

Explaining penal momentum: Path dependence, prison population forecasting and the persistence of high incarceration rates in England and Wales

Thomas Guiney¹  | Henry Yeomans²

¹Thomas Guiney is Assistant Professor of Criminology, University of Nottingham

²Henry Yeomans is Professor of Criminology, University of Leeds

Correspondence

Thomas Guiney, Assistant Professor of Criminology, University of Nottingham.
Email: thomas.guiney@nottingham.ac.uk

Abstract

This article seeks to explain the persistence of high incarceration rates in England and Wales. Building upon recent theoretical work on path dependence, we identify prison population forecasting as a poorly understood positive feedback mechanism that helps to determine the overall scale, scope and reach of the prison estate by connecting capital expenditure decisions with ‘business as usual’ planning cycles that assume considerable policy continuity with the past. We illustrate this point with reference to recent controversies over women’s imprisonment where the everyday, routinised working practices of the penal system have played an important role in sustaining prison expansionism long after the initial conditions that fuelled the mid-1990s prison boom have faded. Disrupting these self-fulfilling logics will not be easy and we conclude this article with a call for a more deliberative democratic politics that confronts penal momentum and invites greater consideration of the many possible futures of penal policy.

KEYWORDS

carceral capacity, forecasting, historical criminology, path dependence, population penal policy, prison

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1 | INTRODUCTION

In recent decades, the adult prison population in England and Wales has experienced periods of continuity and profound change (see Figure 1). Between 1945 and 1993, the prison population followed a saw-edged pattern of growth as politicians pursued a series of strategies, often 'by stealth', that were intended to limit the use of imprisonment, manage overcrowding and control prison expenditure (Green, 2016, p.190). This broad disposition towards the management of British prisons collapsed in the mid-1990s (Jacobson & Hough, 2018). Reflecting trends seen elsewhere, England and Wales experienced a significant 'punitive turn' after 1993 and this shift in both the aims and techniques of penal policy saw the prison population almost double in the next two decades, reaching a post-war peak of just under 87,000 in 2012 (Ministry of Justice, 2022). In the years that followed the prison population began to stabilise and has now fallen to just over 80,000 in 2022. While the long-term effects of Covid-19 remain unclear, there are signs that England and Wales has now entered a new, and less certain, developmental phase.

The social, economic and political determinants of the mid-1990s prison boom in England and Wales are now well documented within the literature (see Newburn, 2007). In terms of its proximate causes, prison expansionism was driven by a dramatic increase in the number of persons sentenced to immediate custody by the courts, a gradual rise in the length of average prison stays for those sentenced for violent and sexual offences, and a growing recall population that has

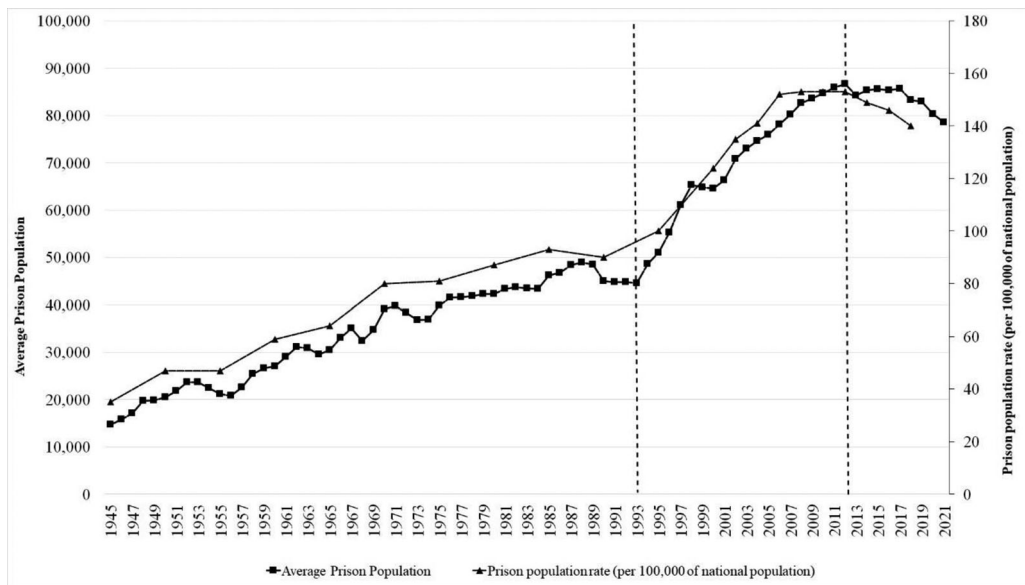


FIGURE 1 The average prison population and imprisonment rate per 100,000 of the population in England and Wales, 1945–2021

Sources: Ministry of Justice (2022, Table A1.2); World Prison Brief – United Kingdom: England and Wales. Prison population rate per 100,000 of the adult population, 1945–2018. Available at: <https://www.prisonstudies.org/country/united-kingdom-england-wales> [Accessed 10 October 2022].

accelerated the 'revolving door' between prison and the community (Ministry of Justice, 2020a). These penal practices remain the engines of high incarceration rates in England and Wales, with the implication that reductions in the prison population prior to the Covid-19 pandemic tended to occur at the margins of the penal system: a declining number of prisoners serving short sentences, the successful expansion of the UK government's Home Detention Curfew (HDC) early release scheme, and a concerted effort by the Parole Board of England and Wales to clear a backlog of post-tariff prisoners serving the now abolished indeterminate sentence for public protection (see Anison, 2018).

While England and Wales has not seen prison growth on a scale that is comparable to the American experience of mass incarceration (Travis, Western & Redburn, 2014), the consequences of prison expansionism, and an incarceration rate that remains the highest in Western Europe, are nonetheless far reaching (Prison Reform Trust, 2021, p.58). Recent research has drawn attention to serious race disproportionality in the sentencing of Black, Asian and other minority ethnic groups (Lammy, 2017). The faltering moral performance of British prisons has contributed to unprecedented levels of suicide and self-harm, interpersonal violence, and some high-profile instances of prison rioting (Auty & Liebling, 2020). Recidivism rates in England and Wales remain stubbornly high with 48% of adults reoffending within twelve months of their release from prison; a figure that rises to 63% for adults serving prison sentences of twelve months or less (Prison Reform Trust, 2021, p.50).

