Anglo-Saxon Sociologies of the Punitive Turn
Critical Timidity, Reductive Perspectives, and the Problem of Totalization

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1 What Anglo-Saxons refer to as theoretical criminology essentially presents itself as a sociology of crime (Robert, 2005), or - in my view more precisely - as a sociology of criminalization. As is the case in sociology, theoretical criminology appropriates and mobilizes numerous concepts and theories whose institutional birth places are other human and social sciences (psychology, geography, political science, philosophy, etc.). It does so, of course, not to explain, predict, and control crime taken as an unproblematic object (i.e. as an object whose essence and existence would be totally exterior to this will). On the contrary, theoretical criminology appropriates and mobilizes numerous concepts and theories in order to understand the complex process of criminalization, that is: all of the manifestations of the social work of penal law. On the Anglophone academic scene, such appropriation and mobilization are particularly explicit in the recent efforts, deployed by an ever growing number of analysts of criminalization, to interpret a contemporary 'punitive turn' (also frequently referred to as 'the new punitiveness').

2 Some analysts have suggested that such a punitive turn is a tsunami, or produces a domino effect (Pakes, 2006, 154), sweeping across the entirety of liberal democracies (Hallsworth, 2002, 473; Hogeveen, 2005, 87), while others have tried to show that various countries, notably Denmark, Germany, Sweden, Italy, Austria, Canada, Japan, Netherlands and Norway, are not victimized by it (Comack, Silver, 2008; Doob, Webster, 2006; Meyer, O’Malley, 2005; Nelken, 2005; Penna, Yar, 2003). Consequently, we should cautiously locate the punitive turn in space and time, or even limit it to the American exception - and in the same breath blame critical criminology for being a catastrophe criminology (O’Malley, 2000; see also Zedner, 2002). Such empirical preoccupations clearly testify to the ubiquitous diffusion of the punitive turn thesis, a diffusion that indeed led Matthews (2005, 175) to discuss of an existing criminological consensus. In parallel, many are convinced that a political consensus (sup)posing a more and more punitive community, in
which it is now totally acceptable to show oneself to be “cruel” toward criminalized individuals, can be observed (Holtfreter et al., 2008; Chevigny, 2003; Pires, 2001; Simon, 2001). The punitive turn thesis therefore suggests not only deep transformations in the politics, rhetoric, logics and practices of officialized criminalization. The punitive turn thesis also suggests new social, cultural, symbolic, non-institutionalized mediations of these officialized politics, rhetoric, logics and practices. Some sociologies of the punitive turn, as we shall see, go as far as to postulate the submission of the institutions of criminalization to this new cultural configuration. But others prefer to observe the reverse relationship, sometimes even through the lens of a vast enterprise of manipulation.

In the first part of this article, the guiding proposition is to suspend the question of the validity of punitive turn thesis. Such a suspension allows the exploration, understanding, and critical examination of the main mobilizations of sociological concepts and theories that are appropriated by the analysts to explain social change - at least those easily observable around punitive turn discourses: social structure and management of the “reserve army” of capitalism; privatization of prisons and the commodification of incarcerated individuals; populism and ‘glocalized’ mass media; the impacts of late modernity; (de)civilizing processes. It is this desire to dissect Anglo-Saxon theoretical contributions - and only these ones - that animates this article. The focus on Anglo-Saxon contributions can be explained, first and foremost, by the fact that it is within this particular academic space that the punitive turn thesis developed to such an extent that some consider it to be a criminological consensus. This focus is also the result of the usual overrepresentation of American and British contexts in criminological work, as well as the fact that the Anglo-Saxon sociologies of the punitive turn show in an exemplary fashion, and with few exceptions, how the same contexts become, by synecdoche, the West.

This article, after having first quickly clarified the meaning given to the punitive turn in theoretical criminology, proposes an analysis of the main sociologies of the punitive turn. Such analysis reveals important problems, particularly a totalizing and reductive gaze on the penal field, as well as a fairly timid criminological critique. I won’t, in what would be a stunning finale, advance a totalizing theoretical perspective on the penal field, which would be enabled by the arbitrary selection and the forced marriage of dimensions proper to the diverse sociologies analyzed in this contribution. The history of sociology, as well as the finest analyses in the epistemology of the social sciences (Berthelot, 1996, 1990), testify easily, it seems to me, not only to the vain attempt of such an endeavor, but also to its intellectually problematic character. In conclusion, the article nevertheless identify some possibilities for a practice of critical criminology that avoids numerous problems identified in the sociologies of the punitive turn (on the level of empirical observation as well as for what regards theoretical work).

1. Main Symptoms of the Punitive Turn

The punitive turn corresponds to a diagnosis that numerous analysts of criminalization establish when, in liberal democracies, three principal bundles of symptoms can be observed. The first one, oftentimes taken as the most important one, is of a strictly quantitative order: it is the carceral boom. The two other groups of symptoms are of a more qualitative nature. The second one essentially refers to transformations in the
management logics of criminalized populations. These transformations are usually grasped through the lens of the emergence of a globally post-disciplinary carceral space. Finally, the third bundle refers to a more widespread constellation of symptoms, all pointing towards an increasingly ‘expressive’, public, and publicized penalty. This trend is argued to manifest itself on the discursive level, such as in calls for “zero tolerance”, as well as on the level of practice, such as in the case of the actions taken to inform the ‘community’ about the identity of men having used the services of sex workers (e.g. John shaming practices).

1.1. The Carceral Boom

The dramatic and constant increase of the carceral population, particularly on American soil, usually provides the principal - and sometimes even the sole - indicator of a punitive turn. The dramatic and constant character of the American carceral growth is difficult to contest. Indeed, after fifty years of “remarkable” stability, with an average incarceration rate around 110 prisoners per 100,000 persons from the 1920s to the 1970s, the United States have exponentially resorted to incarceration (Gottschalk, 2006, 3-4). In only a few years, the incarceration rate multiplied by three, sitting at 310 in 1985, and then almost doubled in a decade, reaching 600 in 1995. Since then, the growth continues, consecrating the USA as the ‘world champion’ of incarceration. The most recent data (2008) establishes the incarceration rate at 760 per 100,000, which translates into more than 2.3 million individuals (International Centre for Prison Studies, 2009). If we decide to extend the gaze to the sum of persons under ‘correctional’ control, notably including persons on parole, then we obtain (for 2007) an official rate of penal surveillance of 3.2%, which corresponds to more than 7.3 million persons, or one adult out of 31 (Bureau of Justice Statistics, 2009). However, any increase in the number of non-incarcerated individuals supervised by penal apparatuses is at best peripheral in discussions that try to confirm the punitive turn - if this wasn’t the case, we would be confronted with little more than a simple reformulation of the net-widening thesis. Indeed, the punitive turn, and even more clearly the expression ‘the new punitiveness’, refers to a transformation, not to the mere enlargement of a logic otherwise unchanged. And this transformation certainly does not present the (obviously quite relative) subtlety and gentleness of the control practices that, following his interpretation of Foucault (1975), profoundly worried Cohen (1985).

The American exception does not reside only in the gargantuan appetite of its penal institutions, but also in their marked preference for ‘exotic food’: as is well known, such institutions mainly feed on the criminalization of Black individuals. In the case of carceral institutions, for example, Wacquant has noted that since 1989, and for the first time in national history, African Americans make up a majority of those admitted in prison each year; in combination with the Latino population, they make up close to 70% of the carceral population. It has thus been possible to estimate that, in the USA, one out of three Black males will be incarcerated at some point in his life, and that a Black person has a greater chance to be ‘admitted’ in prison than in college (Simon, 2007, 141). Without surprise, the color of American penality shapes some sociologies of the punitive turn, as numerous of its analysts are based in the United States of America.
1.2. Post-Disciplinary Penality

Besides the explosion of the carceral population, analysts of the punitive turn also begin by posing that this population is approached as social garbage, of which we rid ourselves - maybe only temporarily, but without caring to invest in it to potentially make it profitable, useful, and clean. The carceral space is characterized as being essentially post-disciplinary; that is, following Foucault (1975), its organization is no longer finalized in normalization. The carceral space, globally, has come out of an era that Garland (2001) termed penal welfarism, or penal modernism, an era in which the rehabilitative project was hegemonic. Consequently, the prison and correctional practices have been described as presenting the characteristics of a waste management vision of corrections (Simon, 2007, 143); as a space in which the social production of difference (abnormality, deviance, pathology) only (potentially) musters a will to transform among a few ‘humanist’ and ‘modern’ actors.

