PENAL INSTITUTIONS AND THEIR HYBRIDIZATIONS "IN ACTION"

Continuities and Discontinuities[1]

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Abstract

The introduction to this dossier traces the main divisions, ambivalences, and forms of hybridization that cut across and shape the criminal justice system, both in Switzerland and internationally. The text therefore invites us to question the relationship between the penal state and the welfare state, between punishment, rehabilitation, and risk management, and between prison and non-custodial sentences asking: how do these seemingly distinct areas empirically come together to constitute a "sociopenal continuum"? We discuss the theoretical relevance of the concept of hybridization for an understanding of the penal field, as well as the methodological tools useful for its analysis. Finally, we propose three forms of hybridization, in dialogue with the contributions to this dossier: the first form is apparent when two institutions pursuing distinct missions are called upon to collaborate in order to deal with the same population; the second emerges when two paradigms for intervention compete with each other within the same institutional framework, resulting in intertwining logics of action; the third can be observed in the trajectories of the population of criminal justice institutions, marked by a diverse range of measures for intervention (whether social, judicial, or therapeutic).

Keywords: *criminal justice institutions, sociopenal continuum, ethnography, hybridization*

Sentencing, punishment, and prison form the symbolic heart of the criminal justice system. Ever since the advent of the centralized rule of law, transgressing penal norms has justified the state's recourse to force in order to punish the guilty and deliver justice, both for the person wronged by the offence and for society more generally.[2] As early as the end of the nineteenth century, Durkheim emphasized, in *The Rules of Sociological Method*, that crime was "normal", in the sense that it exists in all societies and that its punishment reveals the existence of collective rules and morality (2010 [1895] 178–190). This relational and construc-

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tivist reading of the penal system,[3] which remains valid to this day, nevertheless has some limitations: it obscures the heterogeneous meanings and functions of sentences, the multiple paradigms underpinning criminal justice policies, and the diverse professions and institutions that embody, in the day-to-day, what we shall refer to here as the "penal field"[4].

The penal field is indeed an apparently hybrid space, in which competing logics and ambivalent developments intersect. The controversies that surround prison as an institution reveal the intensity of this ambivalence: for almost fifty years now, there has been both a political and a scientific consensus (Combessie 2009) that prison is incapable of meeting its alleged objectives – i. e. combatting the "problem" of delinquency – and yet, over the same time period, the use of imprisonment in response to criminal offences has increased exponentially worldwide (Garland 2001, Walmsley 2018). At the same time, and in reaction to criticisms of the carceral system, we are seeing a rise in "alternative" penal sanctions, although these have not replaced prison sentences. On the contrary, these alternatives to imprisonment are part of a system that goes hand-in-hand with prison sentences and forms a continuum of "sociopenal" management (Darley et al. 2013, Bugnon 2020, Fassin 2015). This expansion of the penal state is proportionate to, and fills the gap created by, the rapid retreat of the welfare state (Wacquant 2012) as we had come to know it, in Europe at least, during the post WW2-boom. Indeed, the welfare state is progressively giving ground to, or combining with, an economically liberal state that governs individuals through "responsibilization" and "skills activation". Its logics of intervention, first tested and disseminated in welfare policies and employment policies (Castel 1995, Schultheis 2004, Tabin et al. 2010), are also gaining ground today in the penal field (Fassin et al. 2013).

Analyses of penal justice and its "field" also speak, more broadly, to changes in sociopenal policies and the role of the state in managing its citizens. This dossier follows this same approach but also provides a renewal of "bottom-up" ethnographic approaches to analysises of the state. These approaches encourage a heuristic combination of interactionist and structuralist perspectives concerned with resituating institutions and actors within the social and power relations in which they are embedded. At the intersection of social problems, penal institutions, and deviancy, this dossier intends to explore how the hybridization of the penal state and the welfare state transforms criminal justice institutions, in the adult and juvenile systems alike. It also examines the impact of this hybridization on the forms of penal control deployed by the various measures used to deal with people who commit offences.

