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Neoliberalism and the Politics of Imprisonment

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Neoliberalism and Neoliberal Penalty

Over the last forty years, Western states have seen unprecedented growth in their imprisonment rates. The synchronic rise to hegemony of neoliberal dogma and policy has prompted a wealth of scholarship seeking to uncover the precise relationship between neoliberalism and imprisonment. One important challenge to this endeavor has been the variegated concept of 'neoliberalism' itself. Since the mid-1970s and the post-industrial restructuring of Western economies, neoliberalism, with a doctrine of the free market at its core, has come to dominate the objectives and processes of government, eroding Keynesianism and welfarism at home and fostering the shrinking of the state (especially with regard to regulation) in weaker economies. There has, however, been considerable disagreement within neoliberal intellectual currents about how an unfettered market is best achieved and, to this end, the desirability of market regulation and the appropriate size and interventionism of the state (Gamble 2009).

Relatedly and somewhat similarly, whilst neoliberal penalty has typically been characterised as comprising at its core the increased use of punishment (and particularly of imprisonment) – alongside the commercialisation of criminal justice and the retrenchment of welfare – at least one alternative conceptualisation of neoliberal penalty has had as a key tenet instead the reduction of imprisonment in favour of monetary fines (even if the latter conceptualisation has not achieved ascendancy; see further O'Malley 2015). As we elaborate below, moreover, a host of scholars have emphasised the contingent and multifaceted manifestation of neoliberal penalty across jurisdictional spaces and times. There has thus by no means existed a consensus about the meaning of 'neoliberal penalty', even if it has attracted ever greater scholarly study.

Our goal in this chapter is to provide an overview of the criminological debates that have flourished in recent years concerning the significance and validity of the notion of 'neoliberal penalty'. Starting first by briefly acknowledging the political economy forebears of neoliberal penalty scholarship, we move on to outline key dimensions of the so-called 'neoliberal penalty thesis', before critically reviewing some of the major qualifications and lines of critique that have been raised in response. In particular, we address challenges that have been expressed regarding: the accuracy and implications of the claim that there is a disconnect between crime and incarceration; the need for broader measures of state punitiveness that go beyond imprisonment trends; the importance of domestic institutions in mediating the impact of neoliberalism on penalty; and whether trends in economic regulation and welfare provision have been interpreted correctly. In our conclusion, we reflect on the current state of neoliberalism and, drawing on literature exploring dimensions of penal change in the US today, consider the continuing relevance of the concept of neoliberal penalty.

The Origins of the Neoliberal Penalty Thesis

Scholarship on the relationship between neoliberalism and penalty has emerged from a longer tradition of research into the relationship between systems of production and modes of punishment, a tradition whose inception is typically credited to Rusche and Kirchheimer and their seminal book *Punishment and Social Structure* (1929 [2003]). Rusche and Kirchheimer argued that the mode and degree of state punitiveness in a society is largely determined, not by crime trends, but by economic and fiscal forces and, for this reason, trends in state punishment tend to reflect the internal relationships of a society's dominant system of production. Thus, they argue, the advent of industrialisation in the 1800s brought with it the imperative of the construction of a mass, compliant labour force, and towards this end the prison (alongside workhouses and poorhouses) made an important contribution (see also Melossi and Pavarini 1981). Governments sought to ensure that welfare assistance never 'rewarded' welfare recipients; in accordance with

the principle of 'less eligibility', assistance would not be of a level that would raise recipients above the standards of living of the working poor. So, too, imprisonment would be such an undesirable fate that it would deter workers from refusing to work under poor conditions although imprisonment, through its enforcement of discipline, could also support the labour market by 'rehabilitating' criminals into docile workers. Ultimately, the severity of punishment would depend on the size of surplus labour in a society; as and when a society's pool of surplus labour increased, harsher forms of punishment would ensue (see further De Giorgi 2012).