With almost three decades of evidence now documenting the corrosive impacts of the 'prison works' experiment there have been signs that a more searching public discussion of the level of imprisonment that is both (i) morally desirable and (ii) economically affordable might be possible. Beginning in the mid-1990s there have been long-term reductions in crime, as estimated by the Crime Survey of England and Wales (Office for National Statistics, 2021) and, since the 2008 global financial crash, criminal justice budgets have been heavily curtailed by government austerity measures (Morgan & Smith, 2017). In the 2010s, crime lost much of its potency as a big-ticket electoral issue and, on occasions, government ministers have been willing to express public frustration with a dogmatic 'tough-on-crime' narrative that stifles policy innovation (see, e.g., Gauke, 2019). And yet, our prison system has proved remarkably resilient to reform and there are signs that this particular window of opportunity to fundamentally rethink the aims and techniques of penal policy may now be closing (Jacobson & Hough, 2018). In August 2019, the Prime Minister, Boris Johnson, reintroduced earlier plans for a £2.5 billion prison building programme that will result in the construction of 18,000 new prison places by the mid-2020s (see Guiney, 2018).

How do we explain the persistence of high incarceration rates in a dynamic social, economic and political climate? What factors have militated against a radical overhaul of British prisons? In seeking to answer these questions we argue that recent trends in the use of imprisonment are strongly suggestive of a path dependent developmental trajectory defined by 'the tendency for courses of political or social development to generate self-reinforcing processes' (Pierson, 2000, p.810). While path dependence is now gaining wider acceptance within criminological scholarship (see Rubin, 2023), there remains a lack of theoretical consideration of the precise causal mechanisms that drive these processes, particularly outside the American federal system. Our central claim is that prison population forecasting can be conceptualised as a form of positive policy feedback that operates at a strategic or system level by connecting investment in prison estate capacity with 'business as usual' planning cycles that assume considerable policy continuity with the past.

In line with emerging perspectives within historical criminology (Churchill, Yeomans & Channing, 2021) as well as the punishment and society literature (Rubin, 2023), we take the view that greater engagement with the temporal dynamics that shape penal policy and practice across the

broad sweep of historical time is an essential first step in helping to develop reflective political strategies that can navigate, exploit or resist these developmental pathways. This line of argument will proceed as follows. First, we foreground this article within a broader sociology of punishment literature that seeks to explain the drivers of mass incarceration and the growth of the carceral state. Second, we identify prison population forecasting as a poorly understood policy feedback mechanism and present a detailed overview of how these causal processes help to sustain prison expansionism in England and Wales. Third, we draw upon contemporary debates over women's imprisonment to demonstrate how prison population forecasts were used to justify new capital investment in the women's prison estate and frustrate the objectives of the Female Offender Strategy. Fourth, we reflect upon the challenges of confronting penal momentum and conclude this article with a call for a more deliberative democratic politics that destabilises established path dependent processes and invites greater discussion of the many possible futures of penal policy.

2 | THEORISING PRISON EXPANSIONISM AND PATH DEPENDENCE

Few issues in the sociology of punishment have attracted greater scrutiny than the extraordinary prison population growth experienced by many liberal democratic states in the final decades of the 20th century and beyond (Travis, Western & Redburn, 2014). In 2001, David Garland (2021a) used the term 'mass imprisonment' to describe what he saw as the large-scale and systematic incarceration of whole populations in the US. More recently, the imagery of the carceral state has been invoked to describe how penal power is now exercised through an expanding criminal justice apparatus (Gottschalk, 2015), while a burgeoning comparative literature is beginning to de-centre the American experience of penality and explore how distinct penal cultures coalesce across time and space (Brangan, 2020).

These intersecting research agendas have generated a rich and varied literature that seeks to explain the key determinants of contemporary penality (see Campbell & Schoenfeld (2013, p.1376): First, a sociological body of work has documented how the broad macro-structural shifts associated with late-modernity, neo-liberalism and globalisation continue to transform the contemporary landscape of crime and its control (e.g., Garland, 2001b). Second, a series of political studies have drawn attention to the emergence of a new, and largely unpredicted, penal populism that has seen politicians and popular media commentators advocate for 'tough-on-crime' strategies that prioritise electoral success over penal effectiveness (e.g., Pratt, 2007; Pratt & Miao, 2019). Third, an institutional turn in the literature is beginning to explore the mediating role of institutions and how these meso-level dynamics shape penal policy outcomes at a local, national and supranational level (see Lacey, Soskice & Hope, 2018).

When taken as a whole these insights continue to do much of the heavy lifting in most contemporary accounts of mass incarceration and the growth of the carceral state. However, there are signs that this theoretical repertoire may need further refinement if it is to adequately explain the causal mechanisms that sustain prison expansionism in a radically altered socio-economic context (Beckett et al., 2018). For example, while abolitionists seek to explain the resilience of the prison institution with reference to its enduring social functions (Mathiesen, 2006) these perspectives often lack the explanatory power to account for how penal systems arrive at a certain quantum of imprisonment, or why these dynamic equilibria persist over the long term. In this context, recent studies in the sociology of punishment have shown growing interest in the theoretical potential of path dependence to bring temporality back into the study of punishment and penality (see Rubin,

2023). A process or situation can be described as path dependent if initial moves in a particular direction make subsequent movement in the same direction more likely (Pierson, 2000). This insight has generated a rich and theoretically diverse literature within the social sciences. Path dependence has been used to elucidate the factors that trigger a causal sequence and to make sense of the self-reinforcing mechanisms that sustain these contingent developmental trajectories across the broad sweep of historical time (Mahoney, 2000; Thelen, 2003). Recent theoretical advances in this area have drawn attention to the importance of policy feedback loops, the role of timing and sequence, and the prohibitive 'switching costs' of moving from one developmental path to another (Pierson, 2000). As Rubin (2023) puts it: 'path dependence shifts our gaze from the beginning and end of the story to the underexplored middle' (p.269).

While long-standing in economics, organisational studies and political science, it is only recently that these theoretical advances have begun to gain traction within criminological scholarship (Rubin, 2023). To take but a few examples, Thorpe's (2015) study of the American political system reveals how a small bloc of southern, largely rural US states, who rely upon carceral institutions as a principal source of jobs and revenue, use their legislative position to frustrate policy initiatives that promote reform and decarceration. Building upon this notion of institutionalised advantage, Beckett (2018) employs the concept of positive feedback to explain how four decades of mass incarceration has shifted the balance of power within American penal politics, creating a new coalition of vested interest groups – private security companies, prisoner officer unions, the bail industry and state-level departments of correction – who benefit directly from continued penal expansionism.

