# Violence, Poverty, Values, and the Will to Punish

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## Abstract and Keywords

This chapter argues that Fassin's analysis should be expanded in three ways. First, Fassin should take greater account of how the unlawful state violence he rightly deplores is nonetheless frequently produced in response to violent criminal acts. Losing sight of the underlying problem of criminal violence in poor and marginal communities can make it harder to see how reform might be possible, by reducing the problem to one of arbitrary labeling (and subsequent punishment) of certain kinds of conduct. Second, while Fassin notes the connections between vulnerability to state violence and poverty, it would be worth paying more attention to the way economic inequality dehumanizes certain subjects and makes them more vulnerable objects of state abuse. Social analysis should be humanizing, in response. Third, Fassin should express positive value commitments to those latent in his critique as a guide to reform.

*Keywords:* inequality, punishment, violence, reform, normative analysis, poverty

Throughout his distinguished career, Professor Didier Fassin has pioneered an anthropology that examines the institutionalization of moral projects, of which our instruments of punishment and criminal justice are preeminent examples.

"The Will to Punish" critically examines an idealized conception of punishment that is both normative and legitimizing for our criminal justice agencies. In this idealized conception, represented by H. L. A. Hart's classic definition[1], punishment is dispensed by authorities against an offender in response to wrongdoing. Punishment, in this account, may be retributive but is cool and proportionate. It may be intended to deter or incapacitate. So strong is this idea that the links between crime and punishment, victim and offender, incarceration and justice have become natural categories through which the work of police, courts, and prisons have come to be interpreted and justified. What's immediately striking to me is that punishment in this idealized conception is described without reference to social inequality. The poverty, racial inequality, and human vulnerability that define the social space in which punitive institutions function is notably absent. Against the idealized theory, Fassin develops an alternative account. Punishment is not the righteous response of authorities to crime and criminals. It is instead the infliction of pain, administered sometimes bureaucratically, sometimes to assert order through a show of force, and typically against the least powerful segments of society. Recalling his Nietzschean **(p.130)** title, excess punishment can even take the form of a kind of state sadism in which authorities take pleasure in the infliction of suffering.[2] Much of the power of this analysis resides in its breadth of reference, denaturalizing the connection between crime and punishment as much through the anthropology of faraway cultures as through contemporary urban ethnography. This sweeping perspective reveals that both France and the United States have arrived at a mode of governance in which the coercive power of police and prison is widely used to maintain established racial and class hierarchies. From my perspective as an empirical sociologist studying incarceration in America, with one foot in a policy school that seeks to improve the world through policy reform, Fassin's analysis is revealing and at times breathtaking in its scope. I would like to probe three areas that are opened by Fassin but in my mind remain unresolved. First, I want to address the question of violence that often sets the machinery of punishment in motion. Second, I want to talk about poverty and how it becomes the ground on which the process of punishment plays out. Third, I want to discuss the normative dimension and the values that might point beyond critique to reform.

Violence

A central task of "The Will to Punish" involves challenging the natural connection between crime and punishment. We see that punishment can happen without offending when Kalief Browder is detained for years at Rikers Island or when the police abuse young African immigrants outside their group home. "Crime does not inevitably require punishment. . . . Punishment does not necessarily result from a crime," Fassin writes. "The relation between crime and punishment is more equivocal than we commonly presume."In America the project of punishment has taken the form of mass incarceration. Criminal justice in this era has become pervasive in the daily life of America's poor. After four decades of growing **(p.131)** prison populations that began in the early 1970s, the U.S. incarceration rate is now five times higher than its historic average and exceeds Western European rates by a factor of five to ten.[3] As Fassin observes, the rise in U.S. incarceration produced extraordinary rates of penal confinement among African American men under forty who have dropped out of high school. In work with Becky Pettit, I estimate that in recent cohorts of African American men who dropped out of high school, around 70 percent will go to prison at some point in their lives.[4] Pervasive imprisonment represents a significant expansion of state violence in very poor, largely urban communities of color.

