime rates will provide explanatory power to the model because during economic downturns people commit more crimes, which in turn raises the incarceration tally.

Of course, regardless of whether crime rates affect punishment, it is not without importance that judges and parole boards believe they do; as Chiricos and Delone suggest in their metaanalysis, decision makers who believe in a link between unemployment and crime would be more likely to send defendants with bleak employment prospects to prison and less likely to parole them. However, that begs the question whether that assumption is empirically founded.

Research seeking to examine the impact of economic downturns and unemployment on crime rates has found a tenuous connection. In an analysis of crime rates during the Australian recession of the early 1990s, Don Weatherburn concluded that the short-term effects of economic downturns could not clearly predict an increase in crime rates and that a rise in crime shortly before the Australian recession could be explained by several intervening variables.[45] A recent United Nations report on the impact of the financial crisis on crime patterns, using police-recorded data for the crimes of intentional homicide, robbery, and motor vehicle theft from fifteen countries or cities across the world, found that, whether in times of economic crisis or noncrisis, economic factors played an important role in the evolution of crime trends. The report found that in twelve of the fifteen surveyed countries changes in the economy predicted at least one crime type, and in eight of those countries there were identifiable "peaks" of crime during the recession.[46] However, data from Britain suggest a continued decline in crime rates throughout the recession,[47] and data from the United States suggest a more anomalous pattern: despite grim predictions and proclamations from law enforcement officials,[48] FBI statistics from 2010 suggest an overall decline in crime.[49] Anthony Karmen's analysis of the decline in violent crime in New York found no clear correlation between crime rates and the economy.[50]

Another problem with studies examining the link between economic conditions and crime rates is the assumption that crime rates are a fixed and objective measure. In *Criminology and Political Theory*,[51] Anthony Amatrudo examines several strains in criminological literature that suggested that link, such as the Chicago school of criminology in the 1920s and 1930s[52] and Robert Merton's strain theory.[53] The Chicago school argued that crime stems from social disorganization in urban centers, the product of migration to the suburbs that leaves the poor population in the city center without proper social institutions. Merton's theory relied on the gap between the advertised goals of the American dream and the unavailability of means to reach these goals, arguing that different people find different ways to adapt to the gap, one of which could be turning to illegitimate means. Both theories, argues Amatrudo, did not account for the fact that crime is a socially constructed concept—an idea explored and analyzed in the works of Box and Hale, who have problematized the downturn–crime rates hypothesis in the context of Britain.[54]

As Beckett argues in *Making Crime Pay,*[55] while a rise in crime rates certainly fueled the turn to punitive policies, this was largely the product of top-down political campaign advertising rather than genuine public fear. Moreover, as Simon[56] and Barker[57] remind us, crime (and criminal justice) is experienced largely on the local level. Neighborhoods and communities that are already politically and economically disenfranchised tend to experience higher levels of crime and social control, and therefore the rise and fall of crime rates nationwide does not necessarily influence personal and community experiences.[58] Moreover, while incarceration rates rose, victimization rates dropped after the early 1980s.[59]

If crime rates did not fuel mass incarceration, has mass incarceration at least had a role in reducing them? In analyzing the incarceration boom in the United States, Bruce Western concludes that the decrease in crime rates in the 1990s is mostly the product of changes in the drug market and an increase in policing; incarceration explains only about 10 percent of this downward trend.[60] Moreover, in his analysis of the economic boom of the 1990s, Western disproves the assumption that periods of economic plenty necessarily lead to a decline in crime rates, as the population primarily targeted by law enforcement—young men of color—hardly benefited from the boom and in fact was economically hindered from accessing its benefits because of the serious disadvantages brought about by mass incarceration and the stigma associated with it. Western's work and similar conclusions reached by Zimring and Hawkins about the disconnect between mass incarceration and a decrease in crime[61] suggest that if economic cycles have an impact on law enforcement and criminal justice policies, that impact is not mitigated by crime rates.