In an important contribution to the literature, Zimring (2020) refocuses the criminological gaze upon the altogether more mundane, routinised working practices that define penal systems on a day-to-day basis. In seeking to explain the 'insidious momentum' of American mass incarceration, Zimring (2020, p.xii) argues that the single largest obstacle to penal reform is not the political process or a failure of the criminological imagination, but the strong institutional preference of state and local criminal justice agencies for stable conditions, or a 'business as usual' operating context. While Zimring does not use the term 'path dependence' explicitly, clear parallels can be observed in his claim that state prison budgets, local elections and an adversarial prosecutorial system are among the basic features of criminal justice administration that have sustained mass incarceration in a radically altered policy context. This insight imbues Zimring's analysis with a scepticism with regards to the prospects for an imminent dismantling of the carceral state and leads to his central conclusion that high incarceration rates are likely to persist long into the future as a 'new normal', even in a low-crime era.

This long-standing association between path dependence and institutional stability has been criticised for neglecting the creative role of agency and the potential for radical social change (Peters, Pierre & King, 2005). But a concern for how past events constrain present actions need not descend into determinism. As Dagan & Teles (2014) observe, the spiralling cost of American mass incarceration has, at times, generated negative feedback mechanisms that have destabilised the status quo and emboldened conservative penal reform movements seeking justice reinvestment in ostensibly punitive states such as Texas, Mississippi and Georgia. While it is true to say that the subsequent realignment of the Republican Party under Donald Trump has derailed this reform agenda, the authors do nonetheless provide a welcome corrective to the structuralism of first wave institutionalism and demonstrate how path dependence can be understood as a dynamic and creative process that can be both path-breaking as well as path-reinforcing (see Mahoney & Thelen, 2010).

In sum, our review of the literature indicates that path dependence offers a sophisticated account of historical change and continuity that appears particularly well suited to the study of institutional creation and reproduction in the penal field. However, the application of these ideas within the punishment and society literature remains in its infancy. Current accounts have tended to crystallise around the unique conditions of American mass incarceration (Schoenfeld, 2018, p.9; see also Karstedt, Bergin & Koch, 2019) and further comparative work is needed to explain how these causal mechanisms operate across a broader range of liberal democratic jurisdictions (Branagan, 2020). While England and Wales have experienced significant prison population growth it has never reached the scale of many American states (Campbell & Schoenfeld, 2013). Moreover, many of the institutional factors most closely associated with the American federal system – such as locally elected prosecutors and the ‘correctional free lunch’ (Zimring, 2020) – simply do not apply to England and Wales.

In seeking to broaden the scope of this promising research agenda – and encourage greater theoretical debate with respect to the wider applicability of path dependence in the penal field – we identify prison population forecasting as a promising point of departure for thinking about the causal mechanisms that are most likely to introduce policy feedback into highly centralised systems of government. In this respect, parallels may be drawn between England and Wales and other centralised systems where prison policy is being co-ordinated at a national level and subject to top-down central government command and control.

3 | WHAT IS COUNTED COUNTS: KNOWLEDGE, POWER AND PRISON POPULATION FORECASTING

Prison population forecasting remains one of the most enigmatic features of contemporary penal policymaking. In England and Wales, population projections are published annually by the Ministry of Justice (2021) as an ‘aid to policy development, capacity planning and resource allocation’ (p.2). These statistical bulletins have the status of official national statistics and report findings from a ‘dynamic flow model’ that tracks the movement of individuals through each decision-making stage of the criminal justice system and seeks to overlay these data with information pertaining to the anticipated impacts of certain policy positions. The official forecasts do not pose ‘what if’ questions relating to policy options that have not yet secured ministerial approval, nor do they present any analysis of how the population forecasts are themselves fed back into the annual cycle of prison planning.

The causal arrow that connects prison population forecasting and penal policy outcomes is therefore complex and multidirectional. All responsible governments must plan for an uncertain future, and we rightly expect that this task is approached responsibly with due care and attention (Martinez, 2008). However, it is also the case that regardless of how sophisticated these statistical analyses may be, they must at some point confront a basic, insoluble tension between the world *as it is* and the world *as it ought to be*. In practice, the act of predicting is never a dry, technocratic exercise, but a profoundly political choice where the past, present and possible futures of penal policy collide (Armstrong, 2013; King et al., 1980). Or, to put this another way, prison population forecasts must be understood as one form of knowledge claim among many, and, like all knowledge claims, they are underpinned by a series of a priori ontological, epistemological and methodological assumptions that inevitably privilege a certain way of thinking about the future while discounting others. To elaborate:

- (i) While prison population forecasts are often presented as objective facts, they are in reality imbedded within dense structures of knowledge, power and meaning. As Armstrong (2013) notes (drawing on Stone (2002)), the act of counting tells us what counts. Numbers provide a way 'to see' the world; they promote certain forms of knowledge and are frequently invoked to decontest complex social phenomena. Quantification has become a dominant mode of knowledge in contemporary societies, and this hegemony is particularly apparent within contemporary criminal justice where managerialism, actuarial justice (Feeley and Simon, 1992; Hannah-Moffat, 2013) and epistemic crime control strategies have emerged as influential alternatives to the perceived failings of modern democratic politics (Loader & Sparks, 2017). Furthermore, the rise of 'big data' analytics in the 2010s has greatly enhanced the position of quantitative data and statistical analysis within science and government (Lavorgna & Ugwudike, 2021). As one high-ranking official stated to the House of Commons Justice Committee (2019, p.10), the Ministry of Justice aspires to be a 'data-driven department' where quantitative data is seen as the 'engine for reform of prisons'.
- (ii) Numericisation creates a binary opposition between the sophistication of statistical modelling and the perceived limitations of alternative knowledge claims that are regularly dismissed as pure guesswork. In turn, this dichotomy can obscure the political assumptions that are implicit in all forecasting enterprises. As King et al. (1980) observed in their wide-ranging critique of the May Committee's (1979) review of the UK prison system, statistical techniques, such as extrapolation forecasts, are not the value free, scientific tools that advocates sometimes suggest. These models typically adopt an uncritical posture towards current political assumptions and present a view of policy change which assumes that the drivers of existing policy and practice will continue in the same direction and at a similar rate of change into the future. In so far as statistical forecasts assume that the status quo will continue largely unchanged it follows that 'extrapolation forecasts reflect essentially conservative views of the world; and since the world does change, then the longer-term the forecasts are, the less accurate they are likely to be' (King et al, 1980, pp.47–48).
- (iii) Prison population forecasts are frequently invoked by penal policymakers to promote a misleading impression of prison population growth as a natural phenomenon that is external, and therefore beyond the reach of government action (Zimring, 2020). By treating trends in imprisonment as equivalent to weather forecasts, prison population projections translate moral and political problems relating to the aims and techniques of punishment, into technocratic questions relating to capacity, overcrowding, resilience and adaptation (see Armstrong, 2013, p.139). For example, in his landmark review of the prison system in England and Wales, Lord Carter (2007, p.16) relied heavily upon government projections of future 'demand' for prison places to justify his call for a significant acceleration of prison building and a shift towards the construction of larger, more efficient prison establishments which, it was claimed, would help drive structural reform of the prison system.

