


# TWO WAYS OF LOOKING AT A CRIMINAL: THE EUROPEAN/AMERICAN DIVERGENCE ON CRIMINAL PUNISHMENT

J a K d



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## INTRODUCTION: THE GREAT DIVERGENCE

F, U d S a c d b a a a c a  
a d a d a a d a a a d a d a d  
d c a c, E a d a b a a d ; B a c  
E a d a d a d a d a d a d a d  
a c a [E l c a a d a d a d  
b d a d d a d a d a d a d  
d b c a Ma ca a d ab ca a  
c c a a d d ca a a c a  
a a , a d a a ac ab a c.<sup>3</sup> W T c  
B a ca A ca a c a E a d  
A ca a a . R c a a a d  
c , b a a 19 c (a d a d a c ) c  
b a a a d S a d a d a d  
a a d c a d c a a d c  
ad d a d. S a 1960 a d c d 1970,<sup>4</sup> A  
M c a T a c d, a a a a a d b . A

c c d b d a c d a c d c. B ac, ca a  
a d d : a a b c b. A ab a d b ,  
E a d : A ca a d c a E T a  
c d c a c F a c<sup>8</sup> M a a d c a  
c a ( c c, E ) d ca a (d d a  
b a a a ) -c a a . A G a c a  
, S a a ad a a acc d c d a a d  
ba a a a a a a a a a a a  
c d c a a a d a a a c a c  
a d d c a d c a c a c .<sup>9</sup> T d c ad  
a d d c : G Pa c a a G a abb d a M ca  
S , c d a c c ba a d d d acc d ca G a  
a c<sup>10</sup> P a c d a a d : A ca a ca a  
a a a c .<sup>11</sup> E a a ca ab a  
F d c a d c b a c a a a d c a  
c d a a b a c . A ca c a c d c a d  
c a E c a a c a . A ca a d c c a  
c c ( a a c c a c ac ) b ad a d E a d  
ab c c c c c c ) a a d a d a a a  
( a d ) a , c c d, a a a a a  
add c c c , c c c d, a a a a  
A ca c a . M a A ca d b a d d c  
a c c d c b c a d d d c d d a a  
c ( a ac a a a ac ), a c a a d d c  
ca b ac d. C a a f c ca a b ac d b c a d d a ac  
c a a c , E a d c ca a a c a  
c d a a a : a d da a a b , c

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<sup>7</sup> Pa I.A.  
<sup>8</sup> WHITMAN, 1, a 71. G a d c c a ab  
A ca , b d b a a a , a Pa I.B, , G a ,  
d c c a a d c b ca c a d d a a ac a c a d  
d a d a d d c a d c b .  
<sup>9</sup> T a W a d, SENTENCING AND SANCTIONS IN  
WESTERN COUNTRIES 188, 195 (M c a T , d., Q d U P 2001). W a d  
a , a 82% a ad a c d G a c a c 1996 c d a .

<sup>10</sup> WHITMAN, 1, a 72.  
<sup>11</sup> Pa I.A.

and a d b a b c a d d c  
c a c a c a d a A ca a d : ba a c b E . F a , a d c a  
c a c a d c a A ca a d c a E I a c a ,  
A ca ac c a acc d c 12 c a ad  
a W E a d a c  
T c c a c a d c a A ca a a  
ca c a . B A ca ca a a 1% 2% a a  
da a d A ca a a a 2.3 a a  
d d .<sup>13</sup> B c a , Fa c , I a , a d S a ca a a  
1% a d G a d d 1%.<sup>14</sup> I ac d a a c  
b a , ac a d a W a a d ba  
c d c , ab 7.3 A ca a d c c a  
d 1 c a 45 ad <sup>15</sup> W a a d c  
a a a b I c a a d c a d d  
a d E . O d a A ca c a d c a d d  
d c a a d ac a b ac A ca a a c a d  
E a c c d A d a d d , a d  
a c c d , d a ,  
<sup>16</sup> d  
T c d a d ab a d c a a a  
a c a a b d a l c . C a d a a  
a d ; E d D a a a , a  
Ka a ca c a c a d b c a d  
a ab a c a d d d , c d  
a d a . T a c a d d a d c a d  
a c a a ( ), d d d c  
a d ca , c b a c a c a a  
c . I c a a c b a , a d c a  
W c , b ad e b a W c a  
c a d a d d , c , a d a

<sup>12</sup> WHITMAN, 1, a 3.  
<sup>13</sup> INTERNATIONAL CENTRE FOR PRISON STUDIES, KING S COLLEGE LONDON, WORLD PRISON BRIEF, :// . d . / / db / b\_ a . ( a d A 15, 2014).  
<sup>14</sup>  
<sup>15</sup> LAUREN E. GLAZE & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES (2008).  
<sup>16</sup> WHITMAN, 1, a 62-64, 71.

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A ca a d c c a d c a , R a c , a a 17  
T a d c c a a , a b A ca a d c a E  
c d a (A c a a ) c a a c b c b a  
a a d ( ) T a a a a a a d a c  
a a d a d a d a c a d W I a d a  
a a b a d a d a c a d C a c a d  
c a c , b d a d d d d d d d d  
T d d a d ab a d c a a  
; d a d c a d a d I a a c a , I  
a c A , c d d a a a a a I C Wa ,  
a a a c a a a a a a a a a  
d c ab b a d a a a a b a c a a  
c d d c a a a a a a a a a a  
a a c a d a c a a a a a a a  
c a a a b a a a a a a a a a  
I b a c a a ( 1970 ) a d , c a d d c b  
a d a c a a a a a a a a a a  
1990 a d a a a A ca c a b d a d  
b c a c a a a a a a a a a a  
a d c a a 18 T a d c a d b a a  
a a 1990 b a a A A ca a d E a a da  
a b a a d a a a a a a a a  
Na a c a a b ca a d a a a d c .  
(M a c , a a a a a a A ca  
a a d E a d a a a c c A ca a  
b a a d a d c a a a a ab A ca d  
a E a .) A b c b a a a d a dab c a , a  
a a a a a b b d. T a d c a a ac ,  
a d ca , ca a d c , a a a a  
ab ca d d , a d ca a c a a d c  
Pa II. W a b a a a a a a c d  
a A ca a d E a a a d a a a  
a a a . T d a a a c a d

17 FRIEDMAN, 1, a 74-75.  
18 S , 4, a 510. LAUREN E. GLAZE & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES (2008), LAUREN E. GLAZE & THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PROBATION AND PAROLE IN THE UNITED STATES (2006).