The case made by the analysts of the punitive turn is that the prison is ‘re-discovered’ in, and ‘re-legitimated’ by, the sole capacity of its walls to exclude, contain, and punish (Wacquant, 2008; Hallsworth, 2002; Garland, 2001). The prison’s walls - instead of the panoptic tower - would embody the dominant penal logic: punishment can (must?) be its own end. Or, when punishment is not solely simple and brutal retribution, it would find its end in the protection of society, but now without having to pass through the tortuous and uncertain - risky - detour of rehabilitation. Numerous authors thus quote politicians suggesting that it is time “to understand less and punish more”. Dissociating incarceration from a project of normalization, whether this is actually occurring or merely claimed, would immunize the carceral institution against worm-eating problems that accompanied it since its modern pretension to transform souls and conducts: the prison is no longer to blame should recidivism occur. On the contrary, the recidivists providing tabloid shareholders’ bread and butter would reinforce the carceral space by displacing the critiques of correctional practices, here towards too short incarceration terms, and there towards policies enabling an easy way out of prison.

1.3. Politicized and Expressive Penalty

The third bundle of symptoms of which the observation is usually part of the diagnosis of a punitive turn is composed of a more or less harmonious scale of practices and discourses explicitly (re)locating, through the mass media, penalty at the center of political space - a political space of which the alleged novelty is an incredible openness not only to a variety of interests, but also to a variety of emotions. Put otherwise, the analysts observe the reversal of the tendencies that have come to be judged as proper to a penalty that self-described itself as modern and civilized. For instance, in introducing the chapters composing The New Punitiveness and representing the work of more than twenty authors, its editors suggest that the punitive turn can be understood as forms of punishment that seem to violate the productive, restrained, and rational tenets of modern disciplinary punishment and hark back, in different ways, to the emotive and destructive themes of sovereign punishment (Pratt et al., 2005, xii). It is indeed because of this reversal that some will want to interpret the punitive turn as resulting from a process of de-civilization (see below). This third bundle of symptoms thus refers to a set of punitive actions and
discourses, finding their common root in their dramatically public and political, therefore mediated, if not spectacular (Debord, 1967) character.

The argument put forward by the analysts of the punitive turn is thus not limited to a simple increase in the recourse to the carceral, and to a more or less generalized abandonment of the modern idea according to which criminalization and incarceration can be transformed into opportunities - possibility to produce a free (i.e. ‘rational’) subject, healthy, eventual consumer and producer of commodities (see Rose, 1999; Wagner, 1994; de Swaan, 1988). The punitive turn also refers to a novel politicization and mediatization of the penal question, in a register that favors emotions, simplicity, and even good old common sense. With such a lens, multiple practices and discourses are organized as converging: “zero tolerance”, political discourses insisting on the need to be ‘tough on crime’, three strikes laws (see Zimring, Hawkins, Kamin, 2001), publication of sex offenders registries (see Spencer, 2009), referrals of minors to adult tribunals, cultural and socio-political impacts of what Best (1999) termed the “industry of victimization”, mass media representations of prisons as Club Med, media-political disqualification of the criminological expertise (see Loader, 2006), etc.

2. Interpretations of the Punitive Turn

The diagnosis of a punitive turn quickly stimulated the production of sociological interpretations in the criminological field. Such interpretations mobilize a wide range of elements: relations between populations and the economy, commercial and political interests, the impact of the mass media on politics, transformations in sociality induced by the radicalization of the dislocation between time and space, de-civilizing processes, etc. The non-exhaustive examination - I am focused on Anglo-Saxon contributions - of these elements leads directly to confronting the difficulty of theorizing social change. Indeed, any sociology suggesting a radical and sudden mutation in the penal field generates the expectation of such a theorization. It is this expectation that motivates the pages that follow. I am less concerned here with how we should think about social change than with analyzing the conceptual tools and theoretical frameworks mobilized within theoretical criminology when it tries to identify the roots, the causes, the reasons of a change posited as fundamental, relatively abrupt, and certainly unforeseen.

2.1. Social Structure and the Management of the “Reserve Army” of Capital

A first sociology of the punitive turn essentially claims that it should be understood as one of the multiple collateral damages of a globalized post-Keynesian economy (Gilmore, 1998/1999). Discussed here is a political representation of the economic as a self-regulated space, of which one corollary would be the timidity or abandonment of any political activism in this space. As such, some announce the death of the social State (Rivera Beiras, 2005), or observe the liquidation of social policies inspired by Keynes’ doctrine (Beckett, Western, 2001). In this context, it is argued, carceral bulimia should be interpreted following Rusche and Kirchheimer’s (1939) central hypothesis, as the predictable result of economic rapports in which a huge portion of the population is de facto useless. Locating it in the US, and adding class-based oppression structured along ethno-racialized lines, we have the fundamental ingredients of this first sociology of the
punitive turn. Its most en vogue proponent is arguably Loïc Wacquant. The parallel between Rusche and Kirchheimer and Wacquant is clear. Firstly - but this is also a characteristic of any sociology of punishment since Punishment & Social Structure - there is an explicit refusal to try to think and understand variations in penal, and particularly carceral, practices through the schema of a response to the stimulus crime (Rusche and Kirchheimer, 1939, 5; Wacquant, 2005, 12). Secondly, and most importantly, what is at stake is to direct the analytical gaze onto the devaluation of the brute (unskilled) force of labor, and on the symmetrical devaluation of the poor. From such a perspective, the punitive turn is thus an accentuation and hardening of penal strategies for the management of the “reserve army” of Capital. But this parallel is imperfect. This is notably so because Rusche and Kirchheimer were worried by the possibility of directly extracting value through punishment (work in carceral settings and fines). The maximization of these possibilities is indeed central to analyses of the “crime control industry” (see below). But here, they are at best secondary, since we are invited to approach the punitive turn from the perspective of the control of the poor, rather than through the lens of the financial capitalization of their management as carceral commodities. The parallel is also imperfect since Wacquant will, in the last instance, point to state-political responsibility, rather than identifying forces of a purely economic nature (Wacquant, 2008, 70).

The originality of Wacquant’s analysis (2008, 2006, 2005, 2001) is to tie together, in the American context, the control of the poor through criminalization and what he terms strategies of caste enforcement, or peculiar institutions, that have, since the start of the 17th century, disjoined African Americans from other persons. Trying to historicize (2008, 46) the functions of the four strategies - slavery, the Jim Crow regime (the segregationist epoch in the Southern States), the ghetto, and “hyperghetto” + prison - Wacquant proposes to understand the punitive turn as one of the results of the obsolescence of the ghetto in our current economic context. The first three disjoining strategies (slavery, Jim Crow and the ghetto) converged in their “function” to, on the one hand, prevent the ‘contamination’ of civilized purity, notably with the help of ideological supports which culminated in eugenics doctrine and practice, and, on the other hand, to extract value through work - first of the soil, then in the factory. It is this second function that the primary contemporary strategy of disjunction on American soil now lacks, a strategy that appears to Wacquant as the formula “hyperghetto” + prison (2008, 41-133). The current economic relations (as well as a set of political decisions and practices stimulating them) result in the traditionally exploited African Americans losing their positive economic function (2001, 91). The articulation of economic and political relations, resulting, among other thing, in the punitive turn, is read as an attempt to impose a desocialized wage labour as a norm of citizenship for the deskilled fractions of the postindustrial working class (2001, 84; 1999).

The new political scene formed by the punitive turn would be characterized less by the simple continuity of a penal control focused on African Americans contesting superstructural oppression, than by the reconfiguration of the penal strategies along the axes of class and race. What Wacquant tries to grasp through the term “hyperghetto” indeed refers to a space of segregation organized by a racial axis, but also specified by a spatialized homogenization of class. In fact, he goes as far as suggesting that the contemporary function of the “hyperghetto” operates primarily through the class axis than through the ethno-racial one, segregating a population that is effectively composed
of a black majority, but which is, first and foremost, extremely poor (compare Bourgois, 1995; Bourgois, Schonberg, 2007). The shift from the ghetto to the “hyperghetto” signals the African American middle- and upper-class exile - an exile which will notably induce, according to Wacquant, the progressive dissolution of informal social controls, allowing for the maximal penetration of repressive state apparatuses in public, residential, and school spaces (see also Lyons, Drew, 2006). The formula “hyperghetto” - prison suggested by Wacquant is thus advanced not only to underscore the color of American penality, but also to signal that the outside of the carceral space is, for African Americans from economically disadvantaged classes, more and more taking the form of a prison. This situation would favor the resurgence of ideological justifications with a strong biological flavor, as found in the work of authors such as Wright (2009) and Walsh (2004). Such supports, indispensable to the political legitimation of crime control practices, mask the state-political responsibility for the development of so-called “criminogenic” urban spaces, a development linked to the decline of the Welfare State. Despite the magnitude of the mutations of economic relations in a globalizing environment (see also Barak, 2001), above all the substantial disappearance of the need for a local workforce in the manufacturing sector, this first sociology of the punitive turn, in the last instance, will point its finger at the political field, and call for a reconstruction of the social State (Wacquant, 2008, 279).

