

IN DEPTH

Punitive populism or social policy?

Albert Sales Campos

Researcher at the Institute Metròpoli

Punitive populism, the political strategy of using criminal law to obtain electoral gains, is based on the premise that increased severity of penalties means less crime⁽¹⁾. In accordance with this strategy, political decision-makers present and approve proposals for harsher sentences as an immediate and apparently simple response to social concerns, like crimes that are widely covered in the media and fear of increased criminal activities by serial offenders. The expression “punitive populism” first appeared in the 1990s at a time of rapid growth in the prison populations of most western countries and when the “zero tolerance” of crime rhetoric was triumphing, thus breaking with the consensus of previous decades.

Between the Second World War and the 1970s, media, political, and academic discourse concurred that crime should be dealt with by means of a combination of social work, institutional reforms, and treatment programmes. In this period, publicly calling for punitive solutions to combat delinquency was considered, in both the Europe of the welfare states and the United States, an excessively vengeful approach that clashed with prevailing values and empirical evidence ⁽²⁾. However, in the 1980s, confidence in expert knowledge and the ability of welfare states to maintain social order began to waver and punitive schemes for combatting criminality gained traction.

This repressive turn has many interrelated causes. First, the changes that western societies have undergone in the last few decades have led to increased inequality, poverty, and unemployment. Second, after the revolutions of the end of the 1960s, we have witnessed a conservative reaction that has entailed a change in social perception of crime. Complex, structural explanations of criminality, labelled as “social

justifications of crime”, are discarded and an individualist discourse portraying criminals as selfish, immoral beings acting against the legitimate interests of the rest of society is now more influential. Theft, muggings, and drug trafficking are no longer understood as the result of marginalisation and poverty, but as rational, antisocial behaviour. Third, the increase in criminal acts occurring on city streets, linked to consumption of certain drugs, encourages attacks on rehabilitation policies as ineffective.

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Renewed faith in the penal system as a tool of social control is, then, closely related with the socioeconomic changes of the final third of the twentieth century. The rise of punitive populism is manifested in the transformation of the role socially assigned to the prison, overemphasis on the importance of victims’ opinions, and electoral use of the perception of insecurity.

Prison: the mainstay of punitivism

If at some point in the twentieth century, there were people who argued that human societies would end up by going beyond the use of imprisonment as a response to breaking the law, today we see how prisons have become the mainstay of mechanisms of penal control around the world [\(3\)](#). Most experts attribute the rising number of prison inmates to changes in penal policy rather than to increased delinquency [\(4\)](#). The most striking growth in prison population has occurred in the United States where it increased from half a million inmates to more than two million between 1980 and 2008. The enormous amount of activity in the US prison system has given rise to what professor Angela Davis calls the “Prison Industrial Complex”, which is to say a mesh of

economic and corporate interests that feed on the fact that prisons have become a key part of governance of the various malaise characterising post-industrial societies (5).

The extreme case of the United States illustrates a trend that is common to all western societies. Lack of confidence in the rehabilitating function of prisons has not led to questioning of the use of incarceration. Instead of wondering whether or not people who commit crimes might be re-educated with lengthy prison terms in enormous installations on the outskirts of cities, we have simply uncritically accepted that if we imprison more people, we'll breathe easier. Penitentiary institutions are supposed to convey to the offender society's rejection of criminal behaviour and its desire for revenge, and also the idea that dangerous individuals will be kept under watch in order to ensure the safety of the rest of the citizens (6).

In Spain, the so-called "Criminal Code of Democracy", which replaced the criminal legislation of the Franco regime in 1995, introduced alternatives to prison sentences, but these were also harsher and effective for longer periods because of elimination of the possibility of reduction by work. Since then, the history of the Spanish penal system has been marked by punitivism, and successive amendments have aimed at expanding the conditions for incarceration and its duration.

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The introduction of revisable permanent imprisonment, which is part of the Citizen Security Law approved in 2015 by the lower house of the Spanish parliament, the Congress of Deputies, is highly representative of this punitivist trend. It means a prison sentence of indefinite duration and, although the deprivation of liberty can be reviewed, the intention of incorporating it into the legal system is an expression of the desire to

have a punishment that is comparable to life imprisonment. As stated in the explanatory memorandum, revisable permanent imprisonment is intended for “extremely serious crimes for which citizens demand a penalty proportional to the crime committed”.

