

# Is the Party Really Over? Parties, Partisanship and the Politics of Crime

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Political parties occupy a contradictory position in the criminological literature: at once active participants in the political contestation of crime but virtually absent from contemporary debates concerning the relationship between crime and democratic theory. In this paper, I present a ‘rational reconstruction’ of party and partisanship as distinctive modes of political association that are vital to liberal democratic systems that take seriously (1) the value of political pluralism and (2) the limits of public reason to yield definitive answers to the crime question. Currently, political parties are failing to perform these mediating roles satisfactorily and I conclude that a stronger normative commitment to an ‘ethic of partisanship’ can help to revitalize our representative democracies and foster a better politics of crime.

**KEY WORDS:** political parties, partisanship, crime, democratic theory, agonistic perspective

## INTRODUCTION

Few issues in the criminological literature have generated more lively debate than the dynamic relationship between crime and democratic politics (see e.g. [Farrall and Gray 2022](#)). In recent decades, a growing body of research has traced the evolution of a highly contested law and order agenda ([Newburn 2007](#); [Brown and Silver 2022](#)) and documented the malign effects of a largely unpredicted populist punitiveness that prioritizes the electoral prospects of a policy over its penal effectiveness ([Bottoms 1995](#)). Comparative studies continue to illuminate the varied ways in which populism, authoritarianism and nativism combine to erode established liberal democratic norms ([Bonner 2019](#)), while governments of all stripes have demonstrated an alarming propensity to ‘govern through crime’ in ways that erode fundamental human rights and increase the potential for democratic backsliding ([Simon 2007](#)). These developments are inexorably bound up with broader shifts in the political economy of crime, the decline of the sovereign state and the disruptive effects of information technology ([Pratt 2007](#)). However, the crises of representative democracy ([Runciman 2018](#)) are also grounded within, and given expression through, an attachment to place. As [Tonry \(2007\)](#) has argued, all politics is local and recent scholarship has made considerable strides in seeking to understand how political culture

and tradition, political institutions and public attitudes coalesce across time and space to shape crime and its control (Brangan 2020).

Perhaps more than any other institution of representative democracy, the political party has occupied a tumultuous position at the intersection of these varied social forces and, as I have argued elsewhere (Guiney 2022a), greater scrutiny of this mediating role can help us to make sense of both the complexity and contingency of contemporary crime politics. This research agenda shows promise, but it continues to be inhibited by the contradictory and theoretically ambiguous position of parties and partisanship within the criminological literature. On the one hand, a sustained body of careful policy analysis has demonstrated that party competition (both internal and external) is closely associated with the production of penal policy outcomes (Wenzelburger 2020). While on the other, political parties remain almost completely absent from current normative theorizing with regard to the relationship between crime and democratic theory (see e.g. Barker 2009; Dzur *et al.* 2016). Political parties may be central to how modern democracies work, but there is now a general sense that their ability to deliver this representative function is severely compromised. Parties have found it difficult to represent the general public's complex attitudes towards crime and its control with authenticity (Jennings *et al.* 2017), while partisanship is frequently evoked within the literature as a byword for all that is wrong with cotemporary crime politics (see e.g. Crépault 2017: 799).

This longstanding disconnect between the normative and functional dimensions of party is by no means unique to criminology (White and Ypi 2016). As Schattschneider (1942) famously remarked, political parties are the 'orphans of political philosophy', and this inter-disciplinary blind spot has contributed to a lack of theoretical precision when seeking to articulate credible normative standards for parties and partisanship in the penal field. Should criminologists be concerned by global trends that have seen political parties 'hollowed out' by a combination of falling membership numbers, a more presidential (or personality driven) style of politics? What should we make of the growing influence of 'militant' political movements that reject established liberal democratic norms or the success of 'cartel parties' who employ the resources of the state to limit party competition and ensure their own electoral success (Mair 2013)? How should we view the increasing polarization of the American party system, or its antithesis in continental Europe where many political parties have withdrawn from civic society and now appear as technocratic institutions of the state that govern first and represent second (Bonotti and Bader 2014: 254)? Does a more democratic politics of crime require parties and partisanship, or can we imagine alternative democratic futures where we dispense with these institutions altogether?

In seeking to stimulate greater criminological engagement with this broad constellation of questions, I present a 'rational reconstruction' of political parties and partisanship (White and Ypi 2016: 3) which, while recognizing its inherent pathologies, and deeply problematic manifestations in contemporary crime politics, attempts nonetheless to recover this distinctive form of political association as a 'civic ideal' that is worth defending. Drawing upon the pathbreaking work of Rosenblum (2008) and Muirhead (2014), I distinguish partisanship from forms of political independence and celebrate the value of standing with others in liberal democratic systems that take seriously (1) the value of political pluralism and (2) the limits of public reason to yield definitive political answers to the crime question. I challenge the overwhelmingly negative, and often pejorative, use of party and partisanship in the criminological literature, and I conclude this paper by building the principled case for a far stronger normative commitment to an 'ethic of partisanship' (see Muirhead and Rosenblum 2020), premised upon inclusivity, comprehensiveness, compromise and loyalty. In sketching out the broad contours of this argument, a secondary goal of this paper will be to bring recent theoretical work on democratic theory into conversation with an agonistic perspective that has proved influential in the sociology of

punishment literature. If political conflict is indeed the ‘motor force of criminal justice history’ (Goodman *et al.* 2017: xi) then we cannot ignore the intertwined normative question of what form these political struggles should take in liberal democratic systems of government. In this context, I offer a spirited defence of ‘regulated rivalry’ between political parties (Rosenblum 2008) as the most effective democratic method we have for framing, contesting and seeking resolution to the crime question.

