

Social Structures of Accumulation and the Criminal Justice System

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Introduction

Social structure of accumulation (SSA) theory posits that at particular historical moments a unique set of economic, political, and social institutions come together to provide the conditions necessary for a period of sustained, vigorous capital accumulation, particularly by regulating class conflict and competition (Kotz 1987). Gordon, Edwards, and Reich (1982: 25) further suggest that “...different social structures of accumulation may incorporate (or exclude) differing sets of social institutions” with a tendency of the institutional ensemble to become more complex and include more institutions over time.

To date, SSA analyses of the post-WWII SSA in the United States have been limited to the four pillars that comprise the SSA–limited capital-labor accord, capital-citizen accord, pax Americana, and containment of inter-capitalist rivalry (Bowles, Gordon, and Weisskopf 1990)–or “core institutions” (Kotz 1987; McDonough 1994) that impinge most directly on the accumulation process. Scant attention has been given to other institutions that may play an important supportive role in facilitating capital accumulation.

This chapter provides an analysis of one such institution–the criminal justice system¹– across phases of the post-WWII SSA in the United States. Several SSA authors have discussed prisons and the new “garrison state” (Bowles, Gordon, and Weisskopf 1990; Gordon 1996), rising expenditures on the criminal justice system (Lippit 1997), and the war on drugs (Houston 1992) as characterizing the most recent phase of the post-WWII SSA, but none have theorized the role of the criminal justice system in the capital accumulation process. We offer such an analysis here.

Research by two of the authors of this chapter has demonstrated a relationship between changes in the U.S. post-WWII SSA and crime and its control. Carlson and Michalowski (1997) first examined the relationship between official unemployment and crime rates across SSA phases. Consistent with expectations based on SSA theory, we found that the relationship between unemployment and crime differs across SSA phases. The relationship was only strong, positive, and statistically significant for all crimes during the decay phase (1966–1979), while being negative but not statistically significant in the ensuing decay/exploration phase (1980–1992). We interpreted these results as indicating that the statistical relationship between unemployment and crime is sensitive to changes in the social meaning of unemployment across SSA phases, as the official measure of unemployment increasingly failed to capture the surplus population at the margins of the economy as unemployment became more structural. Thus, while crime trended upward as members of the surplus population turned to crimes associated with the underground (particularly drug) economy, the proportion of the population actually counted in official unemployment statistics trended downward.

In a second study, combining SSA theory and the work of Rusche (1978[1933]) and Rusche and Kirchheimer (1967[1939]), Michalowski and Carlson (1999) examined historical contingency in the unemployment-imprisonment (U-I) relationship across SSA phases. Consistent with theoretical expectations, the positive, significant relationship between official unemployment and new court admissions to prison rates grew in strength across the initial exploration, consolidation, and decay phases. However, after peaking in the second half of the decay phase (1967–1979), the U-I relationship turned very strong, significant and negative during the most recent decay/exploration phase (1980–1992). Once again we argued that the

strong, negative U-I relationship in this latter period reflected the intersection of a sharp rise in admissions to prison coupled with an increasingly inadequate measure of unemployment that obscured the growth in those living at the margins of the economy.

Taken together, these studies suggest a connection between crime, the criminal justice system, and historical shifts in the post-WWII SSA. However, the exact nature of the relationship between the criminal justice system as a political institution and the capital accumulation process has not been analyzed theoretically.

SSA Theory, Capital Accumulation, and the Criminal Justice System

Gordon, Edwards, and Reich (1982:19) see the state as performing “some critical supportive functions” for capital accumulation. James O’Connor’s (1973) theory of the capitalist state is consistent with this view (see e.g., Kotz 1987:25-26). He argues that the institutions within the capitalist state perform two often contradictory functions—accumulation and legitimization. That is, “the state must try to maintain or create the conditions in which profitable capital accumulation is possible. However, the state also must try to maintain or create the conditions for social harmony” (O’Connor 1973:6). This raises the question of how the criminal justice system might contribute to (or hamper) the state’s accumulation and legitimization functions.

Even the most avid supporters of free markets see the maintenance of law and order as a necessary and legitimate function of the state (e.g., Friedman 1962). This involves controlling crime and civil disorder, which is essential for accumulation and legitimization in two broad ways. By defining and controlling property crime, the criminal justice system creates a legal and security framework that underscores the sanctity of private property. By minimizing violent

crime and social disorder the criminal justice system also creates the social harmony necessary for system legitimacy and investor confidence, core requirements for capital accumulation.

The criminal justice system also has a potential role to play in two of the three steps of the capital accumulation process. In the first step of the accumulation process (i.e., investment in means of production and labor power), criminal justice penal policy can provide capitalist investors with access to exploitable labor, either directly through a contract or lease system where access to convict labor is provided either free or at below market wages, or indirectly by providing job training and flexibility in sentencing that allows opening the prison doors when the labor market is tight.

Second, in the profit realization step of the capital accumulation process, the criminal justice system and its employees serve as markets for goods and services produced by the private sector. As a purchaser of the latest technology and weaponry for law enforcement, building supplies for prison construction, other goods and services necessary for the day-to-day maintenance of prison populations, and private corrections and security services, the criminal justice system serves as a lucrative market for profit realization. Likewise, criminal justice system employees constitute an important market for consumer durable and nondurable goods, and services.

