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Spain: Class War in the New Punitive Normal

Daniel Jiménez Franco¹

Abstract

This article posits a materialist critique of recent penal transformations in the current context of the Spanish debtfare. The so called financial crisis has affected the economic structures, while reinforcing the symbiotic dimension of State-corporate power, and expanding punishment beyond the penal sphere – across most areas of public policing.

Recent Spanish history provides a good example of how penal policies and institutions can adapt to major changes in the accumulation regime. The ongoing change of paradigm in some Northern-peripheral countries might be turning the post-welfare model – neoliberal prisonfare based on seclusion – to a debtocratic regime – painfare based on expulsion. The first boosted prison populations in the name of security. The latter unfolds through the ultimate collapse of social rights and the resort to expulsion as the paramount feature of capitalist deployment. All these effects take place in Spain, hence the need to shift the focus from ‘penal punishment’ (stricto sensu) towards a broader perspective on punishing through public policies, namely a new punitive normal – including penal and extra-penal punitive control devices. After the great recession of 2007-08 and the beginning of austerity policies in Spain, this broad expression of punitivism has grown, while resort to incarceration has taken a break: prison population has declined by 22 percent in Spain since 2010, while exclusion has amplified its expressions in both qualitative and quantitative terms. Therefore, the core thesis of this article might be summed up by the image of a social rule of law that turns into general administration of punishment, just in the period (2010-17) when prison population experiences its first reduction in the last 30 years.

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In other words: on the road to global financialisation and supranational corporate government, the nation-state model has lost some of its capacities and responsibilities to become a sort 'debt management agency'. This has deeply affected most areas within the public policy remit and, as a result, the living conditions of a significant social majority – while enriching a powerful minority. Consequently, to address this complex scenario, the concept of class war should remain the backbone of any comprehensive approach on the aforesaid transformations. In the same vein, the concept of new normal – whether in terms of punitive control or an allegedly 'austere' accumulation process – is a helpful tool to analyse the main features of political economy of punishment in the capitalist peripheral areas of the 21st century. Thus, new normal appears to come with a subsequent new punitive normal, since unproductive accumulation and austere efficiency evolve in parallel with the expansion of extra-penal punishment.

The following first provides an introduction to a theoretical overview regarding the addressed subject matter. A revision of neoliberal prisonfare in Spain will, second, be exposed. The third section sets out a critique of the current new normal under debtfare and expanded harm. Finally, an endnote will underline the risk entailed in maintaining the on-going criminal accumulation regime through resorting to harsher means of punitive and bio (necro) political control – i.e. confinement, banishment and expulsion.

Introduction

Prison becomes the penalty by excellence of commodity-producing society; the idea of retribution by equivalent finds its maximum realization in prison sentence, since the (temporarily) impeded freedom represents the simple and absolute form of exchange value, namely value of wage labour [Melossi and Pavarini, 1977: 17].

The backdrop of this analysis is a sort of radical U-turn in the socioeconomic structure where Melossi and Pavarini placed their work. Over recent years, many critical studies on penal transition to neoliberalism have drawn on the end of Fordist-Welfarist order through a financialisation process that exacerbates the precariousness of work and life (Wacquant, 2009; De Giorgi, 2010; 2013). Austerity and debt are the main weapons of current "accumulation by dispossession" (Harvey, 2004) regime. The relationship between punishment and social structure evolves in a convulsive scenario of capital fixing and transnational hyper-exploitation, thus bringing *class war* back into the debate

on justice and security, as long as the principles stated by Rusche and Kirchheimer (1939) remain in force.²

According to the two authors from the Frankfurt School, this happened ‘in a commodity-producing society’ (see quote above). In the global North of the 21st century, the same link between labour market, fiscal restrictions and penal policies adapts to a global accumulation dynamic based on *non-creative destruction* (see Charnock, Purcell and Ribera-Fumaz, 2014). The recession of the 1970s and the subsequent neoliberal counter-reform implied major changes compared to the pre-1970s scenario. Today, since the beginning of the Great Recession, dispossession through fiscal measures affecting the weakest social sectors has proved the progressive resort to taxes as a governmental tool (Lazzarato, 2013).

The dominant forms of accumulation, the productive structures, and the specific populations recruited by the prison system – i.e. those social groups belonging to the lowest classes – change over time. Nevertheless, the essential link between economy and punitive control remains intact: the primary role of punishment is legitimizing economic order, naturalizing social disorder and reproducing exploitation, in order to guarantee a sustainable increase in corporate profit and some social inequalities.