In the legislature from December 2011 to April 2014, the then Minister for Justice, Alberto Ruiz-Gallardón, announced changes in the penal system that would include revisable permanent imprisonment and security custody with the aim of providing a more appropriate penal response to certain crimes that cause particular social revulsion. From the first debates on the matter, the defence of indefinite deprivation of liberty was based on social rejection and the extreme dangerousness of some kinds of criminals. In other words, life imprisonment was accepted and justified—however reviewable it may be—because of the need to punish crime and ensure security, given that, for some crimes, the rehabilitative function made no sense.

Instrumentalisation of victims

In order to justify this preponderance of the retributive function of the penal system, the discourse of punitive populism turns the relationship between victims and criminals into a zero-sum game. Any questioning of the utility of keeping the perpetrators of other people's pain in prison is seen as an insult to their victims.

It is no accident that tougher sentences are announced amid the uproar caused by cases of murder and sexual aggression against children and adolescents, or that the testimonies of these victims and their families have become essential elements of political debates and panel discussions. In Spain, in order to bring in the penal reform of 2015, the Partido Popular (People's Party) used the tragic case of Marta del Castillo to make a visceral appeal to public opinion and to turn the requirement to toughen the severity of the penal system into a matter of common sense. In February 2014, this party, which was then in government, called the father of the girl who was murdered in 2009 to appear in the Congress of Deputies and support its proposals for dealing with crimes for which it considered that no rehabilitation was possible. As on other occasions in debates on criminal retribution for individuals convicted for terrorism,

this appearance in parliament situated the victim at the heart of the debates.

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These purported interests of victims are given priority over the common interest. It is assumed that all victims share the same desire for vengeance, so the severity of the punishment is presented as part of their compensation, and any possible benefits of imprisonment for convicted criminals seem to be an offence against society as a whole. More prison and longer sentences are demanded, independently of empirical evidence that questions the idea that duration of sentences has any relation with the possibility of recidivism. As David Garland (7) points out, before the 1980s it was unthinkable that people with political responsibilities in the Western democracies should publicly manifest their support for institutional vengeance, or for explicit punishment of crime by the state, but the instrumentalisation of suffering has made possible to normalise visceral positions in public debates on crime and punishment.

Fear-Based Politics

With the disrepute of politics—and politicians—holding out specific responses to shocking events has become a way of reaching the electorate. Responses to insecurity resulting from growing poverty and precariousness are perceived as insufficient and most political parties focus on fears, as if they have a simple, easily communicable solution. Apparently, it is easier to propose increased numbers in the security forces and regulatory changes that are seen as hard-line responses to crime and antisocial behaviour than it is to debate issues of social, employment, or housing policy and the implications that these have for the privileges of economic elites.

Some of the strategies for manipulating information described by Noam Chomsky can be recognised in the alarmist sentiments that are whipped up around, especially revolting crimes and the dangerousness of repeat offenders. First, they work as a way of distracting attention from other routine difficulties while emphasising non-existent problems for which they hold out easy solutions (and, here, I am not referring to crimes as such but to the alleged laxity of the penal system that is supposed to be dealt with by means of penal reform). Second, they aim to generate emotional responses, while avoiding any comparative analysis of alternatives. The centrality given to victims, the focus on extreme cases, inciting fear through concerns about harm to one's physical integrity and that of loved ones... deliberately override any discussion about the collective interest. Third, they keep the public in the dark by concealing objective data on criminality and delinquency, as well as by disparaging sources. And fourth, they base their project on information about social dynamics and trending opinions that is offered by the state's own tools of sociological analysis and specialist enterprises. In other words, punitive populism responds to electoral calculations based on polls and surveys.

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The discourse of punitive populism mixes murders, sexual violence, and terrorism with petty crimes and a perception of insecurity. Concern over lower-level crimes is expressed not only in legislative reforms but it has also entailed the adoption and normalisation of what are called “zero tolerance” policies. This term was popularised with the international publicity given to the strategy implemented in New York by Mayor Rudy Giuliani between 1995 and 2000. At the heart of Giuliani's “anti-crime” policy was permanent harassment of society's most impoverished members in public spaces. By means of increasing the uniformed police presence on the streets, Commissioner

William Bratton of the New York Police Department (NYPD), set out to fight such diverse situations as small-scale drug dealing, prostitution, the presence of homeless people, graffiti, and so on, referring to those he targeted as social “parasites” and “squeegee pests”.

