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Crime and punishment

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Introduction

The prison populations of western countries have grown dramatically over the past few years. All developed democracies are building new prisons and increasing expenditure on law and order enforcement agencies, particularly police and prison officers. This trend has been accompanied by a proliferation of measures aimed at hindering or repressing any one who might disturb the peace, such as prohibitions or restrictions on begging, curfews for teenagers and the increased use of electronic controls, such as video surveillance in public places and on transport services. David Garland² has interpreted this situation as a 'hysterical denial' before the law enforcing agencies' self-confessed inability to control crime and their consequent resort to strategies that place ever more responsibility for crime prevention on citizens and increasingly delegate the policing of public places to private security firms. However, this thesis is too crude. In western democracies, the number and categories of people considered outlaws and suitable for imprisonment has risen at such a rate as to constitute a qualitative transformation of criminal policies. Both governments and public opinion appear to believe that current circumstances require a much broader institutionalisation of citizens than was previously considered acceptable.

Zygmunt Bauman³ and Loïc Wacquant⁴ have recently argued that the spread of security related policies is closely related to the neo-liberal programme first adopted by New Right governments in Britain and the USA, and which is now presented throughout the western world as the necessary (or inevitable) response to globalisation. They regard the criminalisation of poverty by western states as the paradoxical outcome of their weakened capacity for social intervention due to the erosion of their political sovereignty by global pressures. The marked expansion of social control and the barbarity of its methods ultimately result from an ideology that champions the omnipotence of global markets. This chapter explores the link between the weakening of states and this change in criminal policies, and outlines their implications for individual rights.

1 Criminal policy in the era of globalisation

Drawing on Max Weber's well-known thesis, Ernest Gellner⁵ argued that the executive and legislative power of modern states rested upon three types of sovereignty: military, economic and cultural. Historically, the sovereignty of states cannot be separated from their capacity not only to defend their territories against challenges from other sources of order, both internal and external, but also to balance the accounts of the domestic economy and mobilise sufficient cultural resources to defend their individuality by giving their subjects or citizens a distinctive identity. Today the picture is quite different. The globalisation of financial markets is increasingly presented as an irresistible force with which states must comply, thereby relinquishing their hold on the regulation of the economy. This analysis of markets as irresistible has gone hand in hand with the ideology that the new world of mobile capital, where all state-created barriers have been removed, is bound to make everyone's life better.⁶ It has become a commonplace that the control of the economic system by markets is of paramount importance for the well-being of humanity and the stability of the world's social arrangements. According to the ideology of globalisation, instead of the economy needing to be made compatible with a given scheme of social relations, society should be regulated to facilitate the operation of markets.

This approach drastically reduces the room for politics. Political activity, defined by Claus Offe as 'the capacity for making and implementing binding collective decisions',⁷ has become a problem: the public discourse created by the ideology of global capitalism undermines the legitimacy of many choices that for over half a century have been traditionally acknowledged as the prerogative of states. In particular, the legitimacy of any state regulation of markets is being increasingly questioned: there is no longer a domestic market to regulate, the market is global and as such outside the state's power. Moreover, trust in spontaneous progress through the mechanism of the 'invisible hand' undermines any conception of the government's role in economic life. Deregulation, liberalisation, flexibility, the simplification of transactions in the labour and real estate markets, reduced taxation: all these factors tend to reduce state sovereignty to something merely nominal and to make its holder 'anonymous'. The trend is clear: the more the economy is taken out of political control, the less resources states have at their command and the less they can afford to exercise power – even when they are willing or supposed to do so.

As Bauman has emphasised,⁸ the emergence of new small, weak and powerless sovereign states is consistent with economic and financial globalisation. Far from hindering the new world society of the free circulation of capital, goods and information, the birth of small politically independent territorial entities with very few resources is indeed functional to its development. In a situation where the border between what is 'internal' and what is 'external' to a state is continuously shifting, the only function which seems bound to remain definitely internal is that of policing the territory and its population. There seems to be a

tendency to reduce state functions to their required minimum: namely, repressive power. Indeed, the new world order needs weak states for its preservation and reproduction: they 'can be easily reduced to the (useful) role of local police precincts, securing a modicum of order required for the conduct of business, but need not be feared as effective brakes on the global companies' freedom'.⁹