One evidence base assumed by the critical discussions on neoliberal punishment is that delinquency rates are much less relevant than “social budgets, economic inequality or some features in the labour market” (González, 2015: 13) to analyse the functioning of the penal system. Regardless of how it is measured, the crime rate is the least relevant of all those variables, which suggests that punishment should be understood as a “chapter of political anatomy” (Foucault, 1975) rather than as a practical product of legal theories (cf. Wacquant, 2009: 428). In the neoliberal decades, any statistical correlation between the prison population and official crime records has been irrelevant anywhere around the so-called ‘First World’. Moreover, Lappi-Seppälä (2011: 308-9) showed a reverse general trend in the correlation between delinquency and incarceration rates for 35 OECD countries. In Spain, the fact that real wages stagnated (and even decreased) in democracy³ proves the insignificant and/or

² “When prison population is not used to meet the needs of the labour market, the choice of punitive methods is predominantly influenced by fiscal interests” (Rusche and Kirchheimer, 1939: 5).

³ After having increased by a factor three during the dictatorship’s late period of economic growth!: “Real wage tripled in 1954-1978, then it completely stagnated in 1978-2001” (Guerrero, 2006: 71).

negative redistributive effect of public policies under neoliberalism, thus placing exploitation (rather than *delinquency*) as the core element of penal and economic analyses.

In short: in the name of efficiency, 'debtfare' (Soederberg, 2014; cf. Ellis, 2017) and austerity are favouring an important change in State-corporate exploitation strategies and punitive means.

1979-2010. Neoliberal bubbles: Growth, Inequality, and Carceral Prosperity

As explained by S. López Petit, the post-Francoist transition chalked up a social defeat as a victory for all, which provides a good example of what happens when class struggle operates within the plans of capital: the 'crisis of political domination' turned into a 'democratic' and permanent crisis for the working class (2016: XV) under the neoliberal regime. In a few years, some would call it 'the Spanish miracle', while some others would speak of a 'harmful bubble'. The material framework of the Spanish penal bubble is a productive collapse for the sake of speculative deployment.

Analysed in structural terms, both the Francoist⁴ and the demo-liberal regime "are various forms of the capitalist state, and therefore it is correct to consider them as two mere variants of the same state (of discomfort) of capitalism" (Guerrero, 2006: 89). In fact, during the transition between these regimes, the Spanish post-Fordist State consolidated without experiencing the previous decades of European welfare. 'Thanks' to Francoism, Bourdieu's (1999) and Wacquant's (2009; 2011) theses on the replacement between 'left and right state hands' cannot be literally applied to a country where the social and penal spheres expand at once. Many institutional resources for social intervention were born privatized in the 1980s-1990s, thus evolving as subordinate devices of social control and commodification. This new 'social market' addressed some effects of social inequality without touching its structural causes, dismantled the community networks, encouraged soft control through labour discipline and, ultimately, promoted institutional abduction (Sales, 2014).

After a first period (late 1970s - early 1980s) of unrest and conflict within and outside the prison system (Lorenzo, 2013), the ideological convergence of

⁴ Catholic, social and representative state that, according to its tradition, is declared as constituted as Kingdom – Law of the State Leadership's Succession, art. 1 (1947). The Spanish State, constituted as Kingdom, is the supreme Institution of the National community – Law of the Spanish State, art. 1.I (1967).

punitive discourses became one of the keys for stability. The debate on basic *political issues* would dissolve into the common sense of ‘public order’ and security,⁵ and the notion of social justice came to be the main victim: structural inequality encysted, while the prisons were filled with impoverished young people.

In the 1990s, the bipartisan confluence of political attitudes on crime (*leftist neo-criminalization* and *new right-wing progressive way*) favoured “an escalation in which nobody is willing to discuss the real issues of criminal policy in the parliament, and indiscriminate demands for more severe and effective penalties are no longer a political taboo” (Cancio, 2003: 12). But the penal system is never ‘efficient’ enough, which allows all electoral competitors to keep promising more and better ‘security’, when a violent crime is exploited by the media. This “pyrrhic defeat” (Reiman, 1979: 1-8) fed populism and imposed such notions as incapacitation on the lower levels of the working class. Politics revealed itself as *the art of de-politicizing*, and exceptionalism became its golden rule.

Penal exceptionalism illustrates how the Spanish State (formally orphan of any *social and democratic rule of law* until 1978) maintained some “thresholds of indeterminacy between absolutism and democracy” (Agamben, 2003: 11). After thirteen reforms of the Penal Code of Democracy (OL 10/1995) consistently aggravating punitivism, a sort of modern banishment is now being imposed “not only on political adversaries, but on entire categories of citizens who, for any reason, are not being included in the political system” (ibid).⁶

At this point, “we shouldn’t forget that the modern state of exception is a creation of democratic-revolutionary tradition and not of absolutist legacy” (Agamben, 1995: 15), which should help us recognise a sort of continuum between the dictatorship⁷ and the neoliberal democracy: ‘institutional stability’ is invoked against rights; claims for ‘public security’ prevail over social security;

⁵ See Public Security Law (Organic Law 1/1992, aka *Ley Corcuera*, from the name of its ‘father’, the then Minister of Interior), legal predecessor of the current Organic Law 4/2015, aka *Gag Rule*. The General Prison Organization Act (LOGP 1/1979) was the first organic law signed by the democratic parliament. The *Penal Code of Democracy* (Organic Law 10/1995) entered into force 18 years after the Constitution.

