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The culture of  
punishment: A  
critical approach

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SUMARI

**Introduction**

- The culture of punishment: a critical approach

**In depth**

- The interdependence of peace, security and justice
- Punitive populism or social policy?
- Fear management as a political instrument
- Feminist strategies against penal paternalism
- Ethics of care for greater security and justice
- The restorative justice path to healing our communities
- Punitivism and iron fist policies in Argentina: two cases, one double standard
- Against punitivism and impunity in Mexico: a new justice

**Interview**

- Interview with Howard Zehr, pioneer of the concept of restorative justice

## INTRODUCTION

# The culture of punishment: a critical approach

## ICIP

International Catalan Institute for Peace

**ICIP's founding principle has been to act as an instrument** which, "in line with the tradition of fostering and constructing peace, promotes the values and practice of a culture of peace, of human security, disarmament and the pacific resolution of social conflict and tension".<sup>[1]</sup> We understand the culture of peace, which is the *raison d'être* and pillar of each and every one of our actions, as a set of values, attitudes, traditions and modes of behaviour and ways of life based on respect for life, ending of violence and promotion and practice of education, dialogue and cooperation among individuals, groups and states.<sup>[2]</sup> The culture of war, which tends to be understood as a competitive pattern of behaviour among societies and states and making of difference the most violent and destructive weapon, is often presented as its opposite. However, from our position of pacificism, we argue that the antithesis of peace is not war but violence in its many manifestations. Hence, in order to uphold a culture of peace, we believe that it is important to analyse and understand how punishment, dominance, repression, and control are presented today. Although they are expressions of violence, they are also key structural elements of human relations.

The culture of punishment has appeared in many forms and with many intensities throughout history, and it continues to be one of today's predominant cultures, thus routinely nourishing beliefs and practices around the world, and taking the specific form of a mainstream trend: punitivism. As an ideology, punitivism shapes both our personal relationships and public policy models, especially in the fields of security and justice. Although numerous studies argue for constraints and raise questions about the

negative consequences of opting for an abuse of punitive,<sup>[3]</sup> coercive, and vengeful measures, we are living in a permanent contradiction where we reject some forms of violence and defend or praise others.

At ICIP we therefore believe that it is necessary to understand and reveal how the culture of punishment in general, and punitivism in particular are expressed because they are trends that normalise and reinforce violence thus severely limiting the options for constructing a peaceful society. Punitivism is a symbolic system that has material consequences, many of them violating human rights, although we are not always aware of it. In fact, many punitive expressions, like prisons, video surveillance, and police forces, remain unchanged, or they are on the rise, and they often seem to be beyond question. This monograph has been produced with the following concern in mind: what is it that sustains punitivism over time and, in particular, why?

## **“Punitivism normalises violence and has consequences for human rights. Why has this trend been maintained over time?”**

With this issue we aim to question and examine the culture of punishment and punitivism in all their dimensions, which is to say in both legal terms and social behaviour and attitudes. We hope, on the basis of our understanding and the evidence, to reveal the problems of what is not working, and also to defend what is working from the standpoint of ethics and science as an indispensable relationship. Hence, we explore the sociocultural and institutional aspects, historical roots, and present consequences of punitivism. At the same time, however, we also ask whether there are more humane, just, and effective alternatives for dealing with violence. And if so, what are they? Accordingly, we explore the positions and experiences that do not concur with punitivist tendencies while also indicating their limitations. Therefore, in order to assess the possibilities of transforming societies from a perspective of peace, we have sought to offer a theoretical and practical selection of works that brings us closer to radically different forms of security and justice, starting from frameworks that imbibe

from anti-punitivism, as well as human rights and democracy.

In the first article, “Alternatives de seguretat” (Security Alternatives) Sandra Martínez, head of the ICIP Areas of Work, reflects on how, in interrelated ways, peace, security, and justice are named and deployed from the perspective of punitivism. The basic question raised from this starting point is whether working from a position of anti-punitivism can help to redirect the weaknesses and failures of current policies.

Next, the politician and criminologist Albert Sales provides a framework for the main debate related to this, asking if, when tackling crime and violence, investment should be made in punitive or in social policies. He gives a brief historical description of punitive populism and also explores the implications of some punitive formulas, among them prison overcrowding, instrumentalisation of victims, and whipping up fear. In the latter regard, the criminologist, Paz Francés, analyses in the third article how fear becomes a political instrument for manipulating public opinion and poses the question of the responsibility of the media and political parties in producing myths and a mental framework that favours the punitive discourse.

## **“We question the culture of punishment in all its dimensions. Are there more humane, just, and effective alternatives for dealing with violence?”**

The philosopher Clara Serra considers the challenge feminism faces in trying not to fall for such manipulation and asks how violence can be managed without resorting to a penal system that perpetuates inequalities and vulnerability. She suggests inquiring into alternative, complementary, victim-focused strategies that are also committed to working with men and masculinity. The article by the conflictologist Noe Ayguasenos also adopts this ethical standpoint when placing the ethics of care at the centre of community relations and the public model for managing insecurity and injustice. Also discussing the effectiveness of restorative and transformative justice in contrast with the shortcomings and failures of merely retributive justice are Teiahsha Bankhead and Rachel V. Brown, both of them heads of organisations that promote successful



restorative practices in schools, communities, and the juvenile justice system.

Throughout, these articles take us through the similarities and differences that appear over time and in various societies and countries. In fact, despite the contextual divergences, the lawyers Claudia Cesaroni and Paola Zavala reflect on prisons as the ultimate expression of punitivism and mainstay of penal control mechanisms around the world. Hence, is the increasing number of prison inmates due to changes in penal policies or to a real increase in crime? In response to this question, Cesaroni invites us to think critically about life imprisonment and, in doing so, writes about two murders that happened in Argentina with very unequal consequences. In turn, Zavala discusses the key elements of an alternative justice system while also considering the failures of heavy-handed policies in Mexico and their high levels of impunity.

To conclude, and complementing the central articles, we interview Howard Zehr, a leading reference in the field of restorative justice. By means of a summary of his books and extensive career, Zehr reveals the light and dark areas of these practices, explaining why they are the exception rather than the rule, and offering evidence about whether other kinds of security and justice are necessary and possible.

**“If violence is to be transformed and prevented, it will be necessary to change from investment and trust in punitive mechanisms to adopting social mechanisms”**

All the articles comprising this monograph speak in favour of “anti-punitivism”, understood and championed here as a philosophy, a way of life, and a means of political struggle. In the endeavour of transforming and preventing violence, this number shows consensus about the need to change from investment and trust in punitive mechanisms to adopting social mechanisms. Although the authors speak from different angles and with a range of nuances, they all coincide in presenting punitivism as a simplistic and highly ineffective response when dealing with the complexity and many causes of conflict. There is also agreement over the need to include social justice

and collective responsibility as part of managing violence and fostering a decent life for everyone, and they concur when they examine the ethical and moral implications of the debates presented.

ICIP would like to thank all those who participated in this monograph as they remind us of the need to include, at the heart of these discussions, doubts, and proposals, both the people who are most directly affected by violence, and the specialists who strive to combat it—and transform it—in their daily work. We are also grateful because we believe that every one of them, coming from the domains of positive peace, human security, and restorative justice, work to promote them, while also encouraging critical analysis and constructive debate about the culture of punishment. And we thank them, above all, because they bring us closer to making a culture of peace even more desirable and tangible.

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[1] Law 14/2007 of 5 December, creating the Institut Català Internacional per la Pau (in English, [llei\\_1407\\_ang.pdf](#) ([icip.cat](#))).

[2] Declaration and Programme of Action on A Culture of Peace. Resolution 53/243 by the General Assembly of United Nations, October 1999.

[3] In this monograph, we have respected, in the original texts and translations, the usage made by each author of the terms. In some articles, “punitivism” is presented as referring to a “paradigm” and “punitivist” as a “tendency”, while “punitive” is used as a complementary adjective. In others, however, “punitive” appears in the sense of routine use of punishment, and “punitivism” and what is described as “punitivist” would refer to an abusive trend or approach.

This is a translated version of the article originally published in Catalan.

IN DEPTH

## The interdependence of peace, security and justice

**Sandra Martínez Domingo**

Coordinator of the "Alternatives of security", ICIP

**Feminist studies have traditionally drawn attention to the continuum connecting all kinds of violence**, on a scale that goes from the personal to the international sphere, and from the home to the street.<sup>[1]</sup> Hence, for example, violent conflicts are fuelled by the provision of arms and by impoverishment in the social domain while, in turn, causing forced displacement of populations, destruction of infrastructure, and depletion of resources. However, this is managed by opting for increased arms expenditure and policies of economic austerity.<sup>[2]</sup> Moreover, in situations of armed conflict, the prevalence of domestic and interpersonal violence increases, and sexual violence becomes a strategy of war.<sup>[3]</sup> In brief, the various kinds of violence are interconnected and often have a domino effect.

Meanwhile, globalisation has broken the dichotomy between the global and the local<sup>[4]</sup> and everyday experiences of insecurity are also consequences of macro dynamics. In other words, what might appear to be “a conflict specific to cities”, for example homelessness, is connected with global systems and structures of power which create a discriminatory routineness, as in capitalism.<sup>[5]</sup> It is not unlike the way that sexual violence is embedded in the structures of patriarchy, among others. Understanding all these correlations draws attention to different simultaneous needs when it comes to managing conflict.

On the one hand, it is necessary to insist on coherence among local, regional, and international politics. Pressures are often managed in paradoxical or inverted ways. Hence, for example, while state borders are being reinforced as (anti-)immigration



policy cybercrime and transnational crimes are on the rise. Accordingly, systematic analysis that shows the interconnections between peoples and conflicts is essential.

At the same time, a balance must be found between individual and collective responsibility. It is necessary to understand the structural nature of violence in order to design just and distributive policies but without falling into the trap of relativisation and being blind to responsibility for individual acts, or overemphasising community or state responsibility.

**“The various kinds of violence are interconnected and often have a domino effect. It is necessary to understand the structural nature of violence in order to design just and distributive policies”**

On the other hand, the question of the interdependence of peace, security, and justice must be explored, as described below. It should be borne in mind that these three dimensions seek to understand how power is structured and manifested on all scales and that they largely share the aim of managing violence. Nevertheless, they are often presented as compartmentalised, while the spaces that link all three questions, in theory and in practice, are somewhat anecdotal. Advocating for this relationship is no easy task, especially when starting out from the baseline knowledge that the notions of “peace”, “security”, and “justice” are so broad, as well as sometimes being labelled as abstract or ambiguous, and also that they are totally adapted to the intentions of the transmitter. However, adjectives often help to clarify intentions and allow more specificity: positive peace, negative peace, inner peace, social peace, citizen security, human security, private security, personal security, retributive justice, restorative justice, social justice, global justice, and so on. This broad semantics enables us to establish different positions on what the response to violence should be and, in particular, which response or responses we wish to support. However, this conceptual elasticity also entails risks.

First, is the co-opting and misrepresentation of terms by interests other than human needs and wellbeing. Thus, for example, in the name of security, ethnic and religious communities are discriminated with the use of mass surveillance, and dissidence is silenced by the repressive use of public forces. Lynchings are committed in the name of community justice and, in the name of state justice, destitute people are imprisoned while the crimes committed by elites are not investigated. Meanwhile, war crimes are committed in the name of peace. Unsurprisingly, oxymorons like “military peace” and “armed security” abound. To sum up, in the name of peace, security, and justice, basic rights are violated, atrocities are committed, and counterproductive responses are presented in that they do not offer any long-term solution to the violence they are supposed to be tackling. Yet, such manipulation of the more humanistic sense of the concepts should not deter us from upholding them because something that is not named does not exist. In fact, if we detect and denounce this reactionary or totalitarian manipulation of just causes, we are already doing our bit to support them.

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In a nutshell, “how” peace, security, and justice are named has a political and ideological component. It is therefore necessary to keep defending the meanings that best fit the guarantee of human rights and dignified conditions of life. This redefining of terms entails indicating which security and which justice functions and, consequently, which are the ones we want in the name of peace. It also means confronting the associated prejudices and stereotyped constructions that stand in the way of their reappropriation: peace is not utopian, and neither is security the preserve of the police and military, nor justice a matter for judges alone.

The second risk, which is related with the previous one, is that the proliferation of wholesale progressive notions associated with peace and security means that their limits and aims become hazy. For decades now, a rich theoretical and practical corpus has been produced from each of the sectors and, although this provides a wide array of orientations, it also leads to conceptual overlapping, and a surplus of proposals and counterproposals for dealing with what is not working. When misdirected, the multitude of forces can neutralise each other.

### **In search of a shared framework**

To begin with, it should be borne in mind that the conceptual framework of the three questions is partly shared. Among the words they have in common are “conflict”, “human rights”, “freedom”, and “wellbeing”. Independently of the political option or management model that is being defended, almost everyone will agree that justice is related with human rights, and that security is connected with freedom, and vice versa. Hence, although recognition of the different genealogies, and of the varying contributions and functions is essential, it is also crucial to combine efforts in order to underpin the same vision.

In the quest for and materialisation of this shared framework, I believe that it is necessary to identify the many elements that shape and condition the way in which peace, security, and justice are simultaneously understood and applied. As I see it, one of these factors is punitivism, understood as a system of everyday beliefs and practices where punishment is seen as the proper means for resolving conflicts. In other words, it can be defended and upheld by the institutions but also by the general public. I think it is important, therefore, to name and expose punitivism because it is the mainstay of the circle of violence and the justifying corpus that sustains it.