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a, b d d c a a d d a a d; a  
 ca c. T a A ca a a c, 19 a b a a d; a  
 d c c A ca C a b c, a a d d c a  
 d c c ac a d d b a. Y c a c d d c a  
 d c c a a. P a a d c a a a d  
 (W a ac a c a a)) T a a c a  
 c a d a a c a a d a d E a  
 a a a c a d c a a d a  
 ac (a) a a a a a ac ab  
 c d a . a a a a a a  
 T b c E a a a d c a c a  
 b b c d A ca a d c a E a c a  
 a d d a d ca a d E d a c a  
 a d a c a c a d a c a  
 a a d a b a a d a c a  
 T c a a a d: a d a c a d b a a  
 c a ac a a c a d l. d . E a c a  
 c a , a c a a d ab a d d a c a b  
 ac a a a . T a , E a a d ac A ca  
 c (c a ), A ca c a a d a d c d a  
 a d E a c a a d a c a a a d  
 a a a c: a a d A ca c a a c  
 W a I a d E a ca a d a a c  
 T d a ca a b d, a d d a d  
 ca ac . S c a ca a d a  
 F , A ca c a a d c a a d d a  
 E a c a a . G a a a d b , a  
 b a c ac a , a c a . B a b  
 c a c E a c a a c a a 20 a b . A ca  
 a a a a a a a a a I d

<sup>19</sup> WHITMAN, 1, a 6

<sup>20</sup> I a a a c a a a a  
 Da d Ga a d a c c . , Da d Ga a d,

c c (b ca c a ) d a a ; E c c  
 b . C a a c a W E a c  
 ( c a c a ad ), a d b c c ( c a W d  
 Wa II), a d c a b b E a U , C c E d ,  
 a d E a C H a R , a a a a . C  
 a U d S a a a c , a d b c  
 ( c a c ca a ), a d b c b  
 c a a d U.S.C T a a a c A c a a d  
 a a a c a d c a W E a a ( a ) a a a d  
 a a a c . M a , d a a c a A ca c ,  
 E a c a a a d b ca a a a d c ,  
 a ca b c a a a A ca a d d E a  
 ( , ab , a a A ca / E a c a ). T  
 a a b d a . c a a c a c . A b  
 A ca a d E , a a a c c a a c c  
 a ac ac d a A ca a c E a c a a c  
 a d a d , b a a c a a a c c  
 c a ac c , a d c - c a a a ca d c  
 ab a a ab ca . C a a a a d c b ca  
 a a a ac c : N ab d c c a ca ab  
 a a a ca a d . I c b ca d a a ca a  
 c a a a ca a d d a d a a a  
 a a a b d c M .<sup>2</sup> T c a  
 ( c I ca , c c , E ) a d A ca  
 G a a d ac c E a d , a c a a d b  
 a c a d c a a . c d U d K d a a d  
 c a d c a a a E a A ca d .  
 S c d , d c ab a a a a  
 c a , a b d a - , a a a c  
 c a a T a a a , a b . Ma W b d  
 c c d a - a a c ab c a c d a  
 c ; a b c c b a d a d a c c .<sup>2</sup> T d a  
 a a ca a a a a a ab a ca  
 a a d d acc a a a c .<sup>2</sup> I d , W b a , b  
 a d , d c , a d cca a ab c c d d a

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a , 74 S c a R a c 435, 437 (2007) ( A ca a ac ca ,  
 a a E W . )

<sup>21</sup> WHITMAN, 1, a 17.

<sup>22</sup> R c a d S db , T Ma W b D c a 119 (2005)

<sup>23</sup>



a a a d a a c a c .<sup>24</sup> T c d  
c a d c a c d a a c c a . T a c d  
ca a a d a c a a a c c a . Ob d, b  
c a a d a c a a a b a c ca a d E a d  
c a a c a I d a ab . T d a - a d  
a d a d b ca a a c a a b ca a d  
H a c a a d b ca a c a a b ca a d  
a .  
T d, c a ab A ca a d E a a c a  
d c a I a a ab c a d a . T a d d  
, b a a E a a c c a a d E a  
a a a a a a c c , a a  
ac<sup>25</sup> A E D (a d d  
A c ) M a , a a , ca b d d d  
. O ca a c d a d a c ca a a . T  
T b E a ab a b c c ab c d .<sup>26</sup>  
. A a a b a c b a c a d a  
c a d c a d ac c . C a ca b a c a d<sup>27</sup>  
F a a c a ca d a d a a I  
a d c . T a a a a b a ab  
A ca a d E . I a a a d c b a A ca a d  
E a a a a a a d a , a d a d a a  
a , a d b a a a a d a d c a  
a a c a a O a ab a b a a a  
ac c d b a a a a a . T a a  
d c , c c ca a a , a c ca b d d a  
a a d a d a a c d a c c a  
c a b c a d , da a ca [ ]

<sup>24</sup> Ma W b , E a M d S c a Sc c . 90 (Ed a d S & H A. F c ,  
d . & a ., F . P . 1949).

<sup>25</sup> RICHARD A. POSNER, THE PROBLEMATICS OF MORAL AND LEGAL THEORY 5 (1999).

<sup>26</sup> EMILE DURKHEIM, (1906), SOCIOLOGY AND  
PHILOSOPHY 35, 35 (D.F. P c c a ., 1953).

<sup>27</sup> F d a a a d c b c c a c : T  
c a a c d , c abb d a a a , ab a bd c , a bd c  
c a F d a , 1, a 10.

8

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. A c . a . a . a . a . ad . a . A . ca c . , a d . c  
a . d a . a . a . A . ca . a . b ac . a . O . A . ca . ac . d  
da . b . b . d . c . a . a . c . a . c . d . , a . c .  
c . b . c . a . d . c . a . d . c . ab . a . d . T . a . a . ca . b  
c . a . a . A . ca . c . d . E . a . c . d . d . c . M . a . a . d  
a . ad d . a . a . E . a . d . a . S . c . d . a . a . d .  
c . c . a . c . . d . f . a . d . a . d . d . a . a . ab . a . d .  
b . .  
Pa I A a d IB, b . , d . d . ab . , a . a . A . ca . a d  
E . a . c . a . a . a . a . c . d . , a . d . a . a . a . b . a . a . IC  
d . c . d . ca . a . d . a . a . c . a . ab . a . c . a . a . d . b . c . Pa  
A . ca . a d E . a . c . a . a . Pa ID d . a . a . a . c . c . a . b . c  
Ha . a . A . d . c . c . a . a . a . a . P II . a . d E . a . a . d . , a d  
Pa I . , a . a . a . c . c . a . a . A . ca . a . ab . ca . a . a . a .  
d . c . a . a . a . ab . a . a . .  
F a d , C c . a . a . a . a . c . a . d . T  
a . a . Pa I a d II . d . c . a . b . c . ? S ? d . b . d . b  
d bac . W c . a . c . a . a . c . a . c . ? S : N , , a d  
c . a . I d b . E . A . ca . a d E . a . a . c . a d Ic . d . ca  
. T . E . W a . d . a . d . ca ac . a . a . d . a . , a d a . , A . ca  
c . a . a . a . d . acc d . b . a . a . a . ca . E . a . a  
a . a . b . E . a . a . a d . a d . a . d . , a d  
A . ca . a d

# I. DIVIDED OVER THE MORAL CHARACTER OF CRIMINALS

C c a . Ba a c T ca ac a a , b d c c ,  
ca ac a b d ca . T ca ac a a , b d c c ,  
d a d a d -d ca ; ba d . Ba a a b , a ,  
a a a d -d ca ; ba d . Ba a a b , a ,  
a . Ba , , a -ab d , a a d b  
da c ab . W a I a a A ca c a  
c a c ba ca ac a a E a a b a : A ca  
d .  
W a a d ba ? I da a  
ca a , d ba c a a a a d  
Ca a a ab d a b d Ap ( A d L d a d Ca . .  
[A , I a a a a d / I b ca I d a a )<sup>31</sup> H c ( J  
c , I A ca a d A a a c c a a S a R  
1868).<sup>33</sup> T a a a a d a , c ba  
a d c , , c , a d a d a ab  
ba c ad a a a d d a c . D d a c a  
ac c ad a a a d d ? N d d . H a a ca a  
ab a d a a d , c a ac c a a [ ]  
ac a a c.<sup>34</sup> B a H d , ab a a , c d  
c , b d a , d a a , [ ] d c  
c a c d .<sup>35</sup> T a a a : d c , a d a  
T a a a H a ac ab c , a b d . O  
d a c , a a a c d a a ca b d . O

<sup>31</sup> K Ja , G 4:9-12.