We propose that the particular way the criminal justice system facilitates the state's accumulation and legitimization functions will vary historically depending on two factors: (1) the size, content, and perceived or real threat of the surplus population, which in turn depends on (2) labor market conditions. Specifically, we contend that as tightening labor markets in periods of consolidation threaten accumulation by increasing capital's wage bill, the criminal justice

system will respond by decriminalizing some offenses, lowering penalties for others, and creating punishment strategies that will return all but the most dangerous convicted offenders to the labor market in relatively short periods of time. Conversely, as periods of decay and exploration generate increases in the surplus population and attendant crimes, criminal justice system strategies will seek to restore system legitimacy by increasing the severity of penalties in ways that will keep significant portions of the now, no longer needed, surplus population behind bars.

The Criminal Justice System Across Phases of the Post-WWII SSA in the United States

According to Bowles and his colleagues (1990), the post-WWII SSA includes a consolidation phase from about 1948 through 1966, a decay phase from about 1966 through 1979, followed by a phase of overlap between decay and initial exploration for institutional alternatives, a period of decay characterized by “business ascendancy” from about 1979 through the early 1990s. Our historical analysis of changes in the criminal justice system begins with the decay/exploration phase between the two world wars that produced the post-WWII SSA (Gordon, Edwards, and Reich 1982:12). We then discuss each of the phases in the post-WWII SSA, and end our analysis with the most recent phase beginning roughly in 1992. This has been an intense period of institutional exploration and change, resulting in what Kotz (2003) refers to as a “liberal institutional structure” that falls short of being a new SSA.

Decay/Exploration Phase between the World Wars

In the years between World War I and World War II, a new penal philosophy and set of practices developed that would eventually coalesce in the mid-to-late 1940s into the “treatment model” of corrections, along with a professional model of policing. Prior to World War I, the

goals of punishment were deterrence and retaliation. Punishment was by hard labor, either in contract or state account prison industry systems where prisoners produced nondurable consumer goods that were sold in the free market (the profits from which benefitted the labor contractor and/or state while prisoners were paid little if at all), in public works (e.g., chain gangs in the South), or in the prison to maintain and run the facility (Barnes 1921; Gill 1931; McKelvey 1934, 1935; Weyand 1926). Determinate sentencing was the norm where the convicted went to prison for a fixed number of years with no possibility for early release.

The goals of punishment changed in the post-WWI years to emphasize social protection by incapacitation of dangerous offenders, and rehabilitation of offenders who did not pose a risk to society and returning them as productive workers and law-abiding citizens to the community (Barnes 1922:256). This new "treatment" model of corrections combined an emphasis on "reforming" or "rehabilitating" the convicted felon with use of indeterminate sentences, parole, and probation. The use of indeterminate sentences, along with the possibility of early release, was designed to provide individualized treatment for the offender, and to supply the prisoner with a positive incentive—early release for "good behavior"—for acquiring the attitudes and behavior patterns to live as a productive worker and law-abiding citizen on the outside. Indeterminate sentencing also gave the parole board the authority to make "incurable" prisoners serve the full maximum sentence. Use of probation as an alternative to imprisonment also became widespread (McKelvey 1977:310-15). Another feature of the treatment model of corrections was an end to the direct exploitation of prison labor by labor contractors in the private sector, or via the state allocation system. Instead, prisoners received basic education and job training to prepare them for re-entry into the labor force (MacCormick 1931).

A more professional policing model developed during this SSA phase that emphasized increased efficiency via departmental reorganization, the development of state and regional policing agencies, use of scientific crime detection, formal training of law enforcement officers, and crime prevention (Tibbetts 1933:899-901). In addition, the Federal Bureau of Investigation was established as a domestic policing agency that provided training to local law enforcement officers through its national academy (Federal Bureau of Investigation 2007). Police officers were peace officers whose role was to protect and serve the public, not to fight crime.

Consolidation Phase

From the late 1940s until the mid-to-late 1960s, economic output and real wages trended steadily upward while unemployment drifted downward, despite short-term fluctuations in the business cycle (Bowles et al. 1990 : 35-46). Under these booming economic conditions, the unemployed drifted in and out of the portion of the surplus population Marx (1967[1867]: referred to as the “floating form” concomitant with movements in the business cycle, posing no threat to the capitalist order. For the few who came under the control of the criminal justice system, the institutional arrangements put in place during the previous phase—the rehabilitative ideal, probation, indeterminate sentencing combined with early release on parole, work-release programs, job training, and education—were sufficient to facilitate capital accumulation by providing a steady stream of trained labor from behind prison bars. As Thorsten Sellin stated at the time,

Since the First World War, and especially since the last one, there have been tremendous changes in correctional practices. Our best prison systems today are seriously endeavoring to rehabilitate offenders and are earnestly seeking for the most effective

methods of doing so. In that connection, the labor of prisoners plays a role but not one that exploits them solely for profit; it rather aims to train them for jobs that will be available to them on their release (Sellin 1965:281).

The labor supply was often tight, and well-paying, lower-skilled jobs were plentiful. Offenders returning to the community were able to find gainful, legitimate employment. Not only were capitalist employers eager to employ these workers, but their presence slowed wage growth by increasing labor supply. As Assistant Director of the U.S. Bureau of Prisons, H.G. Moeller (1969:83) observed,

[w]ork opportunities for the probationer and the parolee in private industry are increasingly available. The National Association of Manufacturers has publicized the importance of work-release programs. Industry has co-operated with correctional authorities in introducing into institutions training programs specifically designed to provide the offender with skills which are scarce in the labor market.