⁶ See Jiménez (2015b) on the return of the ‘anarchist monster’ and the police set-ups in 2013-15.

⁷ An ‘organic democracy’ as declared by the Francoist National Referendum Law (1945).

penal justice conceals social justice; and the ‘rule of law’ imposes exceptional measures (ibid: 18-9).

In the meantime, all political and economic institutions (including the security industry) adapted to the new democratic framework: power elites reinforce their privileges in the ‘free’ market. The financial and real estate sectors flourished “in the hands of the political and business native elites” (Naredo, 2010: 10). In the case of the penitentiary market, the list of companies awarded by Infraestructuras y Equipamientos Penitenciarios SA⁸ includes many of Spain’s foremost corporations.⁹ The construction of prison facilities during the ‘Spanish miracle’ (see below) – another profitable means to transfer loads of public money to private hands – proved that “the only real limit to what governors are willing to do to fill the prisons is what they can do” (Simon, 2007: 224). In a nutshell: more (neoliberal) democracy brought ‘more prison’ (Barker, 2009). Let us quickly go into this point.

Accumulation, exploitation, incarceration

Forty years of dictatorship may help us understand Spain’s quick integration into a new punitive order that replaces reinsertion with incapacitation and exclusion with expulsion. Spain joined the ‘race to progress’ in the 1980s by adapting its economy to the strategies of the ‘free’ global markets, and importing a ‘new punitive common sense’ from the US (Wacquant, 2009: 345; 2011: 206). “Between 1981 and 2007, the total percentage of the wage bill on the GDP declined by 18.2%” (Silvers, 2008: 60), while the incarceration rate tripled.

Once the structural reforms had destroyed three million jobs in the first years of democracy, the first economic bubble (1986-92) ‘recovered’ two million jobs through the increase of foreign investments and the impulse of public expenditures. The unemployment rate fell to 16 percent – although poverty was hardly reduced. Shortly after, in the undertow of that first bubble, a new recession (1992-95) boosted the rate back to 24 percent. A prison construction plan started right at this post-Olympic crisis, just when imprisonment rate was stopping its upward trend. The legal and political frame of the government of social surplus in Spain would enter the 20th century with new measures for the punitive management of the underclass, ready for a new hyper-incarceration phase – and a new construction plan in 2005.

⁸ *Penitentiary Infrastructures and Equipments Ltd.* – public company.

⁹ Acciona, ACS, FCC, Ferrovial, Comsa, Abengoa, Indra or Sacyr – among others. A list of sectors, services and products in VV.AA. (2007; 2008).

Consumer credit and mortgage debt were the main criminogenic motors of the macro-economic boom (see Bernat, 2015). The perverse wealth effect caused by financialisation and low interest rates was succeeding: “the performance of the cycle is high enough to produce its own consensus” (López, 2012: 88), therefore the political (*electoral!*) debate tended to focus on ‘fear of crime’, racism and segregation. The ‘bubble years’ were times of over-indebtedness and merciless speculation on the one hand, and punitive control of the *rabble* on the other.

The rise in heroin addiction (1980-1990s) and undocumented migrants (2000s) are the two stereotypical embodiments of a scapegoat produced by the deployment of the economic model and digested by the prison system.¹⁰ Those who are hardest hit by every accumulation regime are always the most over-represented social profiles in prison. This be seen across the generations: victims of heroin and AIDS were the children of the working classes suffering the consequences of the abovementioned restructuring plans (1980s) and the first financial crisis (1990s); and victims of hyper-exploitation and immigration laws are the poorest and weakest groups among a massive wave of global workforce needed to build the second bubble (late 1990s and early 2000s).¹¹ In both cases, those profiles recruited by the prison system come from a social surplus which is the “condition of existence of the capitalist mode of production” (Marx – cf. Romero, 2010: 43). The transition between both stages departs from the approval of the ‘Penal Code of democracy’ (LO 10/1995 – *Organic Law*) and the Prison Regulation (RD 190/1996 – *Royal Decree*). Both periods and stereotypes also coincide with the main phases of the neoliberal cycle, which are in turn linked through a change in the penal architecture and disciplinary prison rules – from radial facilities to modular *macro-prisons*.