This line of argument will proceed in three broad stages and should be read, first and foremost, as an *a priori* defence of parties and partisanship, rather than an evaluative judgement of which political systems perform these functions most effectively. First, I trace the influence of two prominent currents of antipartisanship and antipartyism within contemporary criminological scholarship: (1) an insulationist perspective that advocates the careful use of institutional design to shield crime policy from party politics, and (2) a more recent deliberative turn in the literature which seeks to transcend political parties in order to promote a more informed, inclusive and participatory democratic politics of crime. Second, I explore recent advances in democratic theory that are beginning to reconnect the functional and normative dimensions of party and partisanship. I draw out the importance of a vibrant ‘partisan connection’, before turning to consider an ‘ethics of partisanship’ that takes seriously the duties that are distinctive to partisans, and which are expressed through partisan activity. Third, I reflect upon the implications of the analysis presented here and illustrate how more and better partisanship can help to reinvigorate our representative democracies and foster a better politics of crime.

### CONTAINING THE PARTY: INSULATION, EXPERTISE AND INSTITUTIONAL DESIGN

Mistrust of party and partisanship has a long and ‘glorious tradition’ in Western political thought (Rosenblum 2008: 1). Criticism of the party in the early-Modern era was typically associated with the standpoint of holism and a fear that parties constituted a profound threat to both the unity and integrity of Church and State. In modern pluralistic societies, political parties are now more readily tolerated, but they remain objects of suspicion. Left unchecked, parties can be dangerously divisive institutions that weaken the civic bonds of solidarity and trust that hold the modern social and political order together (Muirhead 2006: 714). Moreover, it has long been recognized that parties can be both corrupted and corrupting. In one party systems this may reflect the monopolization of political power, but under the conditions of modern capitalism it is often the vulnerability of parties to the seductions of money, power and privilege that are most likely to disfigure our politics in ways that subserviate the public good to a range of vested interests (see e.g. Beckett 2018). While we may be willing to accept a bounded role for partisanship in the legislative sphere, legitimate questions can be asked about the slow creep of partisanship into areas of public life that have previously remained free from party politics: academia, the judiciary, a permanent civil service, policing and the military.

It is then unsurprising that political parties have been subject to various techniques of institutional constraint (Lacey and Soskice 2015). For example, the architects of the US Constitution explicitly sought to dilute the influence of factional interests through the separation of powers, the careful design of large electoral constituencies and bicameral legislatures (Muirhead 2014: 33). This ‘Madisonian framework’ of multiple, fragmented and overlapping spheres of political authority remains influential today and is frequently evoked, consciously or otherwise, by those who seek to insulate criminal justice from public opinion and party competition. Reflecting upon what he saw as the growing politicization of criminal justice at the turn of the twenty-first century, Pettit (2002) argued that institutional reform was urgently needed to transfer decision-making responsibility for sentencing policy to a ‘body that operates at arm’s

length from parliament and government' (Pettit 2002: 441). In Pettit's view such an arrangement—modelled upon central bank control over monetary policy—would remove sentencing decisions from the corrosive effects of an unrestrained 'outrage dynamic' which fuels public concerns about crime and promotes punitive measures which tend towards a 'cultural maximum' over time (Pettit 2002: 436). Not only would greater institutional insulation re-assert the value of penal expertise, and promote procedurally reliable patterns of policymaking, but demonstrate a long-term commitment to fundamental democratic ideals associated with justice and non-domination.

This concern for the generally punitive attitudes of the public and, by extension their elected representatives, finds parallels in the work of [Zimring et al. \(2001\)](#). In a wide-ranging study of California's unprecedented democratic experiment with 'three strikes and you're out' powers, the authors build the case for 'insulated delegation' as a decision-making model that is desirable, not only in individual cases, but more generally for determining the general principles that ought to govern penal policy at a state and federal level. [Zimring and Johnson \(2006\)](#) would later revisit these themes and stress the need for greater theoretical emphasis upon the 'hardware of crime governance' if we are to understand the 'structural arrangements that advanced democracies make to protect against the excessive punishment of criminals' ([Zimring and Johnson 2006](#): 266). All things being equal, what continues to distinguish the United States from other advanced democracies is not only its distinct political culture and ideational commitment to retribution—examples of the so-called software of crime—but the 'structural vulnerability' of the American system to the direct democratic pressures which arise from the election of prosecutors and judges, and a federal system that pushes responsibility for criminal justice to a local and gubernational level ([Zimring and Johnson 2006](#): 278).

In perhaps the most sophisticated treatment of the insulationist perspective, [Lacey \(2008\)](#) wrestles with the vexed question of how liberal-market economies, such as the United States, England and Wales, Australia and New Zealand, might escape from the current prisoners' dilemma of exclusionary penal policies and prison expansionism. On this account, the structure of the political economy means that liberal-market economies typically lack the institutional mechanisms required to stabilize penal policymaking in the long term, and this challenge is exacerbated by a historic commitment to majoritarian electoral systems that incentivize political parties to compete for a small constituency of floating voters (see also [Lacey and Soskice 2015](#): 455). Given these structural impediments, party politics is no longer capable of overcoming these powerful path dependent trajectories and [Lacey \(2008](#): 195) concludes that urgent action must now be taken if we are to find a 'bipartisan escape route' that would shield criminal justice policy, or key aspects of it, from the vicissitudes of party-political debate. While recognizing that such an approach would likely cause politicians short-term discomfiture, policy pre-commitment would, it is argued, ultimately yield long-term political benefits for those who now have little to gain from any further ratcheting up of the penal arms race; it would allow for greater consideration of the ongoing costs of criminal justice expenditure, and it would encourage greater discussion of the interconnectivity of criminal justice and cognate spheres of social policy.