While this situation held during the consolidation phase, it would not last after the first few years in the decay phase.

In sum, the consolidation phase of the post-WWII SSA in the United States was a time of economic prosperity facilitated by the professional policing model, and a penal regime that supplied trained labor to industry. The surplus population was small and posed little if any threat, so releasing prisoners did not threaten social order or state legitimacy. Crime rates were low, as were imprisonment rates.² However, the ability of the criminal justice system to facilitate accumulation and legitimization began eroding during the subsequent period of economic decay, necessitating changes, first in law enforcement, and then in corrections.

Decay

By 1966 the growth engine of the previous 20 years of consolidation was losing steam. The re-emergence of strong industrial economies in countries previously devastated by the WWII, combined with profit-eroding pressures from labor and other social claimants, as well as the deficit-inducing escalation of the Vietnam war, slowed the growth of the U.S. economy. Unemployment turned increasingly structural as good jobs began disappearing from the economy more rapidly than new ones were being created with the share of U.S. manufacturing jobs falling 22.1% during the decay phase, 1966 to 1979 (Executive Office of the President 1995:324). In response to these conditions, crime rates increased, and public disorder in the form of civil rights demonstrations, ghetto rebellions, and anti-Vietnam war protests signaled a significant decline in social harmony. The consolidation-phase criminal justice policies no longer served to facilitate accumulation and legitimization.

Bowles and his colleagues note that the decay in the social institutions of the post-WWII SSA was not uniform across the entire 1966-1979 period. Instead, decline occurred in two identifiable sub-phases, 1966-1973 and 1973-1979. We suggest that each of these sub-phases, resulted in corresponding adjustments within the criminal justice system.

The first phase of decline was characterized by low and then rising unemployment, rising inflation, and falling rates of profit (Bowles et al. 1990:96), and, most importantly, mass uprisings on the streets of urban ghettos and on college campuses. Local and state police, operating under the professional policing model, with its emphasis on protecting and serving citizens, were ill-equipped to restore social order. In a number of instances, states had to call up National Guard troops to quell these disturbances.

Increasing crime rates and mass protest in the mid-to-late 1960s threatened state legitimacy by creating an image of public insecurity and social disharmony. They threatened accumulation by further eroding investor confidence at a time when the old SSA was increasingly unable to deliver expanding profit margins. In an effort to reinvigorate legitimacy and accumulation, the U.S. Congress passed the Omnibus Crime Control and Safe Streets Act in 1968 (P.L. 90-351), establishing the Law Enforcement Assistance Administration (LEAA) under the U.S. Department of Justice. Through LEAA, local law enforcement agencies received federal funds to improve their ability to fight street crime and quell civil disorders. Most of this money was spent on the "hard side" to arm local police with the latest technology in the areas of weaponry, surveillance, and communications, and to develop new methods of police work modeled on the U.S. military (Kraska and Kappeler 1997), while the "soft side" of police education and improving police-community relations received less support (Michalowski 1985:181-82). Overall, the breakdown in order maintenance during the first decay phase, coupled with loss of productive capital in areas affected by mass disturbances, and increased costs for restoring order likely would have had a dampening effect on capital accumulation.

The second sub-phase of decay, lasting roughly from 1973 through 1979, witnessed rising unemployment, runaway inflation, and continuing low rates of profit (Bowles et al. 1990: 96). Although crime rates continued their upward climb, with average rates being double to more than triple those during the consolidation phase, the average imprisonment rate increased only about 7 percent.³

The combination of increased law enforcement capacity and the still-dominant "treatment model" in corrections, was ill-suited to control the increasingly large surplus population.

Success of rehabilitation programs depends on the availability of jobs that pay a living wage as an economically viable alternative to crime as a way of life. As Greenberg and Humphries (1980: 218) observe:

In the three decades following 1940, the treatment model made a certain amount of sense. Unemployment remained fairly low, so that there seemed to be a place in the economy for those who wanted it... The deterioration of the economy in the 1970s, with its seemingly intractably high levels of inflation and unemployment, had destroyed the material base for the rehabilitative ideal... The hope that all who want a job can have one ... is no longer even remotely believable.

In the context of rising joblessness in the 1970s, increasing the strength of local law enforcement was not sufficient to control the growing population of potentially criminal surplus workers as long as prisons operated according to the treatment model. By the end of the decade, many individual states had begun to replace rehabilitation as the primary goal of imprisonment with strategies to maximize incapacitation and presumably increase deterrence. An increasing number of U.S. states enacted determinate sentencing, habitual offender statutes, felony firearm laws, and other repressive measures designed to reduce crime by keeping convicted offenders locked up for longer periods. For example, in 1976 the Michigan legislature enacted a felony firearm law (MCL §750.227b) that made possession of a firearm in the commission of a felony a separate felony subject to a mandatory two-year sentence to be served prior to, and consecutive with, the sentence for the underlying felony for a first offense, and stiffer mandatory sentences for subsequent offenses (Loftin and McDowall 1981; Loftin, Heumann, and McDowall 1983). Then in 1978, the Michigan legislature passed the harshest drug law in the nation (MCL

§333.7401), popularly referred to as the “650-lifer law” because it mandated a sentence of life in prison without the possibility of parole for possession, possession with the intent to deliver, manufacturing, or delivering 650 grams (22.9 ounces) of cocaine and/or Schedule I or II narcotics (Affholter and Wicksall 2002). Michigan’s drug law prescribed sentences even more harsh than the “Rockefeller Drug Laws,” most of which were enacted as part of the 1973 New York Substance Control Act revisions (Tinto 2001:906). As a result of these changes, particularly harsh mandatory sentences for drug crimes, imprisonment rates began to increase during the second period of SSA decay, but would jump sharply in the exploration phase as more states and the federal government followed suit.