In this period of austerity, the decrease in the unemployment rate coexisted with a large effort on wage restraint, a rising number of deaths in the Mediterranean Sea, higher accumulation rates, more speculative activities, bigger credit flows, higher indebtedness, longer terms of incarceration and

¹⁰ See Brandariz (2015; 2016), Jiménez (2016: III.4).

¹¹ Spain was the third destination for migrants in the world during the 1990-2013 period (6 million people), only after USA (23 million) and United Arab Emirates (7 million). The share of foreign population in prison tripled the general average in the country – today: 28.4 percent foreign prisoners vs. 9.8 percent foreign population. “Consistently with the principle of less eligibility, the hyper-criminalization of migrations contributes to shape immigrants’ acceptance of these over-exploitative conditions” (De Giorgi, 2010: 162).

more people in prison (Brandariz, 2016). Between 1996 and 2007-8 (second bubble), the historical growth of the GDP and a 185 percent increase in the wage bill (from 11 to 19 million) was based on higher levels of exploitation, poverty and profits-wages inequality. On the one hand, a dramatic increase in the foreign army of reserve quadrupled the number of over-exploitable subjects in the Spanish labour market. From 1996 to 2001, unemployment rate plummeted, although wealth redistribution stayed below the European average. From 2002 to 2008, the GDP escalated, and jails got overcrowded. On the other hand, the second way to discipline the labour force was consumption credit: Spanish households' credit turned out to be 14 times higher than their savings capacity – thereby further worsening the effects of the financial crisis. In short: the link between labour exploitation, financialisation, punitive control of foreign labour force and imprisonment is solid.

2010-17. New Punitive Normal. General Administration of Social Harm

As some economists predicted many years ago, the relative poverty of a majority has increased strongly: working conditions have worsened and, what is even more, the living conditions of salaried workers are miserable, unaffordable and decaying (Guerrero, 2006: 93). The current phase of capitalism produces profits and unemployment at the same time. “This combination of capitalism with austerity is impoverishing the labouring classes without restoring growth to a level that can meet the crisis of unemployment... This is the *new normal*” (McNally, 2014; cf. Charnock, et al., 2014: 2).

The prison population marked its peak (76,951) in May 2010, coinciding with the announcement of nine ‘cost-saving measures’ amounting to 15 billion euros.¹² The first penal reform (LO 5/2010), applying certain measures of ‘relief’ for prison overcrowding (Brandariz, 2015: 20 et seq.), was also approved in 2010. Poverty expanded, the wealthy ghetto narrowed and punishment extended beyond the walls of the prison. Thus pain (harm) tends to become the essence of policy-making. This is how a *new punitive normal* seems to have settled since the 2007-2008 crisis – although, or maybe *because*, the sustained

¹² First ‘package’ of adjustments in the *new normal*. On 10 May 2010, the EU Economic and Financial Affairs Council (ECOFIN) presented the adjustment plans to be approved by Spain and Portugal by May-18th under the FMI conditions. On 12 May 2010, the Spanish government advanced some austerity measures included in such plan.

increase in the GDP during the ‘good’ years had laid the solid foundations of social underdevelopment. Let us discuss this in more detail.

Since May 2010, all governments include the formulas of capital in their austerity programmes. After his electoral defeat in 2011, the former Spanish president claimed: “I said I would take any decisions for the good of Spain, whatever the cost”. One year later, the incoming president declared: “I didn’t fulfil my promises, but I have done my duty”. None of its alleged supporters have ever defined what they mean by ‘good of Spain’. On September 2, 2011, the Spanish Parliament approved a reform on article 135 of the Spanish Constitution (a decision arranged one week earlier by the two main parties) to subordinate any budgetary decision to a spending (deficit) ceiling established by the EU (135.2). This turned public debt repayment into an ‘absolute priority’ (135.3), which has been widely deemed to be a *coup de marché*.¹³

Meanwhile, the *crash* of 2007/08 confirmed the link between punishment and social structure which had unfolded in Spain since the mid-1980s: an inverse correlation between unemployment rates and institutional abduction. In the last four decades, economic growth had always been accompanied by higher levels of incarceration. Prison population grew slowly (or even remains stable) when unemployment rates increased in phases of stagnation or recession, which are also periods of more debt and public deficit. Since the late 1980s, within the framework of public ‘fiscal health’ (deficit-debt), economic crises and unemployment have not led to relatively higher levels of imprisonment. ‘Speculative growth’ was the actual context for higher incarceration rates under Spanish neoliberalism.