At the core of the insulationist perspective is a longstanding interest in the relationship between law and politics, and an associated concern that unrestrained partisanship is associated with systems of criminal justice that are less fair, less effective and more expensive ([Roberts et al. 2003](#): 5). Institutional design, typically modelled along the lines of a central bank or a national institute for clinical excellence, is therefore justified in normative terms as a necessary corrective to the manifest failings of 'politics as usual' and the declining influence of penal expertise. Variations of this argument remain popular within penal reform discourse, but it is far from clear that crime can, or indeed *ought* to be, neatly compartmentalized from politics in

this way. Insulation relies heavily upon notions of trust and deference to expertise that—rightly or wrongly—simply no longer exist in many advanced industrialized societies (Garland 2021). Moreover, questions about the membership, terms of reference, delegated powers and strategic priorities that would govern any arm's length penal policy board are likely to trigger precisely the intense party-political debates that defenders of insulation find so objectionable (Dzur 2010). While insulation offers an allure of political neutrality, institutional design is never definitive and can itself lock in prevailing political assumptions for a generation or more (Guiney 2022b).

These challenges are as much practical as they are principled, but they speak to a wider concern that insulationist perspectives betray a deep 'discomfort' with the inherent messiness of democratic politics (Loader and Sparks 2016). While repeated attempts have been made to place politics on a more 'rational' footing, or to delineate its compass within boundaries set by the rule of law, projects of this nature can lead us to an impoverished understanding of democracy that devalues its symbolic, communicative and moral functions. As Loader and Sparks have argued across successive works (2010, 2016, 2019), politics remains the most effective system we have for the peaceful resolution of competing resource claims and the distribution of social goods within society. Politics allows us to work through, and contest the meaning of, fundamental political concepts such as authority, justice, fairness and responsibility (Loader and Sparks 2016). Above all else, democratic politics presents us with a shared public space where claims for recognition, identity and belonging can be expressed and mediated. Scholarship in the insulationist tradition has made considerable strides in seeking to elucidate the 'hardware' of contemporary crime politics (Zimring and Johnson 2006; Lacey and Soskice 2015), but implicit in this analysis is an underlying assumption that compelling solutions to the crime question must be found outwith the political system. Not only does this fail to recognize the transformative potential of democratic politics as Loader and Sparks suggest, but it also highlights the tensions within an insulationist perspective that is destined to lament the very parties and partisans it must rely upon to implement its prescriptions for a fairer, more humane and effective penal system.

### THE PARTY TRANSCENDED: DELIBERATION, DEMOCRATIC EXPERIMENTALISM AND A BETTER POLITICS OF CRIME

Where insulationist perspectives endorse the careful use of institutional design to achieve greater separation between politics and criminal justice decision-making, integrationists work to revive the idea that crime is not only 'political' in its widest sense, but democratic politics remains the most appropriate arena for contesting and determining answers to the crime question (Loader and Sparks 2016: 319). In recent years, this research agenda has been energized by a pronounced deliberative turn in normative political theory and a rich and varied interdisciplinary literature is now beginning to elucidate how the ideals and institutions of democracy might be used to reimagine a better politics of crime (Loader and Sparks 2010). This focus on the transformative potential of democracy is to be welcomed, but, as I seek to show in the analysis that follows, this research agenda has so far struggled to accommodate political parties and partisanship within a broadly deliberative framework.

Perhaps reflecting the unique objects of criminological research, much of the formative theoretical work in this area did not centre upon the legislature but a concern for how democratic participation can be used to revitalize the judicial branch of government. In his wide-ranging defence of the jury system, Dzur (2012) draws attention to the unfulfilled promise of deliberation to invigorate representative democracy and encourage forms of collective decision-making in domains of social and political life, such as the workplace, that are often thought of as non-political. At its heart, deliberative democracy is about encouraging active citizenship and Dzur



advocates for a radical expansion in the use of ‘rationally disorganised’ modes of civic engagement—such as the jury system—if we are to restore popular sovereignty over criminal justice decision-making. In a similar vein, Braithwaite (2017) has argued that the current ascendancy of ‘electoral populism’ represents a fundamental risk to the integrity of the criminal justice process because it promotes forms of ‘money politics’ that result in domination over others. This trend must be resisted if we are to repair our ‘faded democracies’ and Braithwaite (2017: 1520) promotes greater use of restorative justice as a proven and easily replicable model of democratic participation that can engage citizens, support neighbourhoods to feel safer and in-so-doing rebuild trust in state institutions.

While Dzur (2012) and Braithwaite (2017) subscribe to somewhat different models of democratic participation, they both share an underlying belief that civic deliberation can help to revitalize state institutions that feel remote, inaccessible and unaccountable. In recent years, the influence of these ideas has been felt well beyond the judicial branch of government and there is now growing interest in novel forms of ‘democratic experimentalism’ that encourage the general public to play a more active role in thinking about crime and its control (Loader and Sparks 2019). While so-called ‘aggregative’ systems of direct or representative democracy imply a limited and rather episodic role for the general public, deliberative democracy is premised upon a thicker conception of democratic citizenship that is said to accrue two main benefits: (1) a more informed and inclusive discussion of complex public policy choices and (2) a better overall standard of decision-making that guards against system biases and dilutes the influence of vested interest groups. Ultimately, it is the *experience* of deliberation that really counts (Elster 1998), and democratic experimentalism has often gone hand-in-hand with localism, the principle of subsidiarity and participatory strategies that seek to engage with so-called ‘mini-publics’. For example, the use of ‘service user councils’ in custodial and community settings (Schmidt 2020), citizens juries, deliberative polling and more ambitious methods of dispute resolution, such as the truth and reconciliation commissions employed in post-Apartheid South Africa.