Turning to facilitation of capital accumulation, it is unlikely that the criminal justice system played much of a role during the second decay phase. The correctional system continued to release offenders on parole into the community where they were less likely to find jobs. Recidivism increased, and crime rates rose, as did the costs associated with increased crime. In addition, the criminal justice system did not expand its direct demand for more goods and services produced in the private sector, nor did it indirectly increase demand via increasing employment of law enforcement, correctional, and other workers.

Further Decay and Initial Exploration for Alternatives

SSA theorists argue that exploration for new institutional arrangements begins to occur within the context of economic crisis as the old SSA continues to decay (Gordon et al. 1982). This phase, which we have labeled as both decay and exploration, encompasses the Reagan and the first Bush administrations. The beginning years were characterized by “stagflation,” the unprecedented occurrence of high official unemployment rates and double-digit inflation.

Profits eroded and misery increased. The surplus population in impoverished inner cities grew, as did the underground economy, particularly the crack cocaine market, providing employment opportunities for young men and women rendered unemployable in the mainstream economy, as well as necessary goods and services at lower cost (Anderson 1990, 1999; Bourgois 1995; Wilson 1987). Sharp increases in violent crime accompanied the growth of the underground economy, particularly the illicit drug trade, as guns were used to enforce sales territories and keep workers in line, as well as in the commission of crimes for money to buy drugs (Currie 1993; Taylor 1990).

During this phase, individual states followed New York and Michigan in adopting harsh penalties for drug crimes and violent felonies, while the federal government waged a war on drugs. Four pieces of federal legislation contain progressively repressive strategies for controlling the inner-city poor, and reflect the abandonment of the treatment model of punishment, in favor of one founded on deterrence and incapacitation.

The Comprehensive Crime Control Act of 1984 (P.L. 98-473) abolished one of the cornerstones of rehabilitation, the parole system, at the federal level. It also established a commission to develop sentencing guidelines to limit the discretion of judges on the federal bench, overhauled the federal bail system, and endorsed pre-trial detention of “dangerous” defendants in the federal system. The law increased penalties for drug trafficking, and revised forfeiture of property procedures in drug-related and racketeering cases. Taken together, these provisions increased prison terms of federal prisoners and made pre-trial detention more possible.

The Anti-Drug Abuse Act of 1986 (P.L. 99-570) increased fines and prison terms for drug-related offenses, appropriated funds to build more federal prisons, ordered the military to identify unused facilities that could be used as federal prisons, and increased spending for federal, state, and local drug-related law enforcement efforts. The harshness of this law is revealed by the relative appropriation of funds between repressive and placative strategies—nearly 65% of the \$1.7 billion went for law enforcement and corrections, while about 12% and 22% went for preventative education and drug treatment, respectively. Moreover, one of the provisions of the 1986 law makes clear which group was being targeted—the surplus population in inner cities. This law stipulated a five-year mandatory minimum sentence for *selling* 5 grams of crack cocaine (the drug of choice in inner-city neighborhoods), while it would take selling 500 grams of powdered cocaine (a drug popular among those from the middle and upper classes) to earn a five-year sentence.

The Anti-Drug Abuse Act of 1988 (P.L. 100-690) contained provisions to coordinate the national effort against drugs and mandated more efforts in the area of drug interdiction along the nation’s borders and internationally. Two provisions were directed at the surplus population. First, conviction of simple possession of 5 grams of crack cocaine with *no intent to sell* was punishable by a mandatory five-year sentence. Second, the law created “one-strike eviction” where public housing tenants or, persons under their control, would be evicted for engaging in criminal activity in or near the premises.

Finally, the Crime Control Act of 1990 (P.L. 101-647) provided mandatory minimum sentences for drug-related crimes involving minors and near schools. It also established grant programs to assist states with developing new incarceration programs, such as boot camps for

young offenders. These programs tended to widen the incarceration net because they typically placed young, first-time offenders, who would have received probation under the treatment model, in secure custody (MacKenzie et al. 1995).

Taken together, this shift to a repressive penal strategy at both the state and federal levels helped facilitate capital accumulation in two direct and one indirect ways. First, by 1992, policies such as lengthy mandatory minimum sentences dramatically increased the imprisonment rate to a historical high of 332.2 prisoners per 100,000 behind bars in federal and state correctional facilities in 1992. Increasing the proportion of the surplus population behind bars aided profit realization in two ways. First, it expanded employment in the criminal justice system, particularly in courts and corrections. In the judicial/legal part of the system, the number of employees increased by 50.8% between 1982 and 1992 (U.S. Bureau of Justice Statistics 2007a), employing over a third of a million by the end of the decay/exploration phase. Similarly, employment in corrections more than doubled between 1980 and 1992, reaching over half a million employed by the end of the phase. Employment growth in these areas increased the number of consumers to purchase durable and non-durable goods, and services, and hence, profit realization.