**“Peace is not utopian, and neither is security the preserve of the police and military, nor justice a matter for judges alone”**

In other words, the main paradigm of the culture of punishment and the culture of war is punitivism, and the symbolic framework of reference is violence. With this paradigm, the violence that attracts most attention is direct, the most visible, and especially physical violence. When confronting it, defensive and offensive logics appear, together with that of the battle and more or less direct revenge. The ultimate aim is to guarantee order and stability, and to preserve the status quo. Conflict is understood and managed as a negative, toxic symptom that must be suppressed. Difference, minorities, dissent, and simple dynamics of coexistence are problematised and susceptible to being managed reactively by punitive and retributive agents and instruments. In this framework, then, justice is mainly legal since it focuses on supposed aggressors, the enemy to be combatted, and its aim is deterrence.

By contrast, the culture of peace is expressed in anti-punitivism where the symbolic frame of reference is care. It addresses cultural and structural violence as well as direct forms. In this approach, there is confidence in social power, and conflict is understood as a symptom of life, and thus also positive and viewed as a driving force for social change. When violence breaks out, social justice and restorative practices are among the tools of analysis and response. From ethical foundations, social justice calls for fairness and a restorative approach to reparation of damage and transformation of violence.

It is essential to be aware of the main punitivist and anti-punitivist moral principles that condition everyday life, as every society creates its own culture, while culture also has an influence in the structure of society. Here, this is a simplified, or reductionist characterisation for establishing a comprehensible basis for reflection and also to facilitate responses on how to reorient peace, security, and justice themselves and, in turn, how to construct a shared political agenda.

### **The trio in public management**

Any model of security and justice that deals with conflicts without peacebuilding is doomed to failure. It is not surprising that public strategies in the name of peace, security, and justice spring from a profound lack of understanding of the conflicts that cause them, and that they end up being more part of the problem than of the solution.

Obedience is frequently pursued through punishment without consideration of the fact that, paradoxically, the message conveyed is that of legitimating violence, and that the right to abuse is claimed by those with most power.

With these punitivist policies, people are at the service of the state, so the production of public policies in the name of peace, security, and justice is “top-down”. The underlying framework is individualism or extreme doctrinal communism. In other words, they are policies that are concerned with the effects of violence from a behaviouralist standpoint, and they do not take into account the causes, context, or circumstances that give rise to them. The strategies are, in essence, reactive, competitive, and authoritarian, imposing physical and symbolic force by means of coercion, repression, and social control. The purported security is armed and government controlled, created, interpreted, and imposed by the state. Even if this security is also understood as a right, it is limited to security that deals with criminality and guarantees territorial integrity and public order. As for justice, it is mainly retributive, and is also known as “punitive” or “correctional” justice, which is to say that the main focus of its deployment is the aggressor and offences against laws established by the state. The agents of reference are the military, police, and judges.

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The peace that is achieved in this political framework is negative and mostly short-lived. By this I mean that institutional violence is applied in order to ensure the absence of any visible violence. It ends up being a false truce and, therefore, this *pacification* resulting from punitivism is itself a paradox.

It is important to bear in mind that punitiveness is, *per se*, an abuse. It should not be confused with ordinary “punishment” or “punishability” understood as formal criminal or coercive responses for combatting violence and criminality. In this regard, not every

anti-punitivist position is opposed to punishability. Often, anti-punitivist practices like restorative justice programmes function as a complement to the penal system. The point is that punitivism perpetuates the *power over* model. This power dynamic can be destructive and it has many negative associations, among them discrimination and corruption. At the most basic level, it works to grant privileges to some people while excluding others. In politics, those who control resources and decision-making have power over those who do not have this control. They exclude others from access to resources and participation in public decision-making, thus perpetuating inequality and injustice. This is a model of toxic accumulation. In the absence of other relational models, people repeat the *power over* pattern in their personal and social interactions.<sup>[6]</sup>

**“The culture of peace is expressed in anti-punitivism where the symbolic frame of reference is care. It addresses cultural and structural violence as well as direct forms”**

In anti-punitivist policies the state is at the service of people and is attentive to human and contextual vulnerabilities. The underlying framework of these policies is cooperation, and nonviolence can be a guideline.<sup>[7]</sup> It fosters strategies of human security and restorative justice. On the one hand, special emphasis is given to the causes and roots of violence through security of rights with the aim of managing human and planetary needs and attending to personal and community matters, as well as the economic, political, and environmental dimensions. On the other hand, it is committed to restorative justice because it starts from the premise that crimes harm the common good. The approach is comprehensive and supports the victim, the community, and even the offender, giving priority to humanisation and resocialisation.

Political anti-punitivism therefore has a mainly collectivist logic where social agents and citizens play a highly relevant role in conflict management. While, as noted above, the military, police, and juridical forces are the primary and purported guarantee of peace, security, and justice in the traditional punitivist approach, civil society is the key

agent in anti-punitivist policies.

The peace that can be achieved in this framework is positive and long-term. In other words, it is not only committed to eliminating violence, but it also seeks to promote relations and structures that improve people's lives.

A good part of anti-punitivist thinking and learning comes from pacifism, feminism, critical criminology, prison and death penalty abolitionism, and restorative justice approaches. In any case, all anti-punitivist positions believe in the potential of *power among*. Anti-punitivist activists and academics alike have sought more collaborative ways of exercising power and creating more equitable relations and structures by means of transforming *power over*. *Power among* is constructive. It values the ability of people and communities to act creatively and collectively to maintain peace, security, and justice, and it calls for the construction of social and institutional networks that could contribute and refresh knowledge from different sources for a better understanding of the nature of the phenomena concerned. From this political standpoint, any radical change requires acceptance of human and ecosystemic vulnerability and interdependence, as well as prompting uncomfortable discussion that can break with endogamy of thought and action.

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It is important to mention that collective action is often romanticised but, on occasion, it can also lead to segregationist and discriminatory dynamics. At the same time, in the name of the collective, an “association” or a “family”, a horizontal relational culture that is also toxic can arise, as well as spaces of reclusion where autonomy is denied and sacrifice is preached in the name of the group. *Power among* is not authoritarian and it



sees opposition as natural. Hence, in order to become inclusive and peaceful, it must be based on mutual support, collaboration, and recognition of and respect for differences. Only then, can it help to build bridges between divergent positions, openly recognise conflicts, and seek ways to transform or diminish them. As Martin Luther King said, “one of the great problems of history is that the concepts of love and power have usually been contrasted as opposites, polar opposites, so that love is identified with a resignation of power, and power with a denial of love”. What we need to do is engage in politics in the awareness that “power without love is reckless and abusive, and that love without power is sentimental and anemic”.<sup>[8]</sup> This anti-punitivist power can achieve a greater impact because it is able to transform violence while, at the same time, strengthening a sense of community, which acts as a factor to prevent further violence. Yet attention must be given to its perversion or instrumentalisation. It should not become a gateway to trivialisation of some forms of violence, lack of protection of victims or unduly blaming them, or institutional or personal negligence vis-à-vis the damage that has been done. It must not be a synonym of impunity. The state must guarantee life and freedom, and this requires action and acceptance of responsibility.

Commitment to anti-punitive options can do much more than punitivism to eliminate violence, but anti-punitivism—as a critical but purposeful paradigm—does not have the solution for everything. Understood as a set of ideas, it guides a necessary way of understanding conflict and relationships. When manifested, however, anti-punitivism strikes a balance between the urgency of the moment and the depth and complexity of the violence. Although punitivism and anti-punitivism are dichotomised here, in practice they are coexisting paradigms.

### **Keys for transformative action**

In an age of uncertainty and systemic crises, atomisation of struggles at the social level, and of jurisdiction at the institutional level, is a dangerous trend. From the construction of peace, defence of human rights, social activism, and community action, it is necessary to construct shared spaces of *power among*, together with political projects like feminism, antiracism, and ecologism, and to work towards a common minimum that would help us to move forward together in achieving a friendlier world

with fewer inequalities and a better quality of life. We should be aware of the added value held out by each demand, and should work on underlying privileges, but we also need a transversal approach in the struggle which, far from diluting our aims, would help us to strengthen our discourse and replenish our strength. Only thus will we be able to make realistic proposals that can bring us closer to those who are less convinced. This reinforcement is nourished by a necessary “bottom-up” political approach which focuses on the ability of people and communities to develop their own full potential, make collective decisions, and find just, inclusive, and equitable ways of participating in strategies of constructing sustainable peace, security, and justice.

**“It is a challenge to produce a holistic anti-punitive approach that would move closer to positive peace, and this involves committing to a shared, sustainable institutionalisation of human security and restorative justice”**

Similarly, it is also a challenge, at the institutional level, to produce a holistic anti-punitive approach that would move closer to positive peace, and this involves committing to a shared, sustainable institutionalisation of human security and restorative justice. Drawing attention to the many sources of conflict and insecurity faced by individuals and collectives requires cooperative, multisectoral responses that bring together a variety of agents that are involved in the implementation of policies. The “top-down” approach must also be called upon when people are faced with threats that are beyond their control (for example, natural disasters, and financial crises) and when confronted with serious violence that threatens their right to integrity and life. From this perspective, it is also important to address the differential degrees to which people have access to social and relational networks. Given this need for protection, states have a major responsibility to implement policies of peace, security, and justice in a committed and comprehensive but also preventive way. However, international and regional organisations, civil society, nongovernmental actors, and the private sector

also have key roles in managing the many sources of the insecurity to which we are exposed.

**“There are many windows of opportunity for constructing an anti-punitivist framework that is concerned with the wellbeing of people which would finally transform and diminish violence and guarantee a decent quality of life”**

Although the various kinds of violence are interconnected and there are similarities shared among localities, regions, and countries, approaching the problem requires a contextual and situated focus, while policies for constructing peace, security, and justice must bring responses closer to particular needs and causes. Models cannot be replicated automatically because there are as many possible solutions at hand as there are conflicts. In any case, however, it is important to affirm that, far from being idealistic or abstract ideas, other possible kinds of peace, security, and justice do exist, and they aim to satisfy tangible needs.

There are many windows of opportunity for constructing an anti-punitivist framework that is concerned with the wellbeing of people, among themselves and in their environment, which would finally transform and diminish violence and guarantee a decent quality of life. We only need to heed the scientific evidence, have the will and political courage, and make the effort. We can start by believing in the construction of horizontal spaces, understanding that it is possible to envisage life without vengeance, and that empathy and compassion are the most creative social and political option. It will not be easy, but it will be better. In the long run, then, we will move towards more peaceful, which is to say more secure and just societies.

[1] Cockburn, C., 2009. The Continuum of Violence. In: Linke, U., Smith, D.T. (eds.), *Cultures of Fear: A Critical Reader*. Pluto Press.

[2] Stern, M. 2017. "Feminist Global Political Economy and Feminist Security Studies? The Politics of Delineating Subfields". *Politics & Gender* 13(4): 727-33.

[3] Parashar S. "Gendering war and war bodies" in *Peace in Progress* e-magazine "Redirecting security from feminism", ICIP, number 39, January 2021.

[4] Puig S. "Notes for a peace agenda" in *Peace in Progress* e-magazine "Violence in non-war settings", ICIP, number 40, May 2022.

[5] Font T. i Ortega, P. Violència, seguretat i construcció de pau a les ciutats, Informe 38, Centre Delàs d'Estudis per la Pau, Barcelona, 2019.

[6] Haciendo que el cambio sea una realidad: el poder. Asociadas por lo Justo, 2008.

[7] Although nonviolence is more a historically recognised and practised strategy of civil resistance, here it is also understood as a philosophy of life that finds expression in praxis and that entails not using violent means to resolve conflicts. This means abstaining from the use of brute force, arms, or any other means that generates violence or that could cause physical harm to others. Nonviolence does not mean passivity in the face of violence or actions or behaviour that are deemed to be unjust. Rather, it promotes struggle against them but using different tools and mechanisms (Sharp, 2018. *Defensa civil no violenta*. Col·lecció Eines de pau, seguretat i justícia, 22. Barcelona: Institut Català Internacional per la Pau).

[8] Luther King, M. *El crit de la consciència*. Barcelona: Institut Català Internacional per la Pau; Angle, 2016. Col·lecció Clàssics de la pau i de la noviolència, 12 (In English, "Where Do We Go From Here?").

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## Photography

Abstract prison image. Credit: Namning (Shutterstock).

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<sup>(1)</sup>. 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 <sup>(2)</sup>. 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.

**“Punitive schemes for combatting criminality have gained traction. Complex, structural explanations of criminality are discarded and an individualist discourse portraying criminals as selfish, immoral beings is now more influential”**

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 rehabilitative 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.

**“Instead of wondering whether or not people who commit crimes might be re-educated with lengthy prison terms, we have simply uncritically accepted that if we imprison more people, we'll breathe easier”**

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.

**“The discourse of punitive populism turns the relationship between victims and criminals into a zero-sum game; it is assumed that all victims share the same desire for vengeance”**

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.

**“Apparently, it is easier to propose increased numbers in the security forces and regulatory changes that are seen as hard-line responses to crime than it is to debate issues of social, employment, or housing policy”**

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.

**“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”**

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.

**“The alternative to punitive populism is not to deny the right of people to feel safe but to encourage policies that really do provide security, and a culture of care that replaces a culture of control”**

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<sup>(11)</sup>, 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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## Photography

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

IN DEPTH

## Fear management as a political instrument

**Paz Francés Lecumberri**

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**It is the idiosyncrasy of each society** (social, economic, political, and historical heritage model) that contributes to defining in each context who wields power and how, and identifying what mechanisms will be successful in influencing people. Punitive power and the state's right to punish (*ius puniendi*) is the institutionalised power of the state to instil fear (negative or intimidatory general deterrence) in citizens to discourage them from committing crimes. It is a form of social control par excellence. Punitive power exploits people's fear of social exclusion and the possibility of being labelled as a criminal to subject them to its control. In order to keep these threats alive, the punitive system enshrines penalties that have evolved over time and whose main paradigm today is the prison. In order to justify punishment and the control it entails, the punitive system uses fear of crime, of the criminal, of what is different, to incite permanent social alarm. In brief, fear as a core part of domination is an essential element of the punitive system.

