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The Trumping of Neoliberal Penalty? Trump's Presidency and the Rise of Nationalist Authoritarianism in the US

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From the early 1970s, following fifty years of stability, the use of imprisonment in the US set out on a long-sustained and rapid rise. Over the next four decades or so, the country's imprisonment rate more than quadrupled, reaching levels far above those found anywhere else in the world (Travis *et al.*, 2014). The rise to hegemony of neoliberal dogma and policy around the same period has prompted a wealth of scholarship identifying linkages between the advent of neoliberalism and intensified state punitiveness in the form of custodial punishment. The size of the prison population in the US began to fall in 2010, however, and by 2015, had dropped by 8.4 per cent to return to 2005 levels (US Department of Justice, 2016).¹ Whereas some have interpreted the reduction in imprisonment as possibly portending the rollback of punitive policies and practices, others have problematized the significance attributed to the fall in the prison population, arguing that penal excesses may have become more diffuse but not more diluted. The election of Donald Trump to the White House in 2016 has meanwhile raised questions not only about the likely direction of imprisonment trends in the country, but also about whether the concept of neoliberalism retains its purchase in explaining levels and patterns of state punitiveness.

To date, Trump's election has not substantively affected either of the divergent assessments of penal trends in the US. On one hand, optimistic outlooks have shown notable tenacity in the face of Trump's presidency, essentially suggesting that ongoing positive reforms to the penal system will not be impeded despite the new president having campaigned as a 'law and order' candidate and pursued several punitive policies since assuming office. Pessimistic perspectives, on the other hand, have multiplied as well as intensified, warning that the prospects for progressive penal reform under the new administration are even dimmer than before, not least because of Trump's self-proclaimed allegiance to 'law and order' (White House, 2017) or, rather, his preference for 'order' above all (*The Atlantic*, 2017).

This chapter sets out, first, to outline the main arguments raised from each camp, including with regard to the likely effects of Trump's presidency, and second, to draw out the implications these arguments carry for the utility of neoliberalism as a key referent with which contemporary penal trends are interpreted. We argue that both camps have typically appeared to assume the persistence of neoliberal socio-economic policy, optimists treating this as a push factor behind what they see as the reduced use of imprisonment, and pessimists conversely approaching it as a propellant of punitive criminal justice policies and practices. Once, however, we stretch our analysis beyond the strictly penological scope characteristically adopted by optimists and pessimists alike, we are led to different conclusions both about the present and future role of neoliberalism in penal matters, and about Trump's own part in the evolution of state punitiveness. More specifically, given Trump's embracing of economic isolationism in lieu of the norms, rules, policies and practices that underpin neoliberal international order, neoliberalism can no longer be taken for granted as a socio-economic reality in the US, let alone as a force determining penal trends in the country. Whilst the US may well be on the verge of an era of increased state punitiveness, the driver behind it is more likely to be Trump's proclivity towards what we term 'nationalist authoritarianism'. As we show, nationalist authoritarianism manifests itself most acutely in the intensified harshness of the treatment accorded to underprivileged ethnoracial minorities and irregular migrants in

¹ Federal prisons joined this trend late; their rates of incarceration continue to grow until 2013, since which time they have undergone 4 successive years of reduction (US Department of Justice, 2018).

particular. Its reach, however, appears also increasingly to extend to middle-class segments that were previously unlikely to find themselves targeted by penal authorities.

Neoliberalism and Imprisonment: The Neoliberal Penalty Thesis

In the development of a clear and cogent thesis concerning the relationship between neoliberalism and imprisonment, a key role has been played by Loïc Wacquant (2009a, 2009b), not only within his work as such, 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 (see also Cavadino and Dignan, 2006).

For Wacquant, neoliberalism entails the articulation of four specific 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 ethno-racial bias as it punishes and warehouses the primarily Black ‘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. It has been widely 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; Wacquant, 2009a; Melossi, 2015; Cheliotis, 2017). It has also been contended 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 (see, e.g., Michalowski, 2015).

Other scholarship on neoliberal penalty has focused on privatisation trends in the provision of imprisonment, focusing particularly but not exclusively on developments in the US. 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) argues, 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 such a compulsion.