<sup>32</sup> HOMER, ODYSSEY, 15:302-04 (R b Fa a , 1996).

<sup>33</sup> SEAN O TOOLE, THE HISTORY OF AUSTRALIAN CORRECTIONS 22 (2006).

<sup>34</sup> , FRIEDMAN, 197, a 77-82.

<sup>35</sup> OLIVER WENDELL HOLMES, JR., THE COMMON LAW, 5 (D P b ca 1991).

[illegible]

36 DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 12, 14 (2001) ( "I a decade, a b d a a ca ac a a . . . [T] a , a a c a ab a , b a a ca ac a a d a , a a ca d a d b c a a d a b . )

37, 14 Ca .4 1005 (1997).

38 S a D c d , 16

259 (2011), a d  
(C a a J. O . J ., & A S a a , d ., NYU P . 2012).

<sup>39</sup> JOHN M. BEATTIE, *CRIME AND THE COURTS OF ENGLAND: 1660-1800*, at 616-621 (1986).

<sup>40</sup> I a ba a d a ; O c , a da a La c F d a a ,  
a da a FRIEDMAN,

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P. a a, a d K. c d a ca d ca a 1795 ( d  
 a ca a -d a a J d S a ) a  
 add a d b d , a a ca 41 P  
 a a ba b . E. a ca a a d c a  
 d a a c . Ca a a a b dd d c c a  
 (c) a d da c c d a a d c a  
 b a a a ab a d b a a ba d c d a  
 c c b d a a f a c c , d a  
 ca a a a a a a , d c d a b 42 A  
 a d d c d a a a a ba ;  
 ba d c ca a a . T ca a  
 T a a a ba a . W d a  
 a a c a d a d a d a a d  
 a d , a a d c d a d d B  
 a a a d f c d a a d a  
 . I a a a d a a a , b a a d a a  
 a a a da o a a d a I a . L , a  
 a c a a - d a d b a d a  
 , b a a ce a a a d b a d  
 d d a d b a T a , b d, ba d. L  
 dd a d a , ad. c . T a a  
 a a a ba . N , a a a  
 b c a a a ba , b a , a a  
 b a a ba b a .

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197, a 41. W a a a : I a da c , a d  
 a , a a ca ac a . . . . WHITMAN, 1, a 53.

<sup>41</sup> STUART BANNER, THE

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F a , d a c , a c a a c a d c a c  
a a d ba c a d a a ba : a c  
a a d c d A d a a , I d a , a a d  
d a ba d c ba a a a T  
c a a b ca a b c a l ( a a a a  
a ca ) a d a a c c c , a b a , c a  
a b . E a a c a c d d a a  
a b d c c . I a c ca a a a  
a a , c d d a . I b a c d a b d c ac a  
a ca d c d a . A b ca a a d a ba . B  
c c a d a c a a a a ba  
W a a b d a a d ba :  
d a , a a a c d a T a a b  
b a ba c W a I d d l a a ,  
A ca ba d a d E , d d c , c a  
a a .  
Ca a a - a , c . E b a d  
A ca a d ac c ca a , a - . S a c  
c a  
T C a P a C d ( , abb a d S GB ) c  
P a b a a a b d a a .  
a a b c b d ( c G a d .  
a a a c a ba l c a d , a  
d , a a c b a a c a .  
d , a a c b a a .  
44 Pa I.C. I d a b , b ca d a a  
a . I ab a d a T ba c a a b d a  
d c b

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H , a c d c ca b d d c c  
G a a . P d d c a c d ( c d b c c ) a d ,  
G a c a a a d ,<sup>47</sup> a d a a a a a a c b c a d<sup>48</sup> A a ,  
a a c d , G a c a c a d a a a . I d c ,  
a ) a d a a a . A d a ( c d a I d c ,  
G a F d a C a C d 1977 a c a d ,  
a a a ab a<sup>49</sup> F , S GB a a d  
b a d a a c a a c c c d  
a a a a c a d c .<sup>50</sup> ac c ,  
a a a a d a a c , G a ,  
a a a d a a c ba a d a ba



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a , a d a d a .<sup>56</sup> O , a c  
a b c a c d d a b a a a , a ( a )  
a c a d a c a a d c a d a d c  
c a d c ( a a d F a c C a c )<sup>57</sup> F a c c  
a d d a a d: d a d a d a a c a d  
b a , a a a c b a b a a d d a a  
a . B c c d a a a b a a c a d  
ba a .<sup>59</sup> G a b a a a a a a a  
( a a ) b a a a a a a a  
a a a a I a a a E a d c B  
, d da a a a (a d da d a  
da a a a a a a a a a a a a

a a b . T d a d d c J d P -F d  
c c c c:  
[W] a d c b a a c a A c f c a a a b d c b d a a ,  
I a a d c a a c a c a c , a a  
ab a a c a d a d c a d . T c c  
I a c d d a a a d c a b a a c a a ,  
d a b d d a a c c T d d a c b d d ad .<sup>64</sup>

M a d a a d . T c d c a a  
a d a a d c d c a c a a a  
a d .<sup>65</sup>

T ECHR a ad ; d ca , ECHR a b d  
b a .<sup>66</sup> A 2013, E . I d d , ECHR a c a  
a d a b d d a a c a a E . A C :  
[T] . . . c a E a a d a a c b  
a ab a a d c a a a ab a ac d b ca ab [ ]  
a d ab a c c .<sup>67</sup>

T c a A ca a a d . F A ca  
a a d a d a b c c a a a ( ba a a a  
ba d ca a a . U d d a a , a c a a  
d ; a d d a a d G d c c d :  
a b d c d ; d a , abd c , a  
c d abd c ; d a , abd c , a

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<sup>64</sup> (c c J d P -F d ).  
<sup>65</sup> a 113.  
<sup>66</sup> A d c d b a a ca b c d (b ca , a a ,  
a a a c a ac a d ) . E c a b d (b ca a a  
a a c ( c d c a c a d ) , b a a  
<sup>67</sup> a 113-14.  
<sup>68</sup> Ba . R v , 533 U.S. 35, 79 (2008).

a ; b a a d a a b c c a ;  
 ca ac a a ca ; a c a a c d  
 ( c d c a c a d c c T ,  
 U d S a , 42.4% a d a a a a  
 ba c a a a 70 I G a a 2011, 4.7%  
 a d I a , 2 % . I c a a ; S a 6.8% F a c , 15.2% ;  
 b a d U S a . ba a a ca  
 P a , d a a a a a b  
 c a a d LWOP a c a c a a Pa b  
 c a a b c a T d a a c d ca  
 c a a U d S a a , a a , ca a a  
 LWOP a a a a a c a a a a a Pa  
 a c b ( a b ) a a d a ca ab a  
 c a b c , a a a a a d , c a ab  
 N a d d d A ca c a a d , a a  
 ab d d d a a 72 T d c a a c d  
 c . T d d c U.S. S C c d  
 E a C d H a R a d E a C a  
 a d a d ad . . . ; a a a  
 S a C d d b c a d c d c U.S.  
 a d d c a d ( J c d b C  
 b ca a l . c c , a d c . ) W a  
 C d a a d ba : a a c d a  
 D d a c A ca - c a a c d d a  
 c a b d . f b a a a a a d