However, this power can be exercised in various ways. Are they all legitimate? Or only some of them? Do they all serve the same purpose? How can instilling fear become a political instrument? Without a doubt, the problem becomes more evident when fear becomes state terror, when the aim is people's subjective internalisation of fear as a way of ensuring public security, and when governments adopt extreme security measures or legal instruments that violate rights and freedoms. Reality can be manipulated through the different institutions and mechanisms of power, as well as through the mass media (Castillo Moro, 2016, 75-76).

## **The role of the mass media in underpinning objectively non-existent social alarms**

One of the basic questions when considering the phenomenon of public security policies, fear and emergency management, and criminal policy tendencies is this: what role do the media play? The media provide information and enable the shaping of public opinion and, in recent decades, interest in crime has become global. As Fuentes Osorio (2005, 3-4) notes, it can be said that, with regard to both the criminal phenomenon and proposed solutions, information is inaccurate, not pluralistic, and adulterated by the particular interests of the media and those who control them. This author (and others also) describes four elements that typify the role of the media in the treatment of crime:

- The media present a distorted criminal reality. The seriousness and frequency of certain incidents are exaggerated while other common criminal acts are consigned to the realm of the exceptional.
- The constant presence of the criminal phenomenon in the media, together with emphasis on its more violent manifestations also favours the entrenchment of this issue in the public agenda, as well as the formation or reinforcement of a social and personal awareness of concern about crime.

**“The media whip up social alarm, gloss over the problems of penal responses, and favour the development and perpetuation of prejudices about and stereotypes of delinquents and victims”**

- The media are not open-minded when it comes to defining social conflict and presenting proposals for intervention. They reproduce the imperfections of the market and, therefore, when reporting crime and crime policy, give preference to the views concerning criminality of the actors with the greatest socioeconomic

and institutional power.

- The fact that individual and social concerns about crime are turned into news influences legislative policy. They are factors that put pressure on political agents who feel obliged to respond immediately and forcefully by means of criminal law. All in all, it can be stated that, decades ago, the mass media forsook impartiality to become a basic tool in the service of the establishment for creating collective subjectivities. As for crime, the media whip up social alarm, gloss over the problems of penal responses, and favour the development and perpetuation of prejudices about and stereotypes of delinquents (young, male, migrant, or member of an ethnic minority) and victims (creating ideal or desired victims).

### **Political manipulation of criminality and construction of penal myths**

The claim “we’ll put an end to delinquency” is showing no sign of fatigue because it delivers an immediate political payoff (Zuloaga Lojo, 2019, 137-138). However, the focus of the expression is fallacious because it presupposes that it is possible to put an end to criminality. It should be made clear that a society without crime is impossible. Moreover, other phenomena related with this manipulation should be identified. First, there is a disjunction in the crime-punishment binomial or, in other words, a split between the number of crimes and the penalties decreed (González Sánchez, 2021, 38). What we have witnessed in recent decades is an increased resort to prison and a heightened general harshness of the system, but not an increase in criminality (González Sánchez, 2021, 38). Second, there is a connection between social and penal policies, with notable negative correlations between investment in social and welfare policies and the number of incarcerated persons (González Sánchez, 2021, 39).

**“Fear as a core part of domination is an essential element of the punitive system. In order to justify punishment and the control it entails, the punitive system uses fear of crime, of the criminal, of what is different, to incite permanent**

## **social alarm”**

In this situation where citizens have little confidence in the institutions, there is an absence of elementary instruction in the educational domain about how criminal justice works while, as we have seen, the influence in this area of television series and the media, which construct a significant array of mythologies about crime, does not exactly foster a calm approach to the problems. Mythologies can be defined as mental constructions that address cultural practices while changing in response to each place and each time. Nevertheless, it might be said that, in Spain, among the most powerful enduring myths that have been constructed about the people who commit crimes, the victims, public policies, and public opinion are the following: “immigrants are delinquents”, “young people are committing more and more crimes”, “sex offenders can’t be reformed”, “poor people are the ones who are committing crimes”, “all victims need the same thing”, “some cases are exaggerated”, “victims aren’t interested in rehabilitation”, “do the crime, do the time”, “more police, less crime”, “society wants more punishment”, and “crime policy is based on evidence” (Varona Martínez, Zuloaga Lojo, and Francés Lecumberri, 2019).

### **Punitivism as strategy: is it legitimate left-wing, or right-wing?**

The foregoing describes how myth creation leads to authoritarian responses (which, in turn, reinforce the myth) and these are perfectly framed in the use and abuse of criminal law. Yet, is use and abuse of the penal system one and the same thing? Evidently not. Since the Enlightenment, there has been consensus—exquisitely questioned by penal abolitionism—that criminal law is an indispensable branch of the legal system, and that the state’s *ius puniendi* (right to punish), with the necessary limits and guarantees (proportionality, ultima ratio, fragmentariness, etc.), is able to safeguard society’s most prized legally protected interests (life, physical integrity, sexual integrity, environment ...), while also respecting the rights of people who offend against these legally protected interests. This use is widely deemed legitimate, though it is recognised as a strategy based on violence and fear (punishment is a necessary evil, say the criminal lawyers), though its abuse is not considered acceptable.

The starting point is the idea that the security of society depends on several structural factors (social, economic, educational, etc.) and not on greater or lesser intervention of criminal law. Rather, on the contrary, criminal intervention is evidence of the failure of security. In liberal democratic societies, criminal law is the “best” response we have so far found as a society for protecting the most important legally recognised interests from the most serious attacks.

**“What we have witnessed in recent decades is an increased resort to prison and a heightened general harshness of the system, but not an increase in criminality”**

However, intervention as *prima ratio* (and not *ultima ratio*), or constant resort to punitivism are, in themselves responses that are at variance with a social and democratic state governed by rule of law and, consequently, are an abuse of criminal law. This is also the case when the legal consequences are disproportionate. Some examples of this are the introduction of very high penalties for minor crimes against property and public health (for example, theft or drug trafficking), punishment of various types of conduct that do not protect real legally recognised interests (including adultery, abortion, in all their forms and times, and the recently questioned crimes of sedition and rebellion), and the penalty of revisable permanent imprisonment or life imprisonment. Nevertheless, analysis of what is deemed to be abuse of criminal law in terms of these limiting principles is highly complex and depends on many elements of a social and legal nature. Hence, for example, the Constitutional Court has ruled that revisable permanent imprisonment is constitutional, and most of the doctrine of the courts and, of course, public opinion do not question custodial sentences for minor crimes against property and public health. In terms of proportionality, the reformed Organic Law on the comprehensive guarantee of sexual freedom, 10/2022 is also highly controversial.



**“Myth creation leads to authoritarian responses  
and these are perfectly framed in the use and  
abuse of criminal law”**

Without a doubt, we are faced with a situation of (political and social) punitive inflation (González Sánchez, 2021, 123ff.), which encourages a more elastic approach to these limiting principles and acceptance of increasingly harsher sentences. Since 1995, when the so-called democratic Criminal Code was passed, it has been subjected to reforms about forty times. Reforms to a criminal code are necessary inasmuch as they must respond to social changes. There is nothing surprising about this. The problem is that all these reforms have entailed the establishment of more crimes and harsher penalties when this should not have to be the case. This is certainly striking, and it should be called out. I agree with Fuentes Osorio (2005, pp. 41 and 43) when he says that one of the reasons is that the criminal instrument is a measure that demonstrates the interest and responsiveness of political institutions and hence a “comfortable cushion” for the legislator. Criminal law steps in as the hero that resolves a conflict and demonstrates the competence of the government that applies it since it has become a yardstick of political change: a weak administration that does not face problems by means of penal intervention, or that is suspected of making concessions to criminals is condemned to electoral death. These dynamics hold out immediate political benefits.

Academics defend the aforementioned principles that limit the state’s right to punish and, in general, those of criminal law. However, in political and legal practice criminal law is upheld and applied as a *prima ratio* mechanism for resolving problems. This reflects two further issues besides those already mentioned. The first is that we live in a society with little knowledge of crime, its social causes, the various approaches, and the naturalised solution of punishment (which is almost obvious since punishment is part and parcel of our lives). Second, since the culture of a particular kind of security has been popularised, the message that has repeatedly been sent is that the iron fist is the solution.

**“In recent years, a clear dissociation between perception of citizen insecurity and penal reforms has occurred. The questions related with criminality are far from being seen by citizens as the most urgent problems, yet the myth that society wants more punishment remains unchanged”**

However, it should be noted that, in recent years, a clear dissociation between perception of citizen insecurity and penal reforms has occurred. In the decade between 2000 and 2010, when comprehensive penal reforms were carried out, basically by the Partido Popular (PP – People’s Party), one sees that they coincide with a high point in perception of citizen insecurity. Yet, in the last few years, the thoroughgoing reforms that have been introduced, this time by the Partido Socialista Obrero Español (PSOE – Spanish Socialist Workers’ Party), have not coincided with a social perception of insecurity. According to the 2022 the CIS (Centre for Sociological Research) Barometer, when asked about the main problem existing in Spain, respondents situated insecurity in the twentieth position. It is regarded as the most pressing problem by 0.5% of the population, while 1.1% situate it in second place, and 1.5% in third place or, in other words, a total of 3.1% situate it among the top three problems. Considered to be more serious are concerns like the economic crisis, unemployment, political problems in general, healthcare, the unacceptable behaviour of politicians, problems related with employment quality, climate change, and education. And, according to the CIS, the same pattern appeared in the five previous years. Hence, it would appear that in recent years, questions related with criminality are far from being seen by citizens as the most urgent problems, yet the myth that society wants more punishment remains unchanged. Moreover, studies that analyse public opinion on what measures people would take to deal with the problem of criminality are few and far between in Spain. Hence, actions are taken in the name of society, without asking the people for their opinions or carrying out research on the matter (Zuloaga Lojo, in Varona Martínez et al., 2019, p. 176).

We need to be aware of the fact that a more complex understanding of the phenomenon of criminality, and of approaches to it, is necessary. Along these lines, some areas of feminism, critical criminology, prison abolitionism, and critical restorative justice are working on new ways of thinking about crime, its relations with power, and responses to criminality from standpoints that might be less ostentatious but certainly more realistic, and that specifically cater to people, communities, and their needs.

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**Photography**

A cameraman recording a male speaker wearing a suit at a media press conference.

**Author:** Microgen (Shutterstock).

IN DEPTH

## Feminist strategies against penal paternalism

**Clara Serra Sánchez**

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**A global debate about the place of penal policy** in constructing citizenship in the twenty-first century is currently underway. The sociologist Loïc Wacquant is one of the main references in the area of critical assessment of the present advance of systems of punishment in liberal democracies. His thesis is that the expansion of the penal system is an essential characteristic of the present phase of neoliberalism. Given the shrinking of the welfare state and social protection systems as well as growing uncertainty and lack of security, states promise peace and order through hardening their punishment systems, which then target the poorest and most vulnerable populations. When inequality is not identified as a structural problem and there is no attempt to tackle its causes, the political discourses that appear separate crime from poverty and single out individuals and groups of individuals as guilty, while promising harsh punishments for criminals. In the United States, for years now, several theorists from the domain of critical legal studies and antiracism circles have been discussing the need to reflect on the advance of the prison system. They point not only to conservative agendas but also to policies that *progressive neoliberalism* has implemented in recent years, often in the name of feminism and LGBT projects. Neither Europe nor Spain is an exception to this. As Ignacio González Sánchez<sup>[1]</sup> notes, “nowadays, we have more police and more prisoners than there were fifty years ago, and a Criminal Code that is harsher than the one in force when Franco died”.

In this context of a generalised expansion of penal policies in capitalist democracies, it also is necessary to consider the emergence of reactionary projects that characterise

the early years of the twenty-first century. The advent of far-right forces in the democracies of Europe and the Americas further aggravates the problem and reveals how urgent it is for democratic initiatives to move away from the punitive option. Hence, the type of politics put forth by various feminist tendencies are becoming radically decisive because violence against women is frequently played as the perfect trump card in arguments in favour of harsher penal policies. Sexual violence, in particular, is an issue that feminism has placed in the public arena of present-day democracies, thus leading to a call from society for harsher punishments for the crimes it encompasses.

**“Violence against women is frequently played as the perfect trump card in arguments in favour of harsher penal policies. This contributes to the consolidation of a reactionary platitude”**

The American criminal lawyer Aya Gruber<sup>[2]</sup> argues that a significant part of US feminism has inevitably become an ally of carceral policy that is extending the powers of police and prosecutors, promoting punishment as a way of solving social problems, and taking resources from marginalised communities to fund the penal system. It is evident that such political formulae are a weapon of the enemy and that they contribute to the consolidation of the notion that reactionary responses are a form of common sense. One only has to see how the discourse of the National Front leaders in France or of Vox in Spain is used to criminalise migrant populations or to defend the death penalty.