2.2. Carceral Privatization and the Commodification of Incarcerated Individuals

A second type of sociology of the punitive turn, also articulated around motives of an economic nature, insists significantly less on the evolution of the strategies to manage the “reserve army” of capitalism in order to concentrate its attention on Capital’s vivacious forces that commercialize and profit from various crime-fighting enterprises. Such enterprises transform the criminalized either into instruments to produce value within the carceral space, or into genuine commodities (Steen, 2006; Hooks et al., 2004; Welch, 2003; Hallett, 2002; Weiss, 2001; Christie, 2000; Davis, 1998). This second sociology of the punitive turn could potentially be articulated with arguments related to a (relative) withdrawal of the State in a post-Keynesian economy, as well as with arguments related to the structural function of the repression of individuals confined to criminalized economic activities. As it stands, however, it focuses less on the government of poverty than on the production and extraction of value through crime control - which obviously means through creating criminals (Steen, 2006). Nils Christie is arguably the most celebrated ambassador of this second sociology of the punitive turn.

It might seems that the starting point of the analysis presented in Crime Control as Industry is the need to control, through criminal law, the individuals who could try to derail a social order resting on the unequal distribution of both wealth and access to wage labor (Christie, 2000, 13). But the argument is not located in a simple and direct extension of a Marxist perspective, notably because it is solidly built around an analysis of the pain market. Indeed, this second sociology of the punitive turn does not suggest thinking about the putative transformations of contemporary penality as a reflection of deep mutations within economic relations in a globalizing context - whether or not such mutations are, in the last instance, attributed to a neoliberal political ethos. Rather, this sociology prefers insisting on apprehending criminalization and penalization as economic activities per se.19
To put it otherwise: if we can find, behind this industry, effects that can be associated with the management of the “reserve army” of Capital, we should nevertheless approach this industry as being, first and foremost, guided by the accumulation of capital, and secondarily geared towards the maintenance and enforcement of social inequalities protecting capitalist relations of production (Welch, 2003, 234).

According to the perspective put forward by this sociology of the punitive turn, criminalization and penalization are utterly profitable activities given that crime is approached as an unlimited resource: Compared to most other industries, the crime control industry is in a most privileged position. There is no lack of raw-material, crime seems to be in endless supply. Endless are also the demands for the service, as well as the willingness to pay for what is seen as security. And the usual industrial question of contamination does not appear (Christie, 2000, 14).

For Christie, here closely following Bauman’s thesis (1989) according to which the Holocaust is not an anti-modern aberration but rather a product of properly modern logics, the privileged position in which the crime control industry finds itself is largely the outcome of Modernity’s dynamics, that would run against the (also deeply modern ...) ideal of a cosmopolitan justice. Like Bauman, Christie suggests that the bureaucratized dogma of efficiency and instrumental reason favors the dehumanization of, or at least the production of a deep moral distance towards the Other, which in turn enables insensitive and impersonal infliction of pain (see also Waxman, 2009). Here, the logics of Modernity are usually grasped through the model of a transition from community to society (Tönnies’ Gemeinschaft/Gesellschaft framework; see Freitag (1986) and Spitzer (1983)). They also contain the increase in social distance, attributed to the (relative) erosion of “informal social controls”, as well as to the correlatively increasing reliance on state-based modes of control and technical means of surveillance. Such logics constitute a fertile soil to easily convert an increasing number of acts into crimes, but also to ‘naturally’ transform incarcerated individuals either into tools of production, or into pure and simple goods that can be exchanged in the pain market.

In the first case, the analysts of the punitive turn point their fingers at the colossal profits that certain industrial groups are making out of the labor of prisoners - paid with a starvation wage, or (as it is notably the case in Texas) exploited without salary (Christie, 2000, 135). For example, DeVillis (2009) denounces the profits made by the company CORCAN in Canadian penitentiaries. For the year 2007-2008, the company declared selling goods and services for more than 70 millions $CAN, which lead it to celebrate this “strong performance” and to rake in net profits of 3.3 millions $CAN (CORCAN, 2008, 17), representing a 1.2 million increase compared to the previous year (CORCAN, 2007). As DeVillis (2009) underscores, such profits are enabled by the company’s paying its ‘employees’ with extremely low wages and prohibiting them to unionize, while claiming to offer a work environment corresponding to the ‘real world’. For his part, Weiss (2005, 2001) insists on locating the analysis of work in the carceral setting within the context of the restructuring of economic relations attributed to globalization, notably pointing to the increasing utility of incarcerated individuals for capital accumulation in the new political economy.

As mentioned above, the second type of argument is less concerned with the transformation of incarcerated bodies into tools of production than with their commodification. As such, the analysis connects penal practices and ideologies, the
political sphere, and Capital. Political and capitalistic interests meet in the commodification of incarcerated individuals and the privatization of prisons, as jobs are created, and as constructing prisons is presented as a strategy to 'stimulate' rural economies - a meshing that Davis (1988, 416) described in terms of a carceral Keynesianism. This reunion of political and economic interests also manifests itself on the level of penal ideologies. The corporations (profiting from carceral practices) and politicians (profiting from contemporary anxieties) invest in the cultural sphere, suggests Welch (2003, 229), to pour in their propaganda: popular views of crime are distorted by governmental and commercial interests (see also Hallett, 2002). In contradistinction to the sociologies of the punitive turn positing the primacy of political responsibility for the current penal populism (see below), here it is Capital’s tentacles that dominate in the interpretation, as they are taken as holding a mighty grasp on political actors. The lobby exercised by corporations managing a growing archipelago of privatized carceral spaces is thus severely criticized by Welch (2003), who notes that the annual market value of an incarcerated body in the USA can reach 74 000 $US. The power of this lobby is illustrated by the fact that the American crime control industry - with Corrections Corporation of America emerging as a leader - was the most important financial contributor to the Republican party in numerous States where 3 strikes and you’re out form of legislation had been implemented (Prison Privatisation Report International, 2006).

2.3. Penal Populism and ‘Glocalized’ Mediatization

A third form of sociology of the punitive turn prefers to concentrate on a political sphere that is conceived otherwise than as Capital’s spokesperson. It is essentially argued that the roots of this mutation in penalty are to be found in contemporary transformations of political practices, which have ceded to populist temptation. Configuring the relations between politics and mass media as mutually reinforcing, this form of sociology emphasizes the spectacular quality of media representations of criminal and penal issues. Next in this form of sociological argumentation is the production and amplification of a culture of fear or insecurity, which would explain the appeal of penal populism, as well as the commercial success of media products thematizing violence and victimization.

While the carceral boom serves as the main empirical support for the two previous sociologies of the punitive turn, here the analysts’ focal point is mostly directed towards the re-emergence of an expressive penalty and its contemporary politicization.

Bottoms (1995,40) first suggested the expression ‘populist punitiveness’ to convey the notion of politicians tapping into, and using for their own purposes, what they believed to be the public’s generally punitive stance, something that criminologists now usually refers to as penal populism. Thus, for Roberts et al. (2003, 5), penal populism means the political instrumentalization of crime-related issues, one of its important effects being that political gains are prioritized over the efficiency of crime control policies. But the expression is also mobilized in a way that encompasses a wider range of contemporary trends (see Pratt, 2007). The following are the main ones: penal practices are presented as being problematically centered on criminalized persons, which would lead to neglecting victims’ and the public’s needs; penal populism refers to a set of ‘anti-system’ rhetorical claims targeting actors taken as weakly representative of the ‘public’ (judges, academics and pro-rehabilitation practitioners); more broadly, the expression would grasp a general climate of anti-intellectualism, that condemns the distance and rationalizations that
would be characteristic of expert discourses, and instead embraces common sense and emotions. Penal populism designates a vast discursive set, of which one foundation is the idea that ‘real people’ would supposedly have had, in penal matters, their right to speak and to decide stolen by the elite. The public’s supposed ‘need’ for vengeance would have to be satisfied, and its ‘right’ to be protected from crimes - presented as predatory and random - would need to be respected. Thus, the representatives of this sociology of the punitive turn observe the contemporary weight of a political discourse valorizing incapacitation and retribution as a strategy to communicate a sense of proximity with the concrete experience of the electorate. What would be at stake is to turn the punishment of offenders into a symbolic spectacle of reassurance and vengeance for an onlooking public, humiliation and debasement for its criminal recipients (Pratt, 2007, 40).