<sup>69</sup> G d . 2A2.1, 2A3.1, 2A4.1, 2B1.1, 2B3.1. O  
 d d c a a E a d A ca d c d b ca  
 a d a d b b ca a a d a d d b ac  
 E a d -d a a a a d U d S a , c  
 ca bac  
<sup>70</sup> F d a B a P // . b . / c #3.  
<sup>71</sup> C c E , A a P a S a c 108 b .9 (2011).  
<sup>72</sup> C C C Ac 1984, P b. L. N . 98-473; U.S. DEPARTMENT OF  
 JUSTICE UNITED STATES PAROLE COMMISSION, HISTORY OF THE FEDERAL PAROLE SYSTEM (2003).

## TWO WAYS OF LOOKING AT A CRIMINAL

a a a a a c d a d a ( . . , a d a ?  
a a d b a c c d . H d E a d a  
P T d c a a a c d T C a C d  
a a a a a c a c d a a  
b a c a b d a a b . H a d .<sup>73</sup> T G a a  
, ca b a a d a ca , a d a a  
aca ( c a d , b a a a d ) .

79 T ab a E a a ca ac a a h a a d  
 80 A d a c a d , a a A ca  
 a a a d ca ab E a d c a a  
 a a a d (N a a d a ), ac a a  
 a a a d d b a b  
 82 a  
 W a c c a a b a d a a A ca . T  
 E a d c a a b ca d d a c a a c d  
 a c a a R a a a c d b a a , c  
 c d ca b a d d d c a d c b a c  
 a d d a c a c c a a d c a d a d  
 c a . T c a c c E a ac c a , b a  
 - d a a , b a a , a d a a d a b  
 b ca d d a b a a d a , a d a d b  
 d a d a a a c a b a d a . T c a c d  
 A ca ac c a c c a b a ac : a  
 c a ; a a a d c a a ac a a  
 a b ab ac  
 Ta a d ca b c ac c . O d ba , d a  
 a d ca b c ac c . O d ba , d a  
 - d ca b c ac c . O d ba , d a  
 ba a d c a a d a c a d a ca ac a  
 . O ab c a a d a c a d a ca ac a  
 a a c a a c d Y a a , a d a a  
 a a E a c a b bad b a . N c a  
 a a ab c a . I ac  
 c a

<sup>79</sup> C.P.N. 133-13, 133-16.

<sup>80</sup> A . C L b U , O S W W d: A A a F D a c  
 U.S. a d O D c ac 6 b .1 (2006), :// .ac . / -

<sup>81</sup> P Ra E a Ac 2003, 42 U.S.C. 15601(2) (2011) ([E]  
 c a a d a a a 13 c a U d S a a b a  
 a a d . ); NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 25 (2009),  
 :// c . / d 1/226680. d (Ma c d a ab a c d c  
 ca c a a a d ba . . . ).

<sup>82</sup> A Ma , , F P c , J 25, 2011



<sup>83</sup> b  
<sup>84</sup> 12%  
<sup>85</sup> a d  
<sup>86</sup> T  
<sup>87</sup> I  
<sup>88</sup> P  
<sup>89</sup> WHITMAN,  
<sup>90</sup> CAL. PENAL CODE

a d c b a d ad b c c d a ac c.<sup>91</sup> a , c d  
 a a ac a d da c.<sup>92</sup> B S C a d ad a b c a a  
 c a a c a : a d a a , C d b c a a  
 Ca a a l a d a a c d d  
 a d c c a ca ac a d.<sup>93</sup> a d ba a  
 A ca, a a a a a a d a d ba a  
 c a c d c a a a b a c a a . O ac a  
 c a ac a a A ca c a a ac a d a  
 a : a ac a c a c a a , b c a acc d c  
 c a a a d da d d c a a acc d c  
 a ab a a a a c a ab ac a d a c  
 d c a c a a a b c d c a . I A ca,  
 c c c b c c a .  
 W a d E d ab a d ? R c d a c a a  
 c a a a c a ac . T ac / d c a a  
 a a a . W a a d a b , ac c c a  
 W a a d a b a c a c , a c ,  
 a , b d (b ca ca ) a a ac a ab ac .  
 Ac a d ac a d a d b a a d ca b  
 , a a a d b a a b a d d b  
 ab ca . F , a c a ca a d b  
 : a ac ca b d a , a d a d a a  
 c c d . T a d d a a a ba a a  
 a c a ac . R c d ab d a c a  
 c c a a d ac ca .  
 T c d ac E a a , , b acc a  
 a , T E a a d d. F , E a d c  
 a . L a a E a a , 1970 (a a d b  
 a a c c ) , a d c d ca c c d . S c d,  
 E c d a d c a ad a d d c (a d a a

<sup>91</sup> E . Ca a, 538 U.S. 11 (2003).

<sup>92</sup> L c . A d ad , 538 U.S. 63 (2003).

<sup>93</sup> 538 U.S. a 11.



## TWO WAYS OF LOOKING AT A CRIMINAL

ab d a c a a c d ). A d d, E a d c a d a  
d a c d c a ac d d d  
I a , H a c , a d G a a a a  
a d b a d d c a c a  
a c .<sup>94</sup> F a c d c d a a a a b a a a  
b a d .<sup>95</sup> N d c a d H d Sa a a c a a  
c d c a d ) G a 1970 ad a c d a da a  
b C a C a c a d a F d a S c G d ,<sup>96</sup>

a b d c a d a ac , T O  
G a P a C d, d B d P . T a d a R b  
P , a b d a c , d M a R d a  
c a a d a d d b a b a a d a c  
100 T a c d d d S A ca a a ab  
a a d c a c d a c d a d c d  
a d d c a a , c da a d P , a d ca  
101 d d d d a c a a d T M a  
R a d P a d a c a a b d , d add c , a d  
c c c d 102 R d d a c c a a b d b a  
C a C a d a a a a a d I d d, G a  
103 add a  
104 a d d a a a a d d d  
105 A a d a d a d a d 106  
ab a d a d a d a d a d a d  
c c a c , b a c d a c c d d a  
c a .)

T a a M a R a d P G a d c a  
c a b a c a a a a d G a d c a  
d c A 1998. a d a d a d G a d a a  
a , a a a G a a - 107 I c d a a  
c a , b a d ; ac a c a  
I G a a d A ca . I a c c a a d c a a  
ca ca , a c a a b a ca U c

<sup>100</sup> S GB 66.

<sup>101</sup> S GB 66.

<sup>102</sup> 61.

<sup>103</sup> HERBERT TR NDLE & THOMAS FISCHER, STRAFGESETZBUCH UND NEBENGESETZE 67d, (52d d. 2004).

<sup>104</sup> S GB 67d.

<sup>105</sup> 67.

<sup>106</sup>

<sup>107</sup> MEIER, 62, a 227.