This all leads us to re-shape and analyse punitivism and social harm beyond the *penal* sphere. Once austerity policies reversed a three-decade spiral of imprisonment, a re-reading of punishment through the lens of debtfare is warranted. Under austerity, in Spain, incarceration rates have slowed and prison populations have decreased as in many Northern countries,¹⁴ but the punitive nature of public policies (whether of an explicitly penal nature or not) has not

¹³ Spanish Public Debt: 39 percent GDP in 2006; 100 percent GDP in 2017.
Spanish Private Debt: 270 percent GDP in 2007; 220 percent in 2015.

¹⁴ See Karstedt (2013: 5). Prison populations decline in USA (2007), Austria, Finland, Netherlands (2007-08), Germany (2006), Finland (2005, faster since 2009), Ireland, Italy, United Kingdom, Sweden, Spain (2009-10) Greece, France (2013)... Belgium and Portugal are two exceptions (increases in 2007-08). This trend cannot be extrapolated to the rest of the world, where the prison population grows 78 percent in 2010 (Walmsley, 2011), especially in the fastest (economic) growth areas.

diminished. We are witnessing (and suffering) a change in the priorities of control, an extension of extra-penal punishment and a messy adjustment of the penal sphere. *Debtfare* refers to a government “through debt” (Lazzarato, 2013: 176 et seq.) whose economic goals are focused on capturing wealth through profit, incomes and taxes. This change in the accumulation regime, its methods and discourses, is thus producing a *new punitive normal*.

What Spain needs now – or not. Debtfare or painfare

In March 2007, *El País* titled: ‘The Spanish economic miracle. Spain has become the reference model for the countries that joined the EU since 2004’. In September 2007, president Zapatero stated: “This government has placed Spain in the Champions League of world economy [...] Spain wins the most matches, scores the most goals and concedes the least”. But the undertow of this ‘miracle’ would leave its waste on the shore: native sub-proletariat from the urban periphery, dehumanized human beings imported from the global periphery, and a new indebted/impooverished ex-middle class.

In a productive regime that used to foster all expectations of consumption growth, institutional abduction and labour force distribution were related in a more or less consistent way: in the Fordist era, imprisonment used to grow with unemployment, since economic production and social reproduction maintained a causal connection. But this dynamic changed as the management of the labour force turned into over-production of social waste. Spain barely experienced the first era but plunged into the latter. In a regime defined by “social surplus” (De Giorgi, 2000: 90) and fiscal restrictions, the technocratic machine tend to offer such ‘efficient solutions’: no health care for almost one million foreigners, thousands of deaths from hepatitis C, and ‘push-backs’ for immigrants – among many other violations. This is now called ‘responsible government’, according to the ‘God-given’ debtocratic scope. ‘Market-state symbiosis’ (Tombs and Whyte, 2015: 155 et seq.) turns the State apparatus into a painfare operator,¹⁵ – or a *general administration of punishment*.

Banishment is also a common denominator amongst all policies applied with the pretext of austerity. Physical, legal, economic and political expulsion is being produced by a State-corporate assault on fundamental rights. The substitution of State responsibilities by private management abolishes any basic constitutional principle on behalf of corporate profit. This new administration

¹⁵ ‘Governing is often distributing pain’ (A. Ruiz Gallardón, justice minister 12.2012).

of social harm might not need many more prisoners but rather a more 'efficient' control (Forero and Jiménez, 2013: 15/24). The current trend, born in the US (2007) and imported to Europe shortly thereafter, raises several questions. How is the penal system being adapted to an accumulation regime that tries to solve its own crises by reinforcing the exploitation-dispossession circuit and expelling a growing number of individuals out of the 'system'? What is the effect of that 'efficient management' on the 25th article of the Spanish Constitution?¹⁶

In this new context, we have the new dilemma: How to "preserve the political effectiveness of the prison"? (Simon, 2007: 243). In the neoliberal decades, prisons became "more and more similar to deposits and, occasionally, to landfills" (Feeley and Simon, 1995), which proved the victory of the carceral project as a post-Fordist tool to sustain the socio-economic disorder. "When things were going well, prisons were functional to the State and the State was functional to prisons" (Simon, 2007: 210). In turn, in the current depression, the social by-product seems to exceed the capacity of the prison's drain.

Whatever the scenario in the future, debtocracy is already the governmental matrix: the role of the State is thus redefined against all fundamental rights, and social harm is generated from the primary levels of policy-making. If *prisonfare*¹⁷ used to operate through seclusion, *painfare* (San Martín, 2014) operates on the basis of social surplus and life devaluation. In this new normal, unemployment rates tend to lose any validity in measuring social inclusion.¹⁸ The economic myth of full employment succumbs to a *working poverty* paradigm. On the one hand, 'financial capture' (Lazzarato, 2013) and dispossession colonize all public areas that welfare states had kept safe and sound. On the other hand, confinement varies in size and shape: The *camp* becomes the "*nomos* of the political space" (Agamben, 1998: 52), hence carceral control gives way to banishment as the main feature of capitalist governance.

