

## ‘THE PRISON IS AN OUTLAW INSTITUTION’ \*

**Loïc Wacquant**

*University of California, Berkeley*

*Centre européen de sociologie et de science politique, Paris*

Abstract: This discussion of *Les Prisons de la misère* (Raisons d’agir Editions, Paris, 1999 - expanded and updated English-language edition, *Prisons of Poverty*, Minneapolis, University of Minnesota Press, 2009) responds to queries put forth by the editors of *R de réel* and originally published in French that journal in June 2000 (vol. 3, pp.33-38). It argues that the carceral boom in the United States results from the penalization of poverty correlative of the simultaneous revamping of the economic, welfare, and justice missions of the state. Pro-market think tanks have played a driving role in fashioning and diffusing America’s “punitive common sense” across the Atlantic, thus accelerating the import of aggressive crime rhetorics and policies in Western Europe by political elites (including left governments) seduced by neoliberal ideology. But, while the prison purports to enforce the law and to curtail the disorders generated by economic deregulation, the recent French experience confirms that its very organization and daily operation make it an outlaw institution. It is promoted as a remedy for criminal insecurity and urban marginality, but it only serves to concentrate and intensify both, even as it makes them temporarily invisible. To get out of the policy and civic impasse into which the penalization of poverty leads contemporary societies, we must raise anew the quintessentially political question of the purpose(lessness) of incarceration at century’s dawn.

Keywords: incarceration, zero tolerance policing, prison boom, penal philosophy, penal state, urban marginality, think tanks, neoliberalism

**In *Prisons of Poverty*, you argue that there is a close link between the rise of neoliberalism and the bolstering of law-and-order policies, first in the United States and later in Europe. You encapsulate this development in a succinct formula: ‘Withering away of the economic state, diminution and denigration of the social state, expansion and glorification of the penal state.’<sup>1</sup> Can you unpack that expression?**

The intent of this formula is to stress that we cannot understand policing and prison policies in advanced societies today unless we place them in the framework of a broader transformation of the state, a transformation that is itself linked to a makeover of wage work and a shift in the balance of power between the classes and assorted groups struggling over its control. In this struggle, transnational corporations and the ‘modernising’ fractions of the bourgeoisie and state nobility have formed an alliance under the banner of neoliberalism, gained the upper hand and launched a sweeping campaign to revamp public authority on the labour, welfare, and penal fronts. Economic deregulation, the rise of precarious wage work (against the backdrop of enduring mass unemployment in Western Europe and rampant ‘working poverty’ in the United States),<sup>2</sup> and the ascent of the punitive state go hand in hand: the ‘invisible hand’ of the precarized labour market finds its institutional counterpart in the

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<sup>1</sup> Loïc Wacquant, *Prisons of Poverty*, University of Minnesota Press, Minneapolis, 2009, p. 8.

<sup>2</sup> Dan Zuberi, *Differences that Matter: Social Policy and the Working Poor in the United States and Canada*, Cornell University Press, Ithaca, 2006; Alberto Alesina and Edward Glaeser, *Fighting Poverty in the US and Europe: A World of Difference*, Oxford University Press, New York, 2006.

‘iron fist’ of a state that redeploys its forces so as to suppress or contain the *disorders generated by the spread of social insecurity*.

The regulation of the working class through what Pierre Bourdieu calls the ‘Left hand’ of the state – symbolised by education, health, welfare benefits and social housing – is being *supplanted* (in the United States) or *supplemented* (in Europe) by regulation through the ‘Right hand’ – the police, the courts and the prison – which is increasingly active and intrusive in the lower regions of social space.<sup>3</sup> The hyperbolic reassertion of the ‘right to security’, correlative of the dereliction of the ‘right to work’ in its old formula (i.e., for full time employment, with the complete gamut of social benefits, for an indeterminate period and a living wage), and the increasing priority and resources granted to the enforcement of order come in handy to shore up the deficit of legitimacy suffered by political leaders whenever they renounced the established missions of the state on the social and economic front.

In short, the law-and-order turn taken by the Jospin government in France in 1997, and by those of Tony Blair in Great Britain and Massimo D’Alema in Italy the year before, had little to do with the supposed ‘explosion in youth crime’ – official statistics show it has occurred only in the imagination of government officials<sup>4</sup> – or in the notorious ‘urban violences’ (a statistically and sociologically meaningless term) that have recently flooded the media scene and are regularly invoked by the authorities<sup>5</sup>. However, it has everything to do with the generalisation of desocialized wage labour and the establishment of a political regime that will permit its imposition and contain its ramifications at the bottom of the class and urban order. I characterize this regime as ‘liberal-paternalist’ because it is *liberal* at the top, with regard to corporations and privileged categories, and *paternalistic* and punitive at the bottom, toward those who find themselves trapped by the restructuring of employment and the retrenchment of social welfare, or its conversion into an instrument of discipline and surveillance. But, in order to discern that, we must escape the narrow problematic of ‘crime and punishment’ that we all carry in our heads (especially criminologists: it is the founding axiom of their discipline) and which politicians and journalists rehearse *ad nauseam* precisely because it is taken for granted and nobody feels the need to subject it to scrutiny.