Where prior political economy scholarship on penalty has received criticism for being overly reductionist, determinist, and instrumentalist, research on the relationship between neoliberalism and penalty more particularly has sought to pay due recognition to both the multiplicity of factors shaping the form and magnitude of state punishment, and the diverse outcomes produced by punishment across society in terms symbolic as well as material. Characterisation of scholarship on the relationship between neoliberalism and penalty is complicated by the very broad range of criminological approaches that have acknowledged its importance. For some writers, such as Garland (2001) and Simon (2009), neoliberalism has been a key backdrop to but not the cause of intensification on penal fronts. For others, such as Lacey (2009), neoliberalism has been a driving factor but one that has been mitigated by a variety of political and institutional factors (see also Sutton 2012). Then there are those writers – most notably, Wacquant (2009a, 2009b)– who have placed primary emphasis for penal developments on neoliberalism as ideology and as policy, even whilst acknowledging the complexity of factors that shape developments in penalty. And finally, there are those who have explored neoliberal penalty in all but name, such as by highlighting the way in which changes to social structures of accumulation (i.e., with the advent of neoliberalism) can shape imprisonment trends even while the dominant means of production (i.e., capitalism) remains constant (Michalowski and Carlson 1999), and how the intensified use of imprisonment as compensation for the decline of welfarism has

served to both hide and ultimately to expand the pool of unemployed labour (Western and Beckett 1999).

The Neoliberal Penalty Thesis

In the development of a clear and cogent thesis concerning the relationship between neoliberalism and penalty, Wacquant has played a key role, not only within his work but also through the broad and sustained scholarly debate he has thereby helped to galvanise. Wacquant has insisted on the distinctiveness of punishment under neoliberalism from that under capitalism per se, arguing that state punitiveness has been, and continues to be, at its most acute within jurisdictions in which neoliberalism has advanced fastest and furthest, rather than in countries that have more generally been subject to the transformative dynamics of 'late modernity'. This point is one that has also been made by Cavadino and Dignan (2006), who have drawn attention to the relationship between punishment, levels of socio-economic inequality, and welfare provision, across a range of national jurisdictions.

For Wacquant, neoliberalism entails the articulation of four specific institutional logics: economic deregulation, welfare retrenchment, the cultural trope of individual responsibility, and an ever-more expansive penal apparatus. Rather being tangential to or a deviation from neoliberalism, Wacquant argues that punishment serves an essential function within it: managing the social reverberations of 'advanced social insecurity' that neoliberal policies generate amongst the lower and middle classes. At the bottom of the class structure, punishment works to contain the disorders stoked by the 'objective insecurity' of the unemployed poor and a flexibilised and welfare-lite workforce, and demonstrates a systematic social and ethnoracial bias as it neutralises, punishes and warehouses the 'urban (sub)proletariat (rather than disciplining it with a view to enhancing labour exploitability) (Wacquant 2009b; see, similarly, De Giorgi 2006). At the same time, 'punishing the poor' creates a convenient outlet for the 'subjective' insecurity experienced by the middle classes, 'whose prospects for smooth reproduction or upward mobility have dimmed

as competition for valued social positions has intensified and the state has reduced its provision of public goods' (ibid). Punishment of the lower socio-economic classes thereby provides a means by which neoliberal political leaders can compensate for legitimacy lost in pursuit of other social and economic policy goals (see also Cheliotis 2013).

Another key dimension of penalty under neoliberalism to have been explored by Wacquant is its transnationalism; indeed, for Wacquant, neoliberalism should be understood as a transnational political project, carried out by a global elite comprised of the senior executives of multinational corporations, high-ranking politicians, top officials of international governmental organisations (e.g., the IMF and the World Bank), and their cultural–technical experts (e.g., legal and media professionals), with their goal being to 'remake the nexus of market, state, and citizenship from above' (Wacquant, 2009b: 306–7). Moreover, according to Wacquant, it is actors within the United States that have been the progenitors and primary international disseminators of this neoliberal project of which the 'new "punitive common sense" is a crucial component (Wacquant, 2009a: 162; see further Ross 2013).