But the scale of state violence escalated where community violence was also extreme. The emergence of mass incarceration followed not just a period of social and political unrest in the 1960s; serious crime also grew substantially. Crime rates had always been higher in urban areas than in the suburbs and rural America, but the early 1960s ushered in an increase in crime that was to last over two decades. The national homicide rate more than doubled, from 4.5 per 100,000 in the early 1960s to its peak year of 10.2 in 1980. The increase was even larger in cities, rising for example in Chicago from 10.3 in 1960 to 25.0 in 1975. The murder rate for African Americans was 6 to 10 times higher than for whites, and Gurr found the increase in violence in the 1960s and 1970s to be associated with a disproportionate rise in black murder rates.[5] Murder rates for young black men in particular reached extremely high levels—around 150 per 100,000 in 1980—making homicide the leading cause of death among blacks ages fifteen to thirty-four by the early 1990s. It is true that the scale of punishment does not track the crime rate in lockstep, but it is equally true that the distribution of violence across the population is closely correlated with the distribution of punishment.

In a recent interview study, I approached the question of the relationship between violence and punishment in another way, asking a sample of men and women released from imprisonment **(p.132)** in Massachusetts about their involvement in violence over a lifetime.[6] The interviews revealed the lifelong salience of serious violence for men and women who were incarcerated in state prison. In childhood, formerly incarcerated people were frequently victims and witnesses to violence. Sometimes they were injured in accidents. More commonly the interviews of the reentry study revealed reports of sexual abuse, assaults, stabbings, and shootings. Fifty percent of the sample were victims of family violence. Seventy-five percent had witnessed serious injury, and 40 percent had witnessed a violent death. In adolescence, over 90 percent of the sample were regularly involved in fighting. The respondents also reported being perpetrators of violence, particularly in adulthood. As they spoke about their adult lives, the men and women of the reentry study also spoke frequently about witnessing and being victimized by violence as they had been in childhood. In adulthood, the prison itself was a site of violence, and I heard many reports of fighting in prison, mostly among people who were incarcerated but sometimes between prison staff and the incarcerated.

There is serious violence in the social space in which punishment operates. However, it looks little like the offending imagined by criminal justice ideology. There is no bright line between victims and offenders. People who commit violence often have long histories of victimization and in many cases have also been exposed to trauma in childhood as witnesses to serious violence. Violence in the lives of those who are incarcerated is of a very contextual kind, flourishing under conditions of poverty. In these conditions, home life has often been chaotic while growing up. Neighborhood environments have often been disorderly, suffering from high rates of serious crime. Understanding the relationship between violence and punishment remains a pressing task in this context.

As the Boston prisoners described their lives, it also became clear that violence often accompanied an array of other social problems, such as drug addiction, untreated mental illness, housing insecurity, and enduring unemployment. In the absence of social policy **(p.133)** assistance—for treatment, housing, or jobs, for instance—the process of criminalization had filled the vacuum. State violence came to be the response to community violence and many of the related problems closely linked to poverty.

Critical analysis of the institutions of punishment can often miss the salience of violence in the milieux in which the police, the courts, and the prisons do their work. In the research program on mass incarceration, for example, the social problem of violence often appears to be something of a nuisance that is skirted or minimized in analysis. James Forman and Michael Fortner offer this criticism of Michelle Alexander's *The New Jim Crow*.[7]

The question of the relationship of violence to punishment is fundamental, in part because violence is a major problem in the social spaces where criminal justice authorities operate. Fassin is right that punishment is not reducible to crime, but neither is it unrelated. Violence is a variety of social action that is ripe with the possibility of criminalization. It emerges in contexts of social policy failure and contexts of poverty. (Indeed it is this contextual character of violence that I think is entirely consistent with Fassin's observation that punishment can be imposed collectively.) In addition, the violence imagined by our apparatus of punishment is largely a fiction, and the reality requires a different policy response. I may part company with Fassin in asserting a close link between violence and punishment, but I strongly share his empirical realism. Violence as it happens on the ground diverges significantly from the criminal conduct imagined by our classical conception of punishment and the policy that flows from that.