While prison population forecasts may appear neutral and value free, they are in fact active participants in the political contestation of punishment. It is curious then that these projections have such a low public profile (Armstrong, 2013, p.37). Neither the accuracy of these models, nor the assumptions that guide them regularly feature in public debates about imprisonment, or the limits of the liberal democratic state.

These debates may appear academic, but in practice the interpretation, contestation and application of prison population forecasts can have significant and lasting policy implications. Prison

population forecasts matter because, once institutionalised, they begin to introduce positive feedback into the penal system. First, expansionary criminal justice policies relating to policing, prosecution, sentencing or prison release are fed into the annual cycle of prison population forecasting and, through a process of numericisation, are translated into value-free or politically neutral ‘facts’ about future ‘demand’ for prison places. Second, these projections are frequently relied upon by government ministers, and committees of inquiry, such as the landmark May (1979) and Carter (2007) reviews of the prison system in England and Wales, to inform public expenditure decisions that drive long-term expansion or contractions in carceral capacity (see Schoenfeld, 2018). Third, these moments of strategic self-reflection with regards to the overall scale, scope and reach of the penal system help to establish an administrative baseline or ‘new normal’ upon which successive phases of ‘business as usual’ planning are based (Zimring, 2020). In our view, this cyclical process is most accurately characterised as an example of positive feedback insofar as it helps to reinforce, rather than destabilise, existing administrative arrangements. However, this does not imply a mechanistic or self-regulating process. In practice, it is the interaction between prison population forecasts and political agency that animates this process and propels it forward. Population forecasts are mobilised by a broad coalition of political interests to secure investment in new prison building and prioritise spending in certain parts of the prison estate: maximum-security facilities, private prisons, long-term training establishments, etc. In turn, the prisons we build – functionally, architecturally, geographically – reshape the contours of political agency by extending the state’s capacity to punish in ways that close down some policy options while making others more likely (Jewkes & Moran, 2017).

What makes capital investment such a powerful and enduring form of positive policy feedback is that unlike other forms of investment in carceral capacity, such as the recruitment and training of staff, prison buildings endure across generational divides. They are less amenable to policy adaptation and the way we interact with these physical spaces can help to shape the administration of prisons for decades, if not centuries, as in the case of existing Victorian prisons (see Guiney, 2018). As Spelman (2009) found in his careful analysis of the US prison boom, criminal justice spending stood out as one of the strongest predictors of state-level prison population growth. In essence, those states that invested most heavily in prison estate capacity and new prison building tended to experience higher and more sustained population growth over the long term than their neighbours. While capital spending did not itself cause prison populations to increase, Spelman (2009, p.65) found that it did remove a very significant institutional counterweight against inflationary sentencing practices and punitive policy initiatives that were likely to drive up the prison population in the long term.

More recently, Schoenfeld (2018, p.4) has argued that the story of American mass incarceration is the story of a dramatic increase in the state’s capacity to punish. That in order to process millions of individuals through the criminal justice system each year the state needs certain capabilities in place relating to police numbers, probation officers and prison spaces. It follows then, that mass incarceration was made possible by a series of explicit political decisions to expand carceral capacity and reshape the policy landscape in ways that enable punitive penal policies and reduce the need for counter measures designed to limit demand for prison places (Schoenfeld, 2018, p.217). Of course, this is a two-way process and carceral capacity can both catalyse and inhibit prison expansionism. As O’Donnell (2011) has observed, a lack of bureaucratic capacity in the Republic of Ireland constrained the creation of punitive policies in the 1990s and 2000s with the consequence that, at the time he was writing, Ireland had one of the lowest imprisonment rates in the Global North.

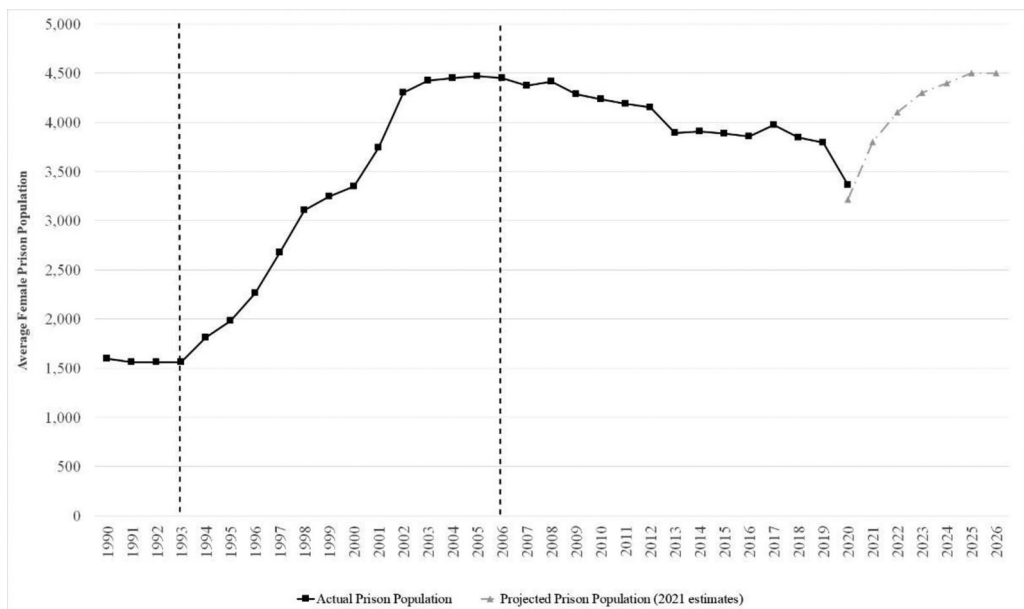


FIGURE 2 Average female prison population in England and Wales, 1990–2020, including prison population forecasts 2020–2026

Sources: Ministry of Justice (2022, Table A1.2); Ministry of Justice (2020b).

4 | COMPETING FUTURES? THE FEMALE OFFENDER STRATEGY AND INVESTMENT IN NEW CARCERAL CAPACITY FOR WOMEN

We can illustrate many of these substantive points with reference to recent debates and controversies surrounding the future direction of women's imprisonment in England and Wales. Reflecting broader trends, the number of women in prison tripled in little more than a decade from 1,500 in 1993 to a post-war high of just under 4,500 in 2005 (see Figure 2). Since this time the women's prison population has declined gradually to a little over 3,200 in 2022, but even accounting for the recent impact of Covid-19, this figure remains far in excess of those levels seen prior to the mid-1990s prison population boom (Ministry of Justice, 2022).