Penal populism’s efficiency is notably attributed to its federating capacity, as political declarations of war (war on crime) are approached as discursive manifestations of the supreme populist moment (Steinert, 2003, 266). Common here are the analogies drawn in the literature with the war on drugs, the war on poverty, the war on cancer, and now the war on terror. Penal populism is also analyzed as a governmental strategy (in its Foucaultian sense; Simon, 2007; Madriz, 1997), or else, in the Frankfurt School tradition of the critique of manipulation (Marcuse, 1964; Horkheimer, Adorno, 1944), as a political strategy of diversion and fraud: crime scares are difficult to understand if they are seen only as a function of the effort to control the very poor; rather, they must be understood also as an effort to gain the allegiance of the populace so that they will forget, for the moment, the extent of inequality and government mismanagement (Chevigny, 2003, 91).

Penal populism nevertheless appears to some analysts (e.g. Garland, 2001, 146) as merely a re-description of the very phenomenon that begs for a sociological explanation. One could indeed ask how the emergence of penal populism is explained, and how one should interpret the fact that its rise coincided with a (relative) regression of official crime rates. Three main interpretative keys are proposed by the representatives of this sociology of the punitive turn.

The first key is found in the transformations of cultural relations to expert systems. The analysts are pointing their fingers at what Nevitte (1996) framed as the decline of deference, and here numerous criminologists lament their decreasing influence (thus the calls for a newsmaking criminology, or for a public criminology).

Globalization furnishes the second interpretative key to penal populism. It is argued that penal populism is a (pathological) defense mechanism of a political sphere confronted by the alleged reduction of its capacity to shield its domestic interventions from transnational forces. Penal populism is thus interpreted as fulfilling an essentially symbolic function, geared towards the denial of the obsolescence of full and complete sovereignty.

Thirdly, and directly linked to the impacts associated with globalization, penal populism is partly explained by the transformations of the communicational economy in contemporary societies. Here, the reflex of numerous criminologists is to blame the mass media, rehearsing some critical themes dear to C.W. Mills (1956), particularly the transformation of the public into a mass society, and the production of a psychological illiteracy in the citizen to be liberated from mass media ascendency. It is thus typical to find analysts blaming media ‘disinformation’ to explain the ‘culture of fear’, as well as the
erosion of social solidarity and trust (e.g. Demker et al., 2008; Pfeiffer et al., 2005; Welch, 2003). By way of the hyperrealization of the ‘danger’ posed by crime, such disinformation generates attitudes that are maybe ‘irrational’, but that certainly have real constraining effects on political action and discourse. Nevertheless, other analysts insist less on the content than on the form of mass mediated communications in a cultural space where the local and the global are, in a complex and contingent fashion, constantly (re)assembled (Grant, 2007; Franko Aas, 2005; Sparks, 2001; see also Sassen, 2005; Ludger, 2005). Deeply influenced by Lash’s description of the Information Society (2002), Franko Aas thus suggests that the mass media fuel and reinforce penal populism less because a critical criminological discourse geared towards more social justice has been discredited (for being too liberal, elitist, or intellectual), than because such a discourse is hardly practical within a communicational structure that submits the “information” to the triple exigency of speed, accessibility, and quotability. Such structuration is geared towards formatting any discourse, in order to make it communicable in a way that crosses through the constraints posed by unpredictable associations of time and space. It is thus concluded that the sloganization of discourses (tough on crime, zero tolerance, 3 strikes and you’re out, broken windows, etc.) is a product of a new communicational economy, exerting a deafening impact on academic speech in the public space, and deeply transforming the face of politics.

2.4. The Late Modern Condition

The fourth sociology of the punitive turn finds its most resounding representation in David Garland’s deeply influential The Culture of Control (2001), to whom we owe the coinage of the expression the punitive turn. The core thesis of this sociology lies in the claim that we ought to take into consideration a new social psychological experience of crime, a new and collective “complex” of psychosocial dispositions attributed to late modernity (radicalization and acceleration of some logics pertaining to Modernity, as first proposed by Giddens (1991, 1990)). Garland (2001, 139, 146) finds the theses explored so far inadequate, for they would not explain the social and psychological conditions making the phenomenon under study possible in the first place, and because they also assume that the citizens passively accept restraints on their liberties.

According to Garland (Garland, 2001; Garland, Sparks, 2000), the following are the crucial transformations in the organization and the mode of reproduction of liberal democracies that need to be taken into account to enable a comprehensive analysis of the new punitiveness: a) a reinforced formula of capitalistic accumulation, resting on a accelerated and delocalized dialectics of production and exchange, which would notably induce an enlarged specter of material insecurities; b) a new familial and conjugal space, altered profoundly by the massive presence of women on the job market, and also characterized by an extensive penetration of uncertainties, if not of anxieties, associated with the effects of a radicalized secularization; c) a set of important mutations in social ecology, caused by an increased dislocation of time and space reconfiguring work and private spaces, and leading to the almost complete disappearance of “informal social control” (compare Lianos, 2001); d) even deeper cultural effects of the mass media, generalizing expectations and fears, further diluting the influence of localized traditions and forces upon cultural and identity-related practices, and generating new constraints...
on electoral practices; and e) an increased democratization of social and cultural life, particularly manifest in the coming of an era of ‘moral individualism’.

The dimensions of late modernity converge to put an ever increasing portion of the population in a position of material as well as ontological insecurity. The same analytical claim is made by Young (1999a, 1999b) in order to explain the making of an Exclusive Society. Refusing the idea of a rise of intolerance, Young instead points to the transformation of our relationship to individuals experiencing various “difficulties” (illegal immigrants, the homeless, the jobless, the criminalized). It is only towards such difficulties that a new intolerance is observable, while “diversity” (ethnic diversity, cultural diversity, diversity in the realm of sexual and parenting practices, etc.) is no longer apprehended as symptomatic of a defect that should be invested by an anatomo-political project. Similarly, Rose (1999) observes the establishment of various circuits of exclusion that tend to contain most manifestations of a disciplinary power based on optical and physical techniques.

But Garland’s arguments are more specific: if no one escapes the consequences of late modernity (see also Loader, 2009; Hinds, 2006; Cavender, 2004; Vaughan, 2002), the punitive turn has to be understood, first and foremost, as the product of the transformation of the cultural relation to crime (and to other ‘difficulties’) in a particular social group, that of the liberal elites (or professional middle class). Garland maintains (2001, 148) that this is the group whose attitudes and dispositions have been more thoroughly transformed over the last three decades. And it is their adaptations to the experience of high rates of crime that have had the most significant impact upon penal politics and crime-control. Garland suggests that the professional middle class is no longer ideologically and culturally inclined to understand crime as a symptom of social inequalities, and to make the case for empathetic correctional practices geared towards rehabilitation. The argument here is not about evoking the decreased socio-political efficiency of such positions, but instead to note their contemporary lack of popularity in the very social group that used to be the most actively involved in their promotion. According to Garland, this group is the dog that did not bark. The making of a generally post-disciplinary space, the carceral boom, and the reemergence of an ‘expressive’ penalty would be largely attributable to the lack of a clear and strong opposition by this social group. This absence of a clear and strong opposition is in turn explained with the following arguments: the professional middle class no longer experiences low rates of victimization; the transformation of its attitudes is the product of a decreased social distance to the ‘problem’ of crime, in part as a result of the mass media. This is the high crime societies argument: as high rates of crime are taken as a normal social fact, a consciousness of crime and of its ubiquitous risk colonizes all social action.

### 2.5. (De)Civilizing Processes

Whereas Garland suggests that the instruments necessary to interpret the punitive turn cannot be found in the work of Durkheim, Marx, Foucault or Elias, some analysts (Pratt, 2005; Vaughan, 2000) want to demonstrate the explanatory power of Norbert Elias’ theses. This fifth sociology of the punitive turn, on this point similar to the analyses articulated around late modernity, attempts to be attentive to the transformations of contemporary citizens’ sensibilities: any social history of punishment must be able to explain why people press for a particular penal option, why it is so appealing to them apart from any
utilitarian benefits it might bring (Vaughan, 2000, 73). The putative transformations of contemporary penality are here interpreted by evoking either a process of decivilization, or the production of a relationship to the world in which civilizing and decivilizing processes are hybridized (see also Fletcher, 1997; Elias, 1996; Mennell, 1990).