The conclusion from the above studies is that the relationship between economic conditions and crime rates and the relationship between crime rates and punishment are tenuous. Without crime rates as the explanatory "middleman," we are left with the need to explain why periods of economic uncertainty, particularly pertaining to labor and unemployment, give rise to an increase in incarceration. One possible explanatory direction follows Emile Durkheim's concept of anomie.[62] During periods in which big societal shifts occur—for Durkheim, these were shifts in social solidarity—the feeling of uncertainty requires tightening social control so as to reaffirm and clarify boundaries. Building on this theme, Kai Erikson showed that during times of legitimacy crises—that is, times when governments felt insecure and were confronted with resistance—authorities in Puritan colonies tended to be more punitive.[63] In a study correlating methods and severity of punishment with governmental attributes, Martin Killias found that legitimacy crises gave rise to harsher punishment.[64] Alessandro de Giorgi's analysis of post-Fordist capitalism and punitivism suggests that economic uncertainty and transition might also produce harsher punishment, particularly aimed at the more vulnerable members of the labor force, such as immigrants.[65]

These powerful explanations would have us predict that as economic conditions worsen governments would tend to punish more severely. But, as this book argues, the 2008 financial crisis has not uniformly led to more punitivism. In fact, as the rhetorical devices, political alliances, and criminal justice policies presented in chapters 4–7 of this book argue, the effect of the financial crisis on penal and correctional policies in the United States has been more complex and nuanced. In some criminal justice sites the recession scaled down the punitive project, whereas in others it has led to tough policies. These mixed trends require an explanation in light of the literature suggesting that in times of austerity governments tend to recur to greater, not lesser, reliance on punishment and oppressive social control. The recent contraction of the criminal justice apparatus suggests that there are other important factors that might counter the reasons that social control is enhanced in times of austerity. One such factor might be a simple economic calculus: budget shortages might make mass incarceration on a grand scale financially unsustainable and thus require a scaling back of the punitive project or significant modifications, punitive or nonpunitive, that render it financially feasible. A fertile body of scholarship that addresses the costs of crime from an economic standpoint is helpful for addressing this issue.

WHAT IS THE PRICE OF PUNISHMENT? ECONOMIC ANALYSIS OF THE CRIMINAL JUSTICE SYSTEM

The recent literature on mass incarceration has left insights from economic analysis largely unexplored. While the point of departure of economists is highly debatable, the concept of cost-benefit analysis as it applies to the entire criminal justice system may provide additional insights as to the effect of limited resources on the landscape of punishment.

The pioneer of economic analysis of crime was Gary Becker, whose article "Crime and Punishment: An Economic Approach"[66] aimed at providing an inclusive analysis of the costs and benefits of crime and crime control. Becker's point of departure is the classic economic assumption of perfect rationality and perfect information, under which, as is the case for any other behavior, "a person commits an offense if the expected utility to him exceeds the utility he could get by using his time and other resources at other activities."[67] Rather than eliminate crime altogether, his model aimed at reaching an optimal level of deterrence that would make offenders internalize the costs of their own offenses and thus create equilibrium in terms of expenditures on reactions to crime. This calculus would allow economists to measure the effectiveness of public policy addressing crime. For that purpose, Becker suggested quantifying the damage caused to society by crime, the costs of apprehension and conviction, and the costs of punishment; notably, he included the possibility that each of these categories may generate gain, perhaps predicting the possibility of profit made from incarceration. Becker also included in the model private expenditures on crime prevention and harm reduction. He even warned against the effects of collusion, analogizing from market monopoly and emphasizing that organized crime could skew the cost-benefit analysis.