Second, as the incarcerated population grew, state and federal prison systems became an increasingly lucrative market for goods and services produced/provided by private corporations. From the building supplies used to construct more prisons, to prison phone services provided by corporations like AT&T, to health services, to high-tech surveillance equipment, the corrections system became an important exploitable market. Between 1980 and 1992, the proportion of total corrections expenditures for expenses other than payroll rose from 38.4% to 47.4% (U.S. Bureau

of Justice Statistics 2007a, see Appendix). The other parts of the criminal justice system also served as increasingly large markets as the proportion of non-payroll policing expenditures increased from 21.5% in 1980 to 30.4% in 1992, while those in the judicial/legal area increased from 36.2% in 1982 to 42.1% in 1992.

Third, the increased severity of the criminal justice system facilitated capital accumulation by creating the image of a return to social harmony. This, in turn, contributed to restoring investor confidence that had been badly eroded by the social and economic disruptions of the decay phase. By reasserting the primacy of law and order, the criminal justice system contributed to capital accumulation through the vector of increased state legitimacy. In addition, high rates of incarceration among working-age men reduced official unemployment rates, creating the illusion that the economy was more robust in providing jobs than it actually was, thus further boosting investor confidence and system legitimacy. For example, Western and Beckett (1999:1043, Table 5) show that the average official unemployment rate for 1985-1989 would have increased 1.2 percentage points, from 5.5 to 6.6 percent, for all men if the incarcerated had been counted among the unemployed, while the average rate for African American men would have increased 5.3 percentage points, from 11.6 to 16.9 percent.

In sum, the decay/exploration phase of the post-WWII SSA witnessed major changes in criminal justice policy resulting in dramatic increases in prison populations. In turn, the role of the criminal justice system in capital accumulation shifted from supplying trained labor to industry, to being a more important player in profit realization. In the most recent exploration phase, these trends continued, with an increasing solidification of the criminal justice system's role in profit realization.

Exploration

When signing the Violent Crime Control and Law Enforcement Act (P.L. 103-322) into law on September 13, 1994, President Bill Clinton stated, “People who commit crimes should be caught, convicted, and punished,” and “‘three strikes and you’re out’ will be the law of the land” (Clinton 1994:1540). This sums up the key elements of the new repressive penal regime that is part of an emerging liberal institutional structure (Kotz 2003). The bill’s balance of punitiveness is shown by the relative allocation of funding. Law enforcement received the largest share of 44.4% of the \$30.2 billion, most of it going to state and local agencies for the much-touted hiring of 100,000 additional officers to patrol the streets, as well as other initiatives. Most telling is the \$9.7 billion allocated to four grant programs for state construction of an additional 100,000 prison beds. Each of these grant programs provided financial incentives for states to lock up more violent offenders for longer lengths of time.

The 1994 law also increased the number of federal offenses subject to the death penalty to 60, and did indeed mandate life sentences without the possibility of parole for those convicted of three violent or drug trafficking crimes. The bill provided new and stiffer penalties for violent and drug trafficking crimes committed by gang members, and authorized prosecution of juveniles 13 and older for particular serious violent offenses. It also required states to set up sex offender registries, and establish notification systems. It created new offenses or enhanced penalties for drive-by shootings, sex offenses, crimes against the elderly, firearms theft and smuggling, firearms trafficking, use of semi-automatic weapons, interstate domestic violence, and hate crimes.

Finally, the 1994 law prohibits awarding of Pell Grants for higher education to prisoners, a provision that had been proposed nearly on an annual basis between 1982 and 1994 (Ubah 2004:76). Since these grants had provided much of the funding for higher education programs in prisons, this provision effectively ended the opportunity to earn a college degree while behind bars, an opportunity that once served as an important source of successful rehabilitation (McCollum 1994; Ubah 2004).

Taken together, this capstone piece of legislation, and state laws that contain similar provisions, guaranteed that prison populations would continue to grow (despite dropping crime rates), employment in the system would increase, and the criminal justice system would continue to facilitate the accumulation function of the state in the realization phase of the circuit of capital. By 2004, the prison population rate had reached an unprecedented high of 488.2 per 100,000, with 1.43 million people held in state and federal prisons (Harrison and Beck 2005).

The unprecedented rates of incarceration during this phase had an even stronger impact on male official unemployment rates. Western and Beckett (1999: 1043, Table 5) estimate that official unemployment rates of all men would have been 1.7 percentage points higher (7.6 versus 5.9 percent) if those incarcerated were counted among the unemployed, while the rate for African American men would have been 18.8 percent compared with the official rate of 11.3 percent, a difference of 7.5 percentage points. Again, this creates the illusion that the economy is performing better than actually is the case, increasing both investor confidence and legitimacy of the system.

Employment in the criminal justice system also increased. Between 1992 and 2004, the number of jobs increased by 30.6% in policing, 33.2% in the judicial/legal part of the system,

and 32.2% in corrections, with 2.37 million employed in the criminal justice system overall.

This growth of employment in the system once again increased the size of the market for consumer goods and services and profit realization over and above the preceding SSA phase.

The proportion of non-payroll criminal justice expenditures in this SSA phase increased, suggesting more profits flowing into corporate coffers. Between 1992 and 2004, police budgets witnessed the largest increase in non-payroll expenses, rising from 30.4% to 37.5%. The judicial/legal and corrections parts of the system saw more modest increases between 1992 and 2004 in their budgets covering non-payroll items, with judicial/legal increasing from 42.1% to 43.3%, and corrections 47.4% to 50.1%.