Poverty
Throughout "The Will to Punish," readers are reminded of the powerlessness and socioeconomic disadvantage of those who are punished. Fassin provides a sustained analysis of the relationship **(p.134)** between punishment and social structures of inequality in his discussion of "who gets punished." The issue is already foreshadowed in his observation that the "punitive function of law enforcement" is applied to "the most vulnerable groups," producing "harassment, provocations, humiliations, racist insults, undue stops, unjustified searches, abusive fines, painful handcuffing, groundless arrests," and so on. In this discussion, the distribution of punishment between the poor and the rich is driven by political choice. In part this is reflected in how penal codes are designed, punishing street crime more harshly than white-collar crime, and partly this due to the street-level politics of law enforcement.

The social structure of inequality is vitally implicated in socioeconomic gradients in punishment. Fassin sees socioeconomic disadvantage as connected to punishment in two main ways. First, criminal offenses are produced in a social context. Young men in poor neighborhoods, often unemployed, come into frequent contact with police. Frustrated with police attention, these encounters often go badly. Second, the crimes of the poor are punished more harshly. Low social status diminishes the value of freedom in the eyes of the court. For the defendant who is poor and the son of immigrants, "the verdict has more to do with what he is than what he is accused of having done," writes Fassin. Criminality in this case attaches not to the conduct but to the individual. In this account, the criminogenic conditions of poverty, official processes of criminalization, and biased policing and prosecution together lead to the overrepresentation of the poor and the disadvantaged in the criminal courts and prisons.

The criminalization of poverty requires more elaboration. An older radical criminology pointed to the threat to social order posed by the unemployed, youth, and racial minorities—what Steven Spitzer has memorably called "social dynamite."[8] From this perspective, punishment helped contain a social threat that pressed not just on public safety but more broadly on norms of conformity and **(p.135)** order. Loïc Wacquant offered a modernized version of the theory in his account of mass incarceration. For Wacquant, "the penal system in the United States has partly supplanted and partly supplemented the ghetto as a mechanism of racial control."[9] We see echoes of the social threat perspective in Fassin's ethnographic accounts of urban policing that observe the adversarial relationship between police and the citizens with whom they interact.

But social threats might be met in a variety of ways. The punitive response is grounded in a set of cultural conditions. Fassin agrees, observing the racism and xenophobia of the French police and the emotionally hot motivation that often moves punishment into action. Alternatively, as in the case of Kalief Browder, it can be tediously bureaucratic, where the courts can appear callous and disregarding of the liberty interest of criminal defendants.

I would argue that large-scale punishment projects depend significantly on the dehumanization of the poor and the powerless. Harsh punishment requires a profound suspension of human compassion. The dehumanization of people of African origin has been studied directly in psychological research on implicit bias. Psychologists find that ape-like images are associated with African American men when study subjects are given short tests in visual perception. Distorted perception has also been found for black children, who are often perceived to be much older than they really are.[10] The tough-on-crime language of s*uperpredators, jungles*, and *savages* are drawing from this same well of dehumanization. In a striking formulation from the heyday of the tough-on-crime era, William Bennett and his colleagues describe a new generation of criminal superpredators: "radically impulsive, brutally remorseless youngsters . . . who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs, and create serious communal disorders. . . . To these mean-street youngsters, the words 'right' and 'wrong' have no fixed moral meaning."[11] For Bennett, the superpredators live in a world beyond the human community.

 **(p.136)** The dehumanization on which harsh punishment rests creates a research challenge in which the depiction of poverty must reassert the human reality of the poor people who come into conflict with the law. In part this involves understanding what are often the long histories of victimization and exposure to trauma, which, in contexts of severe poverty, can not only become more likely but can go untreated. Victims and offenders are not two distinct classes, but in reality are typically one and the same.

The harsh conditions of poverty in which penal severity grows often accompanies social policy failure. Mental illness, drug addiction, learning disability—all can go untreated. Human frailty—a weakness of mind and body—is a condition of poverty and is often the context in which offending and punishment arise. Two-thirds of the Boston sample, for example, reported histories of mental illness, drug addiction, or both. Chronic pain and disease were also widespread. Registering the reality of human frailty throws a spotlight on the lived conditions of poverty and erases the bright line between victim and offender.