34 In *The History of Manners and State Formation & Civilization*, Elias takes numerous precautions to make sure that his analysis is not apprehended through a normative framework. Terms like civilization and civilized grasp, first and foremost, the narcissistic reflection of the West on its own practices and sensibilities, but also, on a smaller scale, refer to distinctive qualifications around which class boundaries are reproduced (Elias, 1939, 2, 32). To discuss the process of civilization implies a socio-historical psychology which make the case for a continual correspondence between social structure and the structure of personality (Elias, 1939, 156; see also Mennell, 2007; O'Malley, Mugford, 1994). The criminological appropriation of Elias’ work usually emphasizes two core ideas. The first suggests the socio-historical transformation of the modes of the regulation of conduct, modes progressively shifting from a Hobbesian framework to a superegotist logic - Elias (1939, 154) evoking the introjection of the civilizing process and the making of a strictly regulated superego. More or less reformulating the first one, the second core idea suggests the increased repulsion and shyness towards acts and objects associated with our bestial nature - violence, animals’ entrails and carcasses of which the flesh cut is destined for consumption, defecation, sexual practices, etc. - as such objects and acts are more and more removed behind the scenes of social life. But for Elias, the civilizing process refers to broader socio-political phenomena. Indeed, self-control and the transformations of sensibilities compose only one of the three (interdependent) dimensions of the civilizing process, a dimension grasped with the term psychogenesis. And to fully understand this civilization of the passions and the transformation of our libidinal make-up (Elias, 1939, 323), we also need to take into account the process of State formation (or the monopoly mechanism), as well as the shifting structure of social interdependencies (sociogenetic dimension of the civilizing process).

35 The extent and the intensity of the statist monopolization of the legitimate means of violence and of the imposition of taxes is one dimension structuring the manifestations and concrete impacts of civilizing strategies. As such, the structure of psychic life will greatly vary according to the State’s ability to pacify social relations in public space. Elias thus argues that the decreased fears associated with threats to our physical integrity come with a price; as the threat of an inner violence comes to replace the threat of external violence (493-497), increased discomfits stem from too strong a sublimation. Finally, the monopoly mechanism, notably through the collectivizing processes it entails (education, punishment, practices of care, etc.), favours an increased social differentiation, which in turn reconfigures the ties that unite us: what changes is the way in which people are bonded to each other. This is why their behaviour changes, and why their consciousness and their drive-economy, and, in fact, their personality structure as a whole, change (Elias, 1939, 480). The monopoly mechanism, through the multiplication of interdependencies and by fuelling social differentiation, thus partakes in (sociogenesis) the enforced need to appear civilized in an increasing plurality of social situations and interactions. In a nutshell, the civilizing process refers to a state-psycho-social triptych of which no dimension is autonomous.

36 The utilitarian revolution in the realm of penality has been analyzed through this process of civilization (Garland, 1990), and Foucault’s (1975) reinterpretation of the gentleness of
punishments (la douceur des peines) is well known. What is more recent, and maybe innovative, is to understand the punitive turn as symptomatic of a reversal of the civilizing process. Such a perspective at least has the merit of raising questions that are as relevant as they are difficult: why is it that, in some national contexts, a low incarceration rate is no longer construed as a sign of ‘civilization’? How should we explain that the American carceral boom is not a source of political embarrassment?

For our present purpose, what is at stake is to establish whether the evocation of a process of decivilization enables a strong understanding of the symptoms of the punitive turn, or whether it merely amounts to a re-description of some of them. The process of decivilization would correspond to a (relative) resocialization of constraints, to the resurgence of impulsive conducts that, in the past, would have been imprisoned by various ‘defence mechanisms’, and to a contraction of the scope of mutual identification (Fletcher, 1997, 83). We should thus note the decreasing efficiency of the monopolization of legitimate violence and of the pacification of social spaces, as well as the reduction of both individuals’ self-control and social interdependencies (Pratt, 2005; Vaughan, 2000). This process of decivilization would thus enable the explanation not only of the cultural and political indifference towards criminalization and penalization, but also of the emotive and expressive excrescences of juridico-political discourses and penal practices. The contemporary citizen, already unable to identify herself to the criminalized individual, would face - at least tele-visually - institutions refusing to clearly affirm our interdependence, repetitively demonstrating that numerous ‘non-persons’ can be banished from our community (see also Larsen, Piché, 2010; Agamben, 2003, 1995). As a result, an incapacitating penality based on fear and anxiety could not only be unleashed, but would be highly seductive (Vaughan, 2000, 87).

Pratt (2005, 263-267) suggests that we should instead observe the fusion of civilizing and decivilizing processes to explain the production of new cultural values, of which the punitive turn would be one result. For example, he proposes that globalization can, on the one hand, weaken sovereignty and contribute to generate anxieties and fears towards the urban environment while, on the other hand, enable and favor the composition of new forms of strong transnational interdependencies (see also Hardt, Negri, 2000). As such, Pratt remains particularly close to the analyses based on the impacts of late modernity, as, on the analytical backstage, they would explain the coming of decivilizing trends.

3. Critiques of the Anglo-Saxon Sociologies of the Punitive Turn

In the previous pages, I have distinguished between five main sociologies, or interpretive frameworks, that dominate in Anglo-Saxon theoretical debates focusing on the punitive turn or the new punitiveness. Although weakly integrated in contemporary discussions in Anglophone theoretical criminology until now, other theoretical propositions can also be observed. I particularly have in mind here some work of Hallsworth (2002, 2000), in which he tries to understand the punitive turn as a symptom of the coming of a miserably conceptualized postmodernity (Penna and Yar, 2003). I am of course not pretending to propose an exhaustive coverage of the sociologies of the punitive turn, and I know I am guilty of reducing their complexity. Nevertheless, it seems to me that their portrayal has been done with a density authorizing a set of strong critiques. I organize them in three...
points: a) a totalizing diagnosis that is not always, at its source, convincing; b) the pretension to a critical engagement with the uses of penal law that, in the end, renew the criminological legitimation of its power and force; c) the conceptual limitations inherent to the very idea of a punitive turn in the penal field. After detailing these criticisms, I conclude by pointing to some theoretical trails left unexplored by these analysts of criminalization. These trails, it seems to me, notably guarantee more caution (or more humility) in the sociological understanding of objects, practices, and trends engendered and supported by the power and the force of penal law.

3.1. A Totalizing Diagnosis

The diagnosis of a punitive turn is usually posed when it is possible to observe the three previously detailed bundles of symptoms: carceral boom, post-disciplinary prison, and expressive politicized penalty. While the intensity of the American carceral boom is idiosyncratic (it should be emphasized that the analysis of this national context masks a complex intra-national diversity), numerous analysts observe a similar, albeit less spectacular, trend in other countries, particularly in the UK (Newburn, 2002; Hallsworth, 2002; Garland, 2001). To conclude on this basis that we can discuss of a carceral boom as a general characteristic of Western liberal democracies since the late 1970s or the early 1980s is a huge leap, that numerous analysts of the punitive turn did not hesitate to make.

Indeed, Doob and Webster (2006, 330) have good reasons to bemoan the near monopoly of the UK and the USA in Anglophone writings on penality. We have to note that, among all the countries presenting the highest incarceration rates (in 2008: United States of America, St. Kitts and Nevis, Russian Federation, Rwanda and Cuba), the bulk of Anglo-Saxon criminological work on the punitive turn only considers the United States. Christie’s work is among the notable exceptions. Building on the methodological strength of international comparisons, and confronted by the high variations in the use of incarceration in different countries, he is forced to note the limits of Modernity as an explanatory key (Christie, 2000, 45, 62). Mobilizing the prison industrial complex, penal populism, late modernity and decivilizing trends, other analysts are however less cautious, and several of them show a tendency to take Modernity and the USA, the Anglophone realm and the West, as being synonymous.

Furthermore, these analysts’ predilection for the prison notably has the effect of neglecting other secluding practices, particularly those that find their conditions of possibility in psychiatry. Comparing American rates of penal and psychiatric seclusion over the longue durée clearly spotlights the limits of the diagnosis of a carceral boom, and points to the need to broaden the criminological apprehension of carceralization (see Harcourt, 2008; Chantraine, 2007). Indeed, when combining these two rates, we no longer obtain this impressive graphic curb demonstrating the clear punitive turn in the USA. A different argument, notably advanced by Matthews (2005, 192), is that while there is no difficulty in demonstrating an increase in rates of incarceration in some Anglophone countries, the problem is to immediately conclude that this is to be explained by a new punitiveness.