All the evidence indicates that the shift towards a judicial and prison management of poverty is more likely the more a government's economic and social policies are inspired by the neo-liberal 'privatisation' of social relations and the weakening of state welfare. 'Less state' in the social field, less economic intervention, apparently means 'more state' in the fields of law enforcement and policing: repressive justice policies are the counterpart of libertarian economic policies. Giving up the right to state welfare, let alone the right to employment (a non-temporary full time job with social security and a decent salary), is reflected in the obsession for reaffirming the 'right to security'. The increase in the resources devoted to maintaining public order compensates, above all symbolically, for the lack of legitimacy resulting from governments giving up economic regulation and the provision of social security.

2 From social contract to zero tolerance

From Cesare Beccaria in the eighteenth century to Hart and Rawls in the twentieth,¹⁰ liberal theories of punishment have attempted to combine the general deterrence of crime with due retribution against actual criminals. In eighteenth-century theories, criminal law was regarded as an expression of the general will. As such, it was believed not to discriminate unfairly against any member of society or privilege any particular interest. According to social contract theory, the liberal state's monopoly of coercion was justified solely to protect those rights that reflected the rational interests of every individual. Its role was to ensure every one respected the rights of every body else. The criminal law was broken only by a small group of people who, unlike most citizens, were incapable of following their own rational will and distinguishing right from wrong. Those who committed crimes, especially re-offenders, thereby showed they were not rational and did not deserve their rights. They had not developed the required degree of self-control to deserve the benefits of the social contract. Individuals were fully responsible for their own actions, for they were supposed to be free to choose and directed by their own rational motives. Punishment was the means whereby an individual, who went astray out of myopia, was returned to the path of virtue. The law concentrated only on the crime, applying a strict code of retribution: the personal or social conditions leading an individual to commit a crime had no bearing on the sentence.

These early liberal theories of punishment assumed a conception of individuals as owning themselves and freely choosing and taking responsibility for their own conduct on the basis of a calculus of its personal and social consequences. This account of human agency came to provide both the underlying

norm of the nineteenth-century liberal model of social order and the condition for its operation. Its 'actualisation' was to be achieved above all by a criminal policy that determined who and what to punish and how. As Foucault has emphasised, from the late eighteenth century in the USA and then little by little in Europe, it was realised that a stable liberal democracy required a set of institutions – penitentiaries as well as asylums, hospitals, schools and the like – capable of producing suitable citizens.¹¹ In particular, social control and criminal policy were deliberately aimed at reinforcing, and creating if necessary, the virtues of individual responsibility and self-discipline needed to cope with the impersonal social relations of the new urban and industrial environment. Deterrent criminal legislation, an efficient police force and a rigorous prison system that both stigmatised convicts and subjected them to a uniform, consistent and largely impersonal discipline, not only provided a practical means for controlling crime, but also reinforced a certain value system.

The deprivation of liberty was a revolutionary and apparently progressive approach to punishment, inspired by the values of the Enlightenment. It turned the traditional strategy of social defence upside down: changing the offender from an individual to be destroyed by death or torture to someone who remained an integral part of society, in spite of having broken its rules. Thus, punishment aimed at the criminal's reintegration into society. The key function of the 'penitentiary', it became the essence of the strategy of social control adopted following the advent of the capitalist mode of production. The penitentiary was viewed as the perfect instrument for turning the masses of former peasants migrating into the towns into industrial manpower. It became a place of forced socialisation and was structured according to the production model of the manufactory and, later, of the factory.¹² The penitentiary offered a theoretical and physical locus that allowed the liberal theory of punishment to be fully deployed. According to this theory, the best type of social defence required that the offender – the breaker of the social contract – paid damages to society through being deprived of a certain amount of liberty and subjected to discipline while serving his or her term. Only in this way could offenders be reintegrated into the texture of legal relations as docile subjects who no longer trespassed on property but were ready to earn a living by entering the market and selling their labour power.¹³

At the end of the nineteenth century, the framework of liberal criminal policy underwent a deep crisis. Liberal theories of order seemed unable to cope with the negative consequences of industrialisation. There emerged a widespread belief that the utilitarian account of agency, the unquestioned and vital basis of classical jurisprudence, should be abandoned. The metaphysics of interest, and hence of individual freedom and rationality, which was the premise of eighteenth-century economic and social theory, was replaced by the paradigm of the Positivist School. This model rejected the assumption that individuals possessed creativity and the ability to choose. Instead, it was premised on the idea that human beings had a given 'personality' or 'character'

that could be scientifically known and manipulated. Criminals simply possessed deviant or pathological character traits.