The importance of transnationalism to neoliberal penalty has also been elaborated by reference to international migration and the rise in punitive regulation towards it. Some have argued that since the 1970s, especially in Europe, undocumented migrants have been constituted as criminal subjects by 'prohibitionist' immigration policies and, whether through administrative detention or incarceration in conventional prisons, migrants' treatment has served to discipline low-wage and surplus labour at the same time as helping to divert and expend the anxieties of the region's middle classes (see, e.g., De Giorgi 2006, 2010; Melossi 2015; Cheliotis 2016). It has also been argued that the punitive treatment of migrants is a dramatic performance of sovereignty by neoliberal states seeking to shore up legitimacy they have risked in promoting the outward flow of jobs and inward flow of 'job-destroying imports' (from commodities to highly specialised or low-cost labour; Michalowski 2015).

Other scholarship on neoliberal penalty has focused on privatisation trends in the provision of imprisonment, focusing particularly but not exclusively on US-based developments. Neoliberal commitment to the privatisation of public services, with the purported intention of reducing strains on the public purse, has fuelled an expansion in private provision, even if – or, rather, because – public expenditure has in many cases increased in tandem with the burgeoning of corporate interests in this area (see, e.g., Gilmore, 2007; Bell 2011). Schlosser (1998) has argued, for instance, that the US has seen the rise of a ‘prison-industrial complex’, in which a set of bureaucratic, political and economic interests have collaborated to press for increased public spending on imprisonment, effectively fixing a need for a steady supply of prisoners entering the penal system regardless of the legal and moral illegitimacy of the compulsion.

The notion of a ‘prison-industrial complex’ has been subject to wide-ranging criticisms for exaggerating the significance of corporate interests in driving prison expansion in the US, and implying the existence of a conspiracy between business and political elites to subvert justice for profit. More nuanced accounts have pointed out that the country’s prison-building boom has served politicians seeking to stimulate weak local economies in their constituencies (even if such economies have not always benefited to the extent expected; see further Gilmore 2007), as much as it has rewarded the diverse array of businesses involved in the provision of imprisonment in the US. Gilmore’s account of the largest prison construction programme in the history of the world – in California, between 1982 and 2000 – shows how a concatenation of local, national and international developments produced surpluses of capital, labour and land, which local power blocs chose to invest in carceral expansion with a view to making financial and political gains (Gilmore 2007). Yet other writers have pointed to the fact that neoliberalism has not only driven privatisation in the form of expanding private provision, but also in the hybridisation of public prisons as they have contracted out the provision of select services (e.g., catering, security, medical and furniture supplies) to other firms, have themselves allowed private and state-owned firms to exploit their prisoners’ labour for profit, and have increasingly charged prisoners for costs

related to their containment (from room and board to medical expenses; De Giorgi 2015; see further Parenti 1999; Kilgore 2013).

Overall, although the volume and range of published research on the neoliberal penalty thesis has amply demonstrated its attractiveness, and whilst such research has arguably been valuable in terms of furthering scholarship on the political economy of punishment more broadly, the thesis has also faced a barrage of criticisms from a host of penological perspectives. It is to these criticisms that we now turn.

Crime and State Punitiveness

Although proponents of the neoliberal penalty thesis have so far tended to presume that rising levels of imprisonment have little, if anything, to do with trends in crime, official and other available evidence on crime trends in neoliberal and other contexts often suggests otherwise, thus casting doubt on the notion that neoliberalism is causally related to penal expansion (and social democratic arrangements to penal moderation) in a simple linear fashion. Lacey and Soskice (2015), for instance, have demonstrated that the US stands out from other similarly neoliberal economies not just in terms of its use of imprisonment, but also in terms of its officially recorded levels of serious violent crime. In much the same vein, international comparative research on rates of self-reported victimization has placed neoliberal England and Wales top and social democracies in Scandinavia the lowest, which is, as Nelken (2010: 335) suggests, 'just where you would expect them to be in terms of prison rates'.