The most recent SSA phase was marked by the passage of the final piece of legislation that brought punitive penal practices to the federal level, practices that had developed gradually at the state level beginning in the second decay phase of the post-WWII SSA, and made them the law of the land. These practices also changed the role of the criminal justice system in the accumulation process as the system and its employees became an increasingly lucrative market for profit realization. No longer is the labor power of prisoners viewed as a valuable commodity to be retrained, rehabilitated, and restored to the labor market. Instead, increased prison populations are the means to the end of profit realization.

Empirical Evidence of Historical Contingency in the U.S. Capital Accumulation-Criminal Justice System Relationship

We have argued that the role of the criminal justice system in the accumulation process in the U.S. post-WWII SSA has changed from a primary emphasis on retraining, rehabilitating, and restoring offenders to jobs in the industrial labor market under the tight labor market

conditions of the consolidation phase, to the criminal justice system and its employees playing an important role in the profit realization stage of the accumulation process. We also suggested that the efficacy of the criminal justice system would be undermined during the decay phases of the post-WWII SSA as the treatment model broke down and the new criminal justice institutional arrangements had yet to be put in place.

If these arguments are plausible, we would expect to find a positive association between criminal justice expenditures and capital accumulation during the consolidation, decay/exploration, and second exploration phases. A negative association should hold during the decay phase as the treatment model lost its ability to facilitate capital accumulation. Finally, the relationship should be weak to nonexistent in the second decay phase when the new punitive model of criminal justice was just beginning to develop at the state level.

Figure 1 shows the relationship between the logarithmic rate of change in non-financial, corporate business sector net fixed nonresidential private capital stock and the logarithmic rate of change in total direct criminal justice expenditures (see Appendix for data sources). Consistent with our institutional analysis, the two series move together during the consolidation phase of the post-WWII SSA. Then as expected, in the decay phase the two series diverge, with criminal justice expenditures escalating due to the cost of restoring order, while capital accumulation drifted downward suggesting that productive property loss and increased costs of crisis containment acted to dampen capital accumulation. By the end of the second decay phase, the series begin to trend together again, and do so markedly in the final two phases when the new set of institutional arrangements in the criminal justice system was in place.

[Insert Figure 1 about here]

Table 1 presents the zero-order correlations between capital accumulation and criminal justice expenditures series for the criminal justice system as a whole, and each of its separate parts. The pattern of results for the criminal justice system as a whole is consistent with our expectations based on our institutional analysis, and with our observations about Figure 1—a moderate positive relationship between capital accumulation and criminal justice expenditures during the consolidation phase, a moderate-to-strong negative relationship during the first decay phase, a weak positive relationship during the second decay phase, and moderate-to strong positive relationships in the two most recent phases.⁴ The remaining results in Table 1 conform to our expectations with two notable exceptions.

[Insert Table 1 about here]

During the consolidation phase, the relationship between corrections expenditures and capital accumulation is positive but weak. This may be due to the corrections expenditure series measuring the market potential of the corrections system and its employees, not the flow of offenders into the labor market. Other measures need to be examined that more adequately tap this role of the corrections system in the capital accumulation process that was of primary importance during the consolidation phase. In addition, it may have cost less to rehabilitate and return offenders to the labor market during the consolidation phase than it did to expand prison populations and provide markets during more recent phases, hence explaining the weaker correlation between corrections expenditures and capital accumulation during the consolidation phase.

The second somewhat unexpected finding is the weak positive relationship between police expenditures and capital accumulation during the most recent exploration phase when the

relationship was moderate for the total system and the other parts thereof. An examination of a graph of the two series reveals that the weak relationship is due to a single spike in police spending in 2002. This may indicate that the spending on law enforcement in the immediate aftermath of the 2001 terrorist attacks did not benefit capital accumulation.

These empirical results, while not definitive, do suggest that the hypotheses we developed in our institutional analyses are plausible. We now turn to our discussion of the implications of our analysis for SSA theory and directions for future research.

Conclusions

In this chapter, we have offered an historical institutional analysis of the changing role of the criminal justice system in the capital accumulation process. In the 19th and early 20th centuries, the criminal justice system facilitated capital accumulation through the direct provision of low-cost convict labor to capitalist manufacturers of non-durable goods. As an increasingly strong labor movement challenged this practice, it was replaced by a state accounting system designed to reduce the costs of imprisonment. In the post-WWII SSA, as labor markets tightened, prisons facilitated capital accumulation by training convicts in skills and work habits, and releasing them as potential workers for industrial capitalist firms. Finally, in the most recent phases, an “imprisonment binge” has served capital accumulation indirectly by restraining large segments of the surplus population from posing public problems in the form of crime, and directly by serving as a vehicle for private profit realization.

For SSA theory, we contend that our analysis demonstrates the importance of analyzing other social institutions beyond those considered to be the core institutions of a particular SSA. While SSAs do not contain all of “the rest of a society” (Gordon, Edwards, and Reich 1982:25),

there are social institutions that play important roles within particular SSAs. The criminal justice system is one such institution that plays both a role in capital accumulation, and in legitimization via social control of the surplus population. Other institutions such as the family, military, and education likewise should be examined.

For sociologists and other social scientists who conduct institutional analyses, our analysis demonstrates the utility of the SSA framework in explaining change in social institutions across long stages of history. The SSA approach offers a unified approach for analyzing such change, by allowing for historical contingency in the processes that lead to institutional change and its empirical effects.