A variety of market-state crimes (Rivera, 2014) produce harm or punishment (Jiménez, 2014), and harsh security performances (Brown, 2010) manage the global consequences of those crimes. Social harm can also be directly generated

¹⁶ 25.2: *Punishments entailing imprisonment and security measures shall be aimed at rehabilitation and social reintegration and may not consist of forced labour.*

¹⁷ "Prisonfare is the stream of policies that responds to urban ills by rolling out the police, the courts, jails and prisons, and their extensions, including probation and parole, but also the computerized diffusion of criminal databases, and the schemes of profiling and surveillance they undergird" (Wacquant, 2009b).

¹⁸ According to the ILO, 22.2 percent Spanish workers were poor in 2014. 53 percent beneficiaries of Cáritas (main Catholic charity NGO) live in households where one or more members have a job.

through public policies and government measures on many different areas. The Kingdom of Spain is a glaring example of this process, and austerity pushed it to its highest expression. Banishment and expulsion determine all criminal and penal strategies in the new punitive normal: *painfare* permeates social policies, economic reforms and penal responses.

Nevertheless, the notion of *painfare* – concerning *general administration of harm* – should not lead us to confuse the functioning of punitive control *stricto sensu* with the aforementioned ‘primary mechanisms’: the first belongs to the devices and institutions of the penal system, while the latter shows how policies on housing, education, labour, and social protection among others can also generate a dramatic level of social harm (Cooper and Whyte, 2017).

With regard to housing, the expulsion of destitute families (too weak to resist unemployment and precarity) is a direct effect of massive speculation, and grows in direct function to the public money spent on bailouts – for those who are ‘too big to fail’ (Bernat, 2015: 95 et seq.; Forero, 2014). Many evictions end up in suicide, the leading ‘non-natural’ cause of death in Spain. The education system is another example of a racist and classist incompatibility between rights and commodification. In December 2011, the CEOE (Spanish Employers’ Organisation) presented two reports on “efficiency” and “transfer of competences” in the public sector (2011: 23), pointing to concentration as the best way to improve its efficient management. The president of CEOE hinted that the State should remove one million public jobs, described the budget on education, health and social services as “huge”, and suggested a number of dismissals “equivalent to those in the private sector”. The alleged aim of CEOE was contributing to “public spends’ efficiency and academic excellence”. The transfer of public budgets to private hands deepens social dualities and fulfils the false prophecy of public inefficiency. With regard to the health system,¹⁹ those same mechanisms increase costs, de-capitalize the State and turn citizens (rights) into consumers (commodities). The Spanish Ministry of Finance admitted in 2013 a 14 percent budget cut (10,000 million) from 2009,²⁰ and the process goes on.

¹⁹ See Lister (2010: 21/26), Anderson and Frogner (2008: 1793), Basu, Andrews, Kishore, Panjabi and Stuckler, (2012: 10-1).

²⁰ In 2012, the Royal Decree *RD 16/2012* limited the access of undocumented foreigners to public health services – emergencies, paediatrics, pre-birth, birth, post-partum and infectious illnesses.

Security?

Back to the specific area of punitive control, we must underline the oversize achieved by this prosperous industry addressed by Christie (1993: 31): “crime control market is waiting for the arrival of its entrepreneurs...” and Spain opened its doors wide. To date, a litany of private security companies²¹ accounts more than 3 billion euros and 90,000 jobs every year. However, during the ‘crisis’, these companies also cut salaries and fired workers. In the Western European State with more police officers per capita (Jiménez, 2015: 152-6), the new Private Security Law (5/2014) replies carefully to the corporate claims: private profits are assumed as ‘an integral part’ of public safety. “Private security is considered a more and more indispensable part of the measures to protect society, and to defend the rights and legitimate interests of all citizens” – reads the preamble of the PSL. The same voice invoking ‘public tranquility’ in the *Gag Rule* (LO 4/2015, to ‘protect public security’), also speaks in the PSL about the necessary ‘motivation of the security staff’ and the provision of ‘legal backup’ and ‘elements of collaboration’ to the Spanish Association of Security Companies, a 80-member lobby with over 16,000 branches. The Ministry of Interior stated that the private security market had ‘a wide margin of growth’; while a 10 percent replacement rate for vacancies in the State Security Forces announced further contracts. The minister J. Fernández Díaz announced the process in 2013: “One of the sectors experiencing a major business boom in Spain nowadays”, although the sector had just lost 8 percent of its billing in 2013 for an accumulated fall of 22 percent since 2010. According to the Secretary of State for Security,²² “connecting the public and the private is a sign of sensitivity [...] the sector is still alive, and we can return to growth [...] the new cycle pushed by this regulation will open big expectations in the world of security”.