**You track the rise of the penal state in the United States, where economic deregulation and the dismantling of welfare support have been accompanied by a stupendous expansion of the carceral system during a period when crime rates first stagnated and then declined. Statistics show that carceral expansion is driven by the locking up of nonviolent offenders, about which you write: “Contrary to the dominant political and journalistic discourse, America’s prisons have been filled mostly not with dangerous and hardened outlaws but with run-of-the-mill scofflaws sentenced for narcotics-related infractions, burglary, theft, and for disturbing public order”.<sup>6</sup> How did the authorities justify this about-turn?**

Spurred by the political and racial backlashes of the 1970s that swept Ronald Reagan into the White House, the United States has strived to replace its (semi) welfare state with a police

<sup>3</sup> See the issue of *Actes de la recherche en sciences sociales* devoted to the transition “From Social State to Penal State” (September 1998). The schema of the “two hands of the state” is from Pierre Bourdieu et al., *The Weight of the World: Social Suffering in Contemporary Society*, Polity Press, Cambridge, [1993] 1998.

<sup>4</sup> Bruno Aubusson de Cavarlay : « Statistiques », in C. Lazergues & J.P. Balduyck, *Réponses à la délinquance des mineurs. Mission interministérielle sur la prévention et le traitement de la délinquance des mineurs*, La Documentation française, Paris, 1998.

<sup>5</sup> Laurent Mucchielli, *Violences et insécurité. Fantômes et réalité dans le débat français*, La Découverte, Paris, 2001.

<sup>6</sup> Wacquant, *Prisons of Poverty*, pp. 62-63.

and prison state in which *the criminalisation of poverty and the confinement of dispossessed categories* serve as surrogate social policy towards the poor. We can describe the advent of the penal state in America succinctly along five modalities. The first is the staggering increase in the carceral population, which quadrupled in twenty years to pass the two-million mark, including over one million non-violent offenders. This figure comes to 720 inmates per 100,000 residents, eight times the figure for France, Italy or Germany (whereas it was twice as high in 1960) and double the rate for South Africa at the peak of the armed struggle against apartheid<sup>7</sup>. The second is the continuous extension of judicial supervision through the enlargement of probation and parole, so that criminal justice now oversees the fate of some six million Americans – one in twenty males and one in three young black males. Its reach further extended by the proliferation of criminal data bases, some of them freely available on the internet, and of genetic fingerprinting (a new era of penal panopticism dawned in 1994 when Congress passed the DNA Identification Act, mandating the FBI to create a national genetic data bank which came on line in 1998 and will eventually contain the ‘DNA prints’ of all persons sentenced to a prison term, perhaps even everyone arrested by the police). The third trend is the gargantuan increase in the resources devoted to corrections, which has become the country’s third largest employer with over 600,000 staff, just behind the world’s leading corporation in terms of turnover, General Motors, and the distribution giant Wal-Mart. This increase has come while welfare, health and education budgets have been subjected to draconian cuts in real terms: for instance, social welfare spending was reduced by 41% while corrections increased by 95% in the single decade of the 1980s.

However, even with the slashing of social services funding, the ‘great confinement’ of marginalized categories would not have been possible without the contribution of the private sector: for-profit imprisonment re-emerged in 1983 and rapidly cornered one-twelfth of the national ‘market’ with roughly 140,000 beds, nearly three times the carceral population of France. These companies, listed on the NASDAQ exchange, posted record growth rates and became the darlings of Wall Street during the 1990s. America’s ‘new economy’ has brought not only the internet and digital information technologies: it also encompasses the punishment sector! As an indication, California’s state prisons employ twice as many staff as does Microsoft. The fifth and last trend is no less revealing: the continuing ‘blackening’ of the carceral population, even as the criminal population ‘whitened’. In 1989, for the first time in the country’s history, African Americans supplied the majority of prison admissions even though black men make up only 7% of the country’s male population. Prison has become an extension of and substitute for the ghetto, after the latter crumbled in the wake of waves of urban riots in the 1960s.<sup>8</sup>

The aggressive ‘law-and-order’ policy deployed during this period, which stoked carceral hyperinflation, is first and foremost a response to the social movements of the 1960s, and especially to the advances of the Civil Rights Movement. (The electoral attraction of tough crime policies resided largely in their ability to express in an apparently civic idiom – to safeguard the peace and safety of the citizenry – the rejection of black demands for equality, while in Europe today they disguise xenophobic anguish about immigrants come from the former imperial periphery.) The American Right then embarked on a vast project of

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<sup>7</sup> As of 2011, the United States continues to lead the world with an incarceration rate of 743 inmates per 100,000, compared to 85 for Germany, 96 for metropolitan France, 111 for Italy, and 153 for England and Wales (cf. Roy Walmsley, *World Prison Population List*, 9<sup>th</sup> edition, London, International Center for Prison Studies, 2011).

