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Book Review

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Geoffroy de Lagasnerie, *Judge and Punish: The Penal State on Trial* (trans. Lara Vergnaud), Stanford, CA: Stanford University Press, 2018; 210pp. (including index). ISBN: 9781503605787, \$25 (pbk)

Geoffroy de Lagasnerie's *Judge and Punish: The Penal State on Trial* is a tour de force into the criminal trial's symbolic economy, violence and political logic.¹ The starting point is the consideration that the courtroom is a 'magnifying glass of our inscription within the legal order and our submission to its authority' (p. 13) and deciphering its nature and functions equates with uncovering our condition as legal-political subjects. From this angle, the book pursues three interlinked aims: to demystify, in a Bourdieusian sense, the trial's self-enforcing perceptual frameworks (how the trial construes reality), to expose its bare violence (how it forces people to be something else from 'what they are') and to denounce and contest its political rationale (how it instantiates our position as political-legal subjects). Finally, the book provides a 'left-libertarian' (p. 19) and rather counterintuitive alternative to the trial's violence.

The first two chapters spell out the book's conceptual apparatus and research objects.

The author aims to take a 'step back' from, that is, to problematise, the understanding of law epitomised by Michel Foucault's suggestion to look at power as a 'positive' force (p. 13). In fact, we should (return to) look at the repressive side of the state, i.e. how 'law appropriates and interprets our actions and existences' (p. 15) through a-social/a-political notions such as responsibility, subject and public order. 'Stepping back' involves also contesting political philosophy (e.g. Derrida's abolitionism) since it neutralises political violence by producing mystifying fictions such as deliberation, representation, contract, which legitimise the order of law (p. 47). Although there is some resonance between this argument and the critical legal studies' deconstruction of law, de Lagasnerie is more interested in 'the political construction of the actions within the logic of the criminal justice system' as a way into a broader reflection on sovereignty and the 'antidemocratic aspects' of the rule of law (p. 145).

If Foucault and Derrida are polemical targets, 'critical social sciences' (i.e. Bourdieu and Nietzsche) provide the tools for de-mystifying the penal state's violence.

This conceptual apparatus is mobilised to uncover how in the courtroom takes place an ‘intermingling of the logics of protection, dispossession, submission, and vulnerability that characterize our existence as individuals answerable to the law’ (p. 30). The criminal trial, in fact, is a site of power which enacts people’s belonging to a state and only by de-symbolising this machine, i.e. by showing that ‘what the judge does, objectively, is [...] *to inflict violence*’ (italics in the original) (p. 37), it will be possible to generate spaces for an ‘inventive, audacious, and different’ criminal justice (pp. 23–24).

Part three and four are dedicated to a detailed analysis of the criminal trial’s internal logic and its links with penal punishment.

The main point, here, is that the trial’s logic rests on an economy of debt and promise whilst penal punishment on a psychic economy of injury, and they are inextricably interlinked. The ‘debt and promise’ logic (a Nietzschean-Benjaminian theme) entails that one’s past actions are promises to be honoured in the future and this justifies one’s answerability to the law within a trial. This underlying connection *is* the notion of individual responsibility. In fact, the trial establishes a responsible subject by violently ‘bind[ing] us to what we’ve already done’ (p. 72) through a narrative which relegates ‘contextual elements and social forces to the background in order to attribute blame for an event or action to a single agent’ (p. 100). This logic legitimises the backward-looking and depoliticising nature of both penal judgement and punishment - crime is an individual act and its responsible author ought to be punished (p. 118).

Paradoxically, this depoliticising effect is justified in the name of a Kantian-Rousseauian abstract ‘society’ (p. 154) whose rules are infringed by the criminal act. So, on the one hand we have the individualising narrative (e.g. a rape is treated as the actualisation of aggressiveness), on the other the production of social categories (e.g. society threatened by that heinous crime) ‘that socialise actions *in terms of their consequences* and thus establish the perception that particular behaviours always and inevitably disrupt *something else*’, (italics in the original), demanding punishment (p. 160).

From a political viewpoint, such a punishment does not follow the judgement, instead, the trial generates responsible subjects in order to punish them (p. 147), and this has a crucial political meaning: creating a subjugated polity.