In this context, it remains one of the defining features of contemporary penal policymaking that official recognition of the case for significant reductions in the female prison population has never been translated into radical and sustained policy change. A series of high-profile reports have evidenced the distinct needs of women who come into contact with the criminal justice system (e.g., Corston, 2007), while a broad coalition of academic researchers, penal reform organisations, political parties and official criminal justice agencies continue to build the case for a fundamental rethink of current service provision (Booth, Masson & Baldwin, 2018, p.430). Women are overwhelmingly sentenced for property, drug and summary offences and, at first glance, we might expect this cohort of prisoners to benefit from bifurcated penal strategies that seek to distinguish between the treatment of violent and sexual offenders and those 'minor' criminals, typically found guilty of volume property offences (Seeds, 2017). As the Ministry of Justice (2018) made clear in its long-awaited Female Offender Strategy, published in June 2018:

We want to reduce the female prison population, with fewer offenders sent to custody for short periods. We will therefore shift our emphasis from custody to the community... we want to ensure that the public and judiciary have confidence in non-custodial sentences – such as effective community orders – which directly tackle the causes of reoffending, including alcohol or drug abuse. We will be looking at what more we can do to emphasise that short custodial sentences should be viewed as a last resort. (p.6)

While it may be too early to assess the broader impact of the Female Offender Strategy, by late 2020 the Ministry of Justice (2020b) was, counter to its own policy objectives, forecasting that the female prison population in England and Wales was likely to increase to 4,500 by September 2026. In this context, the Ministry of Justice later confirmed, in January 2021, that it would move forward with previously mothballed plans to construct new prison places for women as part of the UK government's commitment to a £1.5 billion prison modernisation programme. These plans will see an additional 500 prison places constructed on the sites of existing prison establishments in England and Wales in order to 'increase the availability of single cells, improve conditions and ensure that more women can be held in open conditions' (Ministry of Justice, 2021). Interestingly, the Ministry of Justice (2021) did seek to reaffirm its commitment to the Female Offender Strategy but made clear that it would only close obsolete accommodation *if and when* there was clear evidence of a sustained reduction in the female prison population.

Little detail has been forthcoming on how this will be achieved, but it is interesting to note how the forecasting-expenditure-planning nexus described in this article has helped to structure this process in ways that make it less, rather than more, likely that the government will succeed in its stated aim of reducing the female prison population. On the one hand, the vexed issue of prison closures remains conditional upon changes in the external context rather than viewed as a product of top-down political decision making (see Figure 2). On the other, it is surely revealing that the population forecasts did not receive anywhere near the same degree of public scrutiny as the policy proposals set out in the Female Offender Strategy. This is regrettable, for as the Ministry of Justice (2020b) acknowledged in their own methodological note, the small number of 'female adults' in prison has made it difficult to model the possible futures of women's imprisonment with any degree of confidence:

- (i) Forecasting projections for women are not based upon the 'dynamic flow model' used for men, but a cruder calculation based upon 'historical proportions from the overall population, split by sentence length bands' (Ministry of Justice, 2021, p.12). In essence, planning for the future of the women's prison estate is not only subject to the varied ways in which criminal justice agencies seek to frame the future with reference to their own 'business as usual requirements', but its statistical projections are tied to the overall growth rate of the male prison population. Indeed, this projection is made despite the distinct policy frameworks that now exist to manage these very different prisoner cohorts.
- (ii) Of perhaps greater concern, the prison population forecasts for women do not offer any assessment of the likely impact of the Female Offender Strategy since, it is claimed, 'the impacts are not robustly quantifiable and thus not eligible for inclusion in the baseline projection' (Ministry of Justice, 2020b, p.12). Here we have further evidence that what is counted counts. While the 2020 forecasts make clear that the projections do not estimate the impact of future 'government policies that have not received Royal Assent in Parliament' (p.2), exceptions to this rule have been made to reflect the UK government's plan

to recruit 20,000 new police officers and model the likely impacts of the new Sentencing White Paper.

We therefore find ourselves in a curious position where the Ministry of Justice has, since 2018, simultaneously pursued two mutually contradictory visions for the future: (i) a Female Offender Strategy that establishes new ways of working and signals a long-term shift away from the use of short-term women's imprisonment; and (ii) an alternative, and largely hidden, technocratic penal imaginary premised upon a period of renewed prison population growth that is likely to follow a similar trajectory to the male prison population. While we remain hopeful that the Female Offender Strategy will deliver a long-term reduction in the number of women sentenced to short prison sentences, the analysis presented here can help us to explain the policy legacies created by new prison building (Schoenfeld, 2018; Spelman, 2009) and the difficulty of fostering policy change in a punitive political climate where the 'business as usual' planning cycles of key criminal justice agencies are resistant to significant policy departures.

These dynamics are a product of political choices and societal attitudes towards women who find themselves in contact with the criminal justice system (Booth, Masson & Baldwin, 2018). However, these broader cultural trends are frequently reinforced at the institutional level by the routine and mundane operation of the penal system. Prison population forecasts help to shape the overarching strategic policy context within which individual policy decisions are taken. In this way, they confer a 'stickiness' upon existing institutional arrangements that push back against initiatives, such as the Female Offender Strategy, which promote policy innovation through the exercise of (unquantifiable) soft power. By tying planning decisions pertaining to prison administration and estate capacity to the allocation of public expenditure, prison population forecasts create self-fulfilling prophecies that make it difficult to pursue a strategy of decarceration for women at a time when the prison system is gearing up for a period of sustained prison expansionism for men. Herein lies the central problem with the Ministry of Justice's (2021) claim that: 'if, as expected, the female prison population falls longer-term, these modern facilities will allow the Prison Service to close old accommodation'. By treating trends in the use of imprisonment as external factors over which we have no control, decisions about whether to build or close women's prisons now, and in the future, are abandoned to the vagaries of 'business as usual' planning cycles rather than treated as a product of deliberate policy choice.