<sup>8</sup> On this controversial aspect of hyperincarceration in the United States, see Michael Tonry, *Malign Neglect: Race, Crime, and Punishment in America*, Oxford University Press, New York, 1995, and Loïc Wacquant, ‘The New “Peculiar Institution”: On the Prison as a Surrogate Ghetto’, *Theoretical Criminology*, 4-3, Special issue on “New Social Studies of the Prison” (edited by Mary Bosworth and Richard Sparks): 377-389.

intellectual rearmament by creating ‘think tanks’, those public policy propaganda outfits that would serve as ideological launching pads for the war against the welfare state, which is inseparable from the refusal of full integration for African Americans. Having won the battle against the state’s welfare sector,<sup>9</sup> these institutes turned to promoting its penal sector: the campaign for ‘small government’ in social and economic matters was followed by a crusade for ‘big government’ in matters of policing and prison on the ‘justice’ front. For example, in New York the Manhattan Institute, created in 1978 at the behest of Anthony Fisher, the mentor of Margaret Thatcher, revived and promoted the scientifically discredited ‘broken windows’ theory in order to legitimise the policy of ‘zero tolerance’ (or ‘quality-of-life’) adopted by Rudolph Giuliani, the city’s Republican mayor. The book by George Kelling and Catherine Coles, *Fixing Broken Windows*, presented as a “handbook” of good practices for fighting street crime, was bankrolled and actively promoted by the Manhattan Institute, where Kelling was “Senior Fellow.”<sup>10</sup>

This policy amounts to a ‘class cleansing’ of public space by repelling the threatening poor (or those perceived as such) off the streets, parks, trains, etc. To apply it, the head of the New York City’s police transformed his department into a simile of a ‘security firm’, complete with mandatory numerical monthly targets in terms of crime reduction and the deployment of an additional 12,000 officers bringing total staff strength to a staggering 48,000 (nearly one-half of the entire police force of France!). Compare this figure with the 13,000 who remained in the city’s social service departments after a 30% staff cut over five years. The concrete translation of this shift in priority from social support to street policing was the constant harassment of poor young black and immigrant men on the street, resulting in mass arrests (often with no legal ground) in dispossessed neighbourhoods, the complete clogging of the low-level courts, the uninterrupted growth of the population thrown behind bars (130,000 people pass through the gates of Rikers Island every year, almost double the figure for prison admissions for the whole of France), and a climate of open defiance and hostility between the police and the African-American and Latino populations in the city. Following the deaths of Amadou Diallo, Malcolm Ferguson and Patrick Dorismond, three young black men killed for no reason in the space of a year by trigger-happy police officers, this aggressive street-level policy of law enforcement became vigorously contested in New York City itself, including by some of its main beneficiaries among the white middle class. Which does not prevent some of our fine politicians-cum-criminologists to propose to import it into France...

**In 1662, Jean-Baptiste Colbert, the minister of finance of Louis XIV, sent a letter to the *parlements* [the principal judicial bodies under the *ancien régime*] that read: ‘His Majesty, desirous of replenishing the crews of his galleys and strengthening them by all possible means, wishes you to assist by having your judges procure the condemnation of as many guilty as possible, and in addition convert the death sentence to one of galley**

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<sup>9</sup> Charles Noble, *Welfare As We Knew It: A Political History of the American Welfare State*, Oxford University Press, New York, 1997, and Herbert Gans, *The War Against The Poor: The Underclass And Antipoverty Policy*, Basic Books, New York, 1996.

<sup>10</sup> George L. Kelling and Catherine M. Coles, *Fixing Broken Windows: Restoring Order And Reducing Crime In Our Communities*, Free Press, New York, 1998. The book sports the effusive endorsement of John DiIulio (inventor of the myth of “the superpredator” and ardent advocate of mass incarceration): “A cogent and compelling how-to-cut-crime book that truly should be read by every police officer, every townwatch organizer, every lawyer, every policy analyst and every open-minded civil libertarian in America... Mr. Kelling and Ms. Cole demonstrate clearly that the broken-windows theory is 100% correct.” The said theory is dismantled on logical grounds and refuted empirically by Bernard E. Harcourt, *Illusions of Order: The False Promise of Broken Windows Policing*, Harvard University Press, Cambridge, 2005.

servitude'.<sup>11</sup> Power thus used convicts as a free labour force. In *Discipline and Punish*, Michel Foucault argued likewise that prison serves economic power even more than the galleys did. Have we now reverted to this configuration?<sup>12</sup>

Not in the sense that the economic exploitation of prisoners would be the cause of or reason for the spectacular increase of incarceration in the United States and, to a lesser extent, in western Europe. This configuration obtained at the historical origin of the penal prison: in the sixteenth century, the Bridewell in London, the *Zuchthaus* in Amsterdam and the *hôpital général* in Paris fulfilled three indivisible functions: to confine, to reform and to put to work. In their classic work *Punishment and Social Structure*, Georg Rusche and Otto Kirchheimer showed that, at that time, the aim of imprisonment was to 'render the labour power of unwilling people socially useful' by inculcating them under duress industrious habits so that they would 'voluntarily go swell the ranks of those seeking to labour' when released.<sup>13</sup> But this was no longer true by the end of the eighteenth century, the period that interested Foucault, and the very opposite applies at the end of the twentieth century: today's prisons primarily warehouse the rejects of the labour market, *the deproletarianised and supernumerary fractions of the working class*, rather than a reserve army of labour. In America, barely one prisoner in eight has a 'job' (by the most generous definition of employment, that is, counting doing chores inside custodial facilities) and the ratios are even lower on this side of the Atlantic. Putting convicts to work is not a practical proposition in contemporary society, for a host of legal and economic reasons. Contrary to the claims of the critics of the so-called 'prison-industrial complex', incarceration is not a profitable 'industry' for society because its costs are astronomical (\$25,000 per inmate per year in a California state penitentiary and \$70,000 in New York county jail) and it generates no wealth. It is a gross drain on the public coffers that is profoundly irrational from a capitalistic standpoint. The private operators that benefit from the prison boom are minor players who exploit the bureaucratic rigidities of the state downstream, not strategic actors that impact penal policy upstream.