In addition to studying the physical and mental vulnerability of those entangled in the institutions of punishment, this effort at humanization necessarily has a positive side from which springs the impulses to leniency and mercy. Here researchers can recognize and document the loving relationships, the spontaneity, and the creativity that lie at the heart of human agency.

Again the Boston interviews richly revealed the texture of social life in the shadow of penal institutions. After incarceration the men and women faced extreme poverty and acute housing insecurity. The gap in Boston was largely filled by family. Older women—mostly mothers—played a large role housing their adult sons. The loving bonds of family support seemed fundamental to being "home," even for those who had been incarcerated many times in the past. Family life often brought the stability of meal times, conversations, intimacy, and recollections of a shared history. Of course family life could sometimes be conflictual and complicated. But the **(p.137)** key point remains that those who live in punitive social spaces are neither reducible to violence and other crime nor defined only by the suffering induced by overpolicing and incarceration.

Values

"The Will to Punish" is a critical text. Fassin dismantles several of the conceits that suffuse punitive institutions—that punishment is meted out against an offender in response to crime, coolly and deliberately. Modern criminal justice authorities tout the values of offender accountability and public safety in this effort. We can think of these as the modern remnants of the Christian ethics that value pain for its own sake yet also concede the possibility of penance and redemption.

Fassin's alternative conception of punishment also comes with a variety of normative commitments. In calling out police for their racism, it is antiracist. By identifying the injustice of punishing the poor, it is egalitarian. Behind objections to the bureaucratization of pretrial detention or the arbitrariness of prison discipline is an insistence on the protections of legal procedure. And in pointing to the perverse pleasures of punishment, there is perhaps a suggestion of abolitionism.

If the goal of critique is to bring about change, I wonder if—in the area of justice, above all—our normative commitments must be made explicit, argued for, and studied for their implications for alternative politics and policies. In the rush to punitive criminal justice policy, public safety and offender accountability were elevated beyond values to self-evident imperatives. As Fassin rightly observes, crime victims were shoehorned into a morality play that pitted good against evil, minimizing mitigation and maximizing offender culpability. These normative commitments carried extraordinary capacity to justify, seemingly, any amount of penal severity. Missing from the political debate on crime were the **(p.138)** counterweight values that would limit the extent and severity of punishment.

What would these alternative values look like? The National Academy of Sciences report *The Growth of Incarceration in the United States* elaborated four values that should inform penal policy.[12] From the jurisprudence of sentencing, the NAS panel argued that punishment must be proportionate. The severity of punishment should be calibrated to the severity of the crime. More than this, the panel said, with the legal scholar Norval Morris,[13] that punishment be "parsimonious." By this Morris meant that punishment should always be at a minimum, imposing the least possible pain to attain its public policy purpose. Proportionality and parsimony spoke directly to sentencing policy and were well established, if not well followed, in law.

The NAS panel added two other principles that were even more limiting. The principle of citizenship was intended to assert the human dignity of those who were punished. For the NAS report, this meant that conditions of penal confinement should be humane. Those who are imprisoned do not forfeit their fundamental membership in the social compact. To this end, penal authorities should be subject to public oversight and be publicly accountable for abuse and neglect. A positive commitment to the human dignity of the incarcerated is rare in U.S. prisons, and incentives in prison administration are geared to minimizing escapes and other controversy. Embracing a principle of citizenship would fundamentally change the operation of incarceration in the United States.

Finally, the NAS report argued for the value of social justice. Social justice asserts that public institutions should function to broadly expand the rights, opportunities, and resources for all without unduly burdening any one group. The principle of social justice was intended as a counterweight to the steep race and class inequalities in incarceration, which were never weighed in the move to punitive criminal justice policy.

The four values of the NAS report aimed to elevate the document above critique, to point the way to positive reforms. In addressing **(p.139)** mass incarceration, the committee recommended significant reductions in prison and jail populations. This could be achieved by sentencing reforms that wound back long sentences and limited mandatory-minimum sentences. This effort was to be buttressed by community-based social policy. To advance the value of citizenship, prison authorities were urged to review the conditions of confinement, perhaps particularly solitary confinement, in which prisoners can be incarcerated for months or years at a time.