The second symptom of the punitive turn, the emergence of a generally post-disciplinary prison, can also be contested. The limits of proclaiming the death of the disciplinary era notably show themselves in the rehabilitation discourse that envelops exploitation in the carceral context and provides a central piece of its legitimation (CORCAN, 2007; see also
Cullen, Gendreau, 2001). In posing a shift from a logic of normalizing to incapacitation, the thesis certainly amounts to a grossly monolithic analysis of the social uses of punishment, in a way reminiscent of the - also quite quickly popular - thesis of the new penology (Feeley, Simon, 1992). Most of the time, for the analysts of the punitive turn, it is as if some political discourses emphasizing a retributivist duty should be taken as testifying to the totality of the practices through which punishment is managed. Political discourses, crime policies, penological rationalities uttered in the juridical arena, and the concrete management of the infliction of pain are indeed rarely distinguished, particularly in the sociologies lamenting penal populism. What results from this is the problematic a priori that crime and punishment have a particular substance, rather than being analyzed as differentially constituted in discursive spaces and in regimes of social practices operating according to distinct modalities (see below).

Finally, transformations in the political and media spheres are presented as offering a third empirical support of the thesis of a new punitive era. A typical example given in the literature on this point is the transnational success of “zero tolerance” policies. This example conveniently points to the democratic, guaranteed, insensitive, and thus inhuman application that would be expected of criminal and penal policies. But such a transnational success is a success only in so far as we confine the expression “zero tolerance” to a strictly discursive space - although this does not necessarily compromise the diagnosis of a punitive turn. Indeed, transformations of political discourse and of media treatment have led Anglo-Saxon analysts to pose such a diagnosis, even when political and media discourses do not show any measurable effects on the level of practices, and even in national contexts, such as the Canadian one, where incarceration rates not only do not present any boom, but remain ostentatiously below 1960s levels (see Hogeveen, 2006, 2005). One can argue that discourses generate concrete cultural and institutional effects, and thus diagnose a punitive turn on the basis of the content of a new political discourse that transcends partisan boundaries. This alleged homogeneity should nevertheless be submitted to a sound empirical investigation, which is beyond the scope of this article. But some research already allows us to question it seriously (Altheide, Coyle, 2006).

The growing space occupied by crime related issues in the media, particularly in news media, is solidly established by Anglo-Saxon research (Dowler, 2006, 2004). But the diagnosis of the punitive turn here operates through an non-explicit normativity: Utilitarians apprehend crime related issues by way of reason, whereas retribution’s advocates would approach them through the realm of the emotional. Such a liberal argument, according to which the public, ignoring the analysts’ truths, cannot ‘rationally’ debate crime related questions is certainly not new - for example, one can observe it since the institutionalization of American sociology (see Ross, 1901). Analysts frequently establish a direct correspondence between the transformations of political and media discourses and the fabrication of a punitive public, but such a correspondence is quite easily destroyed by the research done on public opinion (Stack et al., 2007; Brown, 2006; Roberts et al., 2003). Moreover, one of the paradoxes that analysts do not confront is the fact that critique of the mass media is communicated by the mass media itself (e.g. Radio-Canada, 2008). One then is forced to conclude that there is a relative diversity in the media landscape. Also, the argument can hardly be saved by operating a distinction between the ‘good’ media consumers and those ‘unable’ to make the right choices, or else by evoking the domination and ascendency of the ‘bad’ media (tabloids, commercial TV
channels, etc.) on ‘most’ of the people (see notably Doyle, 2006). In short, the third bundle of symptoms of the punitive turn presents the same problem as the second (abandonment of disciplinary carceral practices): it is constituted as a problematically homogenized whole by a criminological gaze looking to found a critical argument.

The three bundles of symptoms of the punitive turn are thus not as obvious as the sociologies considered in this article implies. In contradistinction to research focused more on concreteness than on abstraction, most of these sociologies take for granted these bundles of symptoms and use them as a starting point. The popularity of the Anglo-Saxon sociologies of the punitive turn has the effect of directing the debates on the finesse of theoretical arguments (coherence of truth discourses) rather than on their empirical support (correspondence of the truth discourses). Even if we refuse a narrow empiricist posture and if we adopt a tolerant and pluralist vision of the scientific practice, we can still deplore that the result here is frequently a problematic totalization that blinds itself to intra- and international diversity, something that is quite symptomatic of the imperialist reason (Bourdieu, Wacquant, 1998) that so frequently animates Anglo-Saxon work in the social sciences.

3.2. A Critical Pretension

Some could be tempted to consider the limits of this totalization as a small price to pay, if in return it stimulates the problematization of contemporary uses of the force and power of penal law. For example, some sociologists might answer yes to the provocative question formulated by Cohen (2002) in introducing the third edition of his foundational work on moral panics: maybe we should employ the same tactics, including exaggeration, to partake in the constitution of moral panics in a non-conservative fashion! Despite the fact that their theoretical choices are often irreconcilable and that the empirical focus is on distinct sets of practices and discourses, the sociologies of the punitive turn are united by a pervasive critical pretension. Maybe this can, at least in part, explain the authors’ selective inattention to practices and discourses pointing to the need to modify their diagnosis. But what is clear is that the critique carried by the sociologies of the punitive turn is utterly timid, even potentially counterproductive, which seriously limits the appeal of Cohen’s proposition.

The potential counterproductivity of the punitive turn rhetoric comes from the fact that the argument implies an acceptable (but never clarified) level of pain inflicted by the State, while at the same time promoting a conception of disciplinary practices located outside the realm of “infrapenality” in which Foucault (1975) resolutely anchored them. The latter is perfectly illustrated when the management of a sentence rationalized through rehabilitative goals is represented as opposed to punitive practices (Meyer, O’Malley, 2005; Garland, 2001). In other words, from the perspective of the critical tradition in criminology, the critique carried by the sociologies of the punitive turn is potentially counterproductive and certainly very timid because it amounts to a will to express the need to rehabilitate by force criminalized individuals, which in turn contributes to reinforcing the naturalization of the penal sanction while renewing mainstream criminology’s legitimacy - even though mainstream criminology stands accused of being quite instrumental in the coming of the punitive era. The critical rhetoric animating the sociologies of the punitive turn frequently relies on a romanticized conception of what is constructed as the disciplinary era. The critique of
criminalization and penalization is articulated along quantitative lines (we repress and punish too much), or along operational ones (we repress and punish inadequately), while the uses of the force and power of criminal law, as well as the various logics supporting them, are never radically questioned.

### 3.3. On Some Conceptual Aporetic Dimensions

It has already been pointed out by Matthews that the very concept of punitiveness, central to the theses considered here, remains a thin and under-theorized concept (2005, 178). And this might well be, continues Matthews, one reason for the popularity and diversity of these sociologies of the punitive turn, as anyone can use the ‘concept’ for multiple goals. On the basis of what criteria do we distinguish between the punitive and the non-punitive? Does the focus placed on incarceration suggest that other types of sanctions are not punitive? Are we asked to treat monetary sanctions imposed on the poor - who quite likely will pay their fines through a stay in prison - as non-punitive? How could a penal system possibly be non-punitive? In a nutshell: the sociologies of the punitive turn operate on the basis of common sense never made explicit, on the grounds of pre-notions that seriously limit the reach of their analyses. Matthews (2005, 181) suggests that the sociologists of the punitive turn should replace the notion of punitiveness by that of intolerance. Toleration would be more dynamic and relational, and it would carry an element of ambiguity. This suggestion has yet to be followed, and it is far from certain that the evocation of a ‘new intolerance’ is more satisfactory intellectually (and politically).

Indeed, whether we mobilize the notion of punitiveness or that of intolerance, in both cases this leads us to assume the possibility of their opposite (the non-punitive, the tolerant) within the penal system. But the penal logic rests on the a priori that criminal justice is produced by the infliction of pain, on the idea that the production of harm annihilates the harm (the crime) to which it reacts. We can of course debate the functions of the infliction of pain and analyze their socio-historical fluctuations. A sound analysis of the transformation of the value accorded to various penological rationales (in various systems - political, juridical, scientific - and within different cultural spaces) would indeed enable a finer analysis of the multiple stabilities and fluidities of the penal field. In any case, the concepts mobilized in the analyses of the uses of penal law should not blind us to the hostility that penal law promotes. As such, the punitive/non-punitive difference does not provide us with a tool for sociological observation enabling socio-historical and spatial comparisons of the various uses of penal law, as they never operate inside the realm of the non-punitive. To advance such a critique is evidently not to suggest that no changes whatsoever can be observed in the social uses of the power (to prohibit) and of the force (to punish, to repress) of penal law.