Searching for a *direct* link between incarceration and economic profit takes you nowhere. That does not mean that hyperincarceration does not serve an *indirect* economic function: it disciplines the most reticent elements of the new service proletariat by raising the cost of resistance strategies and of the flight into the informal, illicit street economy. But above all, we must not think the advent of 'liberal paternalism' through the categories of exploitation and repression. We should construe it, as Michel Foucault suggested in his celebrated analysis of the invention of sexuality,<sup>14</sup> through the category of *production*. The transition from the welfare state to the penal state is eminently productive: it produces new categories such as the 'sensitive neighbourhoods' containing the 'problem populations' prone to those dreaded forms of 'urban violence', or the imbecilic slogan of 'zero tolerance' which some would want to apply today in every realm where discredited hierarchies must be reaffirmed (the street, the school, the family, the firm). It produces new discourses, such as the trope of 'security' that the *gauche plurielle* [the left-wing coalition government in France in 1997-2002] keeps harping on about, understood narrowly as referring to the physical security of goods and persons, decisively severed from its social and economic foundations –

<sup>11</sup> Letter by Jean-Baptiste Colbert, 11 April 1662. The short and brutish legal and social life of galley convicts is depicted by André Zysberg, *Les Galériens. Vies et destins de 60 000 forçats sur les galères de France (1680-1748)*, Seuil/Points, Paris, 1991.

<sup>12</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Pantheon, New York, [1975] 1977.

<sup>13</sup> Georg Rusche & Otto Kirchheimer, *Punishment and Social Structure*, Transaction Publishers, New Brunswick, 2003, Preface by Dario Melossi (originally published in 1939).

<sup>14</sup> Michel Foucault, *The History of Sexuality*, Vo. 1, *The Will to Know*, Pantheon, New York [1976] 1977.

which, in a paradoxical reversal, presents the police and penal stewardship of working-class districts as a progressive move that would benefit their inhabitants. Finally, it produces novel institutions and novel agents, such as the ‘security consultancies’ and ‘security associates’ (the creation of 16,000 jobs for young people to improve the ‘policing’ of the peripheral urban zones undermined by unemployment and flexible employment), and new judicial measures (fast-track prosecution, variants of plea bargaining) which, under the pretext of bureaucratic efficiency, install a differential form of justice based on ethnic and class origins.

In short, the penalisation of precariousness creates new ‘realities’, and realities tailor-made to legitimise the ascent of the punitive state according to the principle of the “self-fulfilling prophecy.”<sup>15</sup> One illustration: by transforming the slightest incident of misconduct at school into an act of juvenile delinquency that systematically triggers a court referral, one artificially manufactures an epidemic of ‘classroom violence’ which, with the help of the media, can in turn be used to justify the ‘partnership’ between schools and the police that produced it in the first place, and therefore normalize the creeping daily intrusion of the latter into the former.

**The French public sphere is periodically shaken by debates over conditions in the country’s prisons, which recurrently denounce overcrowding, the dilapidated state of the infrastructure, the routine denial of rights, and the poverty, violence, and sexual abuse imposed on convicts. Lately, the book by Dr. Véronique Vasseur, *Chief Physician at La Santé Jail*, unleashed a torrent of journalistic reports, followed by the establishment of an official commission of inquiry and a raft of indignant pronouncements from leading members of parliament.<sup>16</sup> What are your thoughts on this episode?**

You would like to be convinced that it is always better to talk about prison than not to talk about it, if only to break the *omerta* that protects the institution. Except that there are ways of talking about it that are ways of skirting it and that can ultimately turn out to be counter-productive, because they create the illusion that you are tackling the problem when in fact you are avoiding it. We may well ask what will remain on the beach once this media storm has blown over, not to mention the most astonishing of it all: to see the media elevate a quadron of corrupt corporate heads and national politicians who spent brief stints behind bars under totally atypical conditions (protected in single cells with unusual comforts and wide access to lawyers, family, and journalists) to the ranks of Zorros of prisoners’ rights! In any case, three months after the ‘controversy’ over *Médecin-chef à la Santé*, not a single concrete measure has been announced to correct the scandalous conditions she describes and, curiously, the parliamentary commissions which have rushed to take up the question have set themselves herculean tasks of inquiry and won’t deliver their recommendations for another six months, when we already know everything we need to know in order to act.<sup>17</sup>

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<sup>15</sup> Robert K. Merton, “The Self-Fulfilling Prophecy,” in *Social Theory and Social Structure*, Free Press, New York, 1968 (first published in *The Antioch Review* in 1948).