In the twenty years following the Second World War, a new criminological approach arose focusing on different modes of social control. Primary instruments of social control (like the school, the family and the organisation of leisure), often directly managed by the state, were privileged over the secondary (notably prisons). The new strategy mostly addressed marginal non-criminalised individuals, such as the elderly, children, the unemployed and underemployed, immigrants and minority racial groups. Through financial and other forms of assistance, especially social welfare, the state tried to gain their acceptance of the existing social structure. An attempt was made to reduce imprisonment (both in prisons and asylums) as much as possible and to develop alternative strategies for controlling individuals, such as probation and parole for criminals and care in the community for the mentally ill.

During the 1970s this paradigm also underwent a crisis. Not only was prison perceived as an ineffective means of social control, but parole, community care, fines and the like also no longer seemed able to achieve their primary goal of re-educating offenders. In the concluding words of a well-known survey of the early 1970s literature, it was felt that 'nothing works'.¹⁴ Early analyses of recidivism, which they regarded as the basic criteria for assessing the effectiveness of re-socialising measures, seemed to show that every strategy had failed. More generally, statistical evidence suggested that improving the living standards of the lower classes through state welfare did not in itself affect crime rates. These results led to a questioning of the aetiology of deprivation, that is, the theory associating deviance with subjective socio-economic disadvantage. A widespread perception emerged that a generalised improvement of economic conditions and a substantive enhancement of living standards had been unexpectedly followed by an increase in criminal activity. This view held true especially for that kind of criminality that had been thought to be closely related to social deprivation: street crime and petty offences.

The belief that evidence disproved a link between criminality and marginality ended up undermining the political legitimacy of both the pre-emptive and the re-educational strategies. This left a theoretical gap that still seems unbridgeable. For over two centuries every analysis of the failure and irrationality of the system of punishment had been made with a view to a proposed reform that would improve it. Such optimism has disappeared with the crisis of the notion of rehabilitation. Following the Second World War, this notion had provided the punishment of crime with both its goal and justification, legitimating it before public opinion. Now it seems to neither have a future nor make much sense.

As Castel has observed,¹⁵ current criminal policies are radically different from traditional ones. Today, coping with deviance no longer means singling out deviant agents to be disciplined or otherwise 'taken care of'. The legitimacy of punishing is again a self-evident given and is totally severed from the possible 'positive' impact on individuals it was thought to have when penitentiaries first

appeared. The demand, that was once prioritised, of institutions capable of sustaining and re-socialising their populations, seems to have become irrelevant. The policy of treatment or, more critically, disciplining, is now obsolete. Instead of being disciplined, the new poor, such as immigrants and marginalised people, and above all drug addicts, are merely contained and detained.

Punishment is no longer focused on rehabilitation but is simply a repressive measure designed to take the criminalised classes out of circulation. Its function is general prevention. It must act as a deterrent, with special prevention being limited to temporary detention. It is not intended to re-socialise but simply to incapacitate offenders – at least for a while. Punishment is mostly conceived of as a core set of physical material hindrances that make crime more difficult. A theory of preventing criminality, based on a view of criminals as socially, culturally, economically and biologically conditioned agents, has been supplanted by a discourse focusing almost exclusively on deviant behaviour and the environment within which it arises. The conception of agents as *supple matter*, developed by medical, psychiatric and criminological science as well as sociology, is likewise vanishing. Since agents are no longer seen as treatable transformable entities, their normalisation ceases to be the pivot of social control policies. The paradigm of these policies has changed: intervention in the space for action has emerged as the main strategy for preventing crime. Social control has been made independent of individuals and is associated with place, especially urban areas.