The notion of a ‘prison-industrial complex’ has nevertheless been subject to criticism 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 (ibid.). Yet other writers have pointed to the fact that neoliberalism has driven privatisation both by expanding the private prison estate and by promoting the hybridisation of public prisons as they have contracted out the delivery of select services (e.g., catering, security, medical and furniture supplies) to private 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).

Elsewhere we have taken stock of debates about the significance and validity of neoliberal penalty as a concept. Its mileage, we conclude, has been extended by the very identification of its limitations, insofar as this has helped to indicate ways in which the concept might be refined, whether in terms of the method required to test it (e.g. the need for comparative perspectives) or in terms of substantive insights (e.g. the role played by institutional forces in mediating between crime trends, public opinion and penal policy) (see further Xenakis and Cheliotis, 2019, in press). In the remainder of this chapter, we proceed to consider the present utility of neoliberal penalty as an organising concept for penological analysis in light of new controversies that have emerged, both concerning the direction of recent and ongoing penal trends in the US, but also –beyond the penological field– regarding the current prospects of neoliberalism itself. In so doing, we discuss the likely penal, political and economic effects attributed more recently to Trump’s presidency.

Perspectives on Recent Penal Trends and the Impact of the Trump Presidency

Evidence of a decrease in the US prison population since 2010, combined with Trump’s election to the White House in 2016, has triggered questions about the current and likely future trajectory of state punishment in the country. Below, drawing on scholarly, media and civil society sources, we elaborate the reasoning behind the main divergent approaches offered in response thus far.

Optimistic outlooks

Optimists have reasoned that crime drops, in conjunction with what they perceive to be the fading of public memories of high-crime eras and, above all, the pressures of budget constraints that have made the ever-expanding use of confinement increasingly prohibitive, have been helping to embed the incipient pattern of declining imprisonment (see, e.g., Dagan and Teles, 2014). Positive prognoses along these lines have been reinforced by a series of developments.

Several states have introduced more lenient custodial sentences, and states traditionally regarded as punitive have shown a reduced reliance on solitary confinement. Indeed, in 2016, even at the same time as electing Trump, who campaigned on a ticket championing a ‘tough on crime’ approach, the states of California, Massachusetts and Nevada voted to decriminalize marijuana, California and Oklahoma passed initiatives to reduce prison sentences, New Mexico brought in a constitutional amendment to prevent the jailing of those unable to afford bail, and in several states –including some which voted for Trump, such as Florida and Texas– there were victories for candidates for state prosecutor who had campaigned on a reformist platform (Lopez, 2016).

In addition, it has been pointed out that budgetary pressures have encouraged a marked move away from commitment to ‘tough on crime’ policies within conservative right circles, with the establishment and activities of the ‘Right on Crime’ lobby group testifying to the significant support garnered for criminal justice reform from powerful special interest groups such as the Koch Institute and the Heritage Foundation, as well as an array of high-profile current and former politicians, elected officials and advisors. Alongside his son-in-law Jared Kushner, a number of prominent Republicans that have been close to President Trump, such as former House Speaker Newt Gingrich, have been amongst those advocating criminal justice reform (*Reuters*, 11 November 2016). During the 2016 election campaign, the then Republican candidate for Vice President, Mike Pence, also voiced his support criminal justice reform (*Newsweek*, 7 October 2016). This growth in reformist conservative positions on imprisonment has allowed bipartisan initiatives to arise such as the Sentencing Reform and Corrections Act and the Prison Reform and Redemption Act. Although the Trump administration appears to have effectively halted the cross-party momentum that had been building towards sentencing reform, the supportive steps it has taken towards bipartisan proposals for changes intended to reduce recidivism and assist re-entry have been welcomed by at least some campaigners as facilitative of penal liberalization (*Washington Free Beacon*, 28 February 2018; *CNN*, 18 April 2018). Divisions within the Trump administration itself have also given optimists sustenance, particularly in the case of the prosecutorial treatment of marijuana supply and use, with Trump’s conciliatory stance on the right of states to determine legality providing succor where the Department of Justice’s more strident position under Jeff Sessions has drawn alarm, on which more below (*The Washington Post*, 17 April 2018).

Above all, optimistic observers point to evidence of a significant public appetite for liberal reforms; several opinion polls have indicated the presence of strong sympathy for more moderate sentencing and corrections policies (Lynch and Verma, 2015). 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 the Justice Reinvestment Initiative (Martin, 2016). These are prospects that have been portrayed as having the potential to bring about ‘one of the most equality-enhancing institutional shifts’ of our times (Phelps and Pager, 2016: 198).