<sup>16</sup> Véronique Vasseur, *Médecin-chef à la Santé*, Le Cherche-Midi, Paris, 2000. Vasseur is a physician who became head of the clinic at La Santé jail, at the heart of Paris, after the medical services of France’s correctional administration were integrated into the country’s public health system in 1996. The book is a diary that records her shock and dismay at living and working conditions behind bars; it stresses the violence, insalubrity, idleness, promiscuity, bureaucratic perversity and misconduct that stamp everyday life in a jail famous for having recently hosted a number of high-profile French politicians and corporate tycoons. It received wide media coverage, quickly became a best-seller, and created a roiling public and policy debate on the carceral condition in France.

<sup>17</sup> In June 2000, the French senate produced a damning report entitled “Prisons: A Humiliation for the Republic,” which urged the government to carry out a complete overhaul of its carceral system, but every government since

Amidst the uproar unleashed by the account of the ‘scenes of everyday life’ in La Santé jail, which will have come as no surprise to anyone who has rubbed up close with the prosaic realities of incarceration, I note, first of all, that neither journalists nor policy makers – who, in truth, never debate but among themselves – have seen fit to read any recent social science research on the subject, even though there exists some fine studies based on detailed and methodical fieldwork, instead of fleeting personal impressions.<sup>18</sup> This makes you wonder why the state pays sociologists! Next, I am struck by the *moralising tonality* of the debate. These people pretend to discover, and to denounce as deeply shocking, that French prisons are not ‘worthy of the motherland of Human Rights’ when, by dint of the law itself, the penal institution functions on the margins of legality, outside of all democratic control, in complete administrative arbitrariness against a backdrop of studious official indifference. (I am thinking here in particular of that banal embodiment of bureaucratic despotism known as the *prétoire* [disciplinary board], the ‘internal tribunal’ of the prison through which the prison service toys with the lives of human beings without oversight or recourse, guided solely by its concern for the maintenance of internal order.) The prison is supposed to enforce the law but, by the very nature of its organisation, it operates as *an outlaw institution*. Promoted as a remedy for insecurity and marginality, it does little more than to concentrate and intensify them, but so long as it renders them *invisible*, we ask nothing more of it.

For anyone genuinely concerned about the judicial treatment and living conditions of inmates, there was no need to wait for the publication of Dr Vasseur’s diary. It sufficed to peruse the 1997 study by the Ministry of Justice – or any one of those that periodically preceded it and of which, curiously, the justice minister claimed to be totally unaware. This study reveals that one in four jail detainees lives in ‘very difficult and even alarming’ conditions, with three or four people locked up for 22 hours a day in cells measuring less than nine square metres. In Nîmes, my town of my birth, there were 330 inmates in a building designed for 180, with up to six inmates crammed into cells measuring 20 square metres, forced to curl up on their beds in order to eat their meals, in dreadfully unsanitary conditions. In a number of long-term prisons like the one in Nantes, inmates serving sentences running up to five years are doubled up in single cells which afford them less than two square metres of living space after you factor in the extra furniture stowed in them. When will the prison service enforce ‘zero tolerance’ for these systematic breaches of article 716 of the Penal Code, which stipulates one person to a cell?<sup>19</sup> All the rest, the brutal treatment of inmates and

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has instead tinkered with the margins of the system (see Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity*, Duke University Press, Durham, 2009, chapter 8).

<sup>18</sup> France has a recent but rich and active tradition of field research on jails and prisons: see, in particular, Philippe Combessie, *Prisons des villes et des champs*, Editions de l’Atelier, Paris 1996; Daniel Welzer-Lang, Lilian Mathieu & Michaël Faure, *Sexualités et violences en prison*, Aléas Editeur, Lyon, 1996; Anne-Marie Marchetti, *Pauvretés en prison*, Cérès, Ramonville Saint-Ange, 1997; Corinne Rostaing, *La Relation carcérale. Identités et rapports sociaux dans les prisons de femme*, Presses Universitaires de France, Paris, 1997; Claude Faugeron, Antoinette Chauvenat & Philippe Combessie (eds.), *Approches de la prison*, De Boeck University, Brussels, 1997; and Léonore Le Caisne, *Prison. Une ethnologue en centrale*, Paris, Odile Jacob, 2000 [Among more recent studies, see Anne-Marie Marchetti, *Perpétuités. Le temps infini des longues peines*, Plon, Paris, 2000; Gilles Chantraine, *Par-delà les murs. Expériences et trajectoires en maison d’arrêt*, Presses Universitaires de France, 2004; Antoinette Chauvenat, Corinne Rostaing and Françoise Orlic, *La violence carcérale en question*, Presses Universitaires de France, 2004; Géraldine Bouchard, *Vivre avec la prison. Des familles face à l’incarcération d’un proche*, L’Harmattan, 2007; Léonore Le Caisne, *Avoir 16 ans à Fleury. Ethnographie d’un centre de jeunes détenus*, Seuil, Paris, 2008; and Gwénola Ricordeau, *Les détenus et leurs proches. Solidarités et sentiments à l’ombre des murs*, Autrement, Paris, 2008.]

<sup>19</sup> By virtue of 1976 law, periodically reaffirmed by additional legislation and administrative decrees, convicts sentenced to multiple years of prison have the right to serve their punishment in an individual cell. This right was first inscribed in French law in 1875 but it has never been respected by the national prison service. See Martine Herzog-Evans, *La Gestion du comportement du détenu. Essai de droit pénitentiaire*, L’Harmattan, Paris 1998.

racist chatter of the staff, the routine humiliation of families and visitors, the dire material deprivation and daily violence, has been known and abundantly documented for years.