It nevertheless remains possible that the general thrust of the neoliberal penalty thesis is salvageable so long as it can be demonstrated that state punishment under neoliberalism has risen at a substantially faster pace than crime itself (see, e.g., Lynch, 2007). Indeed, the argument can be taken a step further: insofar as crime is generated, maintained or exacerbated by neoliberal socio-economic policies themselves (because, for example, they deepen poverty and widen inequality gaps), then crime growth in neoliberal environments qualifies as one of the various self-inflicted

'crises' through which the neoliberal apparatus actually derives strength. In this vein, it has been argued that governing elites may twist to their own advantage what are essentially the criminogenic outcomes of neoliberalism, evoking concrete realities of criminal victimization to lend semblances of legitimacy to their distractive prioritization of crime in the public domain and, by extension, to the politically expedient punitive criminal justice policies they pursue in the name of security (see further Cheliotis, 2013).

Crime trends aside, critics of the neoliberal penalty thesis are also concerned about the fact that the punitive outcomes of neoliberalism are typically assessed by reference to imprisonment rates alone. Conceptualisations of state punitiveness that stretch beyond imprisonment, critics go on to argue, problematise the notion that the ascent of neoliberal socioeconomic policies has brought about an expansion and harshening of the penal operations of the state, whether because such conceptualisations indicate that levels and patterns of state punishment under neoliberalism do not necessarily represent a break with past experiences, or because they draw our attention to trends that may be taken to signify penal moderation.

Harcourt's (2010) account of different forms of detention in the US from the 1930s onwards, for instance, has shown that the rapid rise in the use of custodial punishment as of the 1970s was preceded by comparably high rates of confinement in mental institutions. This enables Harcourt to suggest that what is commonly referred to as 'neoliberal penalty' is actually not distinct to recent decades, insofar as the capitalist state has always sought to maintain order in the marketplace by criminalizing and locking away in one site or another any and all violators of the market. Newburn (2010: 344) meanwhile cautions (contra Wacquant) that, whilst imprisonment rates in England and Wales have undergone unprecedented growth since the mid-1990s, US-style 'zero tolerance' policing has largely been eschewed in actual practice, even if not in terms of political rhetoric.

Efforts to gauge state punitiveness solely by reference to rates of imprisonment, furthermore, have by no means necessarily yielded findings supportive of the neoliberal penalty

thesis. Indeed, there is evidence to suggest that prison rates can vary both between and within neoliberal economies. In the cases of Russia and South Africa, for instance, neoliberalisation in terms of their respective socio-economic arrangements has been argued to have coincided with a reduction in their use of imprisonment (Nelken, 2009). And in relation to the US, it has been noted that imprisonment has typically been much more prevalent in the South, especially as compared to the Northeast (Newburn, 2010).

It is possible to turn this line of critique on its head, however, and argue that a broadened conceptualisation of state punitiveness, one attentive to the array of institutions that may have punitive effects, would allow for unearthing evidence in support of the neoliberal penalty thesis. We shall return to this point later on.

The Role of Institutions

Even if one takes the neoliberal penalty thesis on its own terms, there is little clarity as to the precise ways in which public concerns about crime, however valid or constructed they may be, translate into punitive penal policies and practices. Ironically, important clues can be found in scholarship that has complicated linear cause-and-effect accounts of the relationship between the rise of neoliberalism and intensified state punitiveness, especially scholarship that has sought to trace the institutional bases of penal evolution in neoliberal and other contexts. Most famously, Lacey's (2008: 51-52) international comparative research suggests that if neoliberal economies are more likely to pursue punitive penal policies, this is in good part because they tend to have two-party majoritarian electoral systems. This is, on one hand, because such systems encourage parties to focus on attracting the 'floating' median voter through exploiting salient single issues such as crime and its control, and on the other hand, because they produce governments relatively unconstrained by the need to negotiate and compromise with the opposition (see also Miller, 2008; Barker, 2009; Lynch, 2010).