Moreover, the analytical focus and the critical pretension of the punitive turn literature tend to represent the penal field as being subjected to a unique logic. Indeed, all the analyzed sociologies suggest a harmonious vision of criminalization and penalization, in all cases mobilized in the direction of the implacable and the punitive. The focus on discourses of zero tolerance ignores the gigantic discretionary space that still characterizes police work; the focus on the limits imposed on judges’ sentencing choices silences all the bargaining still proper to a significant proportion of cases in judicial processes; the attention given to the referral of youth to adult tribunals can lead us to
forget all the policies and practices of diversion; the spotlighting of discourses, oftentimes political ones, convey the sense of a vengeful denunciation dogma without considering the utterances, oftentimes juridical in nature, suggesting the primacy of other penal justifications; the examination of the legislative modifications within the penal field in not accompanied by a sound analysis of the radical transformations in public and private strategies of prevention, particularly those enabled by technological advances, etc. In a nutshell: despite their theoretical complexity, the sociologies of the punitive turn continue to apprehend the penal field from a considerably reductive perspective.

**Conclusion**

The sociologies concerned with the punitive turn generate a blind and redundant critique: a critique according to which the sociologies of the punitive turn operate at a level of abstraction that would be too high, pejoratively associated with “grand theory”, thus presenting absolutely no utility in the computation of data handled by researchers thinking they have a privileged relationship with ‘reality’. There is no need to be sympathetic to such critique in order to accept that the sociologies of the punitive turn present various limits. Some of them can be quickly evoked: the too strong homogenization of social representations in the culture of control thesis; the highly descriptive and, in the last instance, normative character of the work mobilizing the notion of de-civilization; the too strong (and somewhat naive) submission of political power to capitalistic forces in theses articulated around the notion of the penal-industrial complex; the impossibility of explaining the carceral boom through capitalistic exploitation within the carceral context; the mechanized analysis of communication, which removes its ideological content while remaining silent when asked why we did not witness a non-punitive sloganization (No More Prisons!); the reduction, in Wacquant’s work, of the practices of all repressive, judiciary, penal and political institutions and actors to a concentration camp logic, reacting in a hyper-sensitive fashion to macroeconomic shifts.

Instead of reinforcing and going deeper into individualizing critiques, I wish to conclude by looking more carefully at a problem shared by all sociologies of the punitive turn. It is the problem of a theorization of changes in the social uses of the power (to prohibit) and the force (to repress, to punish) of penal law that reduces too much the complexity of the penal field. My examination of this problem pretends to be neither a full nor satisfactory sociological theory, but instead identifies some theoretical trails that could be mobilized in the analysis of the various solidities and fluidities that run through the penal field.

The reduction of the penal field’s complexity can be observed in both the totalizing diagnosis of the punitive turn and the social logics identified by Anglo-Saxon analysts. One could suggest that we should confront the diagnosis with a set of empirical observations in order to qualify or to refuse it. But the empirical is always mediated by a theoretical framework, common sense providing us with our usual theoretical framework. A solution that might be more satisfying could be to work with theoretical lenses that presume the heterogeneity of the penal field. One immediate advantage of the adoption of a theoretical framework positing the diversity of the field’s discursive regimes and social practices (preventative, policing, juridical, carceral, political, cultural, etc. realms) is that it leads to de-substantialize social objects, and orients the analytical
gaze on multiple and contradictory constitutive practices (Henry, Milovanovic, 1996). As critical studies in legal pluralism strongly demonstrate (Nader, 2003; Parnell, 2003), the identity, in various social spaces, of the meaning and of the signification of the criminalized object needs each time to be demonstrated, rather than pre-judged. Indeed, we can suggest that such an identity is radically improbable (Carrier, 2008b). As such, the Anglo-Saxon sociologies of the punitive turn notably reduce too much the complexity of the penal field because they insufficiently problematize crime and punishment as sociological objects.

In fact, there are numerous cases in which crime is even ontologized. It is one of the strength of the sociologies focusing on carceral privatization and the commodification of incarcerated bodies to constantly underscore the social construction of crime and ‘criminals’. But the sociologies that concentrate on the effects of late modernity, on decivilizing processes, and, to a large extent, those that deal with penal populism, not only forget to take into account the numerous methodological limitations inherent to the production of official crime rate statistics, but also the core lesson of Rusche and Kirchheimer’s (1939) oeuvre: the analysis of penalty should operate in a way that breaks down any a priori relationship between criminalization and penalization. This oversight is perfectly illustrated when one advances the high crime societies argument, or else when it is suggested that, given the decreasing trends in crime rates, the punitive turn has an ‘irrational’ quality. Once again, apprehending the penal field as constituted by various constitutive practices allows us to limit the aporetic elements related to the ontologization of crime, an objective on which criminology has insisted at least since its reception of the work of Mead (Sellin, 1938).

Moreover, the ontologization of objects, and the implicit premise of the correspondence of their meanings and significations in various domains of the penal field, lead analysts of the punitive turn to place penal law in a position of submission to other spheres of social activities. The sociology of law implicit in the interpretations of the punitive turn indeed suggest that change in the social uses of law can be reduced to homogenous forces, that are always external, producing identical effects. Two models are found in the literature: an upward model and a downward model. In the first case, law is, in the last instance, approached simply as a mirror of contemporary cultural life. In the second case, on the contrary, law is apprehended simply as a tool that can be appropriated without much difficulty by various social powers. Both models might be regarded as providing a convincing explanation of some juridical phenomena. But what I want to underscore here is the absence of a third model in almost all theoretical discussions of penal law, in contradistinction to current literature in the sociology of law, where its presence is patent. This third model puts forward the (relative or total) autonomy of the juridical system\(^3\), and as such constitutes an invitation to the development of a sociology of the penal field in which interactions between economy, culture, politics, science, media and law are plural and more complex. To advance the relative or total autonomy of law does not amount to postulating an autarkical juridical space, but instead refuses to think of law as totally dominated by normative forces that are external to it. The juridical system is not passive; it actively partakes in the maintenance and transformation of penal practices. The political can obviously impose certain practices on the juridical, by establishing mandatory minimum sentences for a given infraction, or by instituting new infractions for example. But such transformations can only exist juridically inasmuch as the law constitutes them as being in conformity with its own norms, of which the
processes of legitimation are not those of the political (or of the economic sphere, etc.). As such, to advance the autonomy of the juridical system nowhere leads to the negation of the dynamics of influence, but rather to observe the juridical system’s adherence to the maintenance and transformation of the uses of power and force in the penal field. How does a given national juridical system conceive of a mandatory minimum sentence of incarceration for infraction ‘x’ as conforming to constitutional principles? How does a country’s highest court limit or favor crime policies that are observed by others as populist and inefficient? Which economic, scientific, etc. motives are interpreted by the juridical so as to maintain the very possibility of criminalization and penalization? The juridical system shall never know how to found its own norms other than in a tautological fashion; it is in constant need of justifying them through an external support (the political will for example) to be able to act as if its operations were not founded on a foundationless force (Carrier, 2008a; Luhmann, 2004; Teubner, 2001).

Even if, in the context of this contribution, it is impossible to adequately confront the theoretical problems raised by this sociological analysis positing the autonomy of the juridical, the need to grant a more pivotal status to legal constitutive practices in the theorization of change in the penal field can be appreciated. And in doing so, in tackling more directly the problem of juridical legitimacy, maybe it will be possible to revitalize the criminological critique of all uses of the power and force of law. Whatever the case may be, and even if one chooses to emphasize the relative character of juridical autonomy, the processes identified in the sociologies of the punitive turn cannot be situated in relation to a totally docile penal law.

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NOTES

1. Many thanks to Justin Piché and to Frédéric Ocqueteau for their precious comments on earlier versions of the article, as well as to Augustine S.J. Park and Kevin Walby for revising this translated version.

2. I quickly present below the main symptoms of this punitive turn, as identified in the literature on this theme; see also Comack, Silver (2008); Johnstone (2008); Pratt (2007); Brown (2006); Gottschalk (2006); Sievers, Redding Mersky (2006); Brown (2005); Baker, Roberts (2005); Hogeveen (2006, 2005); Hallsworth (2005, 2000); Matthews (2005); Estrada (2004); Giroux (2003); Garland (2001).

3. This is obviously a highly contested affirmation, particularly from researchers working on “public opinion”.

4. I shall have the occasion to comment on the - often unsatisfactory - basis of the diagnosis of the punitive turn.

5. Some analysts do not feel that it is necessary to notice all three bundles to authorize themselves to diagnose a punitive turn.

6. But when it is the sole or main preoccupation of the analyst, this increase is sometimes grasped through expressions such as mass incarceration or the carceral state (Simon, 2007; Gottschalk, 2006). In such cases, it is more or less dissociated, or at least given a separate treatment, than a punitive turn corresponding to multiple changes more or less thickly agglomerated.

7. For a detailed portrayal of the evolution of the incarceration rate in the USA, see notably Gottschalk (2006) and Wacquant (2001). Above, I used the combined numbers of state and federal carceral institutions (i.e. jails and prisons).