Further analysis of the role of the criminal justice system in capital accumulation also is warranted. In particular, while the empirical evidence we presented here offers tentative support for the plausibility of our hypothesized scenario, further econometric analyses are necessary to develop more definitive support. In addition, this chapter has given relatively little attention to the role of the criminal justice system in SSAs before WWII. For the sake of completeness, this analysis should be expanded to include all of the capitalist era in the United States. Finally, we suggest that such analyses should be conducted in other nations. With the highest imprisonment rate among industrialized nations, the role of the criminal justice system in the capital accumulation process in the United States, may be the exception rather than the rule internationally.

Endnotes

1. The “criminal justice system” in the United States is made up of 51 separate systems—one at the federal/national level, and one in each of the 50 states. Each has its own set of criminal laws, and law enforcement, judicial, and corrections components. The U.S. Constitution limits the jurisdiction of the federal system to crimes that cross state lines (i.e., contain any element that falls under the umbrella of “interstate commerce”; Article 1, Section 8, Clause 3), but federal jurisdiction over criminal cases has increased over time due to court rulings that have broadened the interpretation of “interstate commerce.” For example, use of interstate telephone or mail services in the commission of a crime can bring the case under federal jurisdiction. In 2004, 17.7% of total criminal justice expenditures were at the federal level, 31.9% at the state level, and 50.3% at the local (county or city) level (U.S. Bureau of Justice Statistics 2007b). Policing is primarily a local function (67.8% of all law enforcement expenditures), and corrections a state function (59.7% of all corrections expenditures), with only 12.1% of all prisoners housed in federal facilities (U.S. Bureau of Justice Statistics 2007b). Despite the lesser role of the federal system, we focus mostly on changes in federal criminal justice policy because federal legislation marks the culmination of changes that occur within the state systems over time—i.e., it represents the consolidation of penal and law enforcement practices at the national level.
2. During the consolidation phase, official U.S. mean rates of homicide/non-negligent manslaughter, aggravated assault, robbery, and burglary were 5.0, 83.9, 56.7, and 442.0 per 100,000, respectively, while the mean prison population rate in state and federal prisons was 111.9 per 100,000 (see Carlson and Michalowski 1997 and Michalowski and Carlson (1999) for data sources). As we will see, crime rates have never returned to these historical lows, and there has been nearly a fivefold increase in imprisonment rates.
3. During the second decay phase, official U.S. mean rates of homicide/non-negligent manslaughter, aggravated assault, robbery, and burglary were 9.3, 238.8, 202.1, and 1,428.7 per 100,000, respectively, while the mean prison population rate in state and federal prisons was 120.0 per 100,000 (see endnote 2 for data sources).
4. Here we focus on effect sizes, not statistical significance, for two reasons—the series contain only a small number of time points, and the correlations measure the strength of the relationship between the two series in the population of time points, not a sample thereof.

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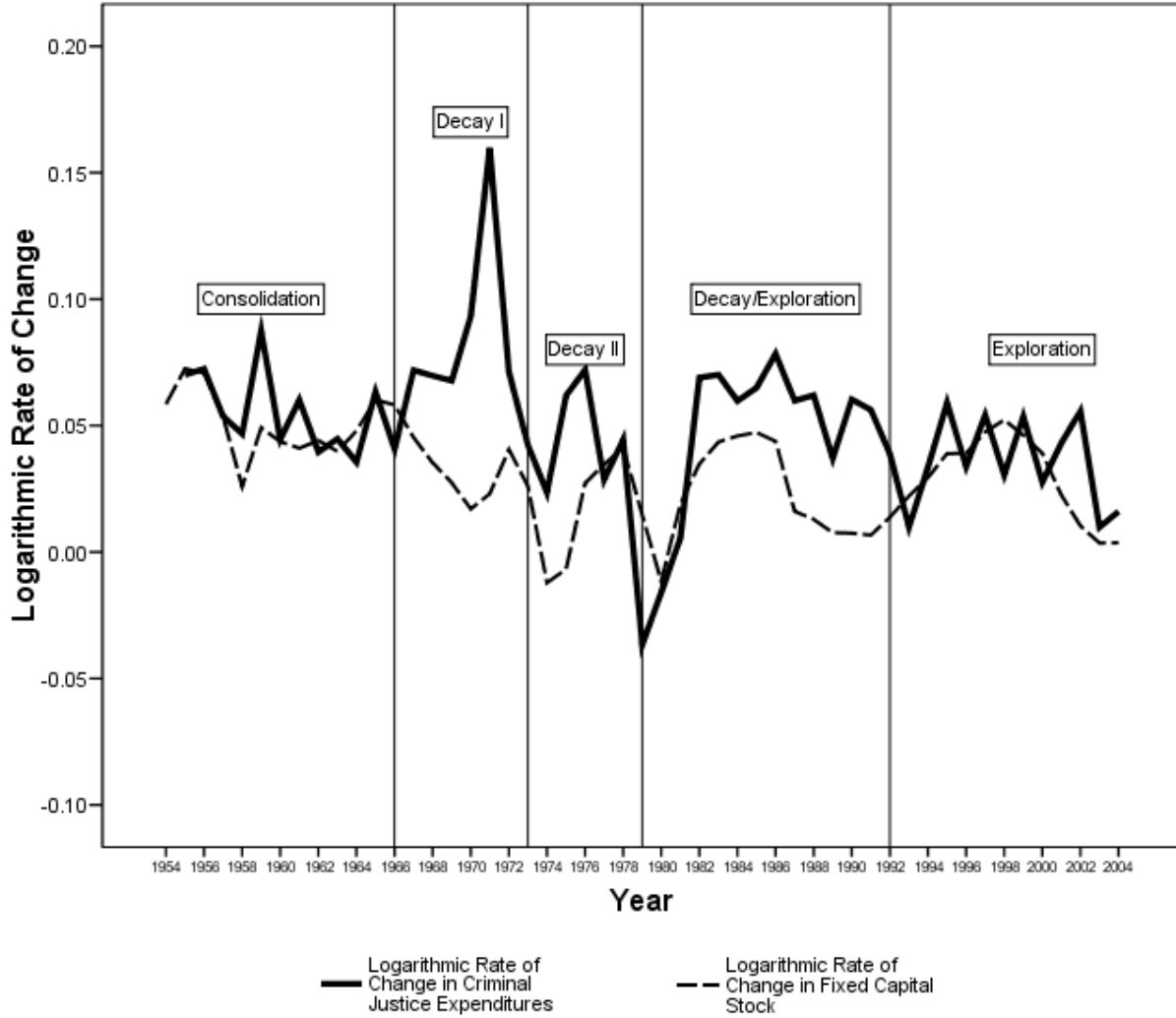
Table 1. Bivariate Correlations between the Logarithmic Rate of Change in Fixed Capital Stock and the Logarithmic Rate of Change in Criminal Justice Expenditures

