

Neoliberal penalty at work: a response to my Spanish critics

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I want to start by thanking my Spanish interlocutors for engaging my book *Castigar a los pobres* (Wacquant 2010a, hereafter CLP) and the *Revista Española de Sociología* for hosting this exchange. Even as it centers on the United States—in due deference to its status as inventor of the disciplinary government of poverty combining restrictive «workfare» and expansive «prisonfare»—the book sketches a *model of penalization as a technique for managing urban dispossession and dishonor* that purports to throw light on the punitive turn and the resurgence of the prison observed in most countries of the First and Second worlds over the past three decades. Against the ideology of «American exceptionalism», CLP treats the United States as an *extreme case* which reveals policy trends, dilemmas, and options cutting across the social and the penal realms in all the postindustrial societies subjected to the neoliberal tropism¹.

Indeed, recent developments on both the labor, welfare, and criminal justice front suggest that Spain presents a very interesting case to study and think through, so as to further specify the mechanisms, dimensions, and pathways of the ongoing drift toward the penal regulation of marginality in the dualizing city as well as choice materials for probing the broader reengineering of the state to which this drift contributes. Since the mid-1980s, the Iberian peninsula has undergone rapid transformation at multiple levels: economy and employment, social and family structure, spatial organization and population circulation, political rule and policy strands. The Spanish labor market has been aggressively «deregulated», that is, re-regulated in favor of firms; union and welfare protections have been curtailed; urban disparities have deepened and destitution has resurged in public space amidst the general prosperity and increased immigration (Toharia and Malo 2000, Navarro 2002). The question

¹ See the postface to the expanded US edition of my book *Prisons of Poverty* (in Spanish version, *Cárceles de la miseria*) for a broad panorama of penal developments over the past decade that support this diagnosis (Wacquant 2009a: 161-176).

of street crime has risen to the forefront of electoral and media concerns after 2001 even as rates of felony stagnated. Following in the wake of stringent measures against domestic abuse and Basque terrorism, penal policies toward street crime have turned more proactive and punitive, thanks in good measure to US-branded imports from the United Kingdom (Medina Ariza 2006). This has resulted in a dramatic increase in the country's custodial population: it boomed from 14,600 in 1983 to nearly 75,000 today, a proportional increase similar to that posted by the United States between 1973 and 2003 which has made Spain the incarceration leader of Western Europe with a rate of 163 inmates per 100,000 residents². The spate of laws adopted in the autumn of 2010 to absorb the shock of the bursting of the financial bubble in 2008 has done nothing but confirm and reinforce these trends. Together, they raise the question of the causal and functional connections between economic deregulation, social welfare curtailment, and penal expansion, which is at the core of the problematic mapped out by CLP.

In this short essay, I react in turn to each of the contributors to this symposium, selecting a central theme from their critique to highlight what I take to be the distinctive contributions of CLP to debates on marginality and penalty in the era of deepening inequality and diffusing social insecurity. I hope that my response will stimulate further theoretical critique, conceptual revision, and empirical extension of the model the book proposes.

1. I am pleased that Alfonso Serrano Mañllo (2011) stresses the relevance of CLP not only to critical criminology but also to mainstream criminology. As a sociologist of comparative urban relegation who «backed» into the prison by tracking the fate of the precarious fractions of the postindustrial proletariat at ground level³, my message to that discipline is that it must expand its analytic purview beyond the standard formula of «crime and punishment» to *heed the extra-penological role of the justice system*. The reason for this move is as simple as it is urgent: it is impossible to explain the rapid permutations of penalty in the neoliberal age—or in any historical epoch, for that matter—as a straightforward response to trends in crime.