The ‘deliberative turn’ in democratic theory continues to gain considerable analytical traction in the criminological literature. The challenge now is to demonstrate how these ‘resources of hope’ can be harnessed to find viable political solutions to some of our most intractable criminal justice problems. In one such contribution to the literature, Dzur *et al.* (2016) argue that three decades of prison expansionism have generated a number of pathologies within the discipline of criminology which too readily indulges in nostalgia for a lost and better world or retreats from public debates over punishment by lauding expertise as *the* solution to the malign effects of contemporary crime politics. In this context, the ideals and institutions of democracy can help us to move beyond mere lamentation and begin to reimagine a better politics of punishment: By engaging the public in a more rigorous *critique* of how the extraordinary expansion of penal power continues to undermine an egalitarian democratic politics. By drawing upon insights from penal and political theory to develop new arguments for *restraining*, and in some cases reversing, the alarming growth in the scale, scope and reach of the carceral state. By opening up new opportunities to *restructure* how democratic societies respond to crime (Dzur *et al.* 2016: 9).

Integrationist scholarship has made important strides in presenting a wide-ranging and optimistic defence of democratic politics, but political parties remain conspicuous by their absence from this normative framework. This tendency to treat party and partisanship as the proverbial ‘elephant in the room’, to be skilfully sidestepped or, in many cases, avoided altogether, is perhaps understandable. Party competition is rarely described as a robust ‘trial by discussion’, while aggregative methods of democratic decision-making appear antithetical to both Rawlsian standards of public reason and the Habermasian ideal of informed, rational deliberation between democratic citizens who come together under conditions of political equality (Elster 1998). As Simone Weil ([1957] 2013: 11) famously argued in her excoriating essay, *On the Abolition*

of *All Political Parties*, partisanship appears to amplify 'collective passions' in ways that preclude the possibility of thoughtful, principled and reasoned democratic deliberation. For these reasons, [Dryzek \(2002: 1–2\)](#) identifies deliberation, rather than voting, interest aggregation or constitutional rights, as the essence of democracy and endorses an explicitly 'insurgent' posture that stands in opposition to established liberal democratic institutions. More recent scholarship has attempted to situate deliberative democracy within a broadly liberal constitutionalist framework, but even here the representative function of party and partisanship is attenuated by novel forms of democratic experimentalism. For instance, [Ackerman and Fishkin's \(2004: 150\)](#) fascinating proposal for the introduction of an annual 'deliberation day' to be held in advance of state level and national elections, relies heavily upon the law of 'anticipated reaction' to curb the influence of political parties and fundamentally re-shape the contours of American politics.

At the heart of these debates are fundamental questions about constitutional democracy, representation and citizenship ([Bohman and Rehg 1997: ii](#)). While deliberative strategies have tended to assume the underlying unity or oneness of 'the people', as defined by a shared history or commitment to certain foundational ideas, the liberal case for parties and partisanship rests upon an agonistic perspective that underscores political pluralism and the inevitability of political conflict ([Muirhead 2006](#)). Such philosophical debates are well beyond the scope of this paper, but if we are willing to accept that alternative interpretations of the crime question are possible, and these competing visions of the public good may be insoluble, then it follows that there will always be a role for parties and partisans in representative democratic systems that take pluralism seriously ([Muirhead 2019: 83](#)). Or to put this even more strongly, while the pursuit of greater democratic participation in criminal justice decision-making is laudable, the realization of this aim may require more, and better-quality partisanship, rather than less ([Muirhead 2014](#)). Democratic experimentalism frequently relies upon elected representatives to establish these institutional arrangements, to reach consensus on the 'rules of the game' and assess the political viability of implementing the recommendations made by mini-publics who are unshackled from such concerns ([Dzur 2010](#)). Furthermore, on those occasions when deliberation does not reduce the scope or intensity of political contestation in the penal field, then parties and partisans will continue to play a pivotal role in building the broad coalitions of interest required to deliver political victories when aggregation is required. Finally, it should not be forgotten that political parties are themselves deliberative entities insofar as they require partisans to negotiate on an ongoing basis with allies and opposition actors alike if they are to determine key matters of political leadership, policy formulation and portfolio allocation ([Guiney 2022a](#); [Guiney and Farrall 2022](#)).

### TAKING THE PARTY SERIOUSLY: THE PARTISAN CONNECTION, REGULATED RIVALRY AND PUBLIC REASON

The ambiguous position of parties and partisanship within criminological scholarship reveals a great deal about the evolving contours and contradictions of contemporary political thought. While insulationist and integrationist perspectives diverge markedly in their understanding of the appropriate relationship between crime and democratic politics, our review of the literature reveals that both traditions share a deeper, and largely unacknowledged, affinity for political independence as the most desirable basis for political participation in the penal field. Whether this ideal is best realized through the careful use of institutional design, or by harnessing the experiential potential of democratic deliberation, remains highly contested. The key point to note here is that this longstanding disciplinary embrace of both antipartisanship and antipartyism leaves us with an incomplete picture of democratic politics and continues to militate against the development of a more fully political criminology ([Loader and Sparks 2016: 319](#)). In this section of the paper,

I confront these disciplinary assumptions and begin to sketch out the principled case for party and partisanship. I then turn to consider how an ethic of partisanship, premised upon inclusivity, comprehensiveness, compromise and loyalty can help to renew our representative democracies and foster a better politics of crime (Muirhead and Rosenblum 2020).

