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DEVELOPMENT OF CRIME, SOCIAL CHANGE, MASS MEDIA, CRIME POLICY, SANCTIONING PRACTICE AND THEIR IMPACT ON PRISON POPULATION RATES¹

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Abstract

Spain has suffered a big increase of imprisonment between 1980 and 2006, passing from an average prison population of 17,000 prisoners in 1980 to 63,000 in 2006, meaning a growth of 266% in average prison population in 26 years. In order to explore the reasons for this increase in prison population, this paper proposes that is useful to distinguish two main periods: a) 1980-1994 (increase in prison population, followed by stability between 1995 and 2000, and b) 2001-2006 (a second increase in prison population). During these two periods, the growth of incarceration rates is higher in the first period (12% average increase per year) than in the second (6% average increase per year). More recent trends seem to announce an even more pronounced escalation of imprisonment in the foreseeable future. Authors proposes that the two trends that in Spain contribute to the enlargement of the prison incarceration rates, the larger time served by prisoners and the criminalization of new phenomena, will continue in the future.

Keywords: prison; incarceration rates; penal reforms; sociology of punishment.

Resumo

Crescimento do crime, mudança social, mídia de massa, política prisional, práticas sancionais e seu impacto sobre as taxas da população prisional

A Espanha sofreu um grande aumento das taxas de encarceramento entre 1980 e 2006, passando de uma população carcerária média de 17.000 presos em 1980 para 63.000 em 2006, significando um crescimento de 266% na população carcerária média em 26 anos. A fim de explorar as razões para este aumento da população prisional, este trabalho propõe que para entender este fenômeno seria útil distinguir dois períodos principais: a) 1980-1994 (aumento da população prisional, seguido de estabilidade entre 1995 e 2000, e b) 2001-2006 (um segundo aumento da população carcerária). Tendências mais recentes parecem anunciar uma escalada ainda mais pronunciada do encarceramento no futuro próximo. Os autores propõem que as duas tendências que contribuíram na Espanha para o crescimento das taxas de encarceramento, o maior tempo de prisão por preso e a criminalização de novos fenômenos, continuarão no futuro.

Palavras-chave: prisão; taxas de encarceramento; reformas penais; sociologia da punição.

INTRODUCTION: THE DEVELOPMENT OF PRISON POPULATION SINCE 1980

Spain has suffered a big increase of imprisonment between 1980 and 2006, passing from an average prison population of 17,000 prisoners in 1980 to 63,000 in 2006, meaning a growth of 266% in average prison population in 26 years (Figure 1).