For optimists, the developments outlined above, allied with long-established constitutional limits to federal intervention at state and local levels (whereby sovereignty is divided between the central federal government and state governments), mean that the impetus already garnered for penal reform is unlikely to be impeded, whatever the punitive intentions of the Trump administration (Grawert, 2017; Phelps *et al.*, 2017; Lopez, 2016; *Vox*, 2016; see also Lynch and Verma, 2015). That there remains a possibility that the administration’s policies might inflate federal incarceration rates is taken to be of negligible import to broader penal trends, given the small size of the federal prison sector, its imprisoned population estimated at a mere 12 per cent of the national total (see e.g. Pfaff in *Newsweek*, 2017). Even within the federal arena, moreover, decisions taken by courts since the arrival of the Trump administration have invigorated optimistic readings of the country’s checks and balances on executive power. Attention has been drawn in this regard to the fact that numerous new policies have been successfully challenged and struck down as unconstitutional, including but not limited to the so-called ‘Muslim ban’, the ban on transgender military service, the removal of protection from deportation for ‘Dreamers’ (undocumented migrants brought to the country as children by their parents), and the introduction of financial penalties for ‘sanctuary cities’; that is, jurisdictions pursuing limited engagement with or involvement in federal immigration enforcement actions (*The Nation*, 30 January 2018).

Pessimistic outlooks

By contrast, however, more pessimistic commentators have drawn attention to indications of continuing and growing state punitiveness in the US.

First, the decline in the prison population has not been uninterrupted: seemingly telling of the resilience of the trend in mass incarceration, the total prison population rose in 2013 and 2014 (Martin, 2016; Lynch and Verma, 2015; De Giorgi, 2015). Nor has the downward trend in prison populations been all-encompassing: half of the US states still saw increases between 2009 and 2013. What is more,

approximately 70 per cent of the nationwide drop 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. Consequently, it has been argued that the reduction in the prison population over recent years ought to be interpreted as the outcome of a highly irregular development in an outlier state, rather than as a general trend (Kubrin and Seron, 2016; Simon, 2015; Lynch and Verma, 2015).

The decline in the US prison population has also been described as more an exercise in the decentralization of corrections and the diffusion of penal control than as evidence of decarceration per se (Sundt et al. 2016). Cate (2016), for instance, points out that, notwithstanding fanfare given by NGOs, politicians and media outlets to reductions in the number of juveniles sent to state-run correctional institutions, the size of the detained juvenile population across the country has not declined. Rather, responsibility for juvenile corrections has merely been devolved and dispersed from the state level to local and private authorities. Conditions of incarceration for juveniles in state-run institutions have meanwhile worsened, and have also been found to be poor in county-level facilities.

Beckett et al. (2016) suggest, furthermore, 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 may nonetheless be interpreted as fulfilling reform goals in this area, ultimately forestalling pressures for more extensive decarceration (see also Gottschalk, 2015). Chiming with such analyses, Martin (2016) notes not only that state correctional budgets have seen negligible reductions, but also, more importantly still, that 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.

A deeper note of pessimism has been struck by numerous commentators as they have anticipated and diagnosed various adverse penal effects of the election of Donald Trump to the presidency. The theme of punishment was abundant in Trump's public pronouncements during the election campaign of 2016, often –but not always– with reference to irregular migration (Brown, 2017). Trump pledged, for instance, that within the first 100 days of taking office he would establish 'a two-year mandatory minimum federal prison sentence for illegally re-entering the U.S. after a previous deportation, and a five-year mandatory minimum federal prison sentence for illegally re-entering for those with felony convictions, multiple misdemeanour convictions or two or more prior deportations'. As part of his campaign, Trump also called for the reinstatement and expansion of programmes that have ensured that violent felons who use a gun to commit a crime are sent to prison for five years without the opportunity for parole or early release (Trump, 2016a, 2016b; see also Hager, 2016).²