The inter-disciplinary literature on party and partisanship is wide-ranging (see e.g. Muirhead and Rosenblum 2020), but recent theoretical work on the importance of a healthy 'partisan connection' presents us with a constructive point of entry into these debates. In short, party and partisanship play a vital role in helping representative democracies to bridge the distant and formidable institutions of the state with the passions, beliefs, interests and values of ordinary citizens (Lipset 2000; Muirhead 2019: 83). Partisanship helps to activate political consciousness; it sharpens political identity and instils a sense of belonging that can help to energize and sustain political participation. Learning to cooperate with others in the public sphere has value for humans *in and of itself* (Ypi 2016), but it is also a necessary pre-condition to effective political mobilization. As early defenders of party spirit, such as Edmund Burke recognized, we all have our own individual views on the 'good' life, but in mass democracies it can be unwise to stand alone in political conflict (as cited in White and Ypi 2016: 16). While political independents are often celebrated for the integrity of their beliefs a high price may be exacted in terms of the political 'weightlessness' that flows from an unwillingness to organize (Rosenblum 2008: 348). There is value in standing with others and partisanship can be understood as a distinctive form of political association that is characterized by cooperation and coordination between individuals who must work together to achieve shared aims.

While political partisanship can be understood as a continuum of activity that connects the work of grass-roots activists, newspaper columnists and political thinktanks, it is the political party that has emerged as the most potent carrier of partisanship. Not only do political parties give organized expression to partisanship, but they are defined by a distinctive claim: they seek to govern in accordance with established legal and constitutional norms (Rosenblum 2008: 20). This 'will to power' is key to understanding the partisan connection. Yes, political parties exist to represent the interests of likeminded partisans, but they also help to shape them. In this sense, representation is never a simple fact, but a state of becoming defined by ongoing negotiation between partisans who must cooperate if they are to build durable political coalitions of interest and articulate viable political objectives in the short-, medium- and long-term (Muirhead and Rosenblum 2020: 97). The partisan connection is dialogic, and this crucial mediating role shapes the politics of crime in at least three ways.

First, political parties help to facilitate non-violent and regulated rivalry. The peaceful rotation of power in office confers democratic legitimacy upon the winners of free and fair elections, but more than this, it recognizes the political standing of opposition parties to compete for power and present alternative visions of the 'good' to the public. Perhaps more than any other area of public policy, criminal justice relies upon peaceful, regulated rivalry to promote voluntary rule compliance (Tyler 2003), but as Pettit (2002) and others have noted, the emotional punch of crime, and its capacity to disenfranchise, can also represent an ongoing threat to the integrity of that political order. In recent decades, the political contestation of crime has become more intense and more polarized (Loader and Sparks 2010). Contemporary debates over the Black Lives Matter movement, #MeToo and Extinction Rebellion provide potent reminders that, 'translating pluralism into ongoing, managed and institutionalised conflict amongst parties was a hard-won and fragile historical development' (Muirhead and Rosenblum 2020: 100).

This insight has important implications for an agonistic perspective that has proved particularly influential in the sociology of punishment literature (Goodman *et al.* 2017: xi). For while this analytical framework has been used to explain penal change in a variety of contexts, it currently offers limited guidance on how we ought to distinguish between different forms of



political conflict in the penal field. Is raw power all that matters or does a commitment to liberal democracy imply a more demanding set of normative expectations for legitimate conflict? As we have already noted, the agonistic perspective implies a series of a priori assumptions about the political world: it is by its very nature bound up with notions of political pluralism, the limitations of human reason and competing visions of the public ‘good.’ While it is true to say that various ‘axis of inequality’—including, but not limited to, race, gender, sexuality and class—continue to distort the political distribution of power amongst social groups (Miller and Stuart 2017), historical work in the agonistic tradition can help us to understand why fundamental conflicts over crime and its control cannot be resolved peacefully without institutionalized systems of regulated rivalry between political parties who act in accordance with established liberal democratic norms.

Second, political parties have an important role to play in curating the public discussion of crime and criminal justice in mass democracies. As we have already seen, disputes about crime and its control are always, in part, contests between essentially contested political principles such as justice, legitimacy and authority which are capable of an almost limitless range of possible interpretations (Loader and Sparks 2016). Political parties help to simplify these choices, to identify key areas of political contestation and present narratives about ‘who we are’ that give shape to a public opinion that would otherwise remain amorphous and episodic (Miller 2016; Jennings *et al.* 2017). Of course, questions can be asked about how well parties currently perform these roles, but a well-functioning partisan connection that seeks both to represent *and* to govern, should animate our representative democracies in the following ways:

- 1 Parties ought to take up opposing positions and offer reasons to fuel conflict.
- 2 Parties *ought* to help determine the range of matters for public discussion and decision. In a perceptive analysis of the agonistic perspective, Koehler (2019: 802) argues that Goodman *et al.* (2017) fail to account adequately for how ‘power orders the penal field.’ In this respect, conflict is not only defined by salient areas of political contestation, but those issues that have been ‘ordered out’ of contemporary penalty and no longer feature prominently. Perhaps more than any other representative institution, it is the party that helps to shape the contours of contemporary law and order politics by helping to order in, and sort out, those issues considered mainstream, contested or relegated to the fringes of acceptable public discourse.
- 3 Parties *ought* to construct available choices and how they appear. Parties prioritize some choices while downplaying policy alternatives that struggle to gain access to the political agenda.
- 4 Parties *ought* to help connect deliberation to political participation. They should provide a political outlet for active citizenship and, in so doing help to energize the grass roots by providing partisans with opportunities to translate their political manifestos into substantive policy change (summarized from Rosenblum 2008; Muirhead 2014; Muirhead and Rosenblum 2020).