Institutionalist insights could be thought of as filling an important ‘procedural’ gap in the neoliberal penalty thesis but leaving its essential core intact. It is also possible, however, to interpret institutionalist findings as cautions against overestimating the generative role of neoliberalism in the field of punishment. The latter possibility is especially likely when institutionalist analyses highlight the historical embeddedness of penal policies and practices recently or currently observed in the context of neoliberal economies (see, e.g., Gottschalk, 2006). Viewed from this angle, neoliberal states may have actually been exploiting and building on existing penal infrastructures and techniques, just, in fact, as they may be aggravating ongoing penal strategies as a means of managing the reverberations of regressive socio-economic policies initiated in the pre-neoliberal period (see further Cheliotis and Xenakis, 2010).

These continuities and their outcomes are by no means insignificant. To the extent that they pertain, however, they are hardly expressive of the mono-causal efficacy neoliberal penalty scholars so commonly bestow, whether openly or implicitly, upon neoliberalism. Methodologically, moreover, they suggest that any account of the relationship between neoliberalism and state punitiveness must be incomplete unless sufficient consideration is paid to the mediating role played by local contingencies in general, and domestic institutional structures in particular.

Neoliberalism in Theory and Practice

Although, as we have seen, the penal efficacy attributed to neoliberalism has been questioned or at least qualified from a range of analytic angles, a priori assumptions regarding the existence and specific elements of neoliberalism as such have usually been taken at face value. Once, however, a distinction is drawn between the rhetoric of neoliberalism and its practical manifestations, there emerge a range of important contradictions—even, or perhaps especially, in the US, the presumed archetype of neoliberalism and its supposed originator and major exporter.

Upon close inspection, for example, both market deregulation and welfare retrenchment in the US turn out to be less self-evident than neoliberal penalty scholars have tended to portray. As

Harcourt (2010) argues, the spread and dominance of free market ideology should not be taken to indicate the degree to which free market principles are applied on the ground; in lived reality, the neoliberal market is subject to systematic state intervention through an extensive web of complex regulations and intricate rules. In Harcourt's view, the gap between neoliberalism-in-theory and neoliberalism-in-practice part of a political trick whereby evocation of the discourse of neoliberalism to describe its implementation serves to mask both the neoliberal state's own regulatory role in the market and the enormous wealth distributions occurring daily therein (see also Gamble 2009).

Soss *et al.* (2011) raise a similar point in relation to social welfare provision in the US under neoliberalism. In this case, too, the state is argued not to have abandoned its traditional interventionist role, despite its rhetoric essentially suggesting the contrary. Indeed, Soss *et al.* claim that the neoliberal state has actually expanded social programmes that target the poor, although this rollout of welfare provision has also been marked by important if subtle qualitative shifts. In particular, welfare programmes are no longer aimed at 'decommodifying' labour through aid that alleviates market pressures. The welfare system has instead been redesigned (at least in part according to penal rationales) to immerse the poor into 'new incentive systems, modes of pedagogy, and reformative experiences of market relations' (*ibid.*: 8) so as to press or otherwise incline them into accepting exploitative conditions of work in low-wage labour markets.

Implicit in these observations is the fundamental political problem of being unable to overturn or resist a given trend without knowledge of the forces that gave or may give rise to it in the first place. Unless, that is, one accurately charts the coordinates of neoliberalism, one cannot realistically expect to reverse or prevent its disciplinary effects, penal or otherwise. The problem is additionally compounded when misinterpretations of neoliberal rhetoric as actually existing neoliberalism in the context of a given country or jurisdiction are arbitrarily extended to account for penal and other developments in foreign environments. The obvious example here –and one commonly found in scholarship supportive of the neoliberal penalty thesis– concerns the

purported 'Americanisation' of the world, whereby the arch-neoliberal US is thought effectively to export their economic dogma and related policies around the globe (see, e.g., Wacquant, 2009a). Leaving aside the occidentalist undercurrent of this notion, it also obscures the fact that US-style neoliberalism, be it in the sense of an ideal type or an empirical reality, is problematically applied to states with very different economic trajectories.