# TWO WAYS OF LOOKING AT A CRIMINAL

U.S. d a a , d b S GB a a a d a  
c c G a a d d a G a a a a d a  
a d a a ;<sup>109</sup> a d a d b a a a d  
a a a a<sup>110</sup> H c d d a d a d a a U.S.;<sup>111</sup>  
G a a a a d d i ( d a a a d a d a  
a a a a ) b a a a a a c a c d a d a  
a d b G a a c a a a a a a a d a  
A c a d d a a a a a a a a a a a  
a d c a c a a a a a c a a d a a d  
a a a a )<sup>112</sup> I G a a d d b H c d  
c d a a a , S d d a a a G a ( A c a  
d Ca a a ). c a a a a a a a a  
L a c a a a a a c I a a a d c  
c c b a a a d , c c a c a a a d  
c a c a b a a a a a a a b d  
c a a a a d I N Y , c a a d  
a a d a a a a a B a a a a a  
d c a a a a<sup>113</sup> I G a a d c a a a  
d c a a a a a a a a d a d a d  
a d c d (b a a a B a a a d  
a d O a c d a a a a a a a a  
d c a a a a a a a a a a a a  
- a a a a a a a a a a a a  
a a a a a a a a a a a a a

---

<sup>108</sup> G d 2B3.1.  
<sup>109</sup> S GB 38(2), 250(2).  
<sup>110</sup> R ca a a a d a a a d a a a a c a I add ,  
G a d a ca (a d d a a a a a d  
d a . GERHARD SCHAFER, PRAXIS DER STRAFZUMESSUNG 290-92 (3d ed. 2001).  
<sup>111</sup> G d 4A1.1.  
<sup>112</sup> G d 4B1.4; Ca . P a C d 667.  
<sup>113</sup> N.Y. P a C d 70(2)(b), 70(3)(b), 130.35.  
<sup>114</sup> S GB 38(2), 177(2). G a a G a a  
a d a a c a a a a d  
a a a a c b a a I d a A ca a a a c  
G a c a a c d d b d a b a b d a d c  
c . A d a c ca a a a a a a a a d  
d c b d a ca a b c a a a a a a d  
a a ; ab a , c a a a a a a a  
a , c a a . S GB 177(1), 177(2).



## TWO WAYS OF LOOKING AT A CRIMINAL

L b b a c a c a a a a  
a a a ab ca a a ad a a c d a d  
ca a b . A d a d ca a a a c  
d c a a a a a a a a a a a  
O E a d, ca a a d a a a a a  
I ab c E ,<sup>118</sup> a ba c a a b E a U<sup>11</sup> a d  
C c E ,<sup>119</sup> a d a a a b c a d d b a a ( a  
c a a ) a E a a b E a a d R a ( a a  
d c a , d d c I a b a P d c K K a d  
c a , a d a a , a d a a a a d  
d a d T a c a b I ab ! I ab  
I ab !<sup>121</sup>

## TWO WAYS OF LOOKING AT A CRIMINAL

a d a a , ca ac a c c a d c a a a a d a c A d a a a d . A ad a c a d a M A d a d c a d a ab b a a a a . T add a d c a f<sup>26</sup> a d a d da a . B /D a ca a 1980 a d a . T ca d da d a .2 () 0(a) () -7.7 c a2 ( d ).2 ( ) 0 a d d , 1988, c d

125

a d d a d ab .<sup>132</sup> Y c a L a d R  
 d ba , a d a ab d b a 369 116<sup>133</sup> A d ,  
 G a ab d c a 1949 W G a a a ,  
 ab a d c 70% 1960 .<sup>134</sup> I a a d a d  
 1960 a E a d , a d a d a  
 c acc d , a d c ca d a c c a c a  
 S ca a d c d 1950 a d a 1960 ,  
 ab 60% 1949 a d 47% 1966. W S C  
 T d a c a d. Ca a a ac c , d ab .  
 1966 a d. <sup>136</sup> S a , c ca a a  
 c b a c a b c a b c b a a  
 A d , a E a /A ca d ca a  
 a a a a ca a a b a c  
 E , a d d d b a ca d  
 E . A a a 1760, ca a - ;  
 (

# TWO WAYS OF LOOKING AT A CRIMINAL

K. c , a d P. a a ca a d ca  
b d d d d a a c a ca a d a d  
b d b d a d a a , a d, da , ca a a d  
ca c d d, a a a a d -a a a d . W a  
a d a ca d a c C b a U a a b a  
c d d ab a a c a d a d a ,  
b c a ca a . 141 T a a c a a d ad ba  
a b a a a a da , a a d cad  
a a ad a ab a a d ca  
b d ). I ca c , c ca  
A ca b a a c a l . c ca  
Y d b ca a b ca a b  
a a a E ? W d c a a d-a- a  
c a a d a c a W d? I c a a ab  
c a a ca a c d b a d ad, b  
c a , a c ca a c a ba d ,  
l a ca a a d b ca a d 142 c a d a  
T ca b a a a a a d c W a a d  
a a a a a a c d. M a a d b  
a a . M a a ca a a d b  
a ab d .  
S I d a a a d a a a a  
d a a c b a a ca a ? A d a a I  
a a , a a ca a a c c d a a c  
b a a ca a ? H d a a ab a c

140 a 98.

141 a 88.

142 T b a ca a d d d a ca , a d a  
c a : c a c c da a b ab d a a . NATIONAL  
RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, DETERRENCE AND THE DEATH PENALTY (2012).  
d c a a ca d a c a a a d a a  
a a .



# TWO WAYS OF LOOKING AT A CRIMINAL

T c c a b : d a a ,  
b c a b c a d a  
( b c a a ), c a a c a a d ,  
c c c T da ca ac a a a d ,  
ca T d a c d ca . F  
d a a , a b a d a a a  
a a , a d , a a a  
p ca d ( . . , c c a ac d a a a  
d d )<sup>143</sup> B a  
O d ca a a a b b ca a ca b  
a , c a a ; d , ab c a  
ca , c ca a d . M I a , a c a  
b a a U d S a A d b a a d E  
d a a a ac a E a a b a d E  
ca c d a a a d b d a a a c a  
ab d a a a a d . I a E a a d ca a  
d b a a a a d a d a b ca a  
c a a E a a a a T O d a  
b a a E a /A ca d d ca a a ab  
a a d .  
W d a a a d ?  
T a c c I , b a d a a ; d  
c d a a , c , E a A ca d c T a b d  
b d a b a a a a ca d ca d a  
a a a . W a a a c ca da  
a a a a a c a b a a ac ca  
a d d c c , a ab ac d. [R] a a c

---

<sup>143</sup> W a a a a a a C a c a a D c a a d  
, cd a , L a a a a d d b a a a R (a d a a  
a a a a a a a a a , O a ab b ca a

Figure 10: A complex diagram showing a dense arrangement of vertical lines and labels, likely representing a data visualization or a complex system. The labels include various letters (A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z) and numbers (144, 145, 146) interspersed among the lines. The diagram is highly detailed and appears to be a technical or scientific representation.