5 | CONFRONTING PENAL MOMENTUM: AGENCY, DEMOCRATIC POLITICS AND THE POSSIBLE FUTURES OF PENAL POLICY IN ENGLAND AND WALES

Greater understanding of path dependence can help us to explain the persistence of high incarceration rates and the causal mechanisms that sustain penal momentum long after the initial conditions that fuelled the mid-1990s prison boom have faded. However, this insight need not imply a static or deterministic account of penal policy change. Prison population forecasts are always animated by political agency and our analysis of women's imprisonment demonstrates how a broad coalition of policy actors with a stake in prison expansionism were able to draw upon the self-fulfilling logics of prison population forecasting (consciously or otherwise) to resist decarceration and advocate for greater investment in the penal system. While the 'future' will always be an essentially contested concept where competing interests collide and compete,

population forecasts offer the enticing (yet ultimately illusory) prospect of an Archimedean vantage point from which we can escape the apparent messiness of democratic politics.

At a time when quantification has emerged as a dominant mode of knowledge and culture, prison population forecasts are often a highly-prized resource that can be mobilised by politicians, civil servants, penal reformers and the news media to decontest complex social issues and advance their strategic aims. Over time this process has created both winners and losers. Punitive criminal justice policies feed into prison population forecasts in ways that indicate that prison population growth is both inevitable and unavoidable. In turn, these projections confer powerful institutional advantages upon those vested interest groups seeking to champion their 'tough-on-crime' credentials, enabling them to demonstrate support for the rule of law and an unwavering commitment to accommodate those sentenced to imprisonment by the courts. As (then) Prisons Minister, Rory Stewart, noted in his evidence to the Justice Committee in 2019:

I am not going to reduce the prison population just to save money. If somebody ought to be in prison, they ought to be in prison and my job is to go to the Treasury and get the money to pay for that prisoner place, to drive up the baseline. (House of Commons Justice Committee, 2019, p.18)

The strong governmental faith in expanded carceral capacity as *the* solution to the problem of predicted rises in the prison population is clearly stated here. Moreover, the implicit representation that it is the primary duty of any prisons minister to secure additional funding from a sceptical Treasury demonstrates a clear asymmetry in the institutional incentives associated with building and reducing carceral capacity in a punitive political climate. As Spelman (2009) has argued: 'when the money was available to increase capacity, policy-makers spent it' (p.65), while during periods of prison population stability and those rare moments of contraction, administrators have been loath to reduce prison capacity and close old prisons for fear of appearing 'soft' on crime or losing highly valued contingency 'if and when' the prison population begins to grow.

If correct, our analysis naturally begs the question of how we might begin to confront what Zimring (2020) has described as the 'insidious' penal momentum of mass incarceration. If powerful path dependent dynamics are at work here, what resources can be mobilised by penal reformers and prison abolitionists to shift England and Wales from its current path? For Armstrong (2013), the route away from this upward spiral of prison expansionism is to exercise the utopian imagination. We should, it is claimed, reject statistical forecasts that envisage escalating prison populations and instead imagine alternative penal futures that move beyond the prison, positing more inclusive and reintegrative social responses to crime. While such realistic utopias are useful, and ideas can indeed change the world, these techniques are unlikely to gain political traction unless they can be institutionalised within 'business-as-usual' planning cycles. Democratic systems of government are particularly susceptible to path dependent processes (Pierson, 2000), and, in our view, it is essential to recognise how these causal mechanisms shape penal policy outcomes if we are to develop reflective political strategies that seek to navigate, exploit or resist these developmental pathways. Yes, positive feedback effects, like prison population forecasting, are resistant to change and push back against policy innovation (Peters, Pierre & King, 2005), but it is also true to say that there are limits to this elasticity. While the inherent 'stickiness' of the prison system may be sufficient to stifle initiatives that do not command cross party support or rely purely on (unquantifiable) soft power alone to challenge the status quo, three decades of law-and-order politics also demonstrate (for better or worse) what can be achieved through deliberate, targeted, and sustained political action.

In this respect, recent theoretical work by Dzur, Loader & Sparks (2016) and their calls for a more deliberative democratic politics of punishment may offer some assistance if we are to navigate a course between populism and technocracy as the 'twin pathologies of our contemporary anti-political malaise' (p.3). Taking up the authors' invitation to 'critique, restrain, and reconstruct' penal policy, we reflect upon a number of political strategies that may help us to disrupt, slow and, in some cases, reverse the current penal momentum we see in the prison system.

First, we see value in serious and sustained scrutiny of prison population forecasts. Prison population forecasting is an important tool of evidence-based policymaking, but, as we have demonstrated, these tools are underpinned by a series of a priori assumptions that privilege the numerical and treat the drivers of prison expansionism as externalities that are outside the control of government (Armstrong, 2013; King et al., 1980; Zimring & Hawkins, 1991). Unlike other forms of strategic decision making, such as the Female Offender Strategy, these forecasts are not routinely subject to consultation and are virtually absent from democratic discourse about punishment in England and Wales. This will only begin to change when, and if, key opinion formers – government advisory boards, parliamentary select committees, penal reform organisations and academic research networks – work together to improve the visibility of the annual prison population forecasts and present counter-narratives that challenge the political assumptions that sit behind these projections.

Second, more work is needed to build the democratic case for greater restraint when appraising public expenditure decisions that are likely to result in the creation of additional carceral capacity. As we have already noted with respect to women's imprisonment, new prison building is frequently justified on humanitarian grounds as a way to 'modernise' the prison estate, while prison closures are often made conditional upon future reductions in the prison population that are treated as external and beyond the scope of government action (Ministry of Justice, 2021). If correct, our analysis demonstrates why the institutional link between prison forecasting, prison building and 'business as usual' prison planning cycles must be mediated by democratic institutions. In liberal democratic systems of government, we rightly expect that high-profile public policy questions – whether they relate to the relationship between citizen and state or the allocation of finite public resources – are made by our democratic representatives through deliberate policy choices rather than outsourcing these decisions to future generations, or technocratic systems that provide a seductive, but ultimately misleading, veneer of neutrality and objectivity (Zimring & Hawkins, 1991).