The most popular strategy of crime control of recent years has been the Zero Tolerance campaign promoted by the New York mayor, Rudolph Giuliani, and managed by the police chief, William Bratton. The theoretical bases of this criminal policy were laid by James Q. Wilson, perhaps the main authority of the New Right in criminology,¹⁶ and George Kelling, a political scientist, in an article which appeared in 1982. The article's very title, 'Broken Windows'¹⁷ suggests the authors' view that urban degradation, personal carelessness and criminality are closely related. According to their ecological-behaviourist account, when an urban environment is allowed to degrade, tolerating all sorts of spoiling, that environment will soon host real criminal forms of behaviour. The article's title derives from the example used to illustrate the theory. If someone is allowed to break a window in an abandoned building, without it being immediately replaced, all windows will soon be broken, thus triggering an escalation of illegal behaviour. Ultimately someone will trespass into the building, which in a short time will become a scene of vandalism. For Wilson and Kelling, urban degradation suggests a lack of attention by the authorities, thus encouraging the belief that illegal action can easily be taken, getting the community used to ever increasing levels of deviance and facilitating the emergence of criminal cultures.

The recipe against crime that this thesis is meant to suggest is clear: instead of the police simply trying to punish crimes after they have been committed, they should prevent them 'by protecting order'. Only by protecting order and

shared values, providing a sense of membership of the community, can cities be naturally defended against the emergence of criminality. The main task of the police should be the repression of behaviour that, while being merely petty offences, are annoying and make citizens feel they live in a degraded city. In order to fight against criminality all 'broken windows' must be removed from citizens' sight, that is, rigorous repression must be used against those who draw graffiti on shutters and subway walls or beg in an aggressive or annoying way, street prostitutes, drunks and drug addicts staying in public places, tramps, etc. It is worth remarking that the two theorists of zero tolerance seem uninterested in either the 'reasons' for deviant behaviour (whether it expresses social distress or points to problems to be dealt with or whatever) or whether these phenomena can be really eradicated from society. In their view, it is only the prevention in public places of 'disruptive' behaviour that matters.¹⁸

The thesis of Wilson and Kelling can be read as a behaviourist version of what Hart,¹⁹ in his polemics against Lord Devlin, Parsons and Durkheim, labelled the 'disintegration theory': namely, the theory that the task of criminal law, more than repressing and punishing harmful behaviour, is to defend social shared values. According to this theory, which rejects the separation of law and morals lying at the heart of liberal doctrine, failing to protect shared values by criminal punishment means that society – as Wilson and Kelling claim – runs the risk of disintegrating, losing its bonds, in another words, of becoming anomic. To the authors of 'Broken Windows', however, the values in need of protection are not the basic values of the social structure, those grounding the social contract in Locke's and Beccaria's theories: their protection is a by-product. What is to be secured directly is the external value of a clean and orderly environment for social interaction. Wilson and Kelling offer no criterion for distinguishing the permissible from the impermissible, orderly from disorderly public behaviour. This task is entrusted to the police, who are granted the status of the one legitimate interpreter of citizens' shared feelings.²⁰ Thus, the police come to express the genuine voice of a community scared of crime. It is up to them to repress behaviour that offends shared feelings. Whether this actually means that they offend legal rules, moral judgements or aesthetic beliefs is of no concern given the promise that this strategy guarantees security and the restoration of order.

3 Actuarial criminal policy and risk distribution

In the field of practice, this new approach to criminal policy means that a system focussed on individuals, the causes of their deviant behaviour and the possibility of their re-socialisation, is replaced with a system addressing whole social groups selected on the basis of the risk they pose to public security. Control strategies target not 'criminal' or 'deviant' individuals but 'categories of individuals' who ought to be the object of surveillance and deterrence. Individuals are only relevant to the extent that they fall under a category denoted by a

probabilistic assessment of the risk created by its members. Paradoxically, the crisis of the welfare state and the success of libertarian policies have led to a criminal policy governed by the same governmental and disciplinary logic that had previously characterised the organisation of welfare.