But, above all, this debate has carefully avoided the more fundamental question: namely, what could be the purpose of prison in the twenty-first century? If it were asked, we would realize that *nobody knows any more just why we lock people up*. We continue to ritually invoke the therapeutic philosophy of rehabilitation and we kid ourselves and others that the mission of prison is to ‘reform’ and ‘reintegrate’ its clients although everything denies it, from its architecture to the organization of the work of guards and the constant penury of institutional resources (as regards work, training, education, and health), to the deliberate drying up of parole release and the absence of post-release support worthy of the name. This is clear from the words of this prison officer who wryly notes: ‘Rehabilitation eases some people’s consciences. Not people like me, but politicians. It’s the same in jail. How many times I’ve heard: “Don’t you worry boss, I won’t ever come back!” and bam! six months later ... *You don’t do rehabilitation in prison. It’s too late. You’ve got to habilitate people by giving them jobs, equal chances at the outset, at school. You’ve got to do habilitation.*’<sup>20</sup> But we are totally incapable of ‘rehabilitating’ unemployed youths, the homeless, and recipients of the guaranteed minimum income on the outside, so what chance is there that we will do that for former convicts?

At first glance, the situation seems clearer in the United States: there the authorities have junked the ideal of rehabilitation and opted by default for the ‘neutralisation’ of violent criminals. But how do you then justify the incarceration of one million petty offenders who pose no danger to anyone? And since deterrence turned out to be a glaring failure, they finally turned to retribution: ‘Make a prisoner smell like a prisoner’, that’s the new slogan of correctional administrations in America. Humiliate, lock up to inflict pain, punish for punishment’s sake. But when the public realises the human and financial costs of this penal ‘theatre of torment’, it is no longer so sure that it wants it. The truth is that we are entangled in what the Scottish sociologist David Garland calls the ‘crisis of penal modernism’,<sup>21</sup> and we will not emerge from it without a fundamental rethinking, a reflection that is *political* in the noblest sense of the term, without restraints or taboos, on the meaning of punishment and therefore of incarceration, and on the moral dilemmas these necessarily entail.<sup>22</sup> The real challenge, to be specific, is not to improve prison conditions, although that is clearly a matter of immediate urgency, but to rapidly *depopulate the prison* by engaging a proactive policy of *decarceration* based on alternative sentencing and the social treatment of urban ills. For, whereas we no longer know why we lock people up, we do know very well that passing through the prison has destructive and demoralising effects on inmates as well as on their families and associates. By reactivating parole, conditional sentences, and community sanctions, by severely restricting remand detention and making intelligent use of remission and amnesties, France could lower its carceral population from 54,000 to 24,000 in two years without compromising public safety – all this requires is a whiff of civic courage on the part of political leaders.

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<sup>20</sup> Cited in Antoinette Chauvenet, Françoise Orlic & Georges Benguigui. *Le Monde des surveillants de prison*, Presses Universitaires de France, Paris, 1994, p.36, my emphasis.

<sup>21</sup> David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*, University of Chicago Press, Chicago, 2002; read also David Garland, “Penal Modernism and Postmodernism,” in Thomas G. Blomberg and Stanley Cohen (eds.), *Punishment and Social Control*, Aldine de Gruyter, New York, 1995, pp. 181-210.

<sup>22</sup> These dilemmas are explored with pessimistic rigor by Antony Duff in *Trials and Punishments* (Cambridge University Press, Cambridge, 1991).

**What role could intellectuals play in launching that debate? Why not intervene regularly in the pages “Horizons-Débats” [the editorial pages of *Libération*, France’s main Left daily], whose contribution to the moral panic over ‘urban violences’ you dissect and denounce in your book? Would this not enable you to reach public opinion, and not just the people who take the trouble to read *Prisons of Poverty*? Shouldn’t you be preaching to the inattentive rather than to the converted? You are a renowned academic and you share this point of view with a number of eminent colleagues; there is no reason why the press wouldn’t welcome your point of view.**

Here, I have to say in all honesty that the last part of your question demonstrates an astonishing naivety as regards the media. Apart from the fact that readers of the major Parisian dailies are not the sole building blocks of ‘public opinion’, do you really believe that the scientific quality and rigor of ideas decide what does or does not get into the newspapers, including in their ‘ideas and debates’ sections? A rudimentary sociology of that profession shows, on the contrary, that journalists appreciate and celebrate first those who think like themselves, in a journalistic way, according to the prevailing categories of the social and political common sense of the day – this is not an individual shortcoming, this is a structural constraints imposed upon journalists.<sup>23</sup> Anything that interrupts the quiet humdrum of the flacid politology they use as a tool for understanding society has every chance of being perceived as an attack or of not being perceived at all. (Ask the editorial board of *Libération* why that newspaper, which purports to be progressive and critical – and which publishes an article on justice and prison issues practically every day – has not considered it appropriate to print a single line about my book, although it is already translated into ten languages and has been widely read and discussed by scholars, activists, and inmates alike across France – indeed, upon its release, my first public debate on the book was with the inmates of La Santé jail and later with the staff and students of the national school for correctional officers.)<sup>24</sup>