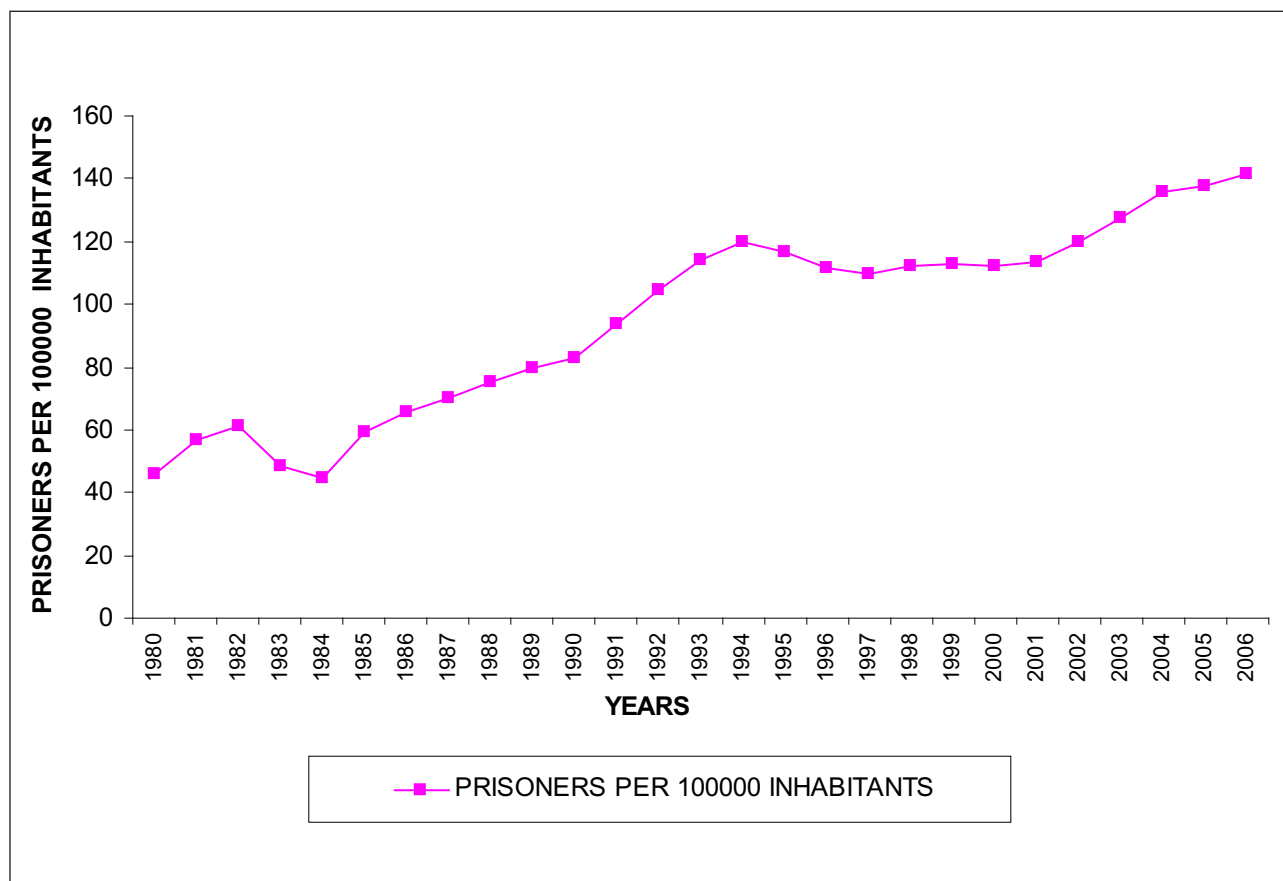


Figure 1. Average prison population. Spain (1980-2006)

Source: Spanish Government, DGIP (Dirección General Instituciones Penitenciarias). *Número de internos en centros penitenciarios. Evolución semanal*; Catalan Government, SSPRJ (Secretaria de Servicios Penitenciarios, Rehabilitación y Justicia Juvenil), *Estadísticas semanales de evolución de la población reclusa*.

Although between 1980 and 2006 Spain has also experienced a demographic increase, the relative figures of prisoners per 100,000 inhabitants show an increase of 208%, from 46 per 100,000 in 1980, to 141 per 100,000 in 2006.

In order to explore the reasons for this increase in prison population we think it is useful to distinguish two main periods: a) 1980-1994 (increase in prison population, followed by stability between 1995 and 2000, and b) 2001-2006 (a second increase in prison population). During these two periods, the growth of incarceration rates is higher in the first period (12% average increase per year) than in the second (6% average increase per year). More recent trends seem to announce an even more pronounced escalation of imprisonment in the foreseeable future.

1 BACKGROUND AND EXPLANATIONS

1.1 Increase in prison population between 1980-1994

The enlargement of prison population between 1980-1994 seems related to the increase of crime during the eighties. As a result of this augment – and irrespectively of any change in crime policy, legal norms or sentencing practices – more offenders were sent to courts, increasing dramatically the numbers of prison admissions.

According to police statistics Spain suffered during the eighties an important increase in criminality. The police recorded, approximately 400,000 crimes in 1980 and 1.000,000 in 1989 (an increase of 150%). If we take into account both crimes and misdemeanors, the figures are, approximately 500,000 criminal infractions in 1980 and 1.500,000 in 1989 (a 200% increase) (Figure 2).