The new criminal policies involve the state giving up its role as the agent of security: the right to security is replaced by a policy of the socialisation of risk designed to bring it within acceptable levels and mitigate its effects. Factors jeopardising public security are managed in the same way the welfare state approached social risks and unemployment, through a scheme of social insurance. Hence the label 'actuarial criminology', that highlights how the new types of social control are grounded on the sorts of calculations employed by the insurance industry.²¹ This approach is based on a significant reconceptualisation of criminals: no longer are they either 'individuals inherently at risk' or 'in need of rehabilitation', they have become '*risk creating agents*'.²²

The insurance strategy hinges upon economically effective techniques for the rational management of risk. At its heart is the elaboration of a system for pricing risk factors, so that the costs of possible accidents no longer fall on affected individuals but are redistributed among all the insured. Like the welfare state, actuarial criminology assumes that within each community there are randomly distributed risk factors that cannot be linked to any single individual but can be statistically related to certain groups of people.²³ Thus, the insurance strategy involves a probabilistic and statistical quantification of the types and levels of risk for different social groups. Each type of risk can then be priced according to its frequency and seriousness. However, whereas the welfare state sought to share costs through universal schemes of social insurance, actuarial criminology adopts the neo-libertarian logic of the insurance market and effectively charges people according to the categories and degrees of risk to which their group is prone. Though all citizens may pay in monetary terms for crime prevention, members of the more risk creating categories of people also have to pay in terms of freedom and opportunity regardless of their own actual propensity to crime. The very logic of insurance rules out any inquiry into the risk posed by an individual agent. The system operates on the basis of a classification of agents: while these classifications are unjust, they return a profit in terms of security.

Actuarial criminology does not deal with individuals but with risk factors, namely, statistical relations among heterogeneous factors that make it more or less likely that a crime may be committed. It deconstructs agents, replacing them with a list of circumstances that risk allegedly stems from. Dangerousness appears as a mysterious and paradoxical notion, for it is an individual's inherent quality and can only be proved after she has committed a crime. The attribution of dangerousness is always hypothetical, it is a more or less likely relation between present symptoms and certain prospective harmful events. Repetition, too, is something that cannot be predicted or can be predicted only with a high degree of uncertainty. Since deviants are almost always unpredictable,

preventative measures are highly risky and hard to justify. Operators are often made to take action not in the light of objective data but out of the fear of being blamed for their inactivity should a deviant individual commit another crime. A conception of prevention confined to predicting a given occurrence appears archaic and unscientific. The goal of the new criminal policies is not to tackle an actual situation, dealing with and containing a given 'dangerous' individual, but the prevention of any possible occurrence of undesired behaviour. Prevention promotes suspicion to the scientific status of probability calculation. For an individual to be suspected, special outer symptoms of dangerousness are no longer required; it suffices to have those features security agencies count as risk factors, on the basis of statistical induction.

Possible 'injustices' resulting from the actuarial method are mentioned in the first document proposing a criminal policy of this kind in Europe: namely, the Floud Report,²⁴ drafted in England in 1981 during the Thatcher era. It acknowledged that any predictive judgement can make two mistakes: it may be a 'false positive' when it predicts an event that does not occur, or it may be a 'false negative' when it rules out in advance an event which does occur. The more 'false negatives', the less efficient the actuarial system and the less security it provides. 'False positives' always result in an unjust bias against the rights of an individual, whose prospective behaviour is not correctly predicted. For if a harmless person is imprisoned, a serious injustice is done with no benefit for public security. Not only is this risk cynically calculated, but it is candidly justified: new criminal policies are supposed to redistribute a burden of risk that the government cannot reduce and the best way of doing this is by the actuarial method.

This policy also may lead to sentences against two authors of the same crime being quite different in terms of the type and quantity of punishment inflicted. For the measure of punishment is not the offence but the presumptive indicators connected with the conduct, the circumstances of the crime, the groups the offender used to frequent: simply put, the class the offender falls into. For instance, according to the criteria of the new criminal policy, a 'pusher' of heroin from the Maghrib, an unemployed and homeless illegal immigrant, should be sentenced more severely, and be subjected to heavier cautionary measures, than an English cocaine 'seller' with a house and a family, who gives out cocaine at exclusive parties and takes it himself. For the former belongs to a dangerous class and this is sufficient grounds for differentiated punishment.