A first proof is the absence of any correlation between *absolute levels* of crime and punishment as measured by incarceration across countries (CLP: 250). For instance, the United States and Canada have nearly identical levels of crime (with the exception of homicides and assaults with a weapon, which constitute a tiny minority of offenses), but the former imprisons at seven times the rate of the latter. A second proof is the glaring empirical disconnect between *the slope* of offending (as measured by victimization rates) and that for incarceration in the United States, which led Alfred Blumstein (1998) to entitle his 1997 presidential address to the American Society for Criminology: «U.S. Criminal Justice Conundrum: Rising Prison Populations and Stable Crime Rates»—in the decade since,

² Similar economic, social, and penal transformations have swept through Portugal, which saw its prison population nearly triple from 6,100 in 1983 to 14,600 for a rate of 144 inmates per 100,000 residents in 1998 (it has since dropped back to 11,700 and 109 per 100,000 in 2009). Everything suggests that it would be fruitful to extend the debate on Spain to encompass its neighbor to the West.

³ See Wacquant (2009b) for an account of how I came to probe penal policies and institutions in the course of fieldwork on the nexus of class inequality and racial domination in the black American ghetto.

incarceration has continued to mount even as crime took a nose dive—. This disconnect can be summed up by the evolution of a baseline ratio: the number of convicts per thousand «index crimes» in America rose from 21 prisoners in 1975 to 75 in 1995 before jumping to 135 in 2005. In short, the United States has become six times more punitive over this quarter-century (CLP: 128). A sharp increase in punitiveness is detected also in England and Wales, where the incarceration rate jumped from 88 inmates per 100,000 residents in 1992 to 154 per 100,000 in 2008, even though criminal infractions receded continuously for twelve of those years (Newburn 2007). A similar disconnect is well documented for other European countries, large and small, such as France, Italy and Holland, as well as for Spain and Portugal. This *rising punitiveness controlling for crime* cannot, by definition, be explained by crime rates⁴.

A second reason for decoupling crime and punishment is suggested by the early history of the prison: the first «houses of corrections» —the Bridewell of London, the Rasphuis of Amsterdam, the *Hôpital général* of Paris— were invented in the period 1560-1670 not to tackle crime but to fight urban marginality, as vagrants and beggars gathered in the burgeoning commercial cities of northern Europe (Spierenburg 1991). Their purpose was to clean up the streets, to impose social and moral order on the disruptive poor, and to discipline the nascent urban working class by dramatizing the work ethic. Workhouses also served to affirm the authority of the rulers of the newly emerging city-states: they partook of early state formation. What is true of the late sixteenth century is true of the close of the twentieth century, which has witnessed a burst of state-crafting in response to the spread of financialized capitalism, changing forms of urban poverty spawned by the fragmentation of wage labor and territorial stigmatization, and the disruption of established ethnoracial and ethnonational hierarchies (Wacquant 2008 and 2010b). The prison has thus returned to the institutional forefront of advanced societies as an organizational vehicle to manage marginality, assert sovereignty, and reinforce identity —by spotlighting and casting out the black subproletariat of the bare hyperghetto on the US side and lower-class postcolonial migrants and their descendants on the European side—.

Does decoupling crime and punishment imply that «there is no relationship» between them, as Serrano Mañllo (2011) worries? Obviously not, since CLP contains extensive discussion of crime. There definitely exists a connection between offending and penal sanctions, but it is not the simple, tight, mechanical relation between rates that preoccupies criminology to the point of obsession. Rather, it is a complex, loose, and contingent *two-way* relationship mediated by politics, culture, and struggles toward and within the state over how to define and respond to the pressing «social problems» of the day at the bottom of the class and spatial order⁵ —*Crime offers the raw materials for a collective work of political*

⁴ Moreover, this rising punitiveness, which is a national trend affecting all jurisdictions in the United States and nearly all countries in Western Europe, contradicts the predictions of observers of the penal scene around the mid-1970s, all of whom expected the prison to shrink if not to vanish.