9. Obviously, as the blatant overrepresentation of Aboriginals in the penal institutions of settler colonies such as New Zealand and Canada constantly reminds us, that the law - in its black letter expression or in its social uses - targets particular social or ethnic groups is hardly particular to the Americans (see for example Monture, 2006; Kramar, Sealy, 2006). In what regards the color of penalty, it is the weight of slavery that places the USA in a particular category. Whether we agree or not with their thesis, authors who, like Brewer and Heitzeg (2008), consider the contemporary US prison to be “the new plantation” cannot extend their claims outside the United States, and probably not even outside the boundaries of some particular States. Nevertheless, such theses are symptomatic of the American socio-historical uniqueness, of which they try to grasp some of its effects.


11. Such actors being however in an institution in which the pursuit of this will to transform is de facto constituted as a form of resistance, as is the complexity of a single word on a predictive grid (see Franko Aas, 2005; Carrier, Quirion, 2003).

12. Usually evoked here is the tendency to remove the practices and discourses surrounding the infliction of pain behind the scenes of social life (Elias, 1939), as well as the tendency to claim politically and juridically an imperative of restraint in the use of the penal force. See also Garland (1990, 236).

13. For an analysis of the relationships between State and post-Keynesianism and of their impact on criminology, see Braithwaite (2000).

14. See also Melossi (2008a, 229-252, 2008b); De Giorgi (2006); Reiman (2004); d’Alession, Stolzenberg (2002); Michalowski, Carlson (2000, 1999).
15. If crime is approached as a stimulus, it is only through its cultural representations; Wacquant thus suggests (2005, 13) that the carceral boom is not a response to a crime wave, but leaves open the possibility to interpret it, at least partially, as a product of a cultural crime wave. As we will see below, his analysis of the strategies of caste enforcement integrates an ideological component.

16. This does not mean that the strategies of financial capitalization of the punitive turn are ignored in Wacquant’s work (e.g. 2005, 11), or that a full-fledged sociology of the punitive turn comprehensively integrating the commodification of criminalized individuals and the management of the reverse army of capitalism is impossible.

17. It is particularly when comparing the American ghetto to the French banlieue rouge that Wacquant (2008) underscores the power of the political field on the corollaries of today’s economic mutations - mutations which elsewhere (Wacquant, 2001) seems to be identified as the primary source of the punitive turn.

18. On the role of criminological knowledge in ethno-racial oppression, see notably Walby, Carrier (2010); Labadie (2008); Rafter (2008, 2004); Morrison (2006).

19. Obviously, such activities only constitute the tip of the colossal security market iceberg (see notably Singh, 2005; Elmer, 2003; Shearing, Wood, 2003; Jones, Newburn, 2002; Rigakos, 2002).

20. See notably the work of Barbara Hudson (2008, 2006), and also Bauman (1993).

21. It should be noted that, since his turn towards the analysis of a liquid Modernity, Bauman (2002, 2000) suggests that Modernity, as described in Modernity and the Holocaust, represents an obsolete analysis of Western contemporary society. See the related arguments of Rose (2007, 2001) and of Freitag (2003a, 2003b) on the obsolescence of Modernity as an explanatory grid for the contemporary processes annihilating alterity, of which criminalization and penalization practices and discourses are constant socio-historical markers.

22. Today, such an interpretation is more frequently advanced by displacing the analysis of Modernity towards neo-liberalism and the culture associated with the “risk society” (Ericson, 2007; Simon, 2007).

23. Recall that the abolition of slavery in the United States has yet to be extended to slavery as a form of criminal punishment, the latter remaining, from a juridical point of view, totally legitimate.

24. In Canada, penitentiaries, under federal management, administer the individuals sentenced for 2 years or more, while provinces are responsible for the management of prisons (sentence of less than 2 years of incarceration). The capitalistic exploitation of incarcerated individuals’ labor force is, currently, limited to the penitentiaries.

25. Corrections Corporation of America (CCA) controls more than 50% of all privatized carceral spaces in the USA (prisons for adults and youth, retention centers for illegal immigrants, that are dealt with in the spirit of the catch and return doctrine (CCA, 2008, 4)). The corporation’s activities also include the construction and management of private prison in various other countries, notably in the UK (where roughly 10% of the incarcerated population is controlled by private interests) and Porto Rico. Ranked among Forbes’s Best Big Companies for its 2007 financial growth (see www.correctionscorp.com), CCA celebrated setting new records in 2007: ‘We are pleased to report that CCA completed another strong year during 2007, setting a new record for revenue and generating solid growth in net income and earnings per share. Total revenues increased 11.7% to nearly $1.5 billion and net income per diluted share increased 23.3% to $1.06 compared with the prior year. Our excellent results were driven by the development of additional bed capacity, an increase in occupancy, higher margins and new management contracts. We continue to benefit from a positive environment where the demand for prison beds exceeds the supply, and we believe CCA is well positioned to take advantage of this market dynamic to continue building shareholder value’ (CCA, 2008, 2).
26. This sociology of the punitive turn is perfectly illustrated when, in the face of an increasing number of legislative changes tying mandatory minimum sentences to various infractions, analysts argue that the governmental project (here, a Canadian one) is to satisfy Capital by opening the door to private interests through the creation of a situation of prison overcrowding (Roslin, 2007).

27. See notably Carlen (2008); Grant (2007); Pratt (2007); Hinds (2006); Loader (2006); Sparks, (2006, 2001); Zimring, Johnson (2006); Franko Aas (2005); Newburn, Jones (2005); Pratt, Clark (2005); Chevigny (2003); Steinert (2003); Vaughan (2002); Ryan (1999); Zimring (1996).


29. When analysts, for example Sparks (2001), want to grasp and theorize the effects of mass mediated communications in the late modern, or risk society, context, then the limits of the distinction I establish here between the third and fourth sociologies of the punitive turn (penal populism and ‘glocalized’ mediatization’, culture of control) appear clearly.

30. This argumentative logic, as well as its empirical support, has been contested (Stacks et al., 2007; Brown, 2006; Boutellier, 2005; Estrada, 2004; Cesaroni, Doob, 2003).

31. The Culture of Control and other preceding work (Garland, 1990, 214) are of course deeply influenced by some dimensions of Elias’ oeuvre.

32. These two work are now aggregated and published as The Civilizing Process (Elias, 1939).

33. This impossibility is even more obvious when using this line of interpretation towards the two other bundles of symptoms of the punitive turn. Besides, and without negating profits realized by some groups, such ‘work’ is still, first and foremost, either a form of punishment (see McBride, 2007), a strategy to produce docility, or a ‘public relations’ tactic geared towards countering a representation of prisons as ‘Club Med’ (See Stucky et al., 2007).

34. For a complete proposal, see Carrier (2008a, ch.3-5).


RÉSUMÉS

Depuis le début des années 2000 semble s’établir un consensus à la fois criminologique et politique au sujet d’une nouvelle donne culturelle en regard de la question pénale. Dans le champ pénal, ce (relatif) consensus est saisi par le biais d’expressions telles que « virage punitif » et « nouvelle punitivité ». En sciences sociales, trois principaux groupes de symptômes sont utilisés pour établir le diagnostic de cette mutation générale de la pénalité : le boom carcéral, la prison post-disciplinaire, et la réémergence d’une pénalité « expressive ». Cette contribution propose de disséquer la façon dont le changement social, particulièrement dans le domaine de la pénalité institutionnalisée, est théorisé par les analystes du virage punitif. Les cinq ‘sociologies du virage punitif’ qui dominent les débats théoriques dans le champ pénal académique anglo-saxon sont ici analysées. Cette analyse révèle notamment leur timidité critique et leur conception réductrice du champ pénal.

A (relative) criminological and political consensus on a new, generalized cultural disposition towards penalty has taken form since the early 2000s. In the penal field, it manifests itself in
numerous claims about a punitive turn or a new punitiveness. In the social sciences, three bundles of symptoms are used to establish this alleged global mutation: the carceral boom, the post-disciplinary prison, and the re-emergence of an expressive penalty. This article uses this 'new punitiveness' thesis to dissect the ways in which social change – particularly in institutionalized penalty – is theorized by various analysts of the punitive turn. This article identifies and scrutinizes the five ‘sociologies of the punitive turn’ that dominate theoretical debates in the Anglo-Saxon academic penal field. The analysis notably shows the critical timidity and the reductionist approach to the penal field characterizing such sociologies.

INDEX

Mots-clés : Virage punitif, nouvelle punitivité, criminologie, sociologie, théories criminologiques

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AUTEUR

NICOLAS CARRIER

Assistant Professor à l’Institute of Criminology and Criminal Justice, Carleton University (Canada).

nicolas_carrier@carleton.ca