Thus, the rhetoric of unavoidable risks that need to be distributed in a socially acceptable way obscures that of equality which, following the Enlightenment, used to be one of the major legitimating grounds of punitive power. For actuarial criminology, individuals should be treated differently depending on the class they belong to. This approach is justified by the idea that the 'burden of risk' currently threatening everyone's life can only be dealt with at the level of whole categories of individuals. This argument seems to have become acceptable in nearly all western democracies: nobody seems to be asking whether classes of dangerousness are a ruse to cover up the revival of a census based

system of justice, or whether it is right to sacrifice equality, a principle the liberal tradition viewed for over two centuries as the main protection against abuses of the power to punish. Instead of segregating undesirable people with a view to their re-socialisation through more or less forcible correctional or therapeutic treatment, the new forms of population management attach a 'social fate' to individuals by virtue of how far they meet the market standards of competitiveness and profitability

A two-speed, dual society is appearing. There is the highway of people who satisfy the harsh requirements of economic competition, and there is the mean street of marginal people who are incapable of keeping pace. Such a dual society may be said to have always existed, but the distribution of individuals between the two sectors used to be theorised as the outcome of chance, depending on events. It was thought to result from markets and an individual's capacity for adapting and reacting to their logic, for staying in or re-entering if expelled. On the classical liberal view, criminal policy was the junction point of this system, segregating those unable to re-enter and trying, at least in principle, to enable them to do so after an intensive 'treatment'. The classification of people into classes defined by the statistical findings of epidemiological research draws a different image of society as a homogeneous space with predefined circuits. Instead of an unknown wild land, marginality becomes itself an organised social zone for those people that, owing to their social characteristics, appear to be unsuited to entering the circuit of economic competition.²⁵

Conclusion

New criminal policies reflect what Peter Gloz²⁶ has called 'the two-thirds society', where a significant quota of citizens is excluded from well-being, or the 'good life' and the political means for claiming it. Within welfare systems, the circuits of political and economic exchange systematically differentiate between interests protected by organisations with strong bargaining power, interests defended by associations without a strategic position and, finally, 'widespread' interests lacking any effective protection. Moreover, for over twenty years in Europe, and much longer in the USA, there has been the phenomenon of a mass migration of people from continental areas with high demographic rates and scarce, if any, development, desperately seeking the advantages of belonging to a 'prized' citizenship. This situation has led to a mass of economically and politically very weak people who are *de facto* excluded from the actual enjoyment of nearly every sort of right. As Galbraith²⁷ has argued, the guarantee of rights for majorities, together with the need for downsizing social security owing to the fiscal crisis of the state, has turned affluent democracies into 'dictatorships of a satisfied class': the rich, the wealthy, the affluent have always existed but, while in the past they were a minority, they are now a majority. Therefore, they are no longer forced to defend their privileges by promoting social mobility: they can afford immobility. Such

historical-social conditions have led in all western countries to the emergence of a what has been labelled an underclass,²⁸ a more or less extended social sub-class, often ethnically defined, deprived of legitimate access to available economic and social resources. It is depicted as dangerous and felt as a threat to urban security. There might be cynical joy in seeing how power finally drops the mask of the rhetoric of equality, but what we call (legal) civilisation is but a collection of masks everyone is supposed to wear, above all, the state leviathan.