Alongside Trump's reactionary rhetoric on crime and crime control, his decision to include in his administration figures with punitive records on law and policing (nominating Jeff Sessions as Attorney General, for example), and the support his candidacy marshaled from private prison companies, have each been invoked to suggest that an end to the country's penal excesses remains far out of reach. Trump was the only presidential nominee in 2016 to call for an expansion in private provision of imprisonment, and the Trump-affiliated super PAC Rebuilding America Now received significant financial backing from the private prison firm GEO. Stocks in the two largest private prison companies in the US saw a sharp rise in their value during the week after election day, reflecting expectations that a Trump win would improve the prospects of such firms.³ In due course, this expectation appeared validated by the Trump administration's withdrawal of previous Department of Justice guidance to the Federal Bureau of Prisons

² Complementing these commitments has been his enduring enthusiasm for capital punishment (in 2015, he promised that, if elected, he would mandate the death penalty for convicted murderers of policemen; *Washington Post*, 10 December 2015; see further Trump, 2000).

³ According to a complaint submitted by the Campaign Legal Centre to the Federal Election Commission in December 2016, the private prison company GEO Group illegally contributed \$225,000 to the Trump-affiliated super PAC Rebuilding America Now, in violation of the 75-year-old ban on government contractors making political contributions (Campaign Legal Centre, 2016). In the week after Election Day, stocks of GEO and CoreCivic rose more than 20 and 40 percent, respectively (*NPR*, 2017).

to reduce the use of private prisons, on the grounds that the Bureau's ability to meet the future needs of the federal correctional system would otherwise be impaired (NPR, 2017).

Several other decisions have been interpreted as signaling the Trump administration's intentions to put more people behind bars. The Department of Justice's instruction to federal prosecutors to 'charge and pursue the most serious, most readily provable offense', for example, has been described by many observers as a move to reinvigorate a harsher sentencing ethos, particularly towards drug offenders, thereby raising the prospect of a rise in the federal prison population (see further Lynch interviewed in *Slate*, 2017; The Sentencing Project, 2017; *Wall Street Journal*, 2017). The new administration's focus on immigrant criminality, pessimists claim, has made this prospect all the more likely (ibid.; *CBS News*, 2016). A number of facts point to this direction. On one hand, irregular entry and re-entry into the country have in recent years come to account for roughly half of all federal criminal prosecutions, and the increase in foreign-born prisoner numbers appears to have made a disproportionately large contribution to the expansion of the federal prison population (Macías-Rojas, 2016). On the other hand, the Trump administration has sought to tighten immigration law enforcement further: an Executive Order issued in January 2017, for instance, introduced an array of measures to enhance the enforcement of federal immigration laws (White House, 2017), and a subsequent memo by the Department of Justice directed federal prosecutors to prioritize criminal immigration enforcement (Department of Justice, 2017a). Thus, between January and April 2017, a 38 percent increase was reported in the number of immigrants arrested by U.S. Immigration and Customs Enforcement (ICE) as compared to the same timespan in 2016, despite the fact that the volume of undocumented migrants caught crossing the US-Mexico border saw an 'unprecedented drop' of 40 percent over January and February (*USA Today*, 2017). As of late March 2017, moreover, 22 percent of federal prisoners were foreign-born, against the majority of whom ICE had issued or was pursuing a deportation order (Department of Justice, 2017b).

Findings from local-level research are even more striking. According to a report published by the Office of the New York City Comptroller Scott M. Stringer, nearly all ICE field offices around the country recorded increases in their use of arrest (primarily targeting individuals for a civil violation of immigration law) and deportation (including for individuals with no criminal convictions) between the final year of the Obama administration and the first year of the Trump administration. In New York itself, the total number of deportations by ICE increased by 150 percent during the same timeframe, with deportations of individuals with no criminal convictions rising at an even faster pace, by 265 percent, amounting to the largest growth in 'non-criminal deportations' recorded for any ICE field office in the country. Significant upward trends have also been recorded in New York for the use of administrative arrest, ICE detainer requests (i.e., requests made by ICE to law enforcement agencies to hold an immigrant in custody longer so that ICE can gain custody of them), and the number of deportation cases reaching immigration courts. Despite the positive contributions immigrants are known to have been making to local economy and culture, the report concludes, many of them 'are today living on a knife edge, afraid to leave their homes and communities, worried that one day they will be detained by US immigration enforcement officials and not make it home to their families' (Office of the New York City Comptroller Scott M. Stringer, 2019: 4).