²¹ <http://ranking-empresas.economista.es/sector-8010.html>

²² M.A. Fernández Rancaño, former police commissioner and charged in the ‘Interligare scheme’, a scandal involving the Ministry of Interior and high-profile police officers in an alleged plot of illegal contracts with an private ‘intelligence’ company – see http://www.vozpopuli.com/tag/caso_interligare/.

Austere class war: less (worse) incarceration vs. widespread punishment

During the first years of austerity, one of the most punitive justice systems in Europe saw its prison population being downsized, while unemployment rates doubled to nearly 24 percent. Between May 2010 and March 2017, the Spanish prison population fell by 22 percent. At the time of slowing its incarceration rates, Spain was the only European State whose prisons fulfilled the five risk factors of overcrowding.²³ If social rehabilitation was already a myth in the ‘good times’ – both for wanting to “educate to freedom by depriving of liberty” and for the severe shortfalls,²⁴ – the new normal imposes a deeper devaluation of living conditions in prison (Forero and Jiménez, 2013).

The number of convictions, the penal reform of 2010 (LO 5/2010), the alternative sanctions, the decrease of pre-trial detention, or the expulsions of foreigners, cannot explain *per se* this decline in the prison population (Forero and Jiménez, 2013). Medium-term changes will clarify whether we are in a new period or this is just an *impasse* before the next upturn – a sort of ‘penitentiary jubilee’ – through which the prison system rearranges itself. For now, the new wave of massive harm is being deployed under a global paradigm of *expulsion-banishment* – managed through actuarial efficiency and situational prevention. Debtfare punishes through over-producing poor, and worsening living conditions, while control devices focus on “trying not to disrupt any social and economic flow, and maintaining an acceptable level of deviant behaviours” (Brandariz, 2014: 49). The criminal policies that fuelled hyper-incarceration have not changed much, but austerity has diverted the efforts towards fiscal tightening, which has resulted in a ‘new normal’, where the pains of punishment are predominantly experienced by those targeted by austerity. Now that debtfare is producing more harm and less (penal) incarceration, administrative repression and fiscal sanctions grows²⁵ and penitentiary budgets stagnate.

²³ Rate of increase, proportion of foreign prisoners, success rate (recidivism under 40 percent), rise in pre-trial sentences (x 100.000 inhabitants), and average length of imprisonment (Delgrande and Aebi, 2012).

²⁴ See Jiménez (2015: 132).

²⁵ The budget to buy anti-riot equipment and gear rise, as well as the creation of new special police intervention groups (Forero & Jiménez, 2013). ‘Bureau-repression’ multiplied all administrative records and fines (Maroto, 2013). More than 93 bureau-repressive sanctions were imposed every day during 2016

But austerity not only played out in the eventual suspension of the construction of new prisons, but in human and material resources, treatment programs and medical care, which were also trimmed or suppressed.²⁶ Budget cuts and punitivism indisputably led to rights violations and curtailed people's recourse to 'justice'. They also normalized a variety of inconceivable practices. For example, push-backs at the Moroccan border fences have recently been declared illegal by the European Court of Human Rights. "One of the main objectives of establishing the expulsion of foreign offenders is to ease the foreign burden of the Spanish prison system [...] Expelling is much more effective than imprisoning", stated the Spanish minister of Justice in 2012.²⁷ "Many youngsters left the crisis in Spain searching for opportunities. This is called external mobility", said the Spanish labour minister in 2013. In a broad sense, expulsions seem to become much more important than imprisonment as a source of punishment.

Although austerity seems to be the dominant economic policy in most OECD countries (Karstedt, 2013: 5), the Spanish case can be usefully compared to the USA:²⁸ incarceration and employment evolved inversely (Holleman, McChesney, Foster and Jonna, 2009: 7) in both countries over the previous three decades. In 2013, the US attorney general spoke in favour of "avoiding locking people and forgetting about them", building fewer prisons, and promoting community rehabilitation programs, because "excessive sentences on drug-related crimes promote injustice and contribute to insecurity" (cf. Gandásegui, 2013). In Spain, the secretary general of penal institutions, Á. Yuste, expressed "a long-standing desire on the need to review the custodial penalty. [...] for two main reasons: its high cost, and the existing doubts about the effectiveness of this measure". He also mentioned a "crisis" inside the prisons and suggested preventing short sentences, in the same direction of the reform enacted in 2015.

(Amnesty International, 2017). More than €130 million were raised in the first 18 months of implementation of the *Gag Rule* (Público 19.05.17).

²⁶ On the fundamental rights and the legal status of prisoners in Spain, see Rivera (2006: 451-540).