TWO WAYS OF LOOKING AT A CRIMINAL

; a a a c a c a a  
a a . Ca a a a  
ab a a c d. H b c d a b c a a  
a d. T c a c d d . I c d  
c a c , a d c a d b d;  
b a a . W a d b a d c d b  
a d d a b N , a W c d b  
Ab G ab , a d B a ) c c a  
d a d . T (ab ac , a d A ca b  
T a d a d (ab ac ) b c a b  
a a , d d a d a .  
I ab a , c d c b a d ca a  
a a a b a d a b d d ca  
a a a T d a d a d d  
a (a a , c d a a d b : ,  
c d a a d d d b a a d b  
a a a b d d b ca a . W  
d a a a d , E d ca a  
c Na b ca , a a d a b c I E  
a a d d d b d d . D a E c c b  
a a d d d d a d c c .  
T , a a a a ca a a a  
d d a a b a c d c a a c . I , ca a  
b ca a b a a c a c a  
a a a d a d b a d I a a  
ca d c Pa , a ab a a  
a a a . I a a c a d c a  
a d a b ca a a d ; A ca c a  
a d a d a  
T d c b ab a d a a a c a  
a c a . T ac c a ca c a  
b a c a . A ca c a c a d a

c a ac d a d ; E a c a a a  
c c a d . T d a a b c  
d a ab a . I a b .  
E a c ab a d d a ab acad c a  
a a ab . T c c a a d, , ab , a d  
d, a c a a c a a a d  
. C a c a a c a a a d  
147 B b a a c d b c d a d ab d, b ca  
b a c a a b ca a d E a a A ca a d  
E a c a a a d ac a /c  
a a , c a d a d a d a a  
d, a a d, da , a d a a a  
a . Ac a a d b a : c a a , a c a a d c a c  
c , a d a c d , a d A ca c b a a d a  
c c ? A d a , c c c (a I  
a c ), d b c a d a ac c ,  
c c ac ce ba ac a d . W d d  
da a d ac  
T a a a c c a ad c d c c  
a a a c c a acad a. E a a b c  


---

147 N c a d c c a a c c a  
acc d a c ( b c K a L c  
, B . C . L. R. 687 (2000)). U a a c a d  
a d c a b a , a a a a a a  
R S. C a & Mad Sa , 7 C L.F. 1  
(1996). Ma a D ca a d a  
a d a b c c a a

## TWO WAYS OF LOOKING AT A CRIMINAL

a c . Sa A d a a b a a .  
T a da a a ab c, a ac, a a a . 149  
c a ac ca c a ca ab . P a a  
c d a a c a a 150 C K aa d a ab d a c  
c c d , c [ ] , a , d ad. 151 a c, a d  
C a ad ca a d , a d a a  
G d a d , ch a d a , G d. O Sa a  
O a a : ac ?  
L a b b ; a d a d  
N da b d , . . .  
S a , a d a ,  
Fa : a d 152  
E b d ;

F M , a , a ad b a c , a a a , b a  
a a a c a d c c. C K aa d ca  
a d c c , [ ] a d d a  
c a ac d a ba ca a d c b ad C a ad ,  
a a 64 H a da a a c a d c c, d a  
F M c a a ad b a c , b a d a c.  
a ab b c a , a d a b d d ,

<sup>149</sup> AUGUSTINE OF HIPPO, *THE CONFESSIONS OF ST. AUGUSTINE* 37 (J.G.P. 1979) (397-401 A.D.).

<sup>150</sup> PLATO, *SELECTED DIALOGUES OF PLATO* 25 (B. a J. a ., M d L b a C a c 2001) (380 B.C.?). T a a a c a a ad d a d a . N c a a d a c c a J d a - C a FRIEDRICH NIETZSCHE, *ON THE GENEALOGY OF MORALITY* (K. A -P a d., Ca b d U P 1994) (1887) (c a a c d c b d a d bad J d a -C a d c b d a d ).

<sup>151</sup> CHRISTINE M. KORSGAARD, *SELF-CONSTITUTION: AGENCY, IDENTITY, AND INTEGRITY* 170 (2009) ( Acc d , bad a c, a d . . . . Ca a a c c : a a , a ac . .

<sup>152</sup> JOHN MILTON, *PARADISE LOST* V.73-110.

<sup>153</sup> KORSGAARD, 151, a 170-71.

<sup>154</sup> IMMANUEL KANT, *RELIGION AND RATIONAL THEOLOGY* (A W. W d & G. D G a a ., Ca b d U P 1996) (1793).

add c. 155 C c a , c c a c c a a c c a a c a  
a . cab . Bad c c ca b ad d c c ; a ca  
. E , b ad C a , a ab a .  
A da d d a c c a a a a ad a c Ha a  
A d , c d a d a a a ad c c a c :  
I a o a a a a a a b a c c a c  
R c a 1933] ab a , 156 S c d a Ka a  
(a d M a ) : Ka a d a a d d a d a  
ca d b d a d b d c , a a ca o a  
a a a a d a c a acc d  
a . 157 I a d a c c a T a c c b  
A d ac a a d c d a a a  
ad ca a d c c a a  
a b c a d a b a c d a  
acc a b a c , a a a ad a a b a d  
a b ac , a a a ad a a , acc a  
Ad E c a a a J a a d b c b  
, a b la a d c a d : I  
a a ad ca , a , a d a  
d a d c d . . . . I -d , a I a d b ca  
ac a d b ca T b a a a O G d a c a d  
ca b ac ca 159 T b a a ca ac a b b  
ad d a ac d , c a b ab ca ab  
a c a a d .  
W A d a a a d a ab c c  
c b E a a d A ca c a a . W a c ca  
c a ac a ca d ca d a  
a b ab ac a d a . F ,  
Ka a a d M a c c ca a a c a d c c b

155 KORSGAARD, 151, a 171-72.

156 L Ha a A d Sa G a (1963), :// . c. /c -  
b /a a ?c Id= a d \_ b& Na =03/030160/030160 a .db& cN =21 ( a d A  
19, 2013).

157 HANNAH ARENDT, ON REVOLUTION 83, 81-83 (1963) ( HERMAN MELVILLE, BILLY BUDD).

158 Hā a A d, Id a d P a a da, Lc a U N Da, (1950), :// . c. /c -  
b /a a ?c Id= a d & Na =05/051480/051480 a .db& cN =0 ( a d A  
2013).

# TWO WAYS OF LOOKING AT A CRIMINAL

a a c a d a , a a , a d a S (a d  
M , a ) a b b c c a a  
a c a ; a a a a d ba S  
T a a c c a , a a d a ca b  
Ka a d M , d c a , A d , T a  
a a , a b a a a d d , a  
ab ; a b a a d a ca c a B  
a a ab , a a c c a a a c  
d c a ac . E a d c , a d a a  
S c d, A d a c c ad ca , a ac  
, a a c, a d d d. A d a a  
c c d a b ac , a a a ad a a  
a a d , a d a S ad a a c d  
a a ad b c c a a c d a a  
G a a 160 B a d d a a  
P a c d a d ( a b a  
c a d). 61 T d ca b a  
d a b c d a b c , a a  
A d a a a da a c a d W a  
a a c a d a d a d a d  
T d, A d c c ba a c d  
ac c c ad ca b c a a a  
d a d a a d. B a d d a c a  
A d a a b a a a d I A d , a  
a c d Ec a , a a a a a  
a a c a Ia (I a M . . . I'  
[A d] a a /T a a a ), 162 b a ca a a  
a d a d c a a a a a ca  
ab a a d a a I d d, a a , ba a  
P a c c c a a ca ca c c  
d b a c ac . T a a d a A d , b

<sup>160</sup> A d, 158, a 3.