Feminist policy implemented by the Spanish state has always been notable for its unwavering reliance on the criminal justice system, with laws against gender violence which mean that lodging a criminal complaint is almost the only way women have of asking for help. The crisis of 2008 and the consequent budgetary cuts in the domain of equality policies reinforced the punitive focus. After a series of amendments that

reinforced the Criminal Code to the point of making it one of the harshest in Europe, some sentences for rape have come to be comparable with sentences for homicide. Yet, today's debates about sexual violence show that a large part of the public is always ready to call for tougher penalties and not even the left seems willing to engage in anti-punitive education. The public debate that has given rise to Organic Law 10/2022 on the comprehensive guarantee of sexual freedom—known as the law of *only yes means yes*—is clear proof that, once punitivism takes over from common sense, nothing triggers a sense of insecurity more than the idea of criminals getting out of prison. This fear is something that the far right can then fan for its own purposes. Institutional feminism, which has also embarked on the punitive path, has contributed to the creation of a debate on penalties and this means that feminists have sold out to the far right. Today's feminisms face an extremely important challenge: how to confront violence and what kinds of discourse should be constructed about it. The matter of what public policies should be implemented is one of the most sensitive and delicate political questions we must deal with. At stake here is the possibility of escaping from far-right frameworks or, conversely, totally falling for them and thus collaborating in the advance of punitive, reactionary guises of common sense.

**“Today’s feminisms challenge is how to confront violence and what kinds of discourse construct about it. At stake here is the possibility of escaping from far-right frameworks or totally falling for them”**

I would like to dwell on two strategic questions that non-punitive feminism must take on if the aim is to tackle violence against women. These issues continue to be completely absent from the predominant public policy approaches and hegemonic discourse.

First, punitivism means surrender. As the feminist Laura Macaya has pointed out on numerous occasions, it requires a certain construction of masculinity and femininity.

The former is presented as a natural masculinity, which is irremediably dangerous for and violent towards women. Naturalising this predatory masculinity and acceptance of the inevitability of this danger become the basis of social discourse that instructs women to be careful, for example, through inhibiting their own sexuality. The other side of the coin of this irrepressibly violent masculinity is a withdrawn and vulnerable femininity, helplessly trapped in the role of victim and totally in need of protection. This essentialist, determinist perspective on men and on women has been, and is, part and parcel of equality policies, especially those against gender violence, while also dictating the kind of response to violence coming from organisations and institutions.

Hence, given these traditional approaches, one of the strategies that must be introduced to combat violence from non-punitive standpoints, is working with men and producing policies aimed at countering the powerful imperatives of hegemonic masculinity. Precisely to the extent that feminism addresses a real problem, which is to say, a structure of domination and inequality rooted in the depths of our social and cultural system, punishing certain individuals cannot be the only response. If anything has been absent, and is still disappearing from institutional policies against violence, it is the matter of masculinity which, far from being a natural and inevitable phenomenon, is a social construction in which everyone is involved. If the patriarchy is a structure, if it precedes all individual subjects, and continues to exist after them, if it keeps affecting our place in the world, generating commands and prohibitions concerning our behaviour and our roles, the problem will not be solved by means of prison and punishment. As bell hooks says, “The perpetuation of male violence through the teaching of a dominator model of relationships comes to boy children from both women and men”.<sup>[3]</sup>

**“One of the strategies for combatting violence from non-punitive standpoints is working with men and producing policies aimed at countering the power of hegemonic masculinity”**

In fact, feminist attention to the question of masculinity must lead us to a broader, more complex understanding of what we can understand as gender violence. Rita Segato, for example, points out that a large number of the expressions of male violence aiming to perpetuate masculinity also targets men. This culture of violence that men are taught from childhood situates them not only as aggressors but also as victims and therefore as objects of a malaise that must also be named by feminism. The impossibility of men themselves managing male violence, the lack of tools for dealing with it, the absence of social attention and a collective response to it is inseparable from the fact that much of male frustration, rage, and wrath is taken out on women. Feminism must, then, draw attention to the hierarchical nature of the patriarchy, which also affects men, as well as pointing out how it relates to mistreatment, its culture of humiliation, and its forms of violence, and must show men that they can escape from this violence, not only to stop inflicting it on women, but also and from the very start, that they need to be able to stop accepting it and suffering it as men. This leads to the urgent task that involves us at many levels as a society, from feminist discourse and educational initiatives through to the institutional resources that laws must introduce. The fact that men can change and, moreover, that they have good reasons for wanting to change, is the premise that underpins every kind of feminism that aims at transformation rather than at punishment.

The second strategic matter is that punitivism means renunciation. Seeing men as irredeemably innate aggressors entails, as a necessary counterpart, a conception of women as victims who are stuck in the position of those who receive the action and damage done by others without any leeway whatsoever for their own action. Punitivism traps women in passivity and gives rise to paternalistic discourse, practices, and laws which, in the name of protection, end up denying any agency to victims. Hence, institutions frequently undertake the task of guardianship of all victims, as if they were minors, and thereby conveying to society and to the victims themselves the idea that they are incapable of having any kind of responsibility for their own recovery.



**“The culture of violence that men are taught from childhood situates them not only as aggressors but also as victims and therefore as objects of a malaise that must also be named by feminism”**

Framed in such views, the Spanish laws against violence have totally disabled some of the main strategies of restorative justice. Law 1/2004, of 28 December on Integrated Protection Measures against Gender Violence includes an explicit prohibition of mediation as an alternative to criminal proceedings, or as a complementary strategy. Almost two decades later, Organic Law 10/2022, on the Comprehensive Guarantee of Sexual Freedom, has once again put paid to this approach as an option. This instrument of justice, recognised as valid in cases of wars and terrorism, and whereby victims can sit down to speak with aggressors, is directly prohibited for women. In their case, the state knows what is best for victims and takes charge of their protection and guardianship, even when this denies the possibility that the women concerned are able to say what they need for their recovery. It is this situation that ends up pushing many women to take legal action, a measure that, in some cases, they would prefer not to resort to and with effects that can revictimise them. The legal option must exist, but victims should not be pushed into this as a matter of obligation and as the only way open to them, and neither should making a police report be the condition or main requisite if they are to be heard by the institutions (in order to gain access to help, social work services, and even shelter resources). In order to leave behind the punitive resort or, in other words, to start thinking about justice in terms of recovery and not punishment, it is also necessary to implement complementary feminist strategies whereby women themselves can know what they need and be heard. Ensuring that support does not become infantilising tutelage must be one of these feminist commitments.

**“The legal option must exist, but victims should not be pushed into this as a matter of obligation**

**and as the only way open to them, and neither should making a police report be the condition if they are to heard by the institutions”**

The austerity of the second decade of the present century has meant that policies that go beyond criminal procedure have been left untapped, and these are also the most dependent on investment by governments and institutions. Educational and cultural policies are needed in order to change shared understandings. Also necessary are redistributive policies that make more resources and tools available to women, allowing them to be more autonomous, more able to decide for themselves, better equipped, and less exposed to precariousness and violence. Policies that go beyond the punitive option are not the most beneficial in electoral terms, and neither are they the cheapest. But they are the most effective.

The main problem that the various branches of critical feminism have with punitive solutions is this deep disagreement over analysis of the problem from which these prescriptions are deduced. The patriarchy will never be tried in a court of law and, therefore, any policy based on the criminalising solution will leave the underlying problem untouched. In order to tackle this, it is necessary to escape from some of the main traps in which we have been caught thanks to policies of the last few decades. The standpoint must change. It means moving from a politics of defeat—one which, moreover, will aid consolidation of far-right discourse—to a politics based on the conviction that men and women want to change. And, on this basis, we could believe that, together, we can organise a society that is more just than the one we have now.

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[1] *Neoliberalismo y castigo*, Bellaterra, 2021.

[2] Gruber, Aya, *The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration*, University of California Press, 2020.

[3] hooks, bell *El deseo de cambiar*, Bellaterra, 2021 (In English, *The Will to Change: Men, Masculinity and Love*, Atria Books, 2004, p.61).

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## About the author

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## Photography

Spanish national police officers at the International Women's Day demonstration in Granada, Spain, on March 8, 2023. Author: Victor Martin Dorronsoro (Shutterstock).

IN DEPTH

## Ethics of care for greater security and justice

**Noe Ayguasenosa Soro**

Expert in security, violent extremism and culture of peace

**Few topics come up more regularly in both public and private conversation** than security. In a changing, increasingly diverse society, in which little is certain, feelings of insecurity and fear emerge organically and frequently among citizens. To an extent, this is a predictable reaction to a state of permanent change. But contexts rife with uncertainty also provide fertile ground for new risks.

### **(In)security in the age of immediacy and complexity**

The problems we collectively face open the door for certain violent extremist tendencies to break out and spread. Such actors, from a range of ideological strands, legitimise the use of violence against their declared enemies and base their discourse on a Manichean vision of reality. In today's European societies the far right poses the greatest risk, but other violent extremist movements, either already existing or yet to emerge, will also look to take advantage of the social situation. It is, thus, perfectly possible that perceptions of insecurity can be taken advantage of and even fomented by those with extremist worldviews who pinpoint those to blame for people's fears and, declaring them enemies, make them legitimate targets for violence. Already a concerning situation, this is only likely to worsen as fear and the need for justice increase.

Social networks play a particularly important role in this perception of instability. They spread and amplify narratives that contribute to toxic polarisation, curtail the lifespan

of facts and generate greater uncertainty, while laying the foundations for the age of immediacy. In this new communications landscape, the mainstream media also often enter the spiral of message simplification and superficial analysis, both of which contribute to the social inertia of seeking quick and easy solutions to complex multidimensional situations.

**“That is why we tend to see security – at both public and private level – as citizen management of crime, and focus less on personal lives, emotional networks, job insecurity, the food crisis, illness and war, and so on”**

We live in one of the safest periods of human history, and yet the perception of insecurity is growing. Today, our fear, anxiety and uncertainty come from many sources, and if we lack the resources to bear them, they can greatly alter our everyday perceptions and undermine our well-being far beyond any actually existing risks. After all, however we conceive of it, security conditions freedom.

### **Public insecurity management**

We worry more about insecurity in terms of crime and antisocial behaviour, than about security in general terms.<sup>[1]</sup> That is why we tend to see security – at both public and private level – as citizen management of crime, and focus less on personal lives, emotional networks, job insecurity, the food crisis, illness and war, and so on.

A number of potential strategies exist for managing insecurity and developing policies from a comprehensive perspective. Unfortunately, the prevailing tendency is to respond to public fears by making serious threats that have the paradoxical effect of provoking fear while promoting a culture of punishment.

**“This punitivist model of “you do the crime, you do the time” shows institutions and systems becoming provocateurs and perpetrators of violence that tend to feed back into each other”**

The measures in this model seek to strengthen strictly punitive and retributive courses of action – “the Penal Code and punishment will save us from all evils, our own and those of others”. This is traditional security politics based on a binary friend/enemy system. It does not humanise or consider multi-causal complexity or relationships and therefore establishes a highly ineffective basis for improving people’s quality of life. On the contrary, it accentuates inequalities and segregation, as well as increasing polarisation in ever more areas of domination. It constructs an artificial reality of black and white and good and bad, and sketches out a world that appears simple, even as it simultaneously complicates everyday life and coexistence.

This punitivist model of “you do the crime, you do the time” shows institutions and systems becoming provocateurs and perpetrators of violence that tend to feed back into each other. It also means abdicating collective responsibility and the possibility of preventing and managing violence by identifying and addressing its diverse causes, particularly the social. It is a model that promotes individualism over a care and mutual aid-based approach, a paradigm that denies shared construction and refuses to look at those who should be at the very centre – the victims. These observations lead us to propose alternatives to the merely retributive (or revenge) model, to opt for models whose main and real objective is to offer opportunities for constructive socialisation.

The mere application of punitivist forms of “exemplary” punishment as means of deterrence reflects the impotence of leaders in the face of the situations described. It reveals decision-makers who are unable to take a comprehensive approach to complex social phenomena and who – voluntarily or involuntarily – end up legitimising perceptions of fear and insecurity. Public authorities that bend to the voices calling for more and harsher penalties, who will not tolerate any level of risk in their lives, abdicate

responsibility for wide-ranging and positive social construction. Provoking and following punitive demands drains all depth from the analysis of the problems and is an implicit acceptance of a degree of infantilisation of citizens, promoting false beliefs about societies that are completely protected from all dangers.

**“Designing public policy based on anxiety and victimisation is not recommendable and nor should it be acceptable. The evidence tells us that it neither increases the perception of security nor improves objective indices”**

This overreaction by public authorities is a form of management that renounces the long-term approach and accepts being a merely reactive actor, conditioned by the basest emotions of certain groups. Designing public policy based on anxiety and victimisation is not recommendable and nor should it be acceptable. The evidence tells us that it neither increases the perception of security nor improves objective indices. On the contrary, it threatens peaceful coexistence and social cohesion.

The alternative, which is inclusive and looks beyond the short term, requires radically different strategies. Responsibility, courage, education and shared construction are all necessary when courses of action are unpopular. Letting oneself be carried away by feelings and desires for revenge when faced with security and justice challenges can strengthen models that contribute to curtailing and shrinking rights and freedoms. Our diverse, changing and accelerated society requires complex and comprehensive approaches that include all social actors, not only the police. All magical or simple solutions are either mis-steps or traps.

### **The need for policy co-production based on the culture of peace**

Public policies must aim to strengthen and improve support networks, interrelation and recognition among neighbours, and the work towards equal rights and

opportunities. To achieve this, a multi-agency policy should be promoted, in which political and social action go hand in hand. A commitment must be made to collective protection based on the culture of care, as opposed to the culture of punishment that feeds the politics of “social control” and moral judgment.

Working towards a comprehensive and collaborative model in our streets, towns and cities means giving a special role to co-production and coordination in matters such as environmental design, leisure projects and repairing physical damage. It is essential that citizen participation takes place in various direct and indirect ways, and that it promotes valid tools such as exploratory walks,<sup>[2]</sup> involvement in public spaces and qualitative research. This means working with the most vulnerable people, because of the challenges that remain, such as increasing the democratisation of voices, redefining power relations and correcting citizen representativeness biases, both when determining indicators in surveys and when spreading real and systematic collaborative tools across neighbourhoods.