| | Consolidation 1954-1966[†] | Decay I 1966-1973 | Decay II 1973-1979 | Decay/ Exploration 1979-1992 | Exploration 1992-2004 |
|---|--|------------------------------|-------------------------------|---|----------------------------------|
| Change in total criminal justice expenditures | .468* | -.516* | .099 | .569* | .440* |
| Change in police expenditures | .561* | -.448 | .093 | .576* | .110 |
| Change in corrections expenditures | .239 | -.491 | -.172 | .574* | .409* |
| Change in judicial/legal expenditures | .077 | -.171 | .369 | .459* | .399* |
| (N) | (12) | (8) | (7) | (14) | (13) |

[†]Due to data limitations in the criminal justice expenditure series, the consolidation phase covers only 1954–1966.

*Correlation is significant at $p < .10$ level (one-tailed).

Figure 1: Logarithmic Rate of Change in Criminal Justice Expenditures and Logarithmic Rate of Change in Fixed Capital Stock Across Post-WWII SSA Phases, 1954-2004



Appendix

Data Sources

Criminal Justice Expenditures, Employment, and Payrolls

Annual data on total criminal justice system, police, and corrections expenditures by all governments for 1954–1996 came from Carter et al. (2006, series Ec1159, Ec1160, and Ec 1163, respectively). More recent expenditure data were from U.S. Bureau of Justice Statistics (2007a, Table 6) for 1997–1999, and U.S. Bureau of Justice Statistics (2007b; cjee0001.wk1, jeeu0101.wk1, cjee0201.csv, cjee0301.csv, cjee0401.csv) for 2000–2004. Data for judicial expenditures only were available for 1954–1968 (Carter 2006, series Ec1162). Therefore, we calculated the proportion of judicial and legal expenditures that were judicial in 1969 and used this proportion to estimate judicial and legal expenditures for 1954–1968. The judicial and legal series for 1969–1996 was obtained from Carter et al. (2006, series Ec1161), from U.S. Bureau of Justice Statistics (2007a, Table 6) for 1997–1999, and U.S. Bureau of Justice Statistics (2007b; cjee0001.wk1, jeeu0101.wk1, cjee0201.csv, cjee0301.csv, cjee0401.csv) for 2000–2004. All expenditure series were converted to constant billions of U.S. dollars (1982–1984=100) using the consumer price index from the Federal Reserve Bank of Minneapolis (2007). We took the first difference of the natural logarithm of each of these series to obtain the logarithmic rate of change in expenditures used in Figure 1 and the correlations in Table 1.

We obtained data on the number of employees in the criminal justice system by activity for 1980 (1982 for judicial/legal and total employment) and 1992 from U.S. Bureau of Justice Statistics (2007a; eetrd07.wk1). Data for 2004 came from U.S. Bureau of Justice Statistics (2007b; cjee0402.csv).

Data on one-month payroll expenditures in the criminal justice system by activity were obtained for 1980 (1982 for judicial/legal and total employment) and 1992 from U.S. Bureau of Justice Statistics (2007a; eetrnd08.wk1), and for 2004 from U.S. Bureau of Justice Statistics (2007b; cjee0402.csv). We multiplied the one-month figure by 12 to obtain an estimate of annual payroll expenditures for each part and the system as a whole. We then subtracted the annual estimates from their respective total expenditures (see above) to obtain non-payroll expenditures, which is an estimate of expenditures on goods and services other than labor, and thus, a proxy for involvement of the criminal justice system in the profit realization process.

Measure of Capital Accumulation

For our measure of capital accumulation, we used a measure consistent with, but not identical to, that used in Bowles, et al. (1989, 1990). We obtained the non-financial, corporate business sector net fixed nonresidential private capital stock at historical cost in billions of U.S. current dollars from the *National Income and Product Accounts*, Table 4.3, line 28. This series was converted to constant billions of U.S. dollars (1982-1984=100) using the consumer price index from the Federal Reserve Bank of Minneapolis (2007). For the measure of capital accumulation, we took the first difference of the natural logarithm of this series to obtain the logarithmic rate of change in fixed capital stock.