⁵ This is in sharp contrast with the studied indifference and organized inaction of Western criminal justice toward upper-class and corporate crime, which has been actively *depenalized* just as it has been booming (as attested by the rampant illegalities that underpin the mortgage sector of finance). This is shown by Lascoumes (1998) in the French case and by Hagan (2010) in the American case.

selection and cultural elaboration of specific illegalities— which in turn provide an opportunity and a target for state action and (re)construction. Chapter 7 of CLP on the frantic efforts to expurgate sex offenders from the societal body, which caught the eye of Serrano Mañillo, tracks how even receding crime rates can lead to hysterical penal activity when they get mixed with spiking intolerance toward tainted social types activated by the displacement onto crime of anxieties pertaining to work, family, and sexuality. It also reveals how punishment can turn criminogenic when it stokes collective fears and aggravates the very conditions it is supposed to curb (in this case, the social isolation and denigration of former sex offenders), so that penalization becomes self-sustaining. Lastly, by recapitulating previous moral panics over sexual criminality in America, this chapter reminds us that the state can always respond to offending—even as it increases— by rolling out social programs and medical treatment instead of penal sanctions. To understand how crime gets used as seed and feed for changing forms of state action, we must sever the crime-punishment bond to bring into analytic play non-penal responses to lawbreaking as well as the extra-penological functions of penalty in the instrumental and the expressive registers.

My major counter-proposition on this front is that the growth and glorification of the penal state over the past three decades are a *response to rising social insecurity, not criminal insecurity*, or the cultural phobias and existential risks of «late modernity» as Jock Young (1999) and David Garland (2001) would have it. The core of the causal model runs from economic to social to penal policy as follows: (i) economic deregulation generates social insecurity at the foot of the class and spatial ladders; (ii) to impress precarious wage labor onto the unskilled fractions of the working class, the state also rolls back protective welfare, which only intensifies urban instability and disorders, real and perceived; (iii) to contain those disorders as well as to close the deficit of legitimacy they suffer due to rolling back the protective missions of the state, governing elites roll out the penal state. This rolling out is highly selective by class and place: it is trained on the neighborhoods of urban relegation that both incubate and embody the disruptions of the age on the material and moral ledgers, which implies ethnic selectivity to the degree that these areas are segregated by origin (Wacquant 2010c). It is not by happenstance that the share of foreigners in Spanish prisons has jumped from 10% in 1985 to 36% today while the carceral population was ballooning, and that immigrants from Europe's imperial periphery and their children are the preferential clients of European jails and prisons (Wacquant 2006).

2. I appreciate Ignacio González Sánchez's (2011) efforts to relate CLP to my previous book *Cárceles de la miseria* on the international circulation of US-style penal slogans and measures, and to grasp both as elements of a developing body of work cutting across the sociology of urban poverty, ethnoracial domination, and the penal state⁶. Central to his

⁶ González Sánchez's claim that CLP is only an extension of *Cárceles* is incorrect. These two books tackle different empirical objects: the transnational travels of American penal formulas for the former and the coupling of supervisory workfare and neutralizing prisonfare in the United States for the latter. CLP also gives full weight to the symbolic moment of penalty and puts forward a different theoretical characterization of neoliberalism as a political (and not an economic) regime, resulting in the endogenization of the prison into the neoliberal Leviathan (for elaborations, see Wacquant 2011). Relatedly, CLP is very different from the counterfeit version *Punir les*

rejoinder is the second major claim of CLP: that we must imperatively *integrate the analysis of social welfare policy and penal policy*. Again, this necessity stems from empirical and historical considerations. First, the shift from protective welfare to disciplinary workfare—which has taken a variety of forms and routes in different countries, but is everywhere in motion, as attested by the generalized drift from «status to contract» in the management of the unemployed and the destitute on both sides of the Atlantic (Handler, 2003; Paugam and Duvoux, 2008)— targets the same population as the expansion of criminal justice, namely the precarious fractions of the postindustrial working class. Second, workfare and prisonfare use germane techniques and protocols of surveillance, deterrence, stigma, and graduated sanctions to alter the conduct of their charges and push them into the substandard slots of the low-wage labor market. Third, social history teaches us that poor relief and the prison were devised at the same time, in the European transition from feudalism to capitalism, and that both were then hybrid institutions that combined social support and penal redress to instill conformity to the work ethic (Geremek 1994). My contention is that the same is true in the late twentieth century, which has witnessed the renewed fusion and confusion of the criminal question and the social question.