**“Our diverse, changing and accelerated society requires complex and comprehensive approaches that include all social actors, not only the police. All magical or simple solutions are either mis-steps or traps”**

A larger and more consistent social cohesion model would extend the paradigm of cooperation based on difference, and reduce the individualism and competition to which various influential actors often subject us. Societies with increased networks and stronger internal cohesion tend to have lower levels of the factors that trigger insecurities, on the one hand, and, on the other, they tend to be more resilient to adversity and less prone to subjective perceptions of insecurity.

In moving towards this scenario, there is a real opportunity to start from the local level, because of the key role it plays in providing security and justice by, for example, using



coexistence and civic behaviour ordinances as tools of transformation, and not as subsidiary extensions of the criminal code, as has long been the case.

The starting point for this commitment should to take a feminist perspective, which has for decades pointed out the links between the local and the global and between the personal – the everyday – and the political. Feminist approaches argue that issues related to intimacy “are of great political significance in that their form and nature are determined by relations of power that play out in a variety of different contexts – from the household to the global political economy”.<sup>[3]</sup> In the same way, feminist foreign policy theory developed from international relations has also a lot to say about internal and local security.

**“Societies with increased networks and stronger internal cohesion tend to have lower levels of the factors that trigger insecurities, on the one hand, and, on the other, they tend to be more resilient to adversity”**

Conducting responsible public policy means working with the aim of strengthening communities and networks in order to build safe, caring societies with the capacity to deter a great deal of insecurity and damage. It is not a matter of handing too much responsibility to citizens, but rather of committing to a culture of engagement, and to a society that has the resources to transform conflicts into opportunities, that promotes genuine rootedness and the construction of shared egalitarian identities. By way of example, neighbourhood improvement policies that have coordinated redistribution and community action have been shown to have positive impacts on security levels.<sup>[4]</sup>

It must be borne in mind, however, that losing sight of the ethics of care and the culture of peace while promoting citizen involvement could increase vigilantism,<sup>[5]</sup> neighbourhood patrols, and groups like the *sometents*.<sup>[6]</sup> This type of behaviour is often based on principles of discrimination and revenge, or confuses coexistence conflicts

with issues of violence, and ends up becoming a tool for maintaining moral order.

### **A new approach to security and justice**

There is a need for public security and justice policies that take a holistic view, paying attention to causes and not limiting ourselves to reacting to visible consequences. Without worrying about the short term, we need to take a long view.

In the same vein, (in)security cannot be conceived of as what happens when a victim is produced. Addressing security involves managing personal and social issues at the same time, both of which often have systemic and institutional roots. Following the same logic, much of what comprises security and the subjective perception of it relates to what we as a society do with people who have committed crimes, how we prevent recidivism and how we promote resocialisation, beyond custodial sentences. In other words, much of the perception of security rests on what we do in the field of justice with those who have breached the criminal code.

**“It must be borne in mind, however, that losing sight of the ethics of care and the culture of peace while promoting citizen involvement could increase vigilantism and neighbourhood patrols”**

As noted above, we live in an eminently retributive setting, perpetuated despite the knowledge that a greater threat of punishment does not guarantee fewer crimes. We also know that reintegration into society based on a deprivation of liberty whose exclusive focus is punishment is enormously difficult. The urgent need to manage violent incidents must not come at the expense of the long view politics requires. It must be borne in mind that a single-minded focus on temporarily neutralising possible dangers (imprisonment for a limited term) ends up restricting the chances of both genuine reparations for the victim, and the true, progressive reintegration of the perpetrator into society.

For all these reasons, there is a need to rethink the currently dominant security and justice paradigm and to transition from the politics of hate to the politics of love, in both public and private senses.

First, the culture of peace must become a point of identification and should be spread. This culture facilitates an alternative approach to handling conflicts and commits to restorative justice. No existing empirical study or experience shows that the world will be made safer only with more punitiveness, more retribution, more iron fist policies and more prisons. It is absolutely essential that we move away from this model and towards a restorative one, in order to progress towards a more cohesive, humanist society in which the values of care permeate everything: from prevention to management and intervention.

**“Investments are required in social policy and strengthening other institutional and community actors who work on a daily basis with the people most affected by violence”**

Second, in our society security should not be a competence that falls to the police alone. Security in its fullest extent is the joint responsibility of all fields that affect people. Particular emphasis should be placed on preventive activity that works to ensure the circumstances exist to promote healthy personal development that is linked with the society around them. To this end, investments are required in social policy and strengthening other institutional and community actors who work on a daily basis with the people most affected by violence.

Third, victims must be at the centre of the system. This means identifying the most effective ways to listen to them and redress the harms they have suffered. Does punishing the perpetrator have a restorative effect on the victims? The evidence shows that it does not. When criminal activity takes place, action should prioritise restorative justice in which the victim takes centre stage and the emphasis of the action shifts towards reparation, rather than retribution. This framework of action focuses on

personal needs, and at the same time promotes and provides opportunities for empathetic development that increases the likelihood of people who have committed crimes being reintegrated. Processes of mediation, facilitation and community action are needed for the widespread implementation of this approach.

Taking these three pillars of individual and collective security as a starting point, it is necessary to focus on insecurity prevention and conflict “provention”<sup>[7]</sup>, on root causes, while considering human rights and global justice. This approach is founded on ethics, but criteria of responsibility for all citizens are also needed in the search for an effective means of collectively building more secure and just societies.

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[1] ICIP 2022 survey “Coexistence and cohesion in Catalonia”, published on March 2023.

[2] Exploratory walks are a dynamic, participative feminist methodology. The aim is to detect features of an urban setting that affect perceptions of safety or insecurity, along with other more general parameters, in order to analyse urban quality, and how the design and management of public space can improve our daily lives. The concept of exploratory walks was developed in Canada in 1989 by Toronto’s Metropolitan Action Committee on Violence Against Women and Children (METRAC). <https://equalsaree.org/>

[3] Conway, M. “National security and care work: two sides of the same coin” a *Peace in Progress* “Redirecting Security from Feminism”, ICIP, 30, January 2021.

[4] Harada, M., & Smith, D. M. (2021). *Política distributiva i delinqüència*. Available at: SSRN 3392733.

[5] When citizens confer on themselves the authority to judge or determine whether certain behaviour is appropriate or not and act accordingly, instead of notifying the security forces.

[6] The *sometents* are farmers who organise themselves to monitor and prevent theft from their fields. The name comes from a historic paramilitary civil self-protection organisation that defended the land in wartime.

[7] Providing people and groups with the necessary skills to face a conflict. Differs from conflict prevention in that its goal is not to avoid conflict but to learn how to deal with it.

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## Photography

An unrecognizable crowd in the street. Author: Aleksandr Ozerov (Shutterstock).

IN DEPTH

## The restorative justice path to healing our communities

**Teiahsha Bankhead and Rachel V. Brown**

Bankhead is Director and CEO of Restorative Justice for Oakland Youth (RJOY) and Brown is Executive Director of The Every Mikkle Foundation

**Restorative justice heals while retributive justice hurts.** Restorative justice is organized around the principles of a healing justice rather than a hurting or harmful justice. Retributive justice asks who has caused harm and seeks to punish and in turn cause more harm in retribution. People who cause harm are then warehoused by a carceral system in prisons and jails and not truly introduced to a process of taking deep responsibility for their actions. Conversely, in a restorative justice approach, core to the orientation, is a set of principles and adherence to the concept of high accountability for wrongdoing simultaneous with high support to repair harm. Restorative justice is “a process in which all the stakeholders affected by an injustice have the opportunity to discuss the consequences of the injustice and what might be done to put (things) right” (Braithwaite, 2022). It is then both a set of practices and principles as well as a comprehensive worldview that promotes wellness and healing in the face of harm.

Because restorative justice is both a set of tools and an embodied approach to creating and sustaining a more equitable world, it is a way of being that centers participatory fairness and a balance in power relationships. It maintains balance through taking a values-based approach in response to conflict and wrongdoing, and equally focusing on the person who caused the harm, the person who has been harmed and the community (Ryan and Ruddy, 2015). That balance restores the perceived loss of power to participants which in turn empowers them on their healing journey. To further aid participants on their journey, restorative justice also employs a toolkit of structural and

relational practices to achieve overarching restorative principles. It is an ethos, in fact, that may be practiced to build community and heal conflicts.

**“Restorative justice heals, because it employs  
the concept of high accountability, while  
retributive justice hurts”**

Humans are interconnected and therefore the effects of a wrong against one person does not just affect that person; the impact of a wrong goes beyond them to their community and everyone with whom they interact. Restorative justice recognizes this truth and seeks to holistically heal the community and the individuals within.

Restorative justice is in no way a new phenomenon, it is a thousand-year-old tradition originated in indigenous cultures across the globe (Walker, 2012). Restorative conversations, restorative economic reparation and restorative ways of engaging in sustainable living, are all valid means. However, the most commonly known and central element of restorative practice is holding space in a restorative justice “circle”.

Restorative justice is typically practiced while sitting in a circle where participants “discuss how they have been affected and reach agreement about what should be done to repair the harm caused” (Pointer et. al., 2023). By sitting in a circle, everyone occupies an equal space on a level playing field and is able to see and hear each other fully. Circles have proven to be an effective space for discussions integral to the healing process.

### **The Three Circles of Restorative Justice**

There are three widely accepted types of restorative justice circles: Community Building or Peacemaking Circles (Tier 1), Conflict or Harm Circles (Tier 2), and Re-Entry Circles (Tier 3) (Davis, 2018). All three of these circle types have similar structural (circle rounds, talking piece, centerpiece) and relational elements (opening, check in and out, values and agreements, games, ritual and ceremony) from an outsider looking in. They

are different, however, in their content, goals and participants.

**“A wrong against one person does not just affect that person; its impact goes beyond them to their community and everyone with whom they interact”**

### **Tier 1 – Community Building Circles**

Community Building Circles are the backbone, workhorse and foundation of restorative justice practices. A jail, prison, school, community, office or family that embodies a restorative approach will 9 out of 10 times likely engage in community building. An abundance of community building circles will prove to be a sustainable solution if they are practiced regularly, even daily, with the primary purpose of deepening the interpersonal relationships and personal connections between circle members (Huguley et al., 2020; Wadhwa, 2016).

All circles require pre-planning. However, community building circles do not require significant preparation with circle members or long-term coordination with members after the circles are concluded, as is the case in other circle types. “By engaging the community, a conflict can be resolved in the best interests of the victim, the offender, and the community, rather than what the law requires. Thus, in the implementation of many restorative boards, community members—rather than an institution—exercise authority” (Beck, 2012).

The goal of the community-building circle is to deepen relationships. Circle members are expected to be authentic and to reveal their true selves. There is an environment of radical honesty where all people present have a license to “be real” and not be judged for their views or lived experiences. The participants in community building circles include those who are available to be present, or those chosen and invited for unique reasons. Participants may be members of a specific class or club or of an affinity or



interest group. The specific activity of the people in attendance is to see each other (practice “Sawubona”), to connect with one another and to work together.

**“The central element of restorative practice is a  
“circle”: everyone occupies an equal space and is  
able to see and hear each other fully”**

### **Tier 2 – Conflict Circles (aka Harm Circles)**

People who are new to or marginally familiar with restorative justice practices usually seek out interventions initially when they are facing a conflict. They desire to find a resolution for a clearly identifiable harm. They want a fair and equitable process for resolving a distressing conflict that includes the voices of all those affected. They also aspire to participate in a process that may conclude with the deep satisfaction felt when true healing and authentic repair of social fracture is possible.

For conflict circles to work, the participants must be open to and vulnerable with each other (Martinez et. al., 2022). Ideally, through that vulnerability, sustainable and preventative transformation will occur. This prevention element is increasingly important in evaluation of effectiveness because while Restorative justice is effective in resolving such conflicts it is equally beneficial as a preventative measure to lay the foundation to avoid ever having such a conflict exist.

Conflict Circles also possess all of the structural and relational elements of all circles. The content of a conflict circle is the discussion that leads to consensus on a plan of accountability and repair for the harm that was caused, with meaningful support to accomplish it. The accountability plan can be as simple as an apology or acknowledgment of wrong-doing, or as complex as years of service and restitution.

**“Restorative justice is a holistic pathway to  
building community, resolving conflict,  
celebrating our own humanity and healing our  
world”**

There is significant planning and individual preparation before the date of the circle is set. This includes preparation of those most affected as well as those causing the harm. As such these circles are quite labor-intensive for the circle keeper and all of those in attendance. Additionally, much of the emotional labor of these circles is accomplished in the preparation process. The participants in a Conflict Circle are those people most impacted by the harm caused. The participants include the people who have been most harmed as well as the people who caused the harm. Also present are people who have been impacted negatively because they observed the harm or were affected by its consequence. For example, in the case of a suspension, a younger sibling may have had to change or eliminate their sports activities to accommodate the support service needs of the sibling who caused the harm.

**Tier 3 – Re-Entry Circles (aka Circles of Support and Accountability COSAs)**

Re-Entry Circles are a critical tool to use when supporting people coming back to a community after they have been suspended or expelled for an infraction. These Circles are the least commonly practiced circle type, in part due to the intensity involved in gathering appropriate circle members and scheduling their participation. They are utilized when a person has been extricated from a community for causing a harmful act or some other wrongdoing and they are at the point of seeking to “re-enter” the community. These circles are typically used when juveniles or adults are returning to society after being in custody in prisons and jails.