The mass media today are not an instrument for democratic debate but an obstacle to sidestep in order to launch that debate. So much to say that to do so one must rely on other networks of communication – journals, newsletters, fanzines, civic forums – and find support elsewhere, among the unions, associations, progressive organizations and collectives engaged in various social struggles (I’ll be in France in the spring for a series of meetings, including a major symposium in Montpellier on the gamut of public policies bearing on the nexus of insecurity and marginality organised by the Syndicat de la magistrature [one of France’s main unions for judges]<sup>25</sup>: we shall see what the newspapers report or not). Through their critical and methodical questioning, based on observation and comparison, scholars have a driving contribution to make to the reformulation, at once bold and realistic, of the penal question. It is urgent that they work collaboratively with all those –lawyers, prison program providers,

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<sup>23</sup> On this point and others, see the articles published in the issue of *Actes de la recherche en science sociales* devoted to ‘Le journalisme et l’économie’ (March 2000: 131-132), and Pierre Bourdieu, *On Television and Journalism*, Pluto Press, London, [1996] 1998.

<sup>24</sup> [Editorial note by *R de Réel*] *Libération* did feature Wacquant’s *Les Prisons de la misère* in the section on the future of the prison for its special report on “40 Worksites for a New Century” (25 March 2000).

<sup>25</sup> The proceedings of this meeting were later published as Gilles Sainati and Laurent Bonelli (eds.), *La Machine à punir. Pratique et discours sécuritaires*, L’Esprit frappeur, Paris, 2001). For an account of the global reception of *Prisons of Poverty* and its analytic import, see Loïc Wacquant, “A Global Firestorm of Law and Order: On Neoliberalism and Punishment,” *Thesis Eleven*, 105, Summer 2011, in press, and the exchange with Pat O’Malley in the same issue.

justice and human rights activists, and the inmates and their families – who battle in the long shadow of the prison to make that outlaw institution enter fully in the City.<sup>26</sup>

## 2011 Postscript: A Decade of *Prisons of Poverty*

The above article was written in response to the issues that my book *Prisons of Poverty* raised in the public sphere when it first came out in France in November 1999. Like the book, it sought was to crisscross and link scholarly, policy, and civic debates on crime control and societal transformation. Its translation into English a decade later will give readers from across the Channel and the Atlantic a sense of my initial purpose: to spotlight and to challenge the penalization of poverty as an offshoot of the transborder diffusion of the neoliberal project.

Over that decade, the prisons of poverty have continued to thrive, so to speak, but my views of the ties between neoliberalism and the penal surge observed around the globe --as documented by the recent report of the World Prison Project<sup>27</sup>-- have evolved in important ways. This evolution is recorded in part in the revised and expanded version of the book that came out in English in 2009, but more so in a series of publications linking urban marginality, ethnoracial division, and penal deployment. This string of articles, in turn, paved the ground for the trilogy composed by my books *Urban Outcasts* (2008), *Punishing the Poor* (2009), and *Deadly Symbiosis* (2011), which charts my fuller conception of the novel place assumed by the police, the courts, the prison, and representations of punishment in the age of deepening urban inequality, broiling ethnic anxiety, and diffusing social insecurity.<sup>28</sup>

The international reactions to *Les Prisons de la misère* (which is translated in 20 languages) afforded me an opportunity to travel across several continents and to meet with justice scholars, activists, and officials from many countries. This enabled me to gain a better concrete as well as analytical grasp of the *varied paths to penalization* taken by different societies, and of the *diverse forms of penalization* they have favored, depending on their position in the world system, inherited social structure and conception of citizenship, and the architecture and policies of their national state. Broadening my empirical purview disclosed that the firestorm of “law and order” has gone virtually global, notwithstanding nodes of principled resistance and practical reticence here and there. It has also confirmed the motor role played by “think tanks,” not only in Western Europe, but also in Latin America and in the nations that emerged out of the sudden collapse of the Soviet Union and the brutal transition from command to market economy.<sup>29</sup> Lastly, expanding the scope of my inquiries over the past decade has verified that policies of economic “deregulation,” supervisory “workfare,” and castigatory “prisonfare” have tended to travel and bloom together. Indeed, whether by political design *ex ante* or through administrative groping *ex post*, they have been bought and sold more or less as a coherent *policy package* that has both caused and responded to the emergence of a new regime of urban marginality fueled by the

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<sup>26</sup> Further reflections on the contribution of social research to public debate and mobilization around the prison, as well as revisions to the model of the linkages between neoliberal and punishment are in Loïc Wacquant, “The Wedding of Workfare and Prisonfare Revisited,” *Social Justice*, vol. 38, no 1-2, Spring 2011, in press.

<sup>27</sup> Walmsley, *World Prison Population List*.

<sup>28</sup> Loïc Wacquant, *Urban Outcasts: A Comparative Sociology of Advanced Marginality* (Polity Press, Cambridge, UK, 2008); *Punishing the Poor: The Neoliberal Government of Social Insecurity*; *Deadly Symbiosis: Race and the Rise of the Penal State* (Polity Press, Cambridge, 2011).