[3] "In former times acts of violence against the person were more frequent than they are today because respect for individual dignity was weaker. As it has increased, such crimes have become less frequent, but many acts which offended against that sentiment have been incorporated into the penal code, which did not previously include them (calumny, insults, slander, deception, etc.)".

[4] The notion of "field" is understood here as "a space structured according to oppositions" that "have to do with the division of organizational functions".

Between rehabilitation and risk management: international trends in the penal field

The measures implemented by the penal system are informed by competing paradigms regarding the meanings and functions of sentences. Historically, penal punishment was based on the ideas of retribution (or punishment) and rehabilitation. Over time, the latter has taken different shapes ranging from rehabilitation through work to normalization through psychological treatment. This paradigm based on punishment and rehabilitation began to be challenged at the turn of the 2000s by a new model for managing delinquency, based on risk assessment and risk management (Feeley and Simon 1992, Slingeneyer 2007). This model spread unevenly throughout the world depending on the region and on the types of apparatus in question, leading to a more or less substantial upheaval of the structures previously in place (O'Malley 2006, De Larminat 2014a).

In Switzerland, actuarial justice and the risk management model have not yet brought about any substantial changes to the penal system, which is still broadly speaking based on the dual aims of retribution and rehabilitation. Nevertheless, the creation of "commissions on dangerousness" and the arrival of "recidivism risk scales", especially in the German-speaking cantons, suggest that this model is beginning to gain legitimacy. When it comes to incarceration rates, Switzerland is below the European average (fewer than 80 prisoners for every 100,000 inhabitants) (Fink 2017). In terms of juvenile justice, the prevailing aim of protecting and educating young offenders was maintained in the recent reform of the Juvenile Criminal Code in 2007 (in terms of both substance and penal procedure) (Queloz et al. 2002, Bohnet 2007). It is important to mention, however, that some changes (extending the maximum period of detention to four years, and allowing sentences and measures to run consecutively) point to the tougher penal management of youths, albeit much less so than can be observed in other European countries (Bailleau et al. 2009).

These different paradigms of intervention are embodied in ~~very~~ concrete professional and institutional practices: while, officially and historically, the penal system's rehabilitation role is taken up by social work (Castel 1998), contemporary criminology has taken on the role of assessing risk and evaluating the dangerousness of criminals. At the same time, expertise in the fields of psychology and psychiatry has either been used to further the ideal of therapeutic rehabilitation or to assess dangerousness (Quirion 2006). The coexistence of many different professions within the same field often leads to "jurisdictional conflicts" (Abbott 1998, Chantraine et al. 2011) within the institutions in question. Each professional group seeks to align its objectives as closely as possible with the ideal form of intervention considered legitimate at a given moment in time, thus producing power struggles with regard to the parameters and boundaries of the missions of these actors from the medical, educational, or penitentiary professions (Frauenfelder et al. 2018).

Alongside the new regime of public sensitivity to security issues (Mucchielli 2008, Frauenfelder and Mottet 2012) which has seen rising penalization of deviant behaviour and the toughening of the criminal justice system as a whole (higher incarceration rates, longer sentences, etc. – Wacquant 1998 and 2012), there is also an increasing concern with treating people who have committed offences in more "humane" ways (Bouagga 2015) and with

ensuring that individual rights are respected, from arrest to detention. Within an economically liberal state, individual rights are a central concern, which leads to the increasingly detailed definition of rights relating to penal procedure (the right to a lawyer, the right to appeal etc.) (Fassin et al. 2013). When it comes to detention, the concern is with ensuring that those convicted enjoy access to the same rights (training, healthcare, ties with family and friends) as if they had retained their freedom, as though there were an attempt to reduce incarceration simply to a set of walls preventing incarcerated people from circulating freely. However, this concern with making prison sentences more "humane" and protecting rights during the process can also be seen as paradoxical, given that a considerable portion of the "public" of the criminal justice system does not benefit from this new more "humane" treatment. Approximately one third of the prison population are in provisional detention, in establishments that do not always ensure access to the rights outlined above.[5] A further point with regard to procedure is that the vast majority of convictions in Switzerland today occur via a "summary penalty order", handed down by a prosecutor without necessarily respecting ordinary penal procedure[6] On an international scale, the penal field is therefore clearly intersected by hybrid and often contradictory logics, the legitimacy of which is under constant renegotiation depending on the power relations in play.