At the end of part four the author proposes his alternative: a ‘neoliberal’ idea of justice (p. 173). Although neoliberalism advances an individualist concept of responsibility which resonates with how the system of judgement actually works, the book argues that we should apply neoliberalism to the second component of the dynamic, the system of punishment. This operation entails preliminarily to contest the taken-for-granted opposition between social state and penal state. In fact, the social state is (at least partly) responsible for supporting the depoliticising logic of punishment whilst the neoliberal vision could dismantle the penal apparatus (p. 180).

By combining (rather singularly) Gary Becker and Nils Christie, the book proposes to conceptualise crimes as private matters, parties as involuntary creditors/

debtors and the trial as a process of reparation informed by a non-penal compensatory law whereby ‘the state would only intervene as an arbiter to evaluate and rule on private conflicts, rather than as an accusing party’ (p. 183). This approach (which apparently resonates with restorative justice) does not intend to advance private conflict resolution mechanisms alternative to state justice but a state-based system which aims to respond to crimes granting actors a space where to make sense together of what has happened, creating opportunities of ‘forgiveness, negotiation, compensation’ (p. 189).

‘*Judge and Punish*’ pushes the reader to enter an uncomfortable space where the criminal trial and penal punishment’s steadfast tenets morph into disquieting political deceptions. This also applies to the (apparently) protective shelters provided by the rule of law, which turns out to be an actual source of legal violence. This critique is particularly sharp when it comes to dismantle the self-sustaining perceptual framing produced by criminal trials whilst uncovering its political logic. Furthermore, the reminder to face the bare violence of legal-political institutions is precious, in a time where ‘cutting off the king’s head’ has often been hastily taken as an invitation to downplay state sovereignty’s violent nature.

A number of rather contentious points render the book even more provoking.

There is an implicit chain of equivalences between trial, criminal law, criminal justice and the law. Equating criminal law with ‘the law’ as well as bundling together criminal justice and the trial, is a problematic analytical operation. Let’s assume they all produce violent perceptual deceptions, but are those engendered by a trial the same as those produced by a police discretionary stop-and-search or during a probation interview? The book seems to answer ‘yes’, producing a wholesale equalisation which appears as oblivious to the different histories of the different legal structures which ensure our inscription in the political order. This lack of historical-analytical sophistication, complemented by the use of the rather specific French criminal trial as a general paradigm of law/criminal justice, is at odds with the author’s declared aim of doing ‘critical social science’ and more consistent with an ontology of criminal justice (*à la* Agamben).

Problematic is also that the links between criminalisation and criminal trial as well as the drives and effects of the penal state’s stronghold on the polity, without differentiating between more and less destituted citizens, or between citizens and non-citizens, are issues raised but not addressed.

Regarding the alternative criminal justice envisioned by the book, this, in spite of the author’s disclaimer, appears very much like an informal private justice, where the state plays a rather dubious ‘arbiter’s role’.

This vision partly resonates with established penal minimalist themes, even though it is animated by a political commitment which is rather specific. de Lagasnerie sees in neoliberalism an emancipatory tool to dismantle the penal state’s transcendent authority. The main issue, here, is that the analysis neglects neoliberalism’s philosophical anthropology and its implications. The neoliberal economisation of justice comes with (and contributes to generate) certain ideas of who social (or better *a-social*) actors are, how they act (or better *transact*) and

based on which needs (or perhaps *interests*). *Inter alia*, this is also the reason why his proposal is not reducible to restorative justice. In fact, restorative justice is predicated on social interdependency and a communitarian ethos and not on individualism and economisation of social relationships. Had the author engaged with the philosophical-anthropological dimension, his proposal would have been perhaps richer and more nuanced.

Additionally, the idea of the state as a passive arbiter obliterates its historically entrenched violent agency and its social effects. To imagine an instrumental state serving meekly people's interests, means rather optimistically overlooking the state's historical tendency (or perhaps nature) to use its iron cage against imperfect consumers.


Finally, and more radically, if the violence meted out by the trial is integral to our inscription in the state apparatus, perhaps emancipation from violence requires rethinking the very idea of state as a necessary form of social-political organisation backing up criminal justice, a necessity which the book instead endorses.

Overall, this is a thought-provoking book. de Lagasnerie's voice is courageous and uncompromising and it is likely that his critique will be appreciated also by those who do not see in neoliberalism any emancipatory potential.

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Note

1. Although the book is informed by the author's observation of criminal trials in France, the argument is presented as significant beyond French borders.