In five years, the number of NYPD agents increased by 12,000 (26% of the total) and the number of men and women employed in the social services dropped by 8,000. The falling crime rate in the city was attributed to this aggressive targeting policy and think tanks like the Heritage Foundation and the Manhattan Institute turned William Bratton into an international celebrity of conservative criminology. However, in their marketing offensive, they deliberately overlooked the fact that other cities like Boston and San Diego, which had adopted strategies of mediation and had not increased the number of agents on the street, showed a reduction in their crime rates similar to that of New York. They also failed to recall that the decline in criminality had begun three years before Giuliani’s appointment and the introduction of his policies [\(8\)](#).

The expansion—and success—of the political and media discourse pushing zero tolerance has consequences in social perception of the mechanisms for crime control and punishment. There are three that deserve special mention: those that give the impression that crime can be tackled and reduced without taking its causes into account; those that link dirt, noise, and expressions of poverty in the street to crime; and those that make police forces responsible for solving the endless array of problems that are framed in the ill-defined domain of coexistence.

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Channelling reactions to the insecurities and nuisances perceived in neighbourhoods through police forces shifts responsibility for nurturing social and community relations

to an external authority specialising in control, with which a complaint-response logic is established, and from which immediate solutions are demanded, without any need for interaction between the parties in conflict. The complaints that mobilise police resources tend to focus on individuals who create uncomfortable situations and who are more visible and present on the streets. Monitoring the activities of young people, the homeless, and groups that meet in public spaces because of the precariousness of their homes or rooms ends up as a demand from local residents who expect this response from the public administration personified in the form of police officers.

Conclusions

The tightening of penal policy relaxed shortly after the financial crisis of 2008. In Spain, the incarcerated population peaked at the time, with 76,951 prisoners or 164 per 100,000 inhabitants [\(9\)](#), after which the numbers slowly dropped in the following years. In the United States, Democrats and Republicans alike are concerned about the economic costs of mass incarceration. A report published by the Brennan Center for Justice [\(10\)](#) in 2016 found that 39% of the people serving prison sentences in the country did not represent any threat to public safety and could be serving alternative sentences, which would have meant a saving of nearly twenty billion dollars per year for the prison system. Given the high economic costs of mass incarceration policies of recent decades, proposals presented in the report, including drug rehabilitation programmes that are widely available in deprived neighbourhoods or reduced sentences for major crimes, have been better received among political representatives than they would have been ten years ago.

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Even if only because of this financial unsustainability, the escalation of demands for more imprisonment and longer sentences seems to be coming to an end. Punitive populism, however, is still the predominant response to problems caused by the economic and social relations of the neoliberal model. Precariousness resulting from deregulation of markets, erosion of mechanisms of social protection, and criminalisation of poverty—based on individualisation of social problems—requires a constantly expanding repressive apparatus⁽¹¹⁾, one that takes the form of harsher prison sentences as well as broad social acceptance of proposals for more control of public space, a greater police presence in all areas of life, and the extension of punishment to any behaviour that does not conform to majority lifestyles.

Punitivism shelves essential questions about the construction of security. The discourse of punitive populism, calling into question the guarantee of rights, favours vengeful impulses and the desire for control and, in the process, exploits and magnifies the most basic fears. The alternative is not to deny the right of people to feel safe but to encourage policies that really do provide security. Safer neighbourhoods are places where people know each other and interact, where evictions and forced displacement have not become a normal part of everyday life, and where streets are real public spaces available for social interaction. Neither control nor punishment is an effective resource for influencing these aspects of security. When combatting uncertainty about the future and anxieties caused by precariousness and poverty, social policies, community-based solidarity, and a culture of care that replaces a culture of control are necessary.

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[7] Garland op. cit.

[8] Wacquant op. cit.

[9] Brandáriz op. cit.

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About the author

Albert Sales Campos

Doctor in Criminology from the Pompeu Fabra University (UPF) and a diploma in Higher Specialized Studies in Sociology from the University of Barcelona (UB); he is a researcher at the Institute Metròpoli of Barcelona and associate professor at the UPF. He also has a master's degree in Public and Social Policy (UPF and Johns Hopkins University) and a degree in Political Science and Administration (UPF). His main research area is social exclusion in urban areas.

Photography

Rows of barbed wire against an abandoned residential building with broken windows background. Author: Mabeline72 (Shutterstock).