Research in the penal field: what role can ethnography play?

Research into the penal field is embedded in very diverse academic cultures depending on national context and therefore employs a range of disciplinary approaches and methodologies. In Canada and Belgium, for example, criminology in its broadest sense makes room for the social sciences, alongside clinical and applied approaches (Queloz 2004). Similarly, in Germany, claims are made for the "socially constructive" role of social science research in the penal field, as reflected by the concept of *Begleitforschung* (research viewed as playing an accompanying role). In France, on the other hand, the prevalent stance involves maintaining distance from public authorities, viewed as necessary to ensuring fully independent and critical work (Salle 2003).[7] In Switzerland, the encounter between the social sciences and the

[5] See Federal Statistical Office. Press Release 19. Crime and Criminal Justice. Imprisonment from 1988 to 2017 (https://www.bfs.admin.ch/bfs/en/home/statistics/crime-criminal-justice/execution-penal-sentences-justice.assetdetail.7127070.html, accessed 25.11.2019).

[6] In Switzerland, approximately 90% of misdemanours or felonies result in a conviction handed down by summary penalty order (https://www.bfs.admin.ch/bfs/fr/home/statistiques/criminalite-droit-penal/justice-penale/jugements-mineurs-adultes.assetdetail.8946637.html, Federal Statistical Office. Adults: Convictions for a misdemeanour or felony, depending on the type of procedure, accessed 25.11.2019). This procedure, which allows convictions to be handed down without any adversarial debate, can be applied if the sentence requested is no greater than six months imprisonment. This "simplified" and "accelerated" justice process takes different forms in different national contexts, for example the *comparution immédiate* [immediate trial] procedure that is increasingly used in the French justice system (Observatoire international des prisons. La comparution immédiate. https://oip.org/analyse/la-comparution-immediate/, accessed 22.11.2019).

[7] In France, penal sociology broke away from the field of criminology in the 1970s and has grown substantially since the launch of the journal *Déviance et Société.*

penal field has been more recent, and lies somewhere between the French and German approaches. Swiss sociology of deviance and of the penal system saw a rise in interest in the 1970s. However, this impetus soon petered out, as evidenced by the increasingly rare contributions by Swiss authors to the journal *Déviance et Société* (Mucchielli 1997). Martin Killias argued, in the early 1980s, that the study of criminality did not seem to be a priority for the Swiss social sciences (or political world) given the relatively low crime rates compared to those of other European countries (Killias 1983). At the same time, Swiss criminal science gained international recognition thanks to important developments in forensic science and criminalistics through research that did not involve the social sciences. These observations, made about thirty years ago now, are still relevant today: despite Swiss criminology having become established first in the French-speaking and then in the German-speaking cantons (Killias 1989), it still struggles to establish its legitimacy in comparison to forensic science. Law and psychology are also regarded as more legitimate than the social sciences in this regard. Finally, within the criminology research that does take a social-science approach, quantitative methods prevail to the detriment of achieving a qualitative understanding of the social processes and wellsprings of criminality and delinquency.[8]

In the social sciences and humanities, historians have done important work on the social history of crime and penal control over the past twenty years (in particular Droux and Kaba 2006, Porret 2008) but quite separately from – and without entering into dialogue with – the fields of both criminology and sociology. Only very recently have sociology and anthropology seen a rise in research projects on deviance, crime, and the penal field: empirical research has been conducted on the police as a profession (Pichonnaz 2017), on the prison environment for adults (Hostettler 2012) and juveniles (Frauenfelder et al. 2018), on probation services (Ros, Kloetzer and Lambelet, this issue), and on the populations labelled deviant and subjected to penal control (Duvanel Aouida 2014).