I adapt Bourdieu's (1994) concept of «bureaucratic field» to bring welfare and penal policies into a single analytic framework and to show how these public policies converge, under the same stern philosophy of moral behaviorism, to effect the *double regulation of the precariat* against the backdrop of rising inequality and diffusing social precarity. The actions of the Left (social) hand and Right (penal) hand of the state converge to instill both moral standards and compliant behavior onto the unskilled fractions of the urban working class. González Sánchez (2011) is concerned by the functionalist cast of my analysis, but he need not be. To start with, every good sociologist relies on functionalist reasoning to trace the systemic, mutually reinforcing, linkages between patterns of action and relations—in this case, the dynamic interactions between class decomposition and urban dereliction, the shrinking of the social safety net, and the aggressive knitting of the police and prison dragnet. Next, the notion of bureaucratic field is expressly designed to escape what Bourdieu called the «functionalism of the worst» and to rid us of the conspiratorial vision of history that animates self-styled radical analyses of the prison (such as the demonology of the «prison-industrial complex» popular in activist circles in the United States). Like every field, the bureaucratic field is a space of forces, a mobile set of objective constraints and strategic opportunities which impose themselves on all participants; but it is also a space of struggles to define and distribute public goods, a terrain of battles in which a gamut of agents seek to set the aims, priorities, and modalities of state action.

The policy of *punitive containment is the contingent product of those struggles*, external and internal to the state, which pit advocates of social, medical, and penal remedies to the predicaments of urban marginality, as well as an array of other political operators pushing for specific policy formulas in the separate spheres of employment, social protection and

pauvres published illegally in French in 2004 by Agone (without contract and against my express will). It is nearly double the length and contains numerous conceptual and empirical developments not featured in the truncated French text (which I do not recognize as mine).

crime control (and in intersecting domains of government activity such as public health, education, housing, etc.). The structural-functional map of the anatomy and physiology of the neoliberal state drawn in CLP must thus be complemented by a strategic analysis of the political battles that have boosted the extra-penological functions of criminal justice and turned the police, the courts, and the prison into major vehicles for supervising the disruptive poor and staging the sovereignty of the national state. This also implies that the organizational convergence and practical interlock of disciplinary workfare and neutralizing prisonfare are *the spawn not of design but of a post-hoc functionality* arising from the gradual meshing of disparate measures taken on the labor, welfare and criminal justice fronts as they come to be applied to the same vulnerable population seen through the same derogatory moral and ethnoracial prism. This is why I insist at multiple junctures in CLP (Wacquant 2010a: XVIII-XIX, 90-91, 103-109, 121-125, 166-168, 184-185, 222-234, 312-313) that the punitive regulation of social insecurity is riddled with irrationalities, incongruities, and gaps. It is neither stable nor coherent, on the contrary: it is riven with contradictions and it is emphatically *not* optimal from any systemic standpoint (whether that system is capitalism, panopticism, or class rule).

3. I agree with Iñaki Rivera Beiras (2011) that the «political economy of punishment» is a broader and more diversified current than would appear from reading CLP. As my footnotes amply indicate, I have learned much from this current, albeit more so from the radical criminology that blossomed in Great Britain after the mid-1970s (as represented by the varied works of Stanley Cohen, Ian Taylor and Jock Young) than from the older Marxist school which, in my view, did not venture much beyond elaborating statistically the labor market-prison nexus postulated by Georg Rusche and Otto Kirschheimer (1939), and ran out of theoretical steam some thirty years ago after Spitzer's (1975) attempt to formulate a «Marxian theory of deviance». At the same time, the major infirmity of this approach remains its congenital tendency to construe the symbolic dimension of social structure and action as a reflex of, or second fiddle to, material factors.