Third, we need to provide more productive opportunities for meaningful democratic participation and debate. In our view prison population forecasts are problematic because they translate moral questions about the use of punishment into technical questions relating to capacity, overcrowding and delivery (Armstrong, 2013, p.139). Not only do these systems reinforce existing power imbalances between information gatekeepers and information consumers, but this metaphorical sleight of hand prohibits a more deliberative democratic discussion of a penal system that is both morally justifiable and economically affordable. A more searching democratic discussion of the past, present and possible futures of imprisonment is then sorely needed. Existing statistical forecasts do include some consideration of contingency, but these scenarios are defined by relatively minor deviations from a projected trendline. In contrast, the application of a more qualitative or narrative form of scenario planning that draws upon international and historical experiences (see Staley, 2002), including those that are markedly different from the status quo (e.g., changes to the structure of the labour market, climate change, unanticipated wars and intergenerational shifts in public attitudes), could encourage greater strategic self-reflection and adaptation within the penal system. Scenario planning thus departs from the decidedly linear

means of envisaging the future inherent within statistical forecasting. By allowing planners to learn from different contexts and experiences, it reduces the tendency to imagine and prepare only for continuity. Crucially, these reflective practices must be institutionalised through ongoing parliamentary scrutiny of government strategy, knowledge exchange exercises, engagement with the penal reform sector and those experts by experience in the prison system if they are to become a regular and routinised part of the policymaking process. We are not under any illusion that confronting the self-fulfilling logics of penal momentum will be an easy task, but it is altogether more likely to succeed if policymakers are empowered to learn lessons from the past, to pose 'what-if' questions and hone their preparedness for a range of possible futures, some of which may diverge radically from the current path.

6 | CONCLUSION

In this article, we have argued that prison population forecasting can be understood as a potent positive feedback mechanism that generates path dependent outcomes within highly centralised systems of government, such as England and Wales, where prison building is tied to 'business as usual' planning cycles that assume considerable policy continuity with the past. Not only does public investment in new prison building extend the state's carceral capacity to punish, but, over time, the types of prison establishments we build create policy legacies that may endure for decades (Jewkes & Moran, 2017). In a punitive climate, continuing investment in prison estate capacity allows sentencers to make regular use of imprisonment, precluding the possibility that overcrowding might lead to a critical accumulation of pressure for new sentencing practices or policy reforms. In failing to 'count' the potential impacts of reformist policy objectives, such as the government's own Female Offender Strategy, prison population forecasts militate against the potentially disruptive impact of negative feedback mechanisms and a broad coalition of voices calling for reform from outside the system (Booth, Masson & Baldwin, 2018).

For these reasons we find ourselves in broad agreement with Zimring's central thesis that, all things being equal, prison expansionism is likely to remain the 'new normal' in a low crime era. Fundamental reform of the prison system is likely to be resisted by the 'stickiness' of current institutional arrangements and the powerful institutional incentives generated by feedback mechanisms, such as prison population forecasting. Rather than simply lament this state of affairs or sit tight until an exogenous shock produces a paradigm shift in both the aims and techniques of penal policy, we find reasons for optimism in a dynamic understanding of path dependence that stresses the importance of human agency. Understanding the scale of the problem and the countervailing forces that push back against reform is not the same as merely accepting the status quo. In concluding this article, we have argued that a more deliberative democratic politics can be mobilised to critique the technocratic assumptions of prison population forecasting and provide more deliberative forums for the discussion, contestation, and resolution of the possible futures of penal policy. Changing penal pathways will not be easy, but none of the processes outlined here operate independently of human interaction. The democratic imperatives to critique, restrain, and reconstruct outlined here may help to disrupt the policy feedback loops that sustain prison expansionism, mediate the link between prison building and prison planning, and emphasise the democratic dividends to be accrued from switching path to a new approach informed by penal moderation and greater parsimony in the use of punishment.

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ORCID

Thomas Guiney  <https://orcid.org/0000-0002-5601-4298>

REFERENCES

- Annisson, H. (2018) Tracing the Gordian knot: indeterminate-sentenced prisoners and the pathologies of English penal politics. *Political Quarterly*, 89(2), 197–205.
- Armstrong, S.C. (2013) Using the future to predict the past: prison population projections and the colonisation of penal imagination. In: Malloch, M. & Munro, B. (Eds.) *Crime, critique and utopia* (critical criminological perspectives). Basingstoke: Palgrave Macmillan.
- Auty, K.M. & Liebling, A. (2020) Exploring the relationship between prison social climate and reoffending. *Justice Quarterly*, 37(2), 358–381.
- Beckett, K. (2018) The politics, promise, and peril of criminal justice reform in the context of mass incarceration. *Annual Review of Criminology*, 1(1), 235–259.
- Beckett, K., Beach, L., Knaphus, E. & Reosti, A. (2018) US criminal justice policy and practice in the twenty-first century: toward the end of mass incarceration? *Law & Policy*, 40(4), 321–345.
- Booth, N., Masson, I. & Baldwin, L. (2018) Promises, promises: can the female offender strategy deliver? *Probation Journal*, 65, 429–438.
- Brangan, L. (2020) Exceptional states: the political geography of comparative penology. *Punishment & Society*, 22, 596–616.
- Campbell, M.C. & Schoenfeld, H. (2013) The transformation of America's penal order: a historicized political sociology of punishment. *American Journal of Sociology*, 119(4), 1375–1423.
- Carter, Lord (2007) *Securing the future: proposals for the efficient and sustainable use of custody in England and Wales*. London: Cabinet Office.
- Churchill, D., Yeomans, H. & Channing, I. (2021) *Historical criminology*. Abingdon: Routledge.
- Corston, J. (2007) *The Corston Report: a review of women with particular vulnerabilities in the criminal justice system*. London: Home Office.
- Dagan, D. & Teles, S.M. (2014) Locked in?: Conservative reform and the future of mass incarceration. *Annals of the American Academy of Political and Social Science*, 651(1), 266–276.
- Dzur, A., Loader, I. & Sparks, R. (2016) Punishment and democratic theory. In: Dzur, A., Loader, I. & Sparks, R. (Eds.) *Democratic theory and mass incarceration*. Oxford: Oxford University Press.
- Feeley, M.M. & Simon, J. (1992) The new penology: notes on the emerging strategy of corrections and its implications. *Criminology*, 30, 449–474.
- Garland, D. (Ed.) (2001a) *Mass imprisonment: social causes and consequences*. London: SAGE.
- Garland, D. (2001b) *The culture of control: crime and social order in contemporary society*. Oxford: Oxford University Press.
- Gauke, D. (2019) Smarter sentences, safer streets: David Gauke speech, 18 July 2019. London: Ministry of Justice. Available at: <https://www.gov.uk/government/speeches/smarter-sentences-safer-streets> [Accessed 17 May 2022].
- Gottschalk, M. (2015) *Caught: the prison state and the lockdown of American politics*. Princeton, NJ.: Princeton University Press.
- Green, D. (2016) Liberty, justice and all: the folly of doing good by stealth. In: Dzur, A., Loader, I. & Sparks, R. (Eds.) *Democratic theory and mass incarceration*. Oxford: Oxford University Press.
- Guiney, T. (2018) Solid foundations?: towards a historical sociology of prison building programmes in England and Wales, 1959–2015. *Howard Journal*, 58, 459–476.
- Hannah-Moffat, K. (2013) Actuarial sentencing: an 'unsettled' proposition. *Justice Quarterly*, 30(2), 270–296.