That Greece, for example, has long known both insufficient provision of social welfare and widespread flexibility in labour relations is due to its stubbornly semi-peripheral position in the capitalist world economy. When neoliberalism proper did eventually emerge in the country, its role was largely restricted to exacerbating ongoing trends and tensions (e.g., public anxieties were further heightened following a rise in household indebtedness, itself the outcome of deregulation of both consumer and housing credit). Ironically, discourses from progressive circles that have sought to critique the continuing regression of the Greek economy by reference solely to its recent neoliberalisation in line allegedly with the US and other similar Western models, have risked deflecting attention from the culpability of local elites and deeply ingrained structural weaknesses of the national economy, as well as giving succour to nationalist agendas that conveniently locate the cause of all domestic malaise with foreign pressures (see further Cheliotis and Xenakis, 2010).

None of the above is meant to dismiss the utility of neoliberalism as a concept in penological analysis. It is clear, however, that greater attention needs to be devoted, first, to establishing the fact of neoliberalism, and then, to clarifying its precise contours, susceptible as it is to both quantitative and qualitative variation according to local economic history and other domestic or regional specificities. It is only once these analytic tasks are accomplished that one can proceed with gauging the degree and ascertaining the forms of neoliberalism's penal efficacy in different environments.

Conclusion: Whither Neoliberal Penalty?

One important but as yet unexplored conundrum hanging over the continued utility of the concept of neoliberal penalty is the fate of neoliberalism itself. Neoliberalism's future has received heightened critical scrutiny over recent years, primarily as a result of the financial crisis that struck the US and much of Europe between 2008-9, and the reactions of governments to these crises. On one hand, the crisis itself is argued to have provided incontrovertible evidence of the ideological and institutional failure of neoliberalism, particularly with regard to neoliberal faith in the self-correcting mechanisms of the market. On the other hand, the depth and persistence of commitment by Western governments to neoliberal principles appeared undone by the speed with which such governments were willing to openly abandon key tenets of the doctrine to intervene, with massive bail-outs and stimulus packages, so as to avert the collapse of banking and financial institutions in their countries (Birch and Mykhenko 2010). Although much analysis has argued that in the aftermath of the crisis it has effectively been 'business as usual' for neoliberalism (ibid; see also Gamble 2009), at the current moment of writing, doubts about the future of neoliberalism have been reinvigorated once more by the imminent arrival into office of an avowedly anti-free-trade US president. Trump's pledge to withdrawal from the Trans-Pacific Partnership free trade agreement (TPP) on his first day of office has been but one striking manifestation of the more general anti-neoliberal sentiment that is believed to have brought him to power, whose ramifications for the continuing neoliberal direction of US policy and, by extension, of international regulatory institutions and regimes, are now a matter of considerable uncertainty.

At the same time, although not in connection with the potential for and likely implications of a change in the present structure of accumulation of capitalist economies, questions have also been raised recently about the continuing relevance of the neoliberal penalty thesis itself. Some writers have pointed to evidence that prison populations have plateaued or have even begun to decline in the US. It has been suggested that this may be heralding a shift in penal practice that reflects crime drops and the fading of public memories of high-crime eras, as well as the pressures

of budget constraints that have made the ever-expanding use of confinement increasingly prohibitive (see, e.g., Greenberg and West 2001; Dagan and Teles 2014). Hopes and expectations have consequently been expressed that apparently emergent decarcerative trends in the US will not only persist, but will lead to the replacement of mass incarceration with parole and probation, the return of a rehabilitative emphasis in penal practices, or liberal modification along the lines of ‘Justice Reinvestment Initiative’ reforms (Martin 2016).¹ These are prospects that have been argued to have the combined potential to be ‘one of the most equality-enhancing institutional shifts’ of our times (Phelps and Pager 2016: 198).