<sup>29</sup> A provocative study of the multisided implication of “think tanks” in transborder state-crafting is Yves Dezalay and Bryant G. Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States*, University of Chicago Press, Chicago, 2000. A more roseate vision on their role in Eastern Europe after the fall of the Berlin wall is Raymond J. Struyk, *Reconstructive Critics: Think Tanks in Post-Soviet Bloc Democracies*, University Press of American, Lanham (MD), 1999.

fragmentation of wage labor, the recoiling of the social state, and territorial stigmatization fastened on the neighborhoods of relegation of the dual city.<sup>30</sup>

Accordingly, I have revamped my model of rise of the penal state as national and global phenomenon. I sketched elsewhere a brief analytic contrast between that model and the main contending macro-theories of contemporary changes in punishment –*inter alia*, David Garland’s “culture of control,” Jonathan Simon’s “governing through crime,” John Pratt’s adaptation of Elias’s “civilizing process,” Foucaultian readings of “risk,” and Jock Young’s dystopian vision of the “exclusive society.”<sup>31</sup> Here I want to spotlight four significant differences between *Prisons of Poverty* (PofPov) and the book which extended and corrected it a decade later, *Punishing the Poor* (PTP). First, PTP elevates shifts in welfare policy onto a plane of analytic equality with shifts in criminal justice, to stress how astringent social policy and munificent penal policy compose the two sides of the same disciplinary mesh flung at the postindustrial poor after the dismantling of the Fordist-Keynesian compact. Next, whereas PofPov establishes a direct connection between the “invisible hand” of the market and the “iron first” of the penal state, PTP uses Bourdieu’s potent concept of *bureaucratic field* to frame this very connection as both a stake and an outcome of struggles raging inside of the state over the definition and treatment of problem categories and territories in the metropolis.<sup>32</sup> This implies that the permutations of punishment we have witnessed over the past quarter-century obey a political, and not an economic, logic.

Thirdly, *Punishing the Poor* expands and improves upon *Prisons of Poverty* in fully heeding the symbolic dimension of punishment as government activity. Neoliberal penalty is not only proactive, expansive, and managerial; it is also distinctively *pornographic* in the sense that much of it is devised and deployed, not to effectively stem crime, but as spectacle aiming to reassert the authority of state elites and to assuage collective anxieties coursing through the social body.<sup>33</sup> Last but not least, instead of treating an aggressive police, severe courts, and a ballooning carceral system as a *consequence* of neoliberalism construed as an economic regime, I now view the resurgent and gloried penal wing of the state as a *constituent element* of the neoliberal Leviathan and neoliberalism itself as a political project of state-crafting that splinters citizenship from above.<sup>34</sup>

From different angles, the one international and the other structural, *Prisons of Poverty* and *Punishing the Poor* converge to stress that the prison is an institution that normally violates the very laws and values it is mandated to defend; that it is not only a criminogenic but a poverty-breeding institution; and that its recent rehabilitation and growth only work to deepen and entrench the urban marginality that crime control institutions are asked to corral. I hope that this older article, which marks an early stage in a continuing journey to track and tackle the penal state, will entice justice scholars, activists, and bureaucrats to engage one another and to collectively relink the penal question with the

<sup>30</sup> Loïc Wacquant, “Ghettos and Anti-Ghettos: An Anatomy of the New Urban Poverty,” *Thesis Eleven* 94 (August 2008): 113-118.

<sup>31</sup> Wacquant, “A Global Firestorm of Law and Order.”

<sup>32</sup> Pierre Bourdieu, “Rethinking the State: On the Genesis and Structure of the Bureaucratic Field,” *Sociological Theory* 12, no 1 ([1993] February 1994): 1-19.

<sup>33</sup> The paradigm for this exhorbitation of the symbolic moment of penalty is the plank of neutralizing, panoptic, and humiliating measures directed at former sex offenders upon release (see “Moralism and Punitive Panopticism: Hunting Down Sex Offenders,” Chapter 7 in *Punishing the Poor*). The fantastical, voyeuristic and garrulous tenor of recent policies toward real and imagined sexual criminals is stressed by Roger N. Lancaster, *Sex Panic and the Punitive State*, University of California Press, Berkeley, 2011.

<sup>34</sup> Loïc Wacquant, “Crafting the Neoliberal State: Workfare, Prisonfare and Social Insecurity,” *Sociological Forum* 25, no. 2 (June 2010): 197-220. See the responses to this essay by John Campbell, Bernard Harcourt, Margit Mayer, Jamie Peck, Frances Piven, and Mariana Valverde in *Theoretical Criminology*, vol. 14, no. 1, February 2010, pp. 58-120; and the varied views from Latin America gathered by Vera Malaguti Batista (ed.), *Loïc Wacquant e a questão penal no capitalismo neoliberal*, Revan, Rio de Janeiro, 2011.

coalescing --yet politically censored-- social question of the new century, dramatically raised by the wave of riots that hit England in August of 2011: the impact of the desocialization of wage labor for the life chances and life spaces of the postindustrial working class.

*[Revised and updated version, LW 8/29/2011]*

\* Forthcoming in the *The Howard Journal of Criminal Justice*, special issue, 50<sup>th</sup> anniversary, December 2011.