Becker was cautious to distinguish between the legal and sociological approaches to punishment and his own economic approach. His article addresses punishment in a cut-and-dry manner, without paying lip service to theories of crime that doubt free choice and rationality and without considering the impact of social policies, such as education and welfare, on crime levels. However, he acknowledged that different groups of offenders may respond differently to punishment and that the deterrence potential would be lessened for impulsive offenders. It is also important to note that Becker's political stance was not as diametrically opposed to that of critical and radical criminologists as scholars of both disciplines sometimes assume: while Becker's work inspired fiscally libertarian and socially conservative ideas of crime control,[68] his original analysis was not infused with punitive values and in fact made a strong case for the use of fines in lieu of imprisonment because of their lesser costs to society: "probation and institutionalization use up social resources, and fines do not, since the latter are basically just transfer payments, while the former use resources in the form of guards, supervisory personnel, probation officers, and the offenders' own time."[69] Moreover, Becker estimated that the elasticity of responses of offenses to changes in imprisonment would be more difficult to measure than their reactions to fines.

Becker's was not the first effort to assess the costs of crime. The 1931 Wickersham Commission was convened by President Herbert Hoover to assess the economic costs and benefits of prohibition, and its findings were material in the effort to repeal it.[70] While the report was not solely focused on costs and the reels of evidence presented to the committee reveal a focus on curbing misconduct in police interrogations and evidence collection proceedings,[71] a substantial part of its review was dedicated to an assessment of the expenditures on enforcement and imprisonment and the strong financial incentives to produce illegal liquor, concluding that the effort to enforce Prohibition cost two-thirds of the total amount the federal government spent on law enforcement. Since then, and after the publication of Becker's analysis, several presidential commissions and many governmental agencies as well as academics have tried to provide assessments of the costs of crime and criminal justice. Charles Gray's review of many of these efforts reveals that they differed in their assessment of harm, particularly in monetizing the public and private costs of protection and the costs of victimization.[72]

Following in the footsteps of Becker and other early law and economics scholars, public choice theorists have applied the rationales of microeconomics and macroeconomics in the private market to governmental decision making in criminal law and other arenas.[73] However, even with these economic tools, the project of finding an optimal level of criminal justice to address crime is exceedingly problematic. One primary difficulty is scant data; in 1967 the Task Force on Assessment of the President's Commission commented, "Crime in the United States today imposes a very heavy economic burden upon both the community as a whole and individual members of it. . . . [I]n view of the importance . . . it is surprising that the cost information . . . is as fragmentary as it is."[74] But there are other serious problems, and economists have been increasingly sensitive to the subjective nature of such calculations.

One major problem is estimating the costs of crime. In an effort to itemize these costs, Mark Cohen draws a distinction between costs directly caused by the crime (to the victim), costs involved in societal response to crime, and costs to the offender. Cohen notes that not all of these costs can be quantified using existing or collectable data, and some of them cannot be quantified at all.[75] Even costs that can be itemized using proxies, such as jury awards or drops in property prices,[76] raise disagreements in the field. A 1996 report assessed the costs of crime at $450 billion annually, factoring in medical spending, mental health care, violent crime, and reduction in quality of life, arguing that these were "conservative assessments." The report used jury awards of compensatory damages to estimate pain and suffering.[77] The criminologist Alfred Blumstein, remarking on the report for a *New York Times* story, criticized it for overassessment of pain and suffering.[78]

David Anderson's effort to provide a figure for nationwide costs of crime aimed at including factors left out of previous assessments, such as opportunity costs, prevention costs, and indirect costs.[79] He includes crime-induced production and production due to property loss.

Calculating the costs of criminal justice also proves a complex task. Information about different expenses at all stages of the process is decentralized and difficult to access.[80] Moreover, states themselves do not itemize all their correctional expenses properly in their budgets.[81] Costs to the offenders themselves are notoriously difficult to estimate, because there are "only sparse data" on prior earnings history that allows quantifiable calculation.[82] In this category, Cohen mentions lost freedom, which cannot be estimated; disruption of lives; hardening of people; and the higher rate of injury and death while in prison. Notably, he also considers overdeterrence and the impact of the system on lives beyond those touched by crime as one of the costs. One interesting way to estimate these costs, which offers a dimension of class awareness missing from the mainstream literature in economics, is to focus on the costs of imprisonment per neighborhood, which draws attention to the existence of "million dollar blocks" in which a substantial percentage of residents are incarcerated or subject to supervision.[83]