As Aviram (2015b) has argued, however, signs of penal moderation in the US – from declining prisoner numbers to the closing of prisons and the reduced reliance on solitary confinement within traditionally punitive states – have not been accompanied by an overall move away from a ‘tough on crime’ mentality. Indeed, in other respects, there have been indications of continuing and growing state punitiveness. Half of the US states, for example, still saw increases in their prison populations between 2009 and 2013. It has been underscored that approximately 70 per cent of the US drop in imprisonment between 2009 and 2014 stemmed from the reduced use of imprisonment in California, which came about as the result of a policy change effectively forced on that particular state by the US Supreme Court in 2011 (Kubrin and Seron 2016; Simon 2015); the drop in imprisonment has thus been more case-specific than reflective of a general trend. Furthermore, whilst the drop in imprisonment achieved between 2009 and 2012 in the US represented a decline of less than 3% in the total imprisoned population, and the number of prisoners rose once more in 2013 and in 2014, thereby seeming to confirm the resilience of the trend in mass incarceration after all (Martin 2016; De Giorgi 2015).

¹ ‘Justice Reinvestment Initiative’ reforms have been formally intended to reduce prison populations and budgets by diverting funding away from prison construction and reinvesting savings in health- and social services-related programmes, and potentially also programmes relating to education, housing and employment, with a view to reducing recidivism (Martin 2016).

It has also been argued that the recent apparent decline in the US prison population has been more an exercise in the decentralization of corrections, and the diffusion of penal control, than an illustration of decarceration per se (Sundt et al. 2016). Cate (2016), for instance, points out that, notwithstanding fanfare given by NGOs, politicians and media outlets in the US to reductions in the number of juveniles sent to state-run correctional institutions, the size and treatment of the detained juvenile population across the country have, respectively, neither declined nor improved. Rather, responsibility for juvenile corrections has been devolved and dispersed from the state level to local and private authorities.

Beckett et al. (2016) also suggest that the recent enactment of more lenient drug and parole reforms in the US has actually subtly served to justify increasingly severe punishment for those who do not qualify for more lenient treatment under such legislative amendments. Likewise, Cadora (2014) has pointed to the way in which Justice Reinvestment Initiative reforms can work paradoxically to reinforce high rates of incarceration by producing minor successes that can nonetheless be interpreted as fulfilling reform goals in this area, ultimately forestalling pressures for more extensive decarceration (see also Gottschalk 2015).

Finally, optimistic prognoses for reduced state punitiveness have been argued to be fundamentally misplaced, not only because state correctional budgets have seen negligible reductions, but also, more importantly still, since state controls designed to monitor the poor and unruly have actually been expanding in the community, through the use of surveillance technologies and new programmes of supervision and psychosocial regulation (especially pharmacological interventions) rolled out in cooperation with non-profit actors (Martin 2016).

In sum, it seems that no matter how multifaceted and contradictory notions of neoliberalism are, the designation 'neoliberal penalty' still holds considerable purchase in analyses of penal trends in the US. Indeed, the relevance of this denomination is maintained whether penalty continues to evolve, as some have projected, towards greater devolution – a model that has been termed 'transcarceration' (see further De Giorgi 2015), the acme of which is embodied

by fully marketised prison environments found in Southern jurisdictions (see, e.g., Whitfield 2015) – or whether it transpires that, for the foreseeable future, the business of punishment continues in much the way that it has done over recent decades. What seems equally likely, moreover, is that the variety of neoliberal imperatives and their differential manifestation and implementation in distinct political and institutional settings will also continue to ensure diversity in penal practice internationally.

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