Re-entry circles involve the participation of multiple diverse community members who may offer support and guidance to the person who is transitioning back into the community. The community’s ability to offer high levels of support and accountability are key components of a re-entry circle. The participants are the preselected COSA

members, invited support persons, and relevant community members with critical human and material resource allocation capacities to support the person of focus.

Re-entry circles include basic structural and relational elements (Boyes-Watson & Pranis, 2015). The preparation for Re-Entry Circles is significant as the planning and recruitment of Circle of Support and Accountability (COSA) members requires much reflection, agreement, and consideration of the person being supported and the relationships they have with the potential COSA members.

The goals of re-entry circles or COSAs are realistic, sustainable and agreed-upon plans for support and accountability (Walker, 2015). Future COSA circles are organized around updates on life circumstances, wellness status and compliance with circle plans. Included in the COSA is an authentic and verifiable commitment from key COSA members to offer specific support to ensure a smooth re-entry of the person and adherence to the earlier stated goals of the COSA.

### **Restorative Justice as a Holistic Pathway**

Newcomers to the movement often think of restorative justice as solely a set of tools to resolve conflict, but restorative justice actually offers much more. It is a holistic pathway to building community, resolving conflict, celebrating our own humanity and healing our world. It guides us in the act of repairing harm but also teaches us to engage in self and communal care through the embodiment of a set of principles calling us to engage in the practice of forgiveness of self and others (Suzuki and Wood, 2017).

While these practices have been embraced for thousands of years, the modern RJ movement is about 50 years old (Kohn, 2010). It has largely been practiced without a racial consciousness lens, except for a few notable leaders who have argued that race, class, gender, sexual orientation, and ability as well as other sometimes marginalized and minoritized identities are central to the practice of RJ (Davis, 2019). It is indeed essential that we take these factors into consideration when looking at justice, because these marginalized communities are affected, victimized and vilified to a much larger extent. Many are quick to identify the cyclical nature of crime in these communities,

however, few are willing to identify sustainable solutions which will stop the negative cycles altogether. Across the globe, oppressed cultural groups have a rightful claim to solutions which will bring about justice and restorative justice brings their voice from the margins to the center while building equity and elevating their humanity.

These practices naturally resonate with indigenous cultures in Native North America, Kenya, Ghana and South Africa as well as other continental African nations, the Maori People in New Zealand and even more recently citizens in Hull and Leeds, England (Liebmann, 2007).

**“Restorative justice brings their voice from the margins to the center while building equity and elevating their humanity”**

### **How does Transformative Justice fit with Restorative Justice?**

Transformative justice describes a political orientation to healing historic and present-day harms using a reparative approach (Mingus, 2019). It is abolitionist in its orientation and asserts that the carceral system in its entirety is harmful and violent and was developed to further oppress marginalized and minoritized communities and maintain social control over the freedoms of these people. By extension, prisons, jails and the entire policing institution hurts rather than heals our communities. Transformative justice approaches obviate involvement of carceral systems in responding to violence and other abuses, and instead focus on healing and accountability.

As with restorative justice, indigenous and traditional peoples have utilized transformative justice approaches for centuries. However, in the transformative justice case the effort has been to repair harm as a direct response to state violence and to avoid contacting or in any way involving an inherently vicious and harmful carceral system. Some transformative justice enthusiasts assert that, “while restorative justice challenges the retributive justice system and brings people together, it fails to

recognize the socio-political and economic issues addressed by transformative justice” (Nocella, 2011). Transformative justice imagines new and radically different futures, and envisions structures for healing and the systems surrounding them as more community focused, relational and based upon total and comprehensive health and wellness.

How restorative justice and transformative justice overlap and depart from each other in philosophy and practical actions has been a topic of discussion and debate. Both processes may be complementary bedfellows or incite sparks of departure and perceived conflict. At the Restorative Justice for Oakland Youth (RJOY) we practice restorative justice with a transformative framework. All of the programs, actions, movement building and interventions that we develop and deliver have core concepts that are at once following restorative justice and transformative justice tenants, where possible. There is one area of significant departure from transformative justice in that we are willing to work with police officers and workers within the carceral system to help transform it and in order to have contact with our potential service users. That means that we are not opposed to holding circles and conducting other work in prisons and jails and meeting with police officers and officials.

### **“Restorative and transformative may be complementary bedfellows or incite sparks of departure and perceived conflict”**

While we may agree that the carceral system in the US (through the implementation of slave patrols) was developed to oppress marginalized communities and continues to live out the legacy of that mission through indoctrinated methods of racism, classism and social control as evidenced by the repeated and senseless killing of unarmed Black men, we also believe that it is useful and effective to attempt to transform the system from working within it.

**How is a restorative solution preferable to a punitive one?**

It is absolutely possible, critical and essential to move from a penal and punitive model to a restorative model that promotes individual and collective responsibility for harm caused. Implementing a holistic restorative justice approach results in reduced recidivism. In San Quentin State Prison in California, people who participated in a restorative justice program focused on accountability, remorse, victim impact awareness, authentic apology and forgiveness had less than a 2% recidivism rate (Benham, 2014) as opposed to the standard 64% recidivism rate (Linden, 2015).

Restorative justice is preferable to the usual punitive penal system because it works. It leads to a healthier, happier, more safe, satisfied and productive society (Long, et. al., 2022). For example, a man that we worked with was incarcerated for 30 years for convictions of homicide and rape. He learned restorative practices while in prison, of deep accountability, truth telling and atonement for the harm that he caused by being radically honest and not shrinking from the responsibility to repair the harm that he caused. Against all odds he was released from prison and has dedicated his life to ensuring that other similarly disadvantaged youth do not follow his path. He is happy, healthy, accountable and highly unlikely to recidivate. The healing power of restorative justice is an indisputable truth. The problem, however, is with how it is often implemented. Especially in racially, culturally and economically diverse and heterogeneous societies there is often not a deep commitment to build equity and treat marginalized people fairly. “Those people,” the ones who are different from the mainstream policy makers, and seen as the “other,” are essentially deemed disposable. In more homogeneous societies, countries and systems, the people causing harm are valued more, as they are viewed as “our people”. They look like us and have shared cultural experiences so it is more difficult to discount their humanity and dispose of them in a punitive penal system.

**“The healing power of restorative justice is an indisputable truth but its implementation must be comprehensive to be wholly effective”**

To predict the efficacy of an implemented restorative approach we must evaluate key components, such as, is it applied comprehensively throughout a criminal legal and community system? Is it relegated to justice in the carceral system or only for people who have already been charged with a crime or at risk of being charged? Community members need access to restorative justice community building opportunities that are available before any harm happens. In community-wide, Tier 1, healing circles community members have the option of bringing their concerns, anger, vulnerability and conflicts to a group of peers for advice, support, ideas and repair, prior to these issues rising to the level of deep community harm. The implementation of restorative justice must be comprehensive to be wholly effective because a fragmented implementation will yield fragmented results.

A restorative justice Tier 2 Harm Circle process offers a fair system of accountability and repair for all parties involved in conflict, people who have caused harm and people who have been harmed. In the usual punitive penal system, those who have been harmed rarely receive a direct apology from those who have caused harm. Harmed people are not advised of the circumstances underlying the social and emotional state of the person causing harm when they committed the offense and they do not typically have a voice in repair or restitution. The person causing the harm does not get the opportunity to take responsibility, account for the harmful impact of their actions and express remorse for their wrongdoing.

In conclusion, restorative justice conflict circle processes as well as transformative justice political action and system change efforts combine to bring holistic justice and healing that is achievable and responsive to real social problems.

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**Photography**

Circle group therapy session. Author: Fizkes (Shutterstock).

IN DEPTH

## Punitivism and iron fist policies in Argentina: two cases, one double standard

**Claudia Cesaroni**

Lawyer and member of CEPOC (Centro de Estudios en Política Criminal y Derechos Humanos)

*... I am a moral imperialist. One of my basic premises will be that it is right to strive for a reduction of man-inflicted pain on earth.*

**Nils Christie, *Limits to Pain*.**

**David Moreira was 18 years old**, the same age as Fernando Báez Sosa.

David lived in Rosario, Santa Fe Province, Argentina.

Fernando lived in the capital city, Buenos Aires.

On March 22<sup>nd</sup> 2014, while riding a motorcycle, David attempted to steal a young woman's bag in a neighbourhood of Rosario. However, the victim resisted and he failed. While attempting to flee, a bystander grabbed hold of him and was soon joined by others. For fifteen minutes they beat him while he lay on the ground. Some got tired and left, only for others to arrive and join in. The police eventually arrived and took him to hospital, where he lay in agony and died three days later.

On January 18<sup>th</sup> 2020, Fernando got into a fight at a bar in the city of Villa Gesell, on Argentina's Atlantic coast. He punched Máximo Thomsen, a young man a little larger than him, in the stomach so hard that he knocked him over, along with the bouncer – “

*patovica*” in River Plate slang – who was leading him out of the venue. Fernando and Máximo were violently thrown out by security staff, along with their respective groups of friends.

On the street, Máximo and his seven friends, aged 18 to 21, sought out Fernando and his group, and in a less than a minute blows and kicks were raining down on him and he was killed on the spot.

It is not easy to find up-to-date news on the trial for David Moreira’s murder. We know that one of the individuals identified was given a three-year prison sentence for taking part in the attack, but the sentence was suspended, meaning he did not serve the prison time. Two others were meant to be tried in May 2021, but following several postponements, the trials have still not taken place.<sup>[1]</sup>

**“Thousands of people have repeated his slogan  
“Without life sentences, there is no justice”  
without stopping to consider what demanding a  
life sentence means in Argentina today”**

According to the prosecutor, the act amounted to “*homicidio en agresión*”: a crime in which a group of people cause a death, but it is impossible to determine individual responsibility, because all contribute, without prior agreement. A horror show of collective responsibility.

On February 6<sup>th</sup> 2023, five of the eight youths who attacked Fernando Báez Sosa received life sentences, while the other three were sentenced to 15 years in prison. It was adjudged that the act should be classified as a homicide doubly aggravated by the premeditation of two or more people and by malicious intent. Thousands of hours of television, radio and social network content, kilometres of paper and rivers of ink have been spent detailing the case. Millions of people have watched videos from every angle that show the moment the group of youths attacked. As well being recorded by security

cameras, eyewitnesses took images with mobile phones, because the events took place right in the centre of Villa Gesell, a highly popular summer holiday destination for young people from all over the country.

**“We barely know what David Moreira’s face looks like; Fernando Báez’s smiling face challenges us day and night not to forget the brutal way his life was taken by eight young men just like him”**

Since January 18th 2020, Fernando’s mother and father – and the pain that has overwhelmed them – have drawn the attention and support of millions of people. The family’s lawyer, Fernando Burlando – who has, in the legitimate exercise of his profession, previously defended the perpetrators of serious crimes – used the case to promote his run for Governor of Buenos Aires Province in the 2023 national and local authority elections. Thousands of people have repeated his slogan “Without life sentences, there is no justice” without stopping to consider what demanding a life sentence means in Argentina today and how disproportionate it is compared to other sentences, such as those for state crimes. Fernando’s family have also used the slogan, perhaps understandably, as have journalists, political figures and townspeople moved by the suffering of Fernando’s parents, which was presented as unique and exclusive. The five life sentences handed down seemed to strengthen Burlando’s argument, and he has promised to seek the increase of the three young men’s sentences from 15 years in prison to life.

We barely know what David Moreira’s face looks like, and see only a photo of his body lying on the floor before the ambulance took him away. Fernando Báez’s smiling face challenges us day and night not to forget the brutal way his life was taken by eight young men just like him, who became murderous monsters and were exhibited in court for us to view their distant gazes and grey faces.

***“Innocent victims, guilty victims. Lives that both ended in the same way, with a fatal beating, but which were not worth the same”***

David Moreira’s mother, father and little brother no longer live in Rosario. They moved to Montevideo, Uruguay, fleeing suffering that elicited none of the words of comfort Fernando’s mother and father received. Instead, they found rejection and blame. She was not mother to a spotless victim with almost saintly characteristics like Fernando – the good boy who studied at the Marianist school, who wanted to be a lawyer and gave out food to the poor. Her son David was a petty thief who tried to snatch a purse from a pregnant woman, and who lacked redeeming features.

*Innocent victims, guilty victims. Lives that both ended in the same way, with a fatal beating, but which were not worth the same.*

In one case, a single three-year sentence was issued to just one of the culprits. The other brought five life sentences, and three 15-year terms. How can we reconcile the brutal punitive act of sentencing five young people to jail for 50 years which almost no one finds disproportionate?

For what reason was a single three-year sentence issued in one case, while five 50-year sentences were handed down in another, apparently similar, case? Why did David Moreira’s death prompt almost no response from society, beyond his small family and some social organisations in Rosario? Human rights activists have tried to show that what had happened on that street was not a case of “taking justice into one’s own hands”, but a homicide with malicious intent driven not by justice, but by pure private revenge.

How can we reconcile the brutal punitive act of sentencing five young people to jail for 50 years, which almost no one finds disproportionate, with the different treatment of the perpetrators of the crime against David Moreira?

**Punitivism in Argentina: a brief history**

In July 2017, a cycle of regressive reforms that began in Argentina in April 2004 was completed. Once again, two events caused public uproar and elicited the same reaction and a repeat of the same type of responses. In this case, the kidnapping and subsequent death of Axel Blumberg (23) in March 2004 and the rape and femicide of Micaela García (21) in April 2017. Both crimes carried mandatory life sentences at the time they were committed. What would happen next was clear and predictable: overreaction, instrumentalisation of the victims, approval of laws that restrict rights, increased sentences and use of pain, uselessness, lack of future results, new debates when another serious event occurs, and so on. In both cases, each time tough-on-crime policies are applied the apparent justification is that increased punishment prevents new crimes. “Apparent” because those who use the argument know it to be false – otherwise the United States would have zero violent crime. Everyone, even those who live their lives through Netflix, know that this is not the case.