My position, extending Bourdieu's (1990) theory of symbolic power to encompass penalty as authoritative classification, is that symbolic structures are not ancillary efflorescences or decorative encasings of material relations. Rather, they are a constitutive force in social life. The penal wing of the state is not a «repressive apparatus» that stifles entities that would already be there, as the Althusserians and their late epigones would have it⁷. Rather, it is a prolific agency that contributes to the production of reality by generating categories and discourses, social relations, and modes of political intervention in social space (see especially CLP: 29-37). To accomplish this, like every institution, criminal justice constantly interweaves real and ideal elements. So we must accord the latter our full attention. At the same time, there are material conditions of symbolic efficacy which must be specified, such that the study of punishment as representation cannot be severed from the dissection of its organizational mooring.

⁷ The artificial duality of "repressive" and "ideological" apparatuses continues to hamper the sociology of punishment, even among students of the state who insist on capturing its active presence in everyday practices and representations (see, for instance, Gupta 2006: 8-20).

This is the third and perhaps most difficult challenge tackled by CLP: *to fully join the material and the symbolic modalities of penalty in one and the same analysis*, rather than stitch them together as separable parts, or swing from one to the other at the risk of dichotomizing them⁸. This move is all the more crucial when the increasing intrusion of operators from the political and media fields into the penal sector of the bureaucratic field have led to the hyperbolic accentuation of the expressive mission of punishment, such that many measures (such as youth curfews or mandatory minimum sentences) are adopted solely to exhibit the authority of the state and stage the grit of politicians to curb crime and the assorted urban disorders it has come to stand for. Granting an auxiliary role to symbols as lynchpin between socioeconomic constellations and penal sanction —as Dario Melossi (1993) does, for instance, in his influential article on «Gazette of Morality and Social Whip»— will not do when one of the hallmark of neoliberal penalty is precisely its *pornographic character*: it is rolled out as moral theater and political spectacle.

My purpose in *Castigar a los pobres* is not to capture the manifold gyrations of criminal justice in advanced society in their full complexity, and much less to claim that the abrupt punitive turn that has made the United States world leader in incarceration is bound to be replicated in other countries that have come into the ambit of the neoliberal revolution. It is to fashion an analytic framework that relates class fragmentation to criminal justice; (re)unites social and penal policies as two complementary variants of poverty policy; and fuses the material and symbolic analysis of the disciplinary regulation of urban marginality; and in so doing contributes to the comparative-historical anthropology of state-crafting on the threshold of the twenty-first century. I hope that Spanish colleagues will revisit and revise the theory of penalization elaborated in *Castigar a los pobres* in light of the experiences of the Iberian peninsula and, beyond that, sketch the distinctive features of the contemporary penal transformation of two overlapping societal types: Southern European countries of the Mediterranean rim (running from Greece to Portugal) with a strong familialist and Catholic tradition, and post-authoritarian Western societies that have successfully established democratic institutions at the same time as they have subjected them to the naked rule of the almighty market.

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⁸ This forced splitting of the material and symbolic moments of penalty undercuts the claim of De Koster *et al.* (2009) to offer a statistical test of my model of the links between post-Fordist sociopolitical transformation and punishment. They mis-specify this model as a materialist interpretation (in part because they project the narrower arguments of *Prisons of Poverty* onto the illegal, truncated French version of *Punishing the Poor*). Omitting the pivotal role of criminal justice as vehicle for drawing boundaries and asserting sovereignty which is epicentral to *Castigar* leads them to set up a false opposition between «neo-liberalism» and «right-wing political culture,» when the latter is a component of the former and when it is Left governments that have pushed for punitive policies in most Western European countries (Wacquant 1999 and 2011).

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