<sup>161</sup> , MARILYN MCCORD ADAMS, HORRENDOUS EVILS AND THE GOODNESS OF GOD 2 (1999).

<sup>162</sup> WILLIAM SHAKESPEARE, OTHELLO ac 1, c. 3, ac 2 c. 3.

ca ca , a c ba a a d  
a : a d, a a , d a c a d  
ca d a a a a a a c a  
b, c, c a a d a c a  
d a a a d a c b d c . I  
ab d c a d ad b d. N, A d ad a  
a d c c ad b . I Ea I d  
c M a d c c Sa a a , d a . I  
B , a , c ca d c . T c a a ,  
a d, a b c a ca a c. Il a d, a d  
M . W. d d b ad D D-L  
H c ac a d a a a a d  
d. H b a a a . H a a S b d d  
b c . H a a d , d a d b ad S  
c a a c a a a a d ac a d . S  
E a a a a a a a d a a d  
d . N c ac, c a a a a d  
, d a d a a a d a d, a c d  
d a d a a d . Y d ad, b c . T  
164  
T , a . N d a d c ca d c c a a  
a , b b a a d a d a a a  
d b a da ab b ca d, b ca a  
a a . T a d, a a A c ab  
d A ca c a a , c d a d a c  
a , c d a a a a .  
A C a d a a . (T d a a d a  
c a b a a d c a a d d , 165 b  
a a d c a d a d a d c d  
d b d a a ca d d a d a d  
c c . Y c c a b I a a ca  
c a a , c a a c d A ca c a a  
c a a , c a a c d a a a  
G d. J a c a

<sup>163</sup> ARENDT, 157, a 82.

<sup>164</sup> DON DELILLO, *UNDERWORLD*, 816-17 (1997). T a a a a d a - a - c . M c a O d a a c a d b

<sup>165</sup> FRIEDRICH SCHLEIERMACHER, ON RELIGION: SPEECHES TO ITS CULTURED DESPISERS (R. C. Aldrich, ed., Cambridge 1996) (1799).



A ca b d d a c c c a c , c c  
 a , a C a A ca d b ad.  
 a c a ad. d d a c c c

### III. CAUSES: WHY HAVE EUROPE AND AMERICA DIVERGED?

T b c a a a b a ab  
 c a ac c a b d d A ca d E a c a  
 a a , ca a , A ca a d E a c a  
 b c d . B ca ca c a acc d c a  
 a d c , a d a b a a p a d c  
 d c d c ca ( a a a d c a  
 a c );

168

EVANS,

166.

<sup>169</sup> DAVID GARLAND, *PECULIAR INSTITUTION: AMERICA'S DEATH PENALTY IN AN AGE OF ABOLITION* (2010).

<sup>170</sup> L ca ca a , Ga a d a , a M c a ab d  
<sup>171</sup> ca a 1846. I d d, a acc a [ ]  
a a d ab ca a a c a ac d A ca , a d a a d  
a a c a ac , a b a d a d a a  
<sup>172</sup> Y a a d a c F , a Ga a d  
a d a a , a b A ca c ac a a  
ca d ac b d a c a a  
<sup>173</sup> a d a b A d a ca d b ca a c  
c , b ca ac a d b c a a d a b  
ad, c 1976, ca d 13 c 174 T a , b c a , ad 342 d a  
a a d ad a a ca d 449 c 175 O c a a a d  
S -S a , O ad a d 176 d a a a d  
<sup>176</sup> 34 c , V a ad 16 d a a a d 105 c S  
b a a , Ca a a d O a ad : d a a a  
a a c a a - -a -S -ac A d  
Ca a a d O a c d c b a d a a c  
a d a a a d c a c a , a c a c d ,  
ab ac c B d Ca a a d a Ma C N Y ,  
G Pa a b a a ca a b a a c d C  
Pa a d a a ).<sup>177</sup> I a d a d b a d  
<sup>170</sup> a 35.  
<sup>171</sup> a 38.  
<sup>172</sup> D a P a I a C , Ja a 31, 2010.  
<sup>173</sup> G , 122, a 1451.  
<sup>174</sup> D a P a I a C , Ja a 31, 2010.  
<sup>175</sup>  
<sup>176</sup>  
<sup>177</sup> G & E , 122, a 41-42.

## TWO WAYS OF LOOKING AT A CRIMINAL

[illegible]<sup>178</sup>G, 122, a 1451.

179

<sup>180</sup> WHITMAN, 1, a 6.

<sup>181</sup> WHITMAN, 1.

## TWO WAYS OF LOOKING AT A CRIMINAL

The figure consists of two panels, A and B, showing time-series plots of normalized residuals from a model fit to observational data. The x-axis represents time in years, ranging from approximately 1800 to 1960.

Panel A displays the residuals for the full model fit. The y-axis ranges from -0.02 to 0.02. The plot shows significant fluctuations, particularly around 1850 and 1900, indicating potential model inadequacies or unmodeled physical processes. A horizontal line at zero indicates the expected residual level.

Panel B displays the residuals for a reduced model fit. The y-axis ranges from -0.02 to 0.02. This panel shows significantly reduced scatter compared to Panel A, suggesting that the reduced model provides a better fit to the data.

Both panels include a legend in the bottom right corner, identifying the different components of the model fit:

- Black dots: Observed data points.
- Red line: Total model fit.
- Blue line: Component 1 (likely secular variation).
- Green line: Component 2 (likely periodic variation).
- Purple line: Component 3 (likely stochastic noise or higher-order terms).

The figure demonstrates the effectiveness of the reduced model in capturing the essential features of the data while minimizing unnecessary complexity.

c . 185 O a c a c a d , Ja Q. W , d d  
 ca a a c d a d , : A ca b a  
 da a a c a d a b c . T a .... [W] a  
 a d a c a c b a d d a a d , b a  
 ac a a , c a b . 186  
 T A ca b c a a a c c d ab ca c . T  
 1950 a d d c c D a d S a  
 K /Y a c a d /I' b - /T a a d /O  
 a a a d ca A ca a a ( d a b a a ,  
 ad c a c d). 187 E a , c b ca a a ca . 188 R c a d  
 N ad a a ca a a acc a c a a 1972  
 R b ca Na a C : F a a c a a A ca a a  
 c d d a .... I d d ... W a a c a a -  
 d a ca a c c c a a d a a  
 d c c b a d ca ac a , a d a ab a , a  
 c b ca ab a a a E 190  
 I a a d : T - a d a A ca ca c a a a d  
 , , A d B , a c a ac d b a ab  
 ca c a a a a G a da 110 100,000 ... 9  
 A d a d c a d. I a a 1970 , a a b N c  
 Ea d a d a A ca ca c a a a a C  
 , a a a bab - ac d,

<sup>185</sup> FRIEDMAN, 197, a - , 449-65 (1993).

<sup>186</sup> JAMES Q. WILSON, *CRIME AND PUBLIC POLICY* 492 (James Q. Wilson, 1983).

<sup>187</sup> L a d B & S S d , , W S d S (1956).

<sup>188</sup>Ford and Ford, 1977, and references therein.

<sup>189</sup>Pd, RcadN, RbcaNaC, AccacN, aS (A. 23, 1972).