**“Each time tough-on-crime policies are applied the apparent justification is that increased punishment prevents new crimes. Those who use the argument know it to be false – otherwise the United States would have zero violent crime”**

Among the consequences of the “Blumberg laws” – approved by a show of hands, almost without discussion, with the argument that “you can’t argue with a grieving father” – terms were increased to 50 years, among other cruel repressions. Successive reforms to the Criminal Execution Law<sup>[2]</sup> have established that most perpetrators of crimes of a certain degree of seriousness – ranging from attempts to kill to selling drugs – must serve the entirety of their sentence in prison, whether that be 5, 15, 30 or 50 years. In many cases, this means leaving prison either old or dead. The five young men convicted of killing Fernando Báez Sosa will be old or dead by the time they get out, no matter what they do, however they change and whatever they grow up to be. It was not Mr Blumberg who wrote the catalogue of proposed punishments that legislators from all political forces voted to approve between April and November 2004, but his

legal adviser, Roberto Durrieu, Under-Secretary of Justice for the dictator Jorge Rafael Videla. In other words, thanks to the votes of democratically elected representatives, rules were incorporated into our criminal code that were drawn up by one of the genocidal dictatorship's most prominent legal figures.

When Luis Petri, the lawmaker who drove the 2017 proposal, says things like “let them rot in jail”, “they shouldn’t be able to rejoin society” and “we’re going to shut the revolving door”, he is rolling back centuries of progress on the conception of the criminal law, and in the process violating constitutional guarantees and ultimately constructing new disposable subjects who are liable to be subjected to torture and who deserve to suffer a living death. And all for no actual result. It is pure revenge and retributionism – an eye for an eye – which is both useless and counterproductive as a method for reducing any type of social violence. Sadly, he was not alone, but aided by each and every lawmaker who supported and voted for his proposal, with greater or lesser conviction.

**“For a large number of convicted persons the right to reintegration has fallen by the wayside or is a false promise. Where will a 25-year-old young man sentenced to life imprisonment be reintegrated? What hope can he hold of returning to life?”**

In 2017, as in 2004, political groupings that theoretically disagree with such right-wing approaches lacked the courage to oppose the discourse and facilitated the incorporation into our penal code and legal system of provisions on sentencing that are completely alien to our constitution and our criminal and penitentiary traditions. The organisation of prisons and prisoner treatment has a rich history that culminated in 1996 with the approval of Law 24660 on the execution of custodial sentences, which was based on four principles: the convicted person's right to reintegration; individualised treatment of prisoners; sentence progression; and judicial oversight of the execution of



sentences.

The reforms made between 2004 and 2017 mean that for a large number of convicted persons the right to reintegration has fallen by the wayside or is a false promise that is impossible to fulfil. Where will a 25-year-old young man sentenced to life imprisonment be reintegrated? What hope can he hold of returning to life in society when his sentence bars him from walking the streets until he is 75, if he even lives that long?

And in terms of individualised treatment, what is the point of agreeing which subjects or vocational tasks to study and which symbolic resources to acquire given the prospect of decades of uninterrupted confinement? There is no sentence progression, wherein a person gradually advances through various phases of prison regime, moving from stricter and more rigid structures to spaces in which self-discipline can be exercised. All of this has been torn to shreds. The lack of prospects and the absence of any hope of regaining freedom make life in prison a kind of suffering that is no different to planned torture.

### **#NoALaMuerteEnVida**

The coverage of the Fernando Báez Sosa murder trial facilitated discussion of one of the most brutal expressions of punitivism: life imprisonment without temporary release or parole. A group of people and organisations have decided to launch a campaign to debate this type of punishment.<sup>[3]</sup> Just as we would fight the death penalty if we lived in a country whose legal system allowed it, we will fight the 50-year death-in-life prison sentence that life imprisonment entails in our country today.

**“The lack of prospects and the absence of any hope of regaining freedom make life in prison a kind of suffering that is no different to planned torture”**

The European Court of Human Rights has repeatedly stressed that all prisoners must have a realistic prospect of obtaining their freedom, and that this cannot be merely theoretical or illusory. With no “right to hope” there is no possibility of freedom, and this constitutes inhumane treatment.

Those of us behind the campaign, which uses the hashtags #NoALaPrisiónPerpetua and #NoALaMuerteEnVida[4], know the destructive effects on a human being of spending decades in prison, and we believe that whatever the crime committed the possibility must exist of making amends for the damage done and restarting a life in community, beyond the prison walls. Opposing life sentences (#ContraLaPrisionPerpetua)[5] is a way to fight for the right to hope that we believe should extend to everyone in a democratic state. Even those who have committed serious crimes.

The fight against punitivism and iron fist policies must first include the victims of these policies. Hence, we propose to work with the perpetrators of these crimes and their families in order to stop talking about them, and start talking and walking a path *with* them. Many questions need asking. Are there other ways to make amends for the damage caused? How can adequate reparation policies be constructed? How much is down to individual responsibility, and how can the social and collective contribution be measured? What can we do to contribute to reducing the number of crimes and the involvement of young people and adolescents in crime?

The words of Nils Christie will guide us as we seek to reduce the pain of state punishment.

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[1] See [this link](#).

[2] Particularly Law 27375, approved on July 5<sup>th</sup> 2017, known as the Petri Law after the right-wing deputy who was its main proponent.

[3] See [this link](#).

[4] English translations: #NoLifeSentences; #NotoDeathinLife.

[5] English translation: #AgainstLifeSentences.

This is a translated version of the article originally published in Spanish.

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## Photography

The hand of a refugee prisoner on a cage fence with barbed wire. Author: Ruslan Tugushev (Shutterstock).

IN DEPTH

## Against punitivism and impunity in Mexico: a new justice

**Paola Zavala Saeb**

Lawyer, activist and peacebuilder.

**Punitivist approaches seek to create security by punishing those who do not obey the law.** In this conception, punishment tends to mean jail, and this is known as justice. Punitivist legislative authorities focus on developing laws of punishment in order to guarantee security, while the executive seeks to enforce those laws by spending public resources on weapons, police, the military, prisons, etc. The courts respond by imposing harsh penalties, especially on poor people, and often for property crimes.

The resources being spent on punitive mechanisms are, by extension, not being invested in other social areas, deepening the inequities and risk factors that cause criminal behaviour to continue and increase, resulting in societies in constant conflict in which violence is normalised. If punitivism works, more people are jailed. That is its supposed indicator of success. In fact, this is a measure of failure: prisons exacerbate violence and the precarious conditions within them are perfect breeding grounds for recidivism.

It is worth setting out the differences between the anti-carceral and anti-punitive movements. As the name suggests, the first focusses on the idea that prisons should be shut, as the vast majority punish poor, racialised people who have committed minor crimes. Prisons, the argument goes, do not act as deterrents to crime, and neither do they prevent recidivism or redress any harm.

Anti-punitive perspectives, meanwhile, see justice as the production of mechanisms designed to prevent criminal behaviour. Given finite resources, prevention is prioritised

over punishment. When crimes occur, efforts are concentrated on redressing the harm done and applying alternative sanctions, with prison reserved as the last resort for only the most serious acts.

While it may seem contradictory, impunity is among the consequences of punitivism, because the more crimes need to be punished, the less institutional capacity is available to investigate and prosecute them with the necessary guarantees.

**“The resources being spent on punitive mechanisms are, by extension, not being invested in other social areas, deepening the inequities and risk factors that cause criminal behaviour to continue and increase”**

It is worth asking whether anti-punitivist approaches increase the risks of secondary victimisation, lack of protection and abdication of responsibility by the state. In my view, the same solution still applies: to prevent this, efforts must be made to distinguish between different types of act, while at the same time expanding the possibilities of justice.

Certain acts are of such gravity and social impact that they deserve punishment, which may in some cases be jail. Such acts include homicide, femicide, kidnapping, enforced disappearance and rape. And it is to ensure that such behaviour can be penalised (and, therefore, deterred) that other types of justice should be used for less serious acts.

### **Punitivism in numbers: Mexico**

I will use my country, Mexico, as a point of reference. According to figures from the National Institute of Statistics and Geography (INEGI),<sup>[1]</sup> in 2021 28,1 million crimes were committed against 22,1 million victims. That is 17% of Mexico's population. However, in 93% of cases, the crimes were either not reported or judicial proceedings were not begun. Of the remaining 7%, only 1,1% ended in penal consequences.

The main problem with punitivism is that by not establishing priorities, impunity increases and aggressors are less likely to take responsibility. When all crimes are serious, none is. When justice systems are obliged to prosecute and try for robbery, marijuana possession, enforced disappearance and homicide, it is highly likely that they will concentrate on punishing the first two, which are usually easier to investigate and are committed by people with fewer resources.

**“Impunity is among the consequences of punitivism, because the more crimes need to be punished, the less institutional capacity is available to investigate and prosecute”**

Taking the 28 million crimes INEGI estimates were committed in 2021 as a starting point, if 10% of perpetrators are punished with imprisonment, that translates to over 2 million people going to prison and levels of impunity that remain above 90%.

So, the way to prevent more victims is not by strengthening the traditional justice system, it is by reducing crime. Then, the state can more effectively punish the most serious crimes with jail, while addressing less serious behaviour in a differentiated manner that facilitates redress for any harm. Among other things, this means ensuring that aggressors have the economic resources to compensate for the damage caused.

### **Impunity in gender-based and sexual crime**

Feminist positions may vary, but they agree on a central agenda: violence is the common denominator of what we reject. We differ, however, on the right way to address this violence.

When addressing gender-based and sexual crimes, punitivist approaches tend to emerge. Certain feminists demand prison not only for femicide, injury and rape, but also for behaviour that may be considered less serious, such as sexual harassment, digital violence and a parent refusing to provide food for children.

However, a growing movement opposes the view that all types of gender-based violence must necessarily be punished with imprisonment. Anti-punitive feminism argues that traditional justice involves the imposition of a patriarchal vision, since the means of achieving it – military, police, weapons, prisons, etc. – reproduce gender stereotypes and values that are associated with men, such as strength, aggression, toughness, control over the body and the power to subdue, resulting in the replication of violence. Hence, new visions of justice are proposed that call into question the predominance of merely punitive justice.

**“Anti-punitive feminism argues that traditional justice involves the imposition of a patriarchal vision, since the means of achieving it reproduce gender stereotypes and values that are associated with men”**

The contemporary public debate engages with both of these visions. Mexico’s recently approved “Olimpia Law”<sup>[2]</sup> is one example. In short, this law targets anyone who records, photographs or creates real or simulated photos, videos or sexual materials, and those who disseminate them without the prior consent of the person involved or by using deception. The punishment is imprisonment.

Our belief, as anti-punitive feminists, is that the high levels of impunity mean that while some – very few – men may be punished with imprisonment, the sexist structure upholding these crimes will not be altered. It may in fact be strengthened, as other mechanisms that could impede it are not deployed. In other words, neither prevention nor redress will be achieved.

If aggressors do not feel threatened because the chance of punishment is very low they will not be deterred from their behaviour. Since the only form of justice sought is imprisonment and perpetrators do not, in the main, go to jail, the victims will not receive the intended justice and re-victimisation will continue.

So, we can keep demanding an end to impunity, but the state has spent billions on a justice system whose failure has been proven, while violence increases and prevention is neglected.

**“More than the deprivation of liberty, it is cruel prison conditions that are the real punishment: overcrowding, daily violence and corruption, a perfect formula for increasing cycles of violence”**

There is another possibility, albeit remote: that aggressors end up in prison for about four and a half years – the average sentence for these crimes. Every day in prison they will face attacks and food and resource shortages, a perfect formula for increasing cycles of violence. This may mean that similar or more serious behaviour will be repeated with new victims when they leave.

More than the deprivation of liberty, it is cruel prison conditions that are the real punishment: overcrowding, daily violence and corruption. For the incarcerated, prisons are mostly places that lack real employment opportunities that provide sufficient wages to make amends for the harm done, they lack access to culture, emotional care and drug detoxification programmes, meaning the state itself creates the necessary conditions to perpetuate criminal conduct.

The anti-punitive feminist approach therefore proposes tackling impunity by opening up the possibility of pursuing types of justice that differ from the patriarchal formula that justifies cruelty and the use of force and whose result – as we know – is yet more violence. It is thus committed to strengthening the implementation of restorative justice. For many victims, it is of paramount importance to establish personal requirements for redress that are in line with their needs – for example, that the aggressor assume responsibility and acknowledge their mistake or apologise publicly. Meanwhile, the state must conduct effective monitoring and follow-up so that this behaviour is not repeated, which should include therapy, not approaching the victim,



community work and social reintegration without violence.

### **A new approach to justice**

A new model of justice that takes a preventive and restorative approach must distinguish between behaviour that causes high social impact and serious human rights violations and illegal behaviour that can be resolved by alternative justice mechanisms. Priority must be given to what needs pursuing most urgently. Logically, this should be what is most serious, what it is in our interests for punishment to dissuade. And we must distinguish between consequences, authorities and means of prevention and redress.

**“A new model of justice that takes a preventive and restorative approach must distinguish between behaviour that causes high social impact and serious human rights violations and illegal behaviour that can be resolved by alternative justice mechanisms”**

Returning to the example of Mexico, of the 28,1 million crimes committed in 2021, 60% was property crime: robbery, fraud and extortion. Following the criminal law principle that the penalty should be proportionate to the harm caused, punishment for crimes that cause material damage should not be inflicted on the body, in other words, by placing the culprit in jail. Similarly, in crimes related to property damage (the majority, 33%) the main interest of both the victim and the state should be to recover what was stolen and to prevent the crime being repeated. In this type of crime, punishment with prison is thus not only useless, but counterproductive. It will further impoverish both the perpetrator and their family, while increasing the risk of recidivism.