Over and above this specifically Swiss situation, in which the social sciences still only have limited legitimacy when it comes to studying the penal field, it is also important to mention a more general and long-standing trend in research in this area which tends to focus on one particular type of penal institution – prison (Werth and Ballestero 2017) – and one particular population – young men subjected to the penal system. This observation, well established in the scientific community in question, has led to a rise, over the past decade, in studies looking at non-custodial settings (Turnbull and Hannah-Moffat 2009, Werth 2011, De Larminat 2014a, Bugnon 2017) as well as populations that had previously received less critical attention (female prisoners, the ageing prison population, etc.) (Cardi 2009, Marti et al. 2017, Hummel in this issue). Other research, often ethnographic, approaches the penal system from the margins, looking, for example, at how inhabitants of African-American neighbourhoods in a city in the United States – mainly young men with a warrant issued for their arrest – experience penal control (Goffman 2014). This dossier, which follows in the wake of these studies, invites us to engage in ever more relational and cross-cutting analysis of the penal field, conceptualizing the mutual dependencies and hybridizations that structure it.

[8] For a more extensive description of the field, see the introduction to the bulletin n°153 of the Swiss Sociological Association (Bugnon and Frauenfelder 2018).

This special issue places the focus on "thick description" (Geertz 1998) of social realities, at the level of directly observable processes, "background expectations" of professionals in the justice system (Cicourel 2018), and the objective as well as subjective structures that condition them (Bourdieu and Wacquant 2014). In doing so, it intends to argue in favour of ethnographic approaches to the state and its penal policies. Our aim has been to bring together studies concerned with connecting different levels of observation and different materials in their analytical framework; the articles therefore combine "multi-integrative" (Beaud and Weber 2003) and "multi-sited" forms of ethnography (Marcus 1998).

What kinds of hybridizations?

While social science research often posits the existence of a carceral, and more generally sociopenal, continuum (Foucault 1975, Bodin 2012, Fassin 2015, De Larminat 2014b), the concrete ways in which the hybridization of penal and social policies – of the "right-hand state" and "left-hand state" (Bourdieu 2012) – manifests itself are less well-documented, whether in terms of the institutional agents who implement these policies or the individuals who are subjected to the constraints of penal institutions. And yet documenting these processes seems extremely important to us insofar as research has thus far tended to give priority to internalizing and segmented approaches: first, penal institutions have mainly been analysed independently one from each other; second, investigations have often been conducted solely inside these institutions, focusing on the agents or their populations, without considering how these agents are embedded in a penal chain that also comprises actors in social work, education, and healthcare.

The choice of the concept of "hybridization" warrants further explanation: our intention is not to defend a fluid vision of institutions and the social world, in which situated practices intersect according to interactions over time, thereby constantly and unpredictably producing new forms of hybridization. While we do build out from the observation that, in contemporary societies, institutions are experiencing forms of fragmentation and hybridization (Laforgue 2009), these forms nevertheless follow structured logics and pre-determined patterns, which analysis can reconstruct and explain. In our view, these forms of hybridization should be understood as the result of power relations that (re)play themselves out between different institutional agendas, which, themselves, evolve over time, and whose social legitimacy is never definitively fixed.

Three forms of hybridization lie at the heart of this dossier. The first can be seen when two institutions pursuing different aims find themselves working in collaboration in order to deal with the same population. Cristina Ferreira and Mikhael Moreau's article engages with this question by retracing the history of the hybridization of internment regimes, at the intersection of the hospital and prison models. This form of hybridization is also easily identifiable in the field of juvenile penal justice, where the educational ideal gives substantial prerogatives to welfare state professionals (social workers in Switzerland, for example), while at the same time placing their work under the direction of a juvenile judge, under the jurisdiction of the judiciary.