Third, political parties provide reasons for state action (and inaction). Viewed in these terms, political parties can be distinguished from pressure groups, trade unions and other organized political interests on the grounds that they take-up the everyday business of government and must justify their decision-making to the public. For Bonotti (2017) partisanship generates a number of specific and *sui generis* political obligations that hinge upon a Rawlsian defence of ‘positional duties.’ Elsewhere, White and Ypi (2016) have argued that the ‘partisan justification’ is normatively linked to a model of discursive exchange that is based upon the giving of public reasons that can be generally agreed upon. For so-called ‘ethical minimalists’, such as

Rosenblum (2008) and Muirhead (2014), it is the act of negotiation that counts, rather than adherence to any one substantive theory of justice per se. If we reject notions of universal political truth, and accept the inherent fallibility of human reason, then robust conflict between competing conceptions of the 'good' are likely to produce compromises or reconciliations that are more reasonable, and ultimately more palatable to the general public, than might otherwise be the case (Muirhead 2006: 720).

## RENEWING OUR DEMOCRATIC POLITICS: TOWARDS AN 'ETHIC OF PARTISANSHIP'

Herein lies the fundamental issue with many contemporary manifestations of partisanship. The liberal defence of party and partisanship presented here rests upon a recognition of political pluralism and the limits of public reason to yield definitive solutions to the crime question. However, as Muirhead (2014: 247) has argued, this normative justification begins to break down when partisans lack the requisite reflexivity to recognize that all political claims are partial and incomplete. There are no simple answers to the crime question and to think otherwise is profoundly illiberal. Political absolutism is problematic because it recasts compromise as a form of 'existential defeat' and, left unchecked, this intolerance of difference can foment malign expressions of crime politics that are dogmatic, polarized and authoritarian. Comparative political economy teaches us that coordinated market economies appear to enjoy certain institutional advantages that help to insulate penal policy from these pressures (Lacey and Soskice 2015), but we should not forget that these structures are themselves the product of partisan struggle and must be continually renewed (financially, politically and administratively) if they are to remain relevant (Guiney 2022b). Rather than view political parties as part of the problem here, the general thrust of this paper is that established power structures are unlikely to be sustained, dismantled or perhaps avoided altogether by emergent democracies (Sozzo 2016), without the transformative potential of parties and partisanship to mobilize, to coordinate and fight for political action. Or, to put this another way, rather than engaging in a perpetual, and ultimately futile attempt to constrain the party, or transcend it in some way, it is surely better and 'more true to the real possibilities of democratic politics', to harness this transformative potential and differentiate between 'high' and 'low' expressions of partisanship in the penal field (Muirhead 2014: x).

In part, this means thinking—as insulationists propose—about the external formalized constraints we place upon partisans through electoral competition law, limits on party spending, ethical codes of conduct and the legal duties that come with public office. It invites us to revisit the case for electoral reform and how we foster greater democratic experimentalism in criminal justice decision-making. Above all else, it demands that we address, as a priority, the multiple and enduring axes of inequality that prevent the most vulnerable and disenfranchised members of the community from exercising full democratic citizenship (Miller and Stuart 2017). However, a transformative politics of crime cannot be achieved by rational, and expert driven institutional design alone. Change must come from within, and this starts by recognizing the distinctiveness of a political partisanship which is public rather than private, collective rather than individual (Ypi 2016: 604). Public in the sense that partisans must speak to the national interest and ought to act in ways that are consistent with fundamental liberal democratic norms. Collective insofar as partisanship is defined by a commitment to stand with others and coordinate one's efforts in pursuit of shared political aims. Whether this takes the form of political activism, party membership or episodic voting for a particular 'side', partisanship generates associational duties that are both commensurate with responsibility and which extend beyond our allies and supporters to encompass those who stand against us in legitimate opposition (White and Ypi 2016; Bonotti 2017; Muirhead and Rosenblum 2020). This intersection between the

public and the collective is key to understanding the duties that, when taken as a whole, comprise an ethic of partisanship:

- **Inclusivity:** At its core, party and partisanship entails a desire to govern on the basis of the broadest possible democratic mandate. In part, this will depend upon the electoral rules of the game. Parties must build broad and enduring coalitions of interest if they are to secure public office and these dynamics will look very different under the conditions of first past the post and proportional representation (see [Tonry 2007](#)). However, the principle of inclusivity is about far more than achieving a simple +1 electoral majority or a strategically advantageous position within coalition negotiations. Inherent in the partisan project is an ambition to persuade others and command the support of the largest possible cross-section of the general public. For this reason, modern political parties tend to be internally heterogeneous organizations that bring together a myriad of overlapping, fragmented and competing political alliances with diverging ideological perspectives on crime and its control (see e.g. [Guiney 2022a](#)).
- **Comprehensiveness:** More than any other value it is the requirement of comprehensiveness that distinguishes the party in its fullest sense from a faction, single-issue pressure group or membership body. To secure a democratic mandate political parties must speak to the national interest, and this means articulating a comprehensive and ideologically consistent policy programme encompassing the economy, national security, education, the environment, transport and home affairs. Crime and its control now feature prominently in most party manifestos ([Brown and Silver 2022](#)), but this is necessarily one aspect of a far broader vista. It is no bad thing that political parties are required to take a wider view than criminologists, penal reformers, activists and practitioners, but this can also encourage an instrumental mindset that impoverishes the politics of crime. For those right leaning parties that enjoy 'issue ownership' over law and order it may encourage them to push for harder and more punitive penal policies ([Wenzelburger 2020](#): 188). In contrast, opposition parties may respond in-kind by seeking to ratchet up the penal arms race or vacate the field entirely by engaging in forms of ideological quietism that shift the terms of debate to more promising spheres of political contestation.
- **Compromise:** Without the ability to compromise there is no party, and without the party there is no organization capable of forming the partisan connection necessary to govern. For political parties to flourish, partisans must develop what [Gutmann and Thompson \(2012\)](#) describe as a 'compromising mindset' that looks beyond the politics of opposition to think strategically about political viability when in government. Typically, this demands compromise at two levels of party organization: (1) inter-party negotiation between parties, whether they are in opposition or coalition and (2) intra-party negotiation within political parties. These subterranean forms of compromise and negotiation are frequently omitted from 'big picture' accounts of penal change (see [Guiney 2022a](#)). As [Ceron \(2019\)](#) has argued, party membership is defined by an oppositional tension between conflict and cooperation. Partisans must work together in order to advance the overarching aims of a party (or coalition), while simultaneously competing to maximize their share of the political payoffs to be derived from party membership.
- **Loyalty:** A willingness to stand with others is what distinguishes partisanship from the political 'weightlessness' of independence ([Rosenblum 2008](#)). Effective coordination between partisans is a necessary first step, but it is unlikely to lead to substantive change if it is fleeting, nebulous or episodic. As [Muirhead and Rosenblum \(2020](#): 106) note '... accomplishing anything ambitious in politics requires loyalty because policies and programmes take time to be worked out, and those opposed to the policy or program will not