- House of Commons Justice Committee (2019) *Prison population 2022: planning for the future* (sixteenth report of session 2017–19, HC 483). London: HMSO.
- Jacobson, J. & Hough, M. (2018) Missed opportunities and new risks: penal policy in England and Wales in the past twenty-five years. *Political Quarterly*, 89(2), 177–186.
- Jewkes, Y. & Moran, D. (2017) Prison architecture and design: perspectives from criminology and carceral geography. In: Liebling, A., Maruna, S. & McCara, L. (Eds.) *The Oxford handbook of criminology*, 6th edn. Oxford: Oxford University Press.
- Karstedt, S., Bergin, T. & Koch, M. (2019) Critical junctures and conditions of change: exploring the fall of prison populations in US states. *Social & Legal Studies*, 28(1), 58–80.
- King, R.D., Morgan, R., Martin, J.P. & Thomas, J.E. (1980) *The future of the prison system*. London: Gower.
- Lacey, N., Soskice, D. & Hope, D. (2018) Understanding the determinants of penal policy: crime, culture, and comparative political economy. *Annual Review of Criminology*, 1(1), 195–217.
- Lammy, D. (2017) *The Lammy review: an independent review into the treatment of, and outcomes for, black, Asian and minority ethnic individuals in the criminal justice system*. London: Ministry of Justice.
- Lavorigna, A. & Ugwu-dike, P. (2021) The datafication revolution in criminal justice: an empirical exploration of frames portraying data-driven technologies for crime prevention and control. *Big Data and Society*, 8(2), 1–15.
- Loader, I. & Sparks, R. (2017) Penal populism and epistemic crime control. In: Liebling, A., Maruna, S. & McCara, L. (Eds.) *The Oxford handbook of criminology*, 6th edn. Oxford: Oxford University Press.
- Mahoney, J. (2000) Path dependence in historical sociology. *Theory and Society*, 29(4), 507–548.
- Mahoney, J. & Thelen, K. (2010) A theory of gradual institutional change. In: Mahoney, J. & Thelen, K. (Eds.) *Explaining institutional change: ambiguity, agency, and power*. Cambridge: Cambridge University Press.
- Martinez, P.E. (2008) Projecting prison populations starting with projected admissions. *The Prison Journal*, 88, 493–516.
- Mathiesen, T. (2006) *Prison on trial*, 3rd edn. Winchester: Waterside Press.
- May Committee (1979) *Report of the committee of inquiry into the United Kingdom prison service*, Cmnd 7673. London: HMSO.
- Ministry of Justice (2018) *Female offender strategy*. London: HMSO.
- Ministry of Justice (2020a) *Story of the prison population: 1993 to 2020*. London: Ministry of Justice. Available at: <https://www.gov.uk/government/statistics/story-of-the-prison-population-1993-to-2020> [Accessed 4 February 2022].
- Ministry of Justice (2020b) *Prison population projections 2019 to 2024, England and Wales*. London: Ministry of Justice. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827791/prison-population-projections-2019-2024.pdf [Accessed 4 February 2022].
- Ministry of Justice (2021) *Press release: extra funding for organisations that steer women away from crime*. London: Ministry of Justice. Available at: <https://www.gov.uk/government/news/extra-funding-for-organisations-that-steer-women-away-from-crime> [Accessed 4 February 2022].
- Ministry of Justice (2022) *Offender management statistics quarterly: April to June 2021*. Available at: <https://www.gov.uk/government/collections/offender-management-statistics-quarterly> [Accessed 9 September 2022].
- Morgan, R. & Smith, D. (2017) Delivering more with less: austerity and the politics of law and order. In: Liebling, A., Maruna, S. & McCara, L. (Eds.) *Oxford handbook of criminology*, 6th edn. Oxford: Oxford University Press.
- Newburn, T. (2007) ‘Tough on crime’: penal policy in England and Wales. In: Tonry, M. (Ed.) *Crime and justice*, vol. 36. Chicago, IL.: University of Chicago Press.
- O’Donnell, I. (2011) Criminology, bureaucracy and unfinished business. In: Bosworth, M. & Hoyle, C. (Eds.) *What is criminology?* Oxford: Oxford University Press.
- Office for National Statistics (2021) *Crime in England and Wales: year ending March 2021*. London: HMSO. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingmarch2021> [Accessed 4 February 2022].
- Peters, B.G., Pierre, J. & King, D.S. (2005) The politics of path dependency: political conflict in historical institutionalism. *Journal of Politics*, 67, 1275–1300.
- Pierson, P. (2000) Increasing returns, path dependence, and the study of politics. *American Political Science Review*, 94, 251–267.
- Pratt, J. (2007) *Penal populism*. Abingdon: Routledge.
- Pratt, J. & Miao, M. (2019) Risk, populism, and criminal law. *New Criminal Law Review*, 22(4), 391–433.

- Prison Reform Trust (2021) *Bromley briefings prison factfile, winter 2021*. London: Prison Reform Trust.
- Rubin, A. (2023) The promises and pitfalls of path dependence frameworks for analyzing penal change. *Punishment & Society*, 25, 264–284.
- Schoenfeld, H. (2018) *Building the prison state: race and the politics of mass incarceration*. Chicago, IL.: University of Chicago Press.
- Seeds C. (2017) Bifurcation nation: American penal policy in late mass incarceration. *Punishment & Society*, 19, 590–610.
- Spelman, W. (2009) Crime, cash, and limited options: explaining the prison boom. *Criminology & Public Policy*, 8, 29–77.
- Staley, D. (2002) A history of the future. *History and Theory*, 41(4), 72–89.
- Stone, D. (2002) *Policy paradox: the art of political decision making*. New York: W.W. Norton.
- Thelen, K. (2003) How institutions evolve: insights from comparative historical analysis. In: Mahoney, J. & Rueschemeyer, D. (Eds.) *Comparative historical analysis in the social sciences*. Cambridge: Cambridge University Press.
- Thorpe, R. (2015) Perverse politics: the persistence of mass imprisonment in the twenty-first century. *Perspectives on Politics*, 13(3), 618–637.
- Travis, J., Western, B. & Redburn, S. (Eds.) (2014) *The growth of incarceration in the United States: exploring causes and consequences*. Washington, DC.: National Academies Press.
- Zimring, F.E. (2020) *The insidious momentum of American mass incarceration*. New York: Oxford University Press.
- Zimring, F. & Hawkins, G. (1991) *The scale of imprisonment*. Chicago, IL.: University of Chicago Press.

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