The challenges of deciding which costs and benefits to include in the calculus of optimal criminal justice produce serious controversy in the econometric literature. A review of studies evaluating the cost-effectiveness of various criminal justice policies revealed only ten studies, of a total of 154 studies reviewed, that encapsulated rigorous application of economic analysis to criminal justice interventions. Even those ten studies exhibited flaws in their methodological rigor.[84] Similar findings emerged in a review of cost-benefit analyses of sentencing, which found only three studies whose quality was not considered poor.[85] The problems are not merely with producing solid models, but with uncovering costs and benefits that seem pertinent to some and external to others. For example, in assessing the Illinois early release of 21,000 inmates between 1980 and 1983, James Austin found that even though victims suffered losses and costs from crimes committed by early release inmates, overall the reduced prison costs to taxpayers more than offset those associated with the slight increase in crime committed by recidivists.[86] Cohen, however, used the same figures and came to the opposite conclusion, because his assessment of the cost of crime to victims was significantly higher.[87] Drug treatment program assessments yield similar controversies. Andrew Rajkumar and Michael French found that the cost of treatment outweighs the benefit of the decline in crime;[88] however, a study of more recent drug treatment conducted by the U.S. Department of Health came to the opposite conclusion, citing additional benefits to treated drug abusers, such as reduced medical costs, increased employment, and reduced welfare benefits.[89] An additional source of confusion is that some policies, such as running one big prison in lieu of several smaller ones, may increase efficiency with regard to a certain function but be detrimental to other functions.[90]

Finally, it bears remembering that evaluation and optimization studies of criminal justice often assume rationality, not only on the part of offenders, but also on the part of law enforcement officers, prosecutors, judges, and parole boards. Studies in behavioral economics conducted by Daniel Kahneman, Amos Tversky, and others have revealed heuristics and biases that stand in the way of reaching equilibrium in criminal justice policy.[91] As Becker acknowledged, different offenders exhibit different levels of elasticity in responding to punishment; studies of deterrence show that severity of punishment has significantly less impact on behavior than the likelihood of apprehension.[92] Even if the effort to optimize criminal punishment to ensure public safety relies not on deterrence but on incapacitation, it is difficult to systematize releases based on risk; relying on judicial and parole decision making as a basis for systematic policy may be fallible, as studies have revealed that judges are prone to heuristics and biases in release decisions.[93]

Given that trained and capable economists find it difficult to generate solid, objectively acceptable cost-benefit equations for criminal justice policies, it is interesting to examine the way such costs factor into arguments made by lawmakers, elected officials, campaign managers, correctional officers, and the general public. One of the themes in the analysis of recession-era politics and rhetoric is the debate over the costs of punishment, made particularly salient by the general sense that the economic downturn has made resources scarce and precious. Questions of externalities are especially important, and, as the discussion in the next chapter illustrates, much of the controversy about policy changes has to do with how the accounting is conducted.

Social histories of the economy and punishment and econometric analyses of the costs of crime differ dramatically in style, audience, and scope. However, they share some important features that are pertinent to this project. First, both bodies of literature see crime and punishment as part of a larger governance project, which happens in the context of a given economic system and a given amount of resources. These issues cannot be neglected and need to be studied side by side with national and local politics, cultural norms, media presentation, and public animus. Second, identifying correlations and explanations—between changing labor markets and punishment, between changing policies and changing costs—is at the forefront of debates in the era of austerity. The following chapters pay attention not only to what governments say about crime and money but also to what they do, showing the ways in which presumed or calculated correlations and cost-related arguments are used to justify and implement a spectrum of policies, old and new, benign and malignant. And third, the different schools of thought show how people with radically different perceptions of human nature and the social order are contemplating very similar questions, albeit from different perspectives, another theme examined in the following chapters.

The next chapter grounds these theoretical insights in the history of American penal policy, by retelling the mass incarceration story through a financial lens, with emphasis on criminal justice funding trends during periods of plenty and scarcity.