Notes

- 1 I'm grateful to Richard Bellamy, Danilo Zolo, Monia Coralli, Francesco Vertova, Raffaella Tucci and Miriam Aziz for their comments on a previous version of this essay.
- 2 D. Garland, 'The Limits of the Sovereign State. Strategies of Crime Control in Contemporary Society', *British Journal of Criminology*, 4 (1987), pp. 445–71.
- 3 Z. Bauman, *Globalization: The Human Consequences* (Cambridge, Polity Press, 1998).
- 4 L. Wacquant, *Les prisons de la misère* (Paris, Raisons d'Agir, 1999).
- 5 E. Gellner, *Culture, Identity, and Politics* (Cambridge, Cambridge University Press, 1987).
- 6 A. Scott, 'Globalization: Social Process or Political Rhetoric?', in A. Scott (ed.), *The Limits of Globalization* (London, Routledge, 1997).
- 7 C. Offe, *Modernity and the State: East, West* (Cambridge, Polity Press, 1996), pp. vii, ix, 37.
- 8 Bauman, *Globalization*, p. 67.
- 9 Bauman, *Globalization*, p. 68.
- 10 C. Beccaria, *On Crime and Punishment and Other Writings*, ed. R. Bellamy (Cambridge, Cambridge University Press, 1995); H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford, Clarendon Press, 1968); J. Rawls, 'Two Concepts of Rules', *Philosophical Review*, 54 (1955), pp. 4–13.
- 11 M. Foucault, *Discipline and Punishment: The Birth of the Prison* (Harmondsworth, Penguin, 1977).
- 12 G. Rusche and O. Kirchheimer, *Punishment and Social Structure* (New York, Russell and Russell, 1968).
- 13 P. Costa, *Il progetto giuridico* (Milano, Giuffrè, 1974), pp. 357–78.
- 14 R. Martison, 'What Works? – Questions and Answers about Prison Reform', *The Public Interest*, 35 (1974).
- 15 R. Castel, 'From Dangerous to Risk', in G. Burchell, C. Cordon and P. Miller (eds), *The Foucault Effect. Studies in Governmentality* (London, Harvester, 1991), p. 288.
- 16 Wilson at the beginning of the 1970s wrote *Thinking About Crime* (New York, Vintage, 1971), which became a sort of bible of New Right criminology. He was adviser for security for USA president Ronald Reagan.
- 17 J.Q. Wilson and G. Kelling, 'Broken Windows. The Police and Neighborhood Safety', *Atlantic Monthly*, March (1982).
- 18 A. De Giorgi, *Zero Tolleranza. Strategie e pratiche della società di controllo* (Roma, DeriveApprodi, 2000), pp. 106–7.
- 19 H.L.A. Hart, 'Social Solidarity and the Enforcement of Morals' (first published 1968), in H.L.A. Hart, *Essays in Jurisprudence and Philosophy* (Oxford, Clarendon Press, 1983), pp. 248–62.

- 20 In another article, in 1989, Wilson and Kelling write: 'Like it or not, the police are about the only city agency that makes house calls around the clock. And like it or not, the public defines broadly what it thinks of as public order, and holds the police responsible for maintaining that order'. Lord Devlin, the target of Hart's polemics, at least entrusted jurors with this 'defining' role (see P. Devlin, *The Enforcement of Morals* (Oxford, Oxford University Press, 1965)).
- 21 F. Ewald, 'Insurance and Risk', in G. Burchell, C. Cordon and P. Miller (eds), *The Foucault Effect: Studies in Governmentality* (London, Harvester, 1991); De Giorgi, *Zero Tolleranza*.
- 22 H. Kemshall, *Reviewing Risk. A Review of Research on the Assessment and Management of Risk and Dangerousness: Implications for Policy and Practice in the Probation Service* (Croydon, Report for the Home Office, Research and Statistics Directorate, 1996), p. 35.
- 23 Ewald, 'Insurance and Risk', p. 195.
- 24 J. Floud, W. Young, *Dangerousness and Criminal Justice*, *Cambridge Studies in Criminology XLVII*, ed. Sir L. Radzinowicz (London, Heinemann, 1981); a comment by the author, Jean Floud, was published under the same title as the 'Report' in the *British Journal of Criminology*, 22:3 (1982), pp. 213–28.
- 25 Castel, 'From Dangerous to Risk', pp. 294–5.
- 26 P. Glöz, *Manifest für eine neue europäische Linke* (Berlin, Wolf Jobst Siedler, 1985).
- 27 J.K. Galbraith, *The Culture of Contentment* (Harmondsworth, Penguin, 1993).
- 28 The notion of *underclass* was made the centre of recent criminological debate by W.J. Wilson, *The Truly Disadvantaged* (Chicago, University of Chicago Press, 1987). It has, however, illustrious ancestors such as E.H. Sutherland's theory of differential associations (*Criminology* (Philadelphia, Lippincott, 1924)), C.D. Shaw and H.D. McKay's ecological theory of social disorganisation (*Juvenile Delinquency and Urban Areas* (Chicago, University of Chicago Press, 1942)) and the theories of cultural conflict.