The second form of hybridization emerges when two paradigms for intervention compete within a single institutional framework, resulting in intertwining logics of action. The coexistence of these paradigms can sometimes be explained by the inertia of historical change – a new logic never entirely replaces the old one but tends instead to overlay it: this is what Jenny Ros, Laure Kloetzer, and Daniel Lambelet's article shows, looking at probation officers' practices, which still owe much to the traditional objectives of social work (monitoring people in the long term, building quality relationships) but have been progressively reconfigured by new practices in risk assessment. In other contexts, this second form of hybridization can be explained by separate professions or contradictory objectives co-existing within the same measure. The management of young offenders in non-custodial settings offers a particular clear illustration of these kinds of tension between assistance and support, on the one hand, and control and surveillance, on the other. Two articles in this issue address these questions, but from different angles. First, Marie Dumollard unpacks how youths experience this monitoring in non-custodial settings and highlights the continuity between the control experienced in custodial and non-custodial settings. The ambivalence between support and control produces demands that these youths perceive as contradictory, because their autonomy is negated from the outset as a consequence of the surveillance weighing upon them. Second, Nicolas Sallée, Mohamed Mestiri, and Jade Bourdages examine the same tension between support and surveillance in non-custodial settings, but this time from the point of view of the professionals. The authors underscore how this tension has been exacerbated by the rise of standardized risk management rationales, while at the same time showing how the professionals in question also seem to take up these rationales in very specific ways, reflecting a certain "relational density" in socio-judicial work.

Finally, a third form of hybridization emerges when we analyse the trajectories of populations that are subjected to the penal field. These trajectories are marked by multiple forms of management through measures connected either to the social, the judicial, or the medical spheres. The "problem" of the person being taken in hand is thus successively categorized and recategorized by these different institutions, with each proposing different forms of intervention, either in turn or conjointly. The individuals being taken in hand then have to cope with these sometimes contradictory institutional expectations and requirements and to make sense of their own trajectories in light of this hybrid institutional regulation. Rita Carlos tackles these questions by exploring the hypothesis that the hybrid institutional trajectories of youths placed in custodial education centres in France reconfigure the meaning and objectives of this particular custodial institution. For his part, Guillaume Teillet adopts a slightly different scale in his analysis, documenting the ways in which civil and penal interventions interact with each other in the penal trajectories of youths targeted by the French justice system. As will now be clear, the question of "populations" is approached in this dossier from different and often intersecting perspectives: on the one hand, they are analysed as a category that is the object of sociopenal interventions considered at the level of institutions and professionals who cannot conceptualize their own work without asking themselves questions about the population or populations they target; on the other hand, they are analysed as subjects whose experience of the penal field and the penal process reveals the

effects – both intended and unintended – that institutional frameworks have on the daily lives and trajectories of individuals subjected to penal control.

Finally, two further texts shed complementary light on the issues addressed by this dossier. First, in what serves as a postface, an article by Franz Schultheis on the regulation of youth looks at the added value of ethnographic research in analysing the field of penal law and its transformations. Second, in the "essays in visual anthropology" section of this issue, Cornelia Hummel presents photographs taken by "ageing prisoners", examining the intersection of penal and ageing policies, as well as of the logics of ensuring public safety and providing medico-social care.

Why and how should we look at forms of hybridization?

Behind this concern with highlighting forms of hybridization lies a scientific objective to deconstruct institutional categories and create some distance from the sometimes artificial bureaucratic boundaries linked to "state thought" (Bourdieu 2012). These categories – at once legal, social, and political – structure the penal field as whole, in terms both of appearances and of the discourse of its professionals. Juvenile criminal justice is presented as entirely different to adult criminal justice; within juvenile justice, sentences must not be confused with protective measures; within child protection, civil interventions should be considered separately from penal management.

Running counter to these few examples, we work on the assumption, following the lead of other authors (Werth and Ballestero 2017), that an ethnography of institutional practices makes it possible, first, to conceptualize the continuities between seemingly distinct categories and, second, to highlight the ambivalence of, or even contradictions within, apparently homogeneous institutional discourse. The substantial discretionary power enjoyed by state agents (Lipsky 1980) allows for institutional intentions and normative frames to be (re) appropriated leading to the production of concrete forms of penal regulation that in fact differ substantially from the initial intentions of penal policy.

Finally, by focusing this dossier on "bottom-up" perspectives on institutional analysis, our intention is also to understand the structural mechanisms at the heart of social processes in action. Institutional frameworks are embedded in the broader social world and, through ethnographic approaches, it is possible to shed light on how penal measures can, in specific configurations, be used to act upon this social world and how they also contribute to reproducing, in more or less euphemized ways, certain social relations (of gender, class, race, nationality, and age).

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