The key philosophical move is the dilution of a highly individualistic ethical system. Citizenship and social justice in particular limit penal severity by emphasizing our common status as citizens with a common humanity. I wonder if mercy and leniency will ultimately spring from these values that esteem the collective as much as the individual.

Certainly the threads of human dignity and social justice run through Fassin's analysis. The ethnographic cases reveal that interactions between citizens and authorities are shot through with unaccountability, disdain, and humiliations that offend human dignity. The costs of punishment too are often social, extending beyond the individuals singled out by authorities to entire communities. In the language of the NAS panel, French policing, for example, undermines social justice because an entire social group is penalized. In my perspective, the impact of the critiques can be magnified by explicitly naming the underlying value commitments, defending them, and exploring their implications for alternatives.

Fassin has given us a wide-ranging discussion that focuses on the essential fact of punishment—the authoritative infliction of human suffering, whose operation appears deeply threatening to the aspirations of a democratic society. Yet severe social problems abound in such societies, and this is the context in which modern punishment, at least the American variety, has flourished. In asking what punishment is, analysis should probe the real conditions of violence and the human frailty that arises in contexts of poverty. In this world fraught with moral complexity and ambiguity, a new kind of **(p.140)** normative discussion is needed. I see this as going beyond critique to reassert the bonds of social solidarity in the face of extreme injustice and inequality. And I thank Fassin for his provocation in advancing this agenda.

Notes:

(1.) H. L. A. Hart, "The Presidential Address: Prolegomenon to the Principles of Punishment," *Proceedings of the Aristotelian Society* 60 (1959–60): 1–26.

(2.) "To punish is not merely to return evil for evil; it is to produce a gratuitous suffering, which adds to the sanction, for the mere satisfaction of knowing that the culprit suffers," writes Fassin.

(3.) Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: National Academy Press, 2014).

(4.) Bruce Western and Becky Pettit, "Incarceration and Social Inequality," *Daedalus* 139 (2010): 8–19.

(5.) Tedd Robert Gurr, "Historical Trends in Violent Crime: A Critical Review of the Evidence," *Crime and Justice* 3 (1981): 295–353.

(6.) Bruce Western, "Lifetimes of Violence in a Sample of Released Prisoners," *RSF: The Russell Sage Foundation Journal of the Social Sciences* 1 (2015): 14–30.

(7.) James Forman, "Racial Critiques of Mass Incarceration: Beyond the New Jim Crow," *New York University Law Review* 87 (2012): 101–46; Michael Javen Fortner, *Black Silent Majority* (Cambridge, MA: Harvard University Press, 2015); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010).

(8.) Steven A. Spitzer, "Toward a Marxian Theory of Deviance," *Social Problems* 22 (1975): 638–52. See also Theodore G. Chiricos and Miriam A. Delone, "Labor Surplus and Punishment: A Review and Assessment of Theory and Evidence," *Social Problems* 39 (1992): 421–46; George S. Bridges and Martha A. Myers eds., *Inequality, Crime, and Social Control* (Boulder, CO: Westview Press, 1994).

(9.) Loïc Wacquant, *Prisons of Poverty* (Minneapolis: University of Minnesota Press, 2009), 155.

(10.) Phillip Atiba Goff, Jennifer L. Eberhardt, Melissa J. Williams, and Matthew Christian Jackson, "Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences," *Journal of Personality and Social Psychology* 94 (2008): 292–306; Phillip Atiba Goff, Matthew Christian Jackson, Brooke Allison Lewis Di Leone, Carmen Marie Culotta, and Natalie Ann DiTomasso, "The Essence of Innocence: Consequences of Dehumanizing Black Children," *Journal of Personality and Social Psychology* 106 (2014): 526–45.

(11.) William J. Bennett, John Dilulio, and John P. Walters, *Body Count: Moral Poverty . . . And How to Win America's War against Crime and Drugs* (New York: Simon and Schuster, 1996), 27.

(12.) Travis et al., *The Growth of Incarceration*, chapter 12.

(13.) Norval Morris, *The Future of Imprisonment* (Chicago: University of Chicago Press, 1974).