One proposal is to set up an alternative property justice system that focusses on redress made while remaining at liberty, such as community work, which in turn

facilitates integration and social justice in order to effectively prevent recidivism.

In short, a new approach to justice is needed, in which:

1. The primary aim of justice is to ensure that crimes do not occur. From this perspective, priority should be given to investing resources in prevention rather than punishment. A legal framework would need constructing that promotes preventive approaches that acknowledge multi-causality and therefore take a comprehensive, transversal, specialised and gender-sensitive approach.
- Behaviour that causes high social impact and serious human rights violations should be distinguished from illegal behaviour that can be resolved by alternative justice mechanisms. Once this is achieved, the state's punitive activity can be concentrated on effectively investigating and punishing the most serious crimes.

**“The current punitive justice model does not deter the commission of crimes, penalise in a differentiated way, provide efficient methods of alternative justice, or redress harms”**

- The responses to crime must change. In the traditional approach, a crime is an offence against the law that requires punishment by the state. In restorative justice, a crime is an offence against the victim and the appropriate response is to try to make the perpetrator take responsibility for the harm done and, as far as possible, restore the well-being of those involved, including society.
- Recognise that jail is a means of punishment, not social reintegration. Imprisonment and its consequences do not prevent recidivism, but deepen the cycles of violence for those deprived of their liberty, as well as for their families and social environment. It should, therefore, be the last resort of the justice system.

In conclusion, it is important to underline that the current punitive justice model does not deter the commission of crimes, penalise in a differentiated way, provide efficient methods of alternative justice, or redress harms. To change the method and establish new premises for social coexistence, the focus of justice must change. To move from a failed justice system to one that allows social reconciliation, the patriarchal historical forms of combatting violence must be questioned. That means questioning prohibition, weapons and punishment as means of achieving a justice that rarely transpires. Committing to anti-punitive methods can do much more to eliminate violence than punitivism because it involves diversifying strategies and actions in order to strengthen justice and peacebuilding.

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[1] INEGI. *Encuesta Nacional de Victimización y Percepción de la Seguridad Pública*, 2022.

[2] The Olimpia Law is a set of legal norms that aim to recognise digital violence and punish crimes that violate people's sexual privacy using digital media, also known as cyberviolence. These norms are contained in the General Law on Women's Access to a Life Free of Violence (published in the Official Federal Gazette February 1st 2007 and amended on December 17th 2015) and the Federal Penal Code.

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## About the author

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## Photography

Agents of the Puebla State Police (Mexico), April 20, 2020. Author: Alejandro Munoz (Shutterstock).

## INTERVIEW

## Interview with Howard Zehr, pioneer of the concept of restorative justice

Sandra Martínez Domingo and Eugènia Riera Casals

International Catalan Institute for Peace

**Dr. Howard Zehr, distinguished Professor of Restorative justice at the Center for Justice and Peacebuilding, Eastern Mennonite University, is considered one of the pioneers of the restorative justice field. He is author of many books and articles including *Changing Lenses: Restorative Justice for Our Times*; *The Little Book of Restorative Justice*; and most recently *Restorative Justice: Insights and Stories from my Journey* (2023).**

**From a retributive justice view, crime violates the law and the state. Still, from a restorative justice approach, crime violates people and relationships. One focuses on “who has done it?” and the other focuses on “who has been hurt”. However, you say that they are not the polar opposites we often assume. Could you please develop this vision?**

As philosophies, retribution and restoration have much in common. Both argue that those who cause harm must be treated as a moral agent. Both argue that the “victim” is owed something by the “offender.” Both intuit that there is a kind of balance that must be restored, but they differ significantly in what is thought to restore that balance. Retribution argues that punishment – the infliction of harm – will restore a balance. Restorative justice argues punishment is often counterproductive and unsatisfying and what will create a sense of balance is a process of restoration. That usually involves the person who caused harm taking responsibility and making an effort to “make things right,” even if it is only possible to do that symbolically.

This has implications between restorative justice. I'm convinced that the need to "balance the score" is intrinsic to human beings, and there are both healthy and unhealthy ways to attempt to achieve this balance. If peacebuilding efforts do not take this into account, they are likely to fail.

**Restorative practices are often accused of being utopian. It is common to think that restorative justice is about rehabilitating the offender or a "get out of jail free card". It is also frequent to see it appropriate only for comparatively "minor" offences. In this magazine, we synthesize what restorative approaches are, but we would like to discuss more about what they "are not". Could you demystify which you consider the three most common assumptions?**

One common misunderstanding about restorative justice often promoted by the media is that restorative justice is about forgiveness. While research has suggested that "victims" and "offenders" are often less hostile and have fewer misunderstandings about each other after a restorative process, whether they want to move toward forgiveness is totally up to them; it is not on the agenda of a reputable restorative justice practice. In cases of harm such as crimes, restorative justice processes are provided as an opportunity for victims to express themselves and identify their needs, for offenders to be given encouragement to understand and take responsibility, and as a way to empower participants to tell their stories, express their feelings, and decide outcomes. If they choose to move in a direction that seems like forgiveness, that is totally up to them.

Another common misunderstanding is that a restorative justice encounter with the one you have harmed is an easy out. It is not; many who have caused harm have admitted that jail or prison was easier than having to face up to the person they harmed and hear about the harm they caused.

A third misunderstanding is that restorative justice processes are only for less serious offenses. In fact, the processes are often most impactful and effective for more serious violations.

**“One misunderstanding is that restorative justice processes are only for less serious offenses. In fact, the processes are often most impactful and effective for more serious violations”**

On the other end of the spectrum, a common misunderstanding by its advocates is that restorative justice, at least as we know it, is a beautiful thing with no downsides and a solution to everything. Maybe in some form it could be an answer to many problems, but we definitely don't know enough yet to propose a full systems approach. And as I say repeatedly in my new book, like all ideas, it can be – and is being – hijacked and misused by some.

**In fact, your recent book *Restorative Justice: Insights and Stories from My Journey* (2023) is a powerful guide demonstrating how restorative practices can be extended to all human interaction—through respect, relationships, and responsibility, along with humility and wonder. One of the chapters includes the signposts for applying principles, published in *The Little Book of Restorative Justice* (2002), which can be used as guides along the way. After so many years of experience, which of them do you consider the most difficult to develop and which are more accessible?**

I'd say that, at least for me, the most difficult to fully understand, embrace and put into practice is number 10: “Sensitively confront everyday injustices, including sexism, racism and classism”. These things are so deeply engrained in us that they are very hard to recognize and act on. Perhaps the easiest or most accessible principle is number 9 about “not imposing my “truth” on other people” – but that may just be my personality. Maybe number 1, “taking relationships seriously”, is the most accessible in general.

Restorative justice is a relational, people-centered understanding of justice. It acknowledges that each of us exists in a web of relationships with others. Our actions impact others and their actions affect us. With this in mind, we are encouraged to treat

one another respectfully and to take responsibility for our actions. Restorative justice seeks to treat all parties respectfully, balancing concerns for everyone.

**You point out that society's laws for handling crime have often resulted in increased violence, mass incarceration, and unresolved human cost. So, what do you think are the current leading political barriers to defeating punitiveness?**

In my country at least – the United States – everything has become so politicized that it is difficult to have a respectful discussion about things that seem as simple as whether one should wear a mask to prevent the spread of disease.

The US is said by some researchers to have the most politicized criminal legal system in the western world. This is due in part of the fact the key actors are elected -such as prosecutors and many judges. Given that crime policy is such an easy stick for politicians to use to beat each other, this makes for a real obstacle to movement away from punitiveness.

**“Restorative justice is actually a kind of westernized and maybe modernized formulation of what many traditions and cultures had been doing, at least in part, for centuries”**

**On the other hand, which experiences or countries would you like to highlight as good examples of restorative lenses?**

In my retirement, I am no longer trying to keep up. Anyway, a promising application within the criminal legal system being pioneered in some U.S. communities draws from New Zealand's innovative approach to youth justice. Instead of prosecution, cases are handled through a restorative conference involving the person who caused the harm, the ones harmed, and significant individuals in the lives of these people. Plans are worked out to address the harms as well as the needs of the parties involved and prosecution is avoided. Unlike many approaches here in the US that happen within the



system (e.g. by referral from a judge or prosecutor), the intention here is to address problems and needs and avoid the stigmatization and other negatives that happen within the criminal legal system.

The focus of my work has been in the criminal legal arena, but there have been many exciting applications in other areas such as schools, the workplace, the medical field, etc.

In this sense, other example in which I have been involved a bit as a consultant, is the use of restorative justice as a framework for addressing past wrongs committed by historical museums. Previously-marginalized communities are being brought into the conversation and highlighted. Artifacts that were taken from communities without authorization are being returned. Distorted histories are being corrected. Museum practices are changing as a result of this work.

**You always point out that restorative justice is not a new or a North American development; it greatly benefits earlier movements and various cultural and religious traditions. Could you summarize the precedents and roots of restorative justice? In this sense, how does it feel to be called the “grandfather” of restorative justice?**

I once asked the author who gave me the title “grandfather” why they had done so. They replied that because I tended to support efforts, making suggestions when asked, rather than imposing my ideas and will, grandfather seemed more appropriate than father. I definitely would object to “father” because I didn’t invent restorative justice. Rather, I synthesized a variety of ideas and experiences from others and tried to communicate them in an accessible way. Originally, however, I knew little about any traditions except my western ones. Later I came to realize that restorative justice is actually a kind of westernized and maybe modernized formulation of what many traditions and cultures had been doing, at least in part, for centuries.

In my original synthesis, I was drawing heavily upon the Christian tradition, European history and movements in the US such as the civil rights and victim rights movement, prisoners’ rights, community mediation, etc. When I began teaching at the Center for

Justice and Peacebuilding, my graduate students from all over the world began to find resonance in their histories, cultures and religious traditions. There are so many roots that I cannot begin to summarize them here!

**In 1996 you published *Doing Life*, a book of photo portraits of individuals serving life sentences without the possibility of parole in Pennsylvania prisons. Your goal in *Doing Life* and in others, such as *Transcending*, has been to humanize those you interviewed and photographed so that we see and listen to them without our stereotypes getting in the way. How would you explain this experience with a restorative lens? What has photography contributed to your way of understanding restorative justice and vice versa?**

Intrinsic to restorative justice is dialogue with one another, and I see the concept of restorative justice as an invitation for communities to dialogue about who we are, what are values and traditions are, what are needs are, etc. Restorative justice also recognizes the therapeutic and relational value of narrative, of story-telling.

My photography and interview projects have been intended to allow people – those who have been harmed, those who have caused harm (even pickup truck owners, in my book, *Pickups: A Love Story*) – to present themselves respectfully and to tell their stories to others who may not know them or their situations. I have tried to conduct these projects with same values I advocate for restorative justice – respect, responsibility, relationships. My goal with them, as with my work in restorative justice, is to encourage thought and discussion by allowing us to encounter real people rather than symbols and stereotypes.

**“Intrinsic to restorative justice is dialogue with one another. It also recognizes the therapeutic and relational value of narrative, of story-telling”**

Approached in a “restorative” way, I have found that photography can help us see one another as persons, can build bridges, and can even help those photographed to get

new insights into themselves. As with restorative justice processes, such photographic encounters are at best a collaboration between the photographer and the person photographed. I am convinced – and research affirms this – that communication is most effective when it involves visuals as well as words.

**Twenty-five years later, in *Still Doing Life* (2022), you revisited many of the same individuals and photographed them in the same poses. What was the main objective of this project, and which have been the main learnings?**

I very much wanted to see how these individuals were doing, how they were coping, how they had changed or not, what they had learned over the 25 years since I last talked with them. I enjoy exploring how we change and how we remain the same visually and psychologically as we age. These visits allowed me to renew old acquaintanceships and friendships, to talk about these issues, and then to do their portraits in poses that were somewhat similar to the poses in the original portraits.

When I revisited these individuals, I was not thinking that a book would be possible. However, by teaming up with my friend and colleague Barb Toews, and with the enthusiastic support of the publisher, we were able to shape a book that helps to humanize life-sentenced prisoners and their situations in a way that might provide insight into how people cope in such situations and encourage conversation about related policy issues. I was pleased that the first public webinar about the book was sponsored by a victim advocate office and presented voices and photos from my books of both life-sentenced prisoners and crime victims. Personally, perhaps the most important reminder from these books is that one can find ways to grow and flourish under the most trying of circumstances. Hope is essential.

**“Forgiveness is not on the agenda of a reputable restorative justice practice. That point is totally up to the participants”**

**In this issue, we have reflected on the relationship that exists, or should exist, between peacebuilding, security and justice. What do you think about this intersection?**

Restorative justice is in essence a peacebuilding approach to justice. My former colleagues at the Center for Justice and Peacebuilding Dr. Lisa Schirch and Dr. Barry Hart have written that peacebuilding is essential for security and that it is an overall approach in which fields such as restorative justice and trauma healing play an important part. At the Center for Justice and Peacebuilding we've understood the peacebuilding field as a wheel made up of a variety of sub-fields or "spokes" such as trauma healing, conflict transformation, and restorative justice as well as organizational and community development.

Peacebuilding is about building and maintaining healthy relationships and mending them when they are broken or threatened. Restorative justice is a philosophy, a set of principles and values that can guide us in many situations, including those where no "program" or fully-restorative process is possible. As I have long argued, it is a "lens" through which we can consider how we want to live together in a web of healthy relationships.

## **Photography**

Howard Zehr.