relax their opposition while things unfold'. Loyalty to each other is then emblematic of partisanship, but it requires more than blind adherence to party leaders and an uncritical attitude towards their decisions. Loyalty, in its fullest sense is tethered to a shared political project and defined by memory and patience. History is a complex and multi-layered phenomenon. Different stages of policy development are often insulated from one another, policy actors rarely have full knowledge of what has come before and 'what had been influential at one stage ceased to be so later on, eclipsed, transformed or replaced by what happened later' (Rock 2019: 427). Put simply, criminal justice reform is not possible without the inter-generational memory, patience and loyalty of partisans willing to stay the course.

Thinking about political association in this way confers several benefits. Not only does a stronger normative commitment to an ethic of partisanship provide a powerful institutional counterweight against the political ambitions of high-profile individuals and those vested interest groups who do not serve the public good. But, of equal importance, it allows us to move the conversation on from tired claims that 'all politicians are the same', or 'we need to take the politics out of crime' to initiate a more discerning democratic conversation about expressions of 'high' and 'low' partisanship in the penal field (Muirhead 2014: 251). For while it can be frustrating that expressions of low partisanship are rarely subject to formal sanction, it is also true that parties and partisans must remain vigilant of the cumulative damage that can be caused by myopic decision-making that toxifies the party brand; that weakens the partisan connection; that erodes public trust in politics and makes it impossible for elected representatives to cooperate on questions of crime and criminal justice when it is in the public interest. These ethical dilemmas are an ever-present feature of all politics in action and high-profile examples of 'electoral wipe-out' demonstrate the long-term risks associated with systematic low partisanship. When viewed in these terms, the issue with many manifestations of contemporary crime politics is not that politicians are too ideological or too partisan. Rather, it is that political actors have too often fallen short of the normative standards we should expect from an ethic of partisanship. It is to this argument that I turn in the final section of this paper.

## THE FUTURE OF THE PARTY? REPRESENTATIVE DEMOCRACY AND THE POLITICS OF CRIME

At this point in the analysis, some readers could be forgiven for identifying a worrying disconnect between the lofty ideals espoused in this paper and the everyday lived reality of party politics across much of the globe (see e.g. Bonner 2019). If a 'rational reconstruction' of party and partisanship is to be of any analytical value as a philosophical device (see White and Ypi 2016: 3), it must start with a frank appraisal of the world *as it is* and acknowledge the deeply problematic manifestations of party in contemporary crime politics. Even those with a cursory knowledge of crime and its control will be aware of numerous instances of bad faith decision-making that stifle debate, promote narrow vested interests and exclude disadvantaged communities from the benefits of political organization (Beckett 2018). In part, these outcomes are a product of individual choice, but the current ascendancy of technocracy and populism across much of the globe is suggestive of a far deeper democratic malaise (Runciman 2018). Putting to one side the negative consequences of expressive policies, penal populism stands as the quintessential example of 'bad faith' in contemporary crime politics because it assumes the 'oneness' of the people and imbues this artificial construct with a generally punitive attitude or common-sense perspective on crime (Canovan 2002). Whether these ideological assumptions are genuinely held, or merely exploited for instrumental reasons, these claims are so objectionable because they devalue political pluralism and short circuit an authentic partisan connection that seeks

both to represent and to govern in accordance with established legal and constitutional norms (Pratt 2007; Pratt and Miao 2019).

This reality must be acknowledged if we are to develop reflexive political strategies that begin to revive our representative democracies and foster a better politics of crime. However, we should not allow realism to collapse into cynicism. High-profile instances of ‘low partisanship’ in the penal field are nearly always more visible and widely reported by the media than the everyday contributions of volunteers, party organizers and those elective representatives who make our democracies work. While it would be naïve to think that political parties can, or will ever be, the sole preserve of ethical partisans, these institutions of representative democracy can still be engines of change where (1) a majority of partisans demonstrate a strong normative commitment to the principles of inclusivity, comprehensiveness, compromise and loyalty and (2) party leaders invest in healthy organizational cultures where key decision-makers are expected to act ethically more often than they do not. In a less deferential age, criminologists have become familiar with the imagery of the principled independent, or ‘democratic under-labourer’ who is committed to the generation of criminological knowledge and seeks to use this expertise in the service of democratic politics (Loader and Sparks 2010: 133). But what should those who struggle in pursuit of a better politics of crime expect in return from the parties and partisans they must cooperate with if they are to achieve substantive penal policy change? While the ethical principles outlined here are intended to be universalizing, it must also be recognized that criminal justice is by its very nature a coercive system and this capacity to disenfranchise (Reiner 2020) represents an ongoing challenge to our representative democracies. Parties and partisans can play a transformative role in building a better politics of crime, but as I have argued here, this will require a far stronger normative commitment to an ethic of partisanship that takes seriously the responsibility we all share to safeguard and nurture the conditions for peaceful, regulated rivalry on the crime question. To elaborate:

Regulated rivalry can only be achieved where parties and partisans provide effective political representation. Not only are a broad range of views on crime and its control desirable, but where possible these perspectives should be authentic in the sense that they flow from a shared and collectively agreed upon political project. Of course, partisans frequently do clash over the ‘soul’ of the party (Guiney and Farrall 2022) and how best to respond to a constantly shifting external context. Such forms of epistemic deliberation are an essential feature of all political projects (Ypi 2016), but problems begin to emerge where partisanship is untethered from a shared sense of purpose. Populist rhetoric, techniques of triangulation, technocratic governance and a dogmatic law and order consensus (Newburn 2007) are all suggestive of a misfiring partisan connection that no longer provides sufficient opportunities for partisan association, or the hard yards required to canvas, campaign and persuade others to endorse a particular interpretation of the crime question.

Representative democracy cannot function effectively without parties and partisans willing to articulate public reasons for action, and to situate these choices within a broader, ideologically coherent, account of the public ‘good’. As we have already seen, disputes about crime and its control are always, in part, contests between competing political ideologies and in mass democratic systems we rely upon political parties to simplify these choices and curate public discourse in ways that connect political philosophy with the everyday thought behaviour of individuals and social groups (Guiney 2022a: 1162). While much can be learnt from novel forms of democratic experimentalism that open up new spaces for civic participation, we should not shy away from robust, hard-fought political conflict in the penal field. Where possible, ideological quietism should be avoided, and political parties must be encouraged to present comprehensive narratives of crime and its control that are located within an ideologically consistent account of conservatism, liberalism, socialism, feminism and environmentalism, etc. (see e.g.



Loader 2020). Regulated rivalry remains the cornerstone of liberal democracy, but it cannot succeed without legitimate opposition and the mediating role of political parties who curate public debates on crime and its control in ways that order in, and sort out, a range of competing ideological perspectives.

Too often, there has been a disconnect between what political parties say about crime and what they actually do in government. This ‘communicative dissonance’ has undermined public trust and weakened our representative democracies (Guiney and Farrall 2022). As we have already noted, political parties can be distinguished from other forms of political association by a distinctive claim: they seek to govern. Viewed in these terms political parties cannot simply be campaigning organizations. They must adopt a ‘compromising mindset’ (Gutmann and Thompson 2012) if they are to develop credible plans for government and deploy the capacities of the state effectively. In many cases this will require far greater reflexivity with respect to the pathologies of partisanship and the long-term benefits that can be accrued from institution building, policy pre-commitment and restraint (Lacey and Soskice 2015). For example, where policy portfolios are simply too narrow, or lack the necessary budgetary accountability to incentivize action in the public interest; where public appointments and ministerial interference are likely to undermine operational independence or result in myopic forms of criminal justice decision-making that damage public trust.

Finally, an ethical partisanship demands that we take seriously the overarching responsibility that all parties and partisans must accept to pursue their political aims in accordance with established liberal democratic norms (Rosenblum 2008: Ch. 9). What this requires in practice is likely to be the subject of intense partisan contestation, and shaped by history, political culture, constitutional arrangements and the structure of the political economy (Brangan 2020). However, the general point remains that in recent decades many governments have demonstrated impatience with, and in some cases outright hostility towards, many of the foundational building blocks of the established liberal democratic order: the constitutional separation of powers, collective cabinet responsibility, the rule of law and international treaty obligations. While robust debate on these points is to be welcomed, parties and partisans must be cognisant of how their words and conduct can incite hatred and encourage forms of democratic backsliding that allow radicalism, division and violence to flourish. As one Conservative MP acknowledged when asked to reflect on his role in the UK Brexit negotiations, ‘we tested our institutions nearly to destruction, but thank God we did actually get through that test of our constitution with it still working... We just about got through it, and I don’t ever want to do it again...’ (BBC 2023). As this remark acknowledges, our representative democracies are precious and hard-won accomplishments. Without a clear and unambiguous commitment to ethical partisanship we cannot navigate the porous boundaries that divide robust political contestation from unacceptable manifestations of crime politics that fatally undermine the established legal and political order.

## CONCLUSION

The challenges facing our representative democracies are immense. From reform of the police to the impact of mass incarceration. From tackling violence against women and girls to international action on climate change, our representative democracies will be judged by their ability to deliver compelling solutions to these most intractable of social problems. In this paper I have presented a ‘rational reconstruction’ of party and partisanship that recognizes both its normative and functional importance in contemporary crime politics. Following Rosenblum (2008) and Muirhead (2014), I have built the case for a vibrant partisan connection and outlined why a transformative politics of crime will require more and better partisanship rather than less. More,

in the sense that representative democracies need partisans who are willing to stand with others in pursuit of a common cause. Better, insofar as democratic politics cannot function without a demanding 'ethic of partisanship' premised upon inclusivity, comprehensiveness, compromise and loyalty.

In building the principled case for party and partisanship I have also demonstrated the value of a more productive dialogue between democratic theory and an agonistic perspective that views political conflict as the 'motor force' of criminal justice history (Goodman *et al.* 2017). Regulated rivalry between political parties is fundamental to the peaceful contestation of the crime question and it is hoped that this paper will contribute to a more searching public discussion of low and high partisanship in the penal field. Currently, political parties are failing to perform these vital mediating roles satisfactorily and I brought this paper to a close by exploring how ethical partisans can navigate the politics of crime in ways that help to rebuild, repair and nurture our precious representative democracies. The party may not be over, but their continuing relevance will surely depend in large part upon effective, ethically informed cooperation between political partisans.

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