More broadly, Trump's apparent penchant for exploiting his privileged role in shaping public discourse so as to preempt, suppress or otherwise undermine resistance to his agenda, combined with the considerable success his administration has already had in promoting punitive policies beyond the carceral field itself, have provoked concerns as to the fate of the momentum seemingly achieved towards liberal penal reform to date. Pessimists underscore not only that Trump has publicly denigrated and even issued threats against those placing checks on his administration, from members of the judiciary and the intelligence community, to segments of the mainstream mass media and the citizenry (see e.g. Ben-Ghiat, 2017). With a steady stream of inflammatory rhetoric on crime and its control, he has also sought to whip up public pressure in order to bring or keep officials behind his criminal justice initiatives as such. The implication here is that public fear of criminal victimization may be raised by Trump's repeated gross overstatement of crime trends and his insistent call for harsher criminal justice measures in response, and this in turn could bring a halt to the reformist plans of liberal-minded elected officeholders hoping to retain popular support (Grawert and Camhi, 2017).

Relatedly, pessimistic expectations regarding liberal reform in the use of imprisonment have been couched in accounts of an upturn in punitiveness already effected across other parts of the criminal justice

system. Critical scrutiny has been directed most notably towards steps taken by the Trump administration to embolden the police and augment their powers, from the decision to limit the Department of Justice's pursuit of civil rights suits against police departments, to the rescinding of restrictions on the federal forfeiture of assets seized by state or local police forces, to the lifting of limits on the transfer of surplus military equipment to local police agencies (see further Ben-Ghiat, 2017; Levitsky and Ziblatt, 2017; *ThinkProgress*, 2017).

Concerns have similarly been expressed regarding the intensification of zero-tolerance policing of underprivileged ethnoracial communities and the adoption of a more draconian approach to tackling civil disobedience on the streets. One example of the latter can be found in the official reaction to protest in Washington DC on the day of Trump's inauguration, when DC police kettled a group of approximately 300 protestors (including clearly identifiable journalists and legal observers), using tear gas and 'sting-ball' grenades to keep the crowd in check, and rather than go on to issue suspected offenders with a fine (as would have been consistent with prior standard practice for such situations in DC), charged 230 of with a felony rioting offense, carrying a maximum penalty of 10 years imprisonment and a fine of \$25,000. As suggested by the DC chapter head of the American Civil Liberties Union and the Committee to Protect Journalists, the indiscriminate pursuit of serious felony charges against a mass of protesters, even if the majority of cases were dropped over the ensuing days, sent a clear and forboding message to journalists and would-be protesters alike (Pyke, 2017; *The Guardian*, 24 January 2017).⁴

Will Neoliberal Penalty be Trumped?

Whatever the merits of the distinct optimistic and pessimistic perspectives above, they have generally not reflected on the shifting politico-economic trends that underpin penal trends. A tacit acceptance of the continuing relevance of neoliberalism can nevertheless be extrapolated from both perspectives. In optimistic assessments, the foundational principle of the neoliberal penalty thesis seems to be inverted, neoliberalism apparently intensifying whilst imprisonment declines. That is to say, optimistic outlooks often attribute an important role to neoliberal politico-economic dynamics in shaping penal trends, crediting meso-level fiscal pressures on policy-makers of all political shades as a key factor behind the seeming reduction in imprisonment. From pessimistic perspectives, meanwhile, a modified version of the neoliberal penalty thesis can be discerned, with a more diffused mode of neoliberal penalty unfolding, if one no less dystopian than its predecessor. This is a version in which the state may be retreating following the logic of neoliberal budgetary pressures, but only in the sense that it devolves more of its authority and responsibility for the delivery of punishment to private actors, both commercial and third sector (i.e. charities). In fact, insofar as any drops in imprisonment rates may be regarded as the outcome of an increasingly empowered neoliberal compulsion to curtail government spending and responsibility for managing the punishment of offenders, they have raised the prospect of a more thorough neoliberalization of the penal field, in a manner reminiscent of the fully marketized prison environments found in some Latin American jurisdictions (on which see further Whitfield, 2015).