190 A. ab a ,c d, Z ca c a , 19, a 166 ( O a  
a c -d c d d ca da ab a a d c c ab .). B  
26, a 395 ( Fla ab a a c a d d-1970 b a cc  
a a d . . ). A ca ad a , M. WOLFGANG ET AL., DELINQUENCY IN A BIRTH  
COHORT (1972); N a M , A READER ON PUNISHMENT 241,  
242 (A D & Da d Ga a d d ., 1994). A b ERNST VAN DEN HAAG, PUNISHING  
CRIMINALS (1975); ANDREW VON HIRSCH, DOING JUSTICE: THE CHOICE OF PUNISHMENTS (1976); DAVID  
FOGEL, WE ARE THE LIVING PROOF: THE JUSTICE MODEL OF CORRECTIONS (1975).

<sup>191</sup> A d B , , C 387, 387 (Ja Q. W & J a P a d., 1995).

d ab a c a a , Ha (Ea d' ) d , [b] ca  
 .<sup>92</sup> (T , a Wa C c a c d  
 c b a c a a .) A d cad c , A ca ad c a c a  
 c c ab c a . a c a d A , d  
 a , W a d /W d /D d d  
 c! B a a : O c K , a a a ;T b d  
 d , d a a a ca !T a a a b c b d  
 c c d b d T : O c [K ' a a b /T b d  
 d a d c , a d b S c a d a a b c /A d  
 c c ! B d , : O c K d  
 a a /T b d d a b , d a a / a a  
 d d ;D d d , d! A d b c a : W  
 d, d! /W a d /L b da d!  
 J a ca a ca b c d c a d c a c a d  
 c d b a a a d c a c ? A  
 a a d a a a a a I c , I b a a c  
 A ca a c a a a a c a b a 1950 a d  
 1990 . E c d a c a , d a a a  
 A ca a d a d a c c d c a a a  
 c . I d d a a ca a a , I b a a a a  
 E a /A ca a a a a a a a  
 a b d a a a a a a a ca c ,  
 a b d a bad a d a a a a a  
 a c bac a a a d c a a a a  
 a d . I c a E a a a a a a d  
 c ac c a a d a a a b : a d c . T  
 c c d d a a a a b a c a

. A d , a a c d  
 c d c c a a c a d d a c , c a a a b d c  
 d c c a a c a a d , d a a acc . E a a d ca  
 a d a a da a a c b a a d  
 I a a a a a d c d ab a  
 acc É a a ad R a a c d ab a c b  
 a a c a A ca a d d, Mad a 193 A b  
 a a a da a a d c, a d d c  
 d d c A ca a d d c, a Mad I a c a d d c  
 c b . A d b c a . 194 T a a d d c E  
 a ca a d a a b a a A a a c d  
 a a d a d b d a b a a a a d a b  
 d a a b a b a c, a d a a c d b  
 c 195 G a a c a a a a c d a ab  
 ac , a d d b a c d a a d ab a  
 a d b ca a d c a d d d d  
 G a a a d a d d a a a a c  
 a a a b d d a a a a  
 a d a d a a d c c a b , a d  
 c ca ab a c c c c a b a d  
 I add , a a a ab c d A ca  
 ad . W a , c d c a c d d  
 d c c A ca C a b c , 196 b a a d d  
 a a , c d c c c a a d  
 b . E , a d, d c c c a a d  
 c c , d a a d a a a c a a ad  
 b a d c 197 A ca a ac a a Ed a d  
 d a d b ca , a a a G d b a a

193 THOMAS SOWELL, *A CONFLICT OF VISIONS* 18-39 (1987) (c a a a d a a d a a -  
 a a ca , c a ac a a c a a d a a a d a a

194 THE FEDERALIST NO. 51 (Ja Mad ).

195 JEAN-JACQUES ROUSSEAU, *DISCOURSE ON THE ORIGINS OF INEQUALITY AMONG MEN* (G.D.H.  
 C a ., D d P 2009) (1754).

196 WHITMAN, 1, a 6

197 LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY*, 33 (1993). a 23.

N ab , G a a c, W a a ad d .  
 WHITMAN, 1, a 14. C a c Da , a A ca a a a a ,

a ad d d d c a a a b a a c a d d a ,  
 a [ ] ac a d c a a a b a a c a d d a ,  
 a d c d CLARENCE DARROW, *CRIME: ITS CAUSE AND TREATMENT* 8, 10 (1922)



198 V a c d a (1611), a ca d Da a , a  
d La D , M a a d Ma a . 199 T d ac a b c d  
a a a c c a a , b a d  
a d , bad d a a b b a a a b  
a bad.  
T a E d a d A ca a c a  
ac a d c b ca d  
P A ca d F c ; a d a a a d ; c a c ac b , c . T ca  
a b c a ;  
L b c a : d b a a d a a a c a  
ab a d c a d c ; a A ca b c a a a d  
a a E a d . F , A ca c a c c a ,  
d a A ca a d E a b c a c a ,  
c a a d b E a a d b d a A ca T  
c c . T a a , I a d , a a a ab , a d  
c d - ac c a a c a a d c a a c  
a a , a d a b a c a ca a d c a  
a a . B I d . A d I a a d c d a a  
a a . T a d

198 JONATHAN EDWARDS ET AL., SINNERS IN THE HANDS OF AN ANGRY GOD AND OTHER PURITAN  
SERMONS (2005). F d a a c a Ed a d a d a A ca d  
: E d a : W d? W d b c ?  
C a A ca a d a d c b : F bad, c b  
a a a d bad c a ac , b , a a A ca a a  
a d b a c b d a d a a d , a d a d  
: a a c c a a c a c a . O a b  
d a d a d b Saa , a ad a T c a ad d  
a a ; ad b c a a a a . FRIEDMAN, 197,  
a 47. I a a a a b a A ca c c a d -ca  
A ca a d c b a I a c ab d d a a  
. I a d ca a c a O a a d A ca a  
J a a Ed a d ad a d Ya C 1710. T a d a a c , c a d b a ca  
c a a bad d E a a d a a a c a  
c d a A ca A d ac a , c a a a da : T  
d c a d d a a a c d a d a ab b d  
52. 199 197.

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a b, , b c c a a a d c b, , b  
F a , I d a a E a /A c a C a a  
c a c d A ca ad a d c a a G a  
A ca ad a a c c a G a a c , a  
d da a d c a a d c . A ca a  
c b a d d c b d a d , a d c a  
b a c a ca c c a d ba a c c a  
c a a b ca d , b d d a a a c  
ca d a a . N c d a a c a a : ac  
a E a a a c a a a d A ca, c a a  
a C d b a a d c ? A d a ab E a  
c ca ab a a d a a a a d , a  
a , c a a a ? A ca d b a a a d ab a  
a a a ca b c d a d b d o a  
b a d a b ab ac a d c a a d a I a ab  
a a d a ab A ca a d E a d d d t  
R a d L

**CONCLUSION: TWO FORMS OF MORAL FAILURE**

W a , a , a a ? T a a a a b a  
c d c a ; a a b b  
a a c c H a I a , a A ca a d  
E a c a a a c d . B d a a  
d c a a a p c b W c a a  
a a a c a ? A d ( a ), c a ac c a  
a p ?  
T , I a a a a , b a a a  
b a , I d. O d a a a a d ab  
c c a a a a c a d ab  
c c a T c a a a . R a d  
a a d a a c a a a a  
a a b ac ca b c a a c P a  
d a a a a d ba d a c d ? O

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