²⁷ "We know that voluntary returns are the less costly way to expel illegal immigrants" – stated by a UK government spokesman on the campaign 'Illegal in the UK? Go home or face arrest' (Metro 29.07.13).

²⁸ See Hickey (2013), Shapiro (2011: 42). See Jiménez (2016: 314-15) on how Correctional Corporations of America can help us analyse the link between fiscal adjustments and imprisonment.

There is no doubt that debtfare produced a punitive-schizophrenic effect in the State Administration. The last triple legal reform in Spain²⁹ lengthened some *hard core* penalties and re-criminalized social protests, while other changes were aimed at discharging the prison foreign population, first-time offenders and inmates under short sentences – in line with Yuste’s generous statements (see above). In a sort of legalistic enlightenment, the principles of *minimum intervention* and *ultima ratio* are back on stage, while some ‘back door’ strategies to drive early releases are being applied (Rodríguez and Larrauri, 2012). Among other ‘innovations’, a controversy around *permanent revisable prison*³⁰ adds to the abolition of the third and fourth degrees of sentence serving,³¹ as well as an exceptional expansion of *dangerousness* which is radically incompatible with the principle of *guilt* or criminal liability. Penal exception (a classic feature under dictatorship) was reinforced by the Penal Code of 1995, which gradually redefined some crime types, especially that of terrorism, and violated the principle of scientific individualisation (General Prisons Regulation Act, art. 72) through the Organic Law 7/2003. This 2003 reform raised maximum sentences to 40 years, changed conditions (for progression in degree, benefits or probation) and added such requirements as meeting civil liabilities for the criminal offence or rejecting the means and *aims* of the activity. The Penal Code of 2015 maintains this exceptionalist trend. The State seems more focused on appeasing social unrest and exploiting zero tolerance than on paying attention to official delinquency rates.

Endnote: conclusions, questions, and global projections

How will the state react and handle this advanced marginality that, paradoxically, it has fostered and entrenched at the point of confluence of economic ‘deregulation’ policies and social protection cutbacks? And how, in turn, will the normalization and intensification of social insecurity in territories of urban relegation contribute to

²⁹ Penal Code (1/2015), Public Security Law (5/2014) and Private Security Law (4/2015).

³⁰ Read ‘revisable’ *de facto* life sentence. *The forecast of this periodic judicial review of the personal situation of the prisoners [...] is beyond any doubt on this penalty’s inhumanity, thus it ensures a horizon of freedom for the condemned (Organic Law 1/2015, modifying OL 10/1995, of the Penal Code – Preamble, II).*

³¹ Third grade has become a ‘privilege’ conditioned by risk factors. Probation turns to be regulated as a way to suspend the execution of the sentence that remained outstanding.

redrawing the perimeter, programmes and priorities of public authority? [Wacquant 2014: 1693].

Is public authority proposing any redefinition beyond the expansion of the perimeter, the suspension of programs, and the antisocial reformulation of its priorities for an expansion of social insecurity outside the spaces previously reserved for the ‘dangerous classes’? Is there *a policy*? Whatever the short-term variations in incarceration, the image of a (politically and economically) different prison does not require any wastage of “sociological imagination” (Wright Mills, 1959). If prisons are designed to confine dangerous subjects and enclosed urban areas are designed to keep them out (Simon, 2007: 241), the question then, is what kind of socio-spatial mutations are being produced under the current model of accumulation by dispossession. That is to say: Where is that *outside* located and how will punitive control devices deal with it?

Capital de-bordering and population displacements, waning sovereignties (Brown, 2010), global class war and Neoliberal ‘necropolitics’ (Mbembe, 2003) – are some of the concepts we must now turn to in order to contextualize these extended dynamics of exploitation and expulsion. This inevitably determines the evolution of state-corporate crime, the intensity of the punitive policies, the volume of harm caused by the first, and the ‘social surplus’ managed by the latter. Nevertheless, this inevitably implies that Rusche and Kirchheimer’s statement on the background of the aforementioned dynamics was (and will be) right:

Every production system tends to the discovery of punishments which correspond to its productive relations [...] and the intensity of penal practices in their determination by social forces [Rusche and Kirchheimer, 1939: 5].

As Bernal, Cabezas, Forero, Rivera and Vidal put it, “most of the harm that is produced in our societies is determined by inequality and social division, which have become structural violence” (2012: XLVIII). These social divisions happened in the ‘good times’ and so it is in the austerity period. The labour reserve army is globalized, where penal policies and institutions reorder their priorities towards ‘efficient’ methods (Whyte, 2009). As long as pure production of social surplus replaces the welfarist inclusive paradigm, expulsion reinforces a *debtfarist ethos*.

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