The version of neoliberal penalty emerging from pessimistic perspectives is additionally one in which the authority of criminal justice institutions is subject to heightened challenge, to the extent that there have been repeated efforts on the part of the Trump administration to subvert formal structures and processes, not least by stoking punitive public sentiment to put pressure on elected officials. At the same time, pessimistic observations of the subjects of punishment suggest the potential for a departure from the operations and functions of neoliberal penalty as commonly conceptualized to date. Albeit with new vigour, the overt targets of central government's punitive imperatives continue to match the profile of those previously identified as the 'preferred clients' of inflated prisons under neoliberalism (Wacquant, 2009a) –underprivileged ethnoracial minorities and irregular migrants in particular–, regardless of actual crime trends. Insofar as stigmatizing invective in relation to issues of crime and punishment has been directed by the Trump administration against members of the judiciary, the intelligence agencies, journalists of the mainstream media, and protesting members of the public, however, it raises the prospect of an expanded target in the middle classes. Should this be pursued further –the broadening and

⁴ A remaining 59 defendants await trial at the time of writing.

emboldening of police powers signaling that it might—, the function of punishment would no longer be the general discharge of displaced middle-class insecurities and the containment of unruliness amongst the lower classes, as foreseen within most iterations of the neoliberal penalty thesis. Punishment would displace the insecurities of some (e.g., relatively disadvantaged white conservative) members of the middle classes, whilst disciplining others (e.g., affluent educated urban-dwelling liberals) in terms of their participation in public life, whether in their capacity as professionals or as private citizens.

Beyond questions about the present and future trajectory of criminal justice policies and practices as such, however, lies a further crucial debate that has to date been unduly neglected by punishment and society scholarship, despite the importance it ought to have for assessing the continuing relevance of the concept of neoliberal penalty; that concerning the status and future 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 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).

Much commentary in the immediate aftermath of the crisis lamented that it was effectively 'business as usual' for neoliberalism. More recently, however, it has been argued that ongoing economic strains should be interpreted as signs of a deep structural crisis and of an impending major institutional restructuring of capitalism in which key tenets of neoliberalism will be jettisoned (Kotz, 2015). Economic analysis uncovering a retreat of core elements of globalization since 2008 suggests that this restructuring may have already begun. Salient features of what has been identified by some experts as nascent processes of 'deglobalization' include a decline in net international flows of goods, services and finance relative to GDP, and a rise in state interventionism and trade barriers (see, e.g., BMI Research, 2016), with negative implications for neoliberalism, given the priority accorded by the latter to removing obstacles that encumber these flows.

The likelihood of the large-scale dismantling of global trade and, more broadly, the institutions, rules and norms that underpin neoliberal international order, has been regarded as a coming step closer with the arrival into office of Trump, an avowedly isolationist anti-free-trade US president, one reportedly as unconvinced about the benefits of the North Atlantic Treaty Organization as he has been about the North Atlantic Free Trade Agreement (e.g., Applebaum, 2016; *The Independent*, 23 January 2017; *Financial Times*, 2 April 2018). Trump's vow to 'put America First' in US trading relations has led the administration to the decidedly non-neoliberal position of rejecting the Trans-Pacific Partnership (TPP) trade pact, stalling negotiations on the Trans-Atlantic Trade and Investment Partnership (TTIP), announcing sweeping aluminum and steel tariffs in a severe blow to the norms established by the World Trade Organization (Council on Foreign Relations, 2018), and propounding the merits of trade wars (as Trump memorably tweeted, "trade wars are good, and are easy to win"; *Financial Times*, 2 March 2018).

To the extent that such steps portend the demise of neoliberalism, they also signal the end of neoliberal penalty, both as a practical reality where it has emerged and as a useful theoretical framework for scholarship seeking to interpret penal trends from now on. Thus, in the case of the US, whether levels of imprisonment continue to rise, or state punitiveness mutates to focus primarily on irregular migration or becomes even more diffused in its manifestation, neoliberalism would be irrelevant as an organizing concept for penological analysis of emerging trends. To put the point differently, it is quite conceivable that the US may be on the cusp of a period of increased state punitiveness, yet one driven not by neoliberalism, but by a nationalist authoritarianism that combines economic protectionism abroad with divisive identity-based politics at home. Substantively, the law and order policies under the Trump administration may not necessarily represent rupture with the policies pursued by neoliberal administrations of the recent past; it has been pointed out, for example, that whilst the more punitive treatment of irregular migrants has been an avowed commitment of Trump's White House and has been a key focus of its expressive crackdown on crime, the Obama administration itself deported more people than its own predecessors (see, e.g., Michalowski, 2017; Gottschalk, 2016). The causal role neoliberalism

has thus far played, however, is likely to be trumped.

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