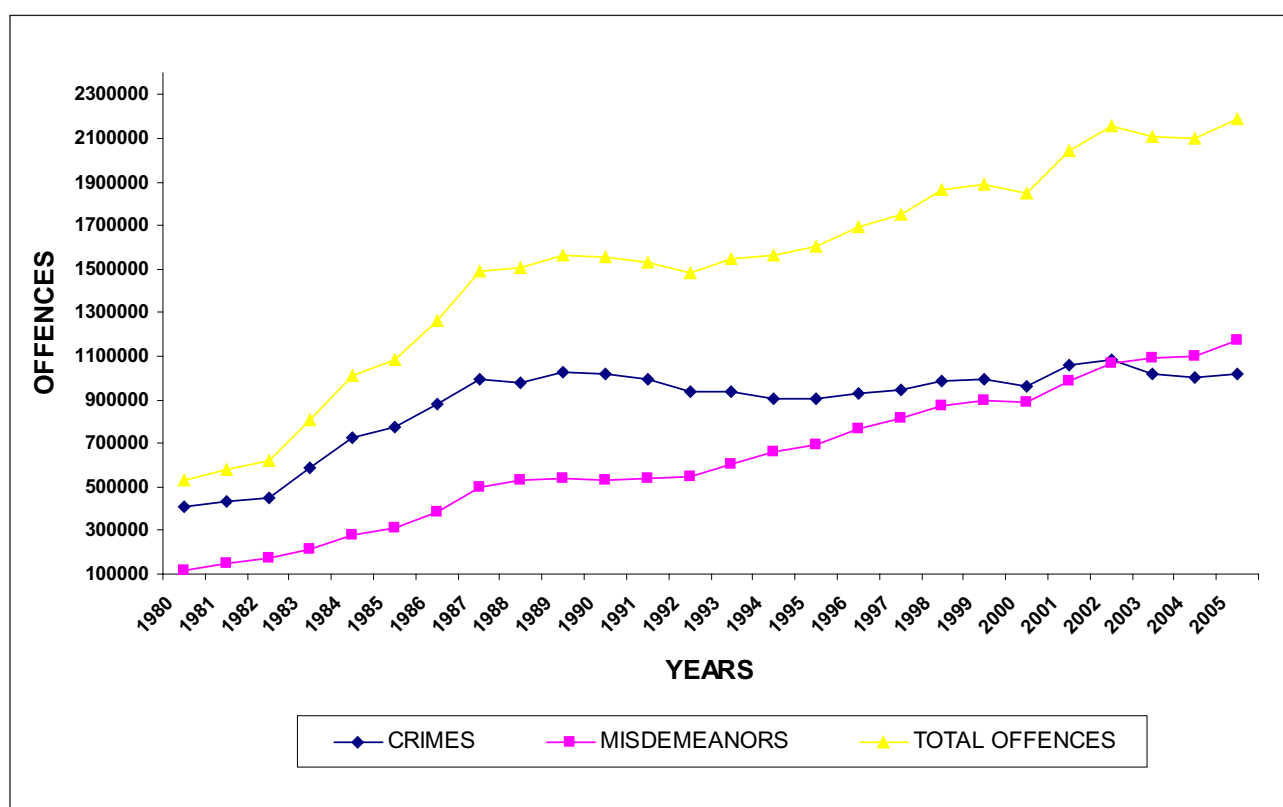


Figure 2. Evolution of Crime. Spain (1980-2005)

Source: Spanish Government, Ministerio del Interior, *Anuario Estadístico*; Catalan Government, Information to the authors about crimes known by Catalan police.

In order to appreciate the relevance of the evolution of offences known by the police and the incarceration rates we should take a look at the evolution of prison admissions in Spain. As shown in Figure 3, the rate of admissions to prison rose very sharply between 1980 and 1985 and kept stable in the following years until 1994. In any case, during all this period the average entries per year were comparative very high (68,000 admissions per year, in average).

From this figure we can realize the relationship between number of crimes detected and entries in prison. In fact, during these years, most prisoners were not admitted in prisons due to a conviction but as a remand

prisoners. This is why the analysis of the evolution of offences and prison entries show a similar trend in the two variables: a big increase in crime and entries in prison in the middle eighties followed by a stability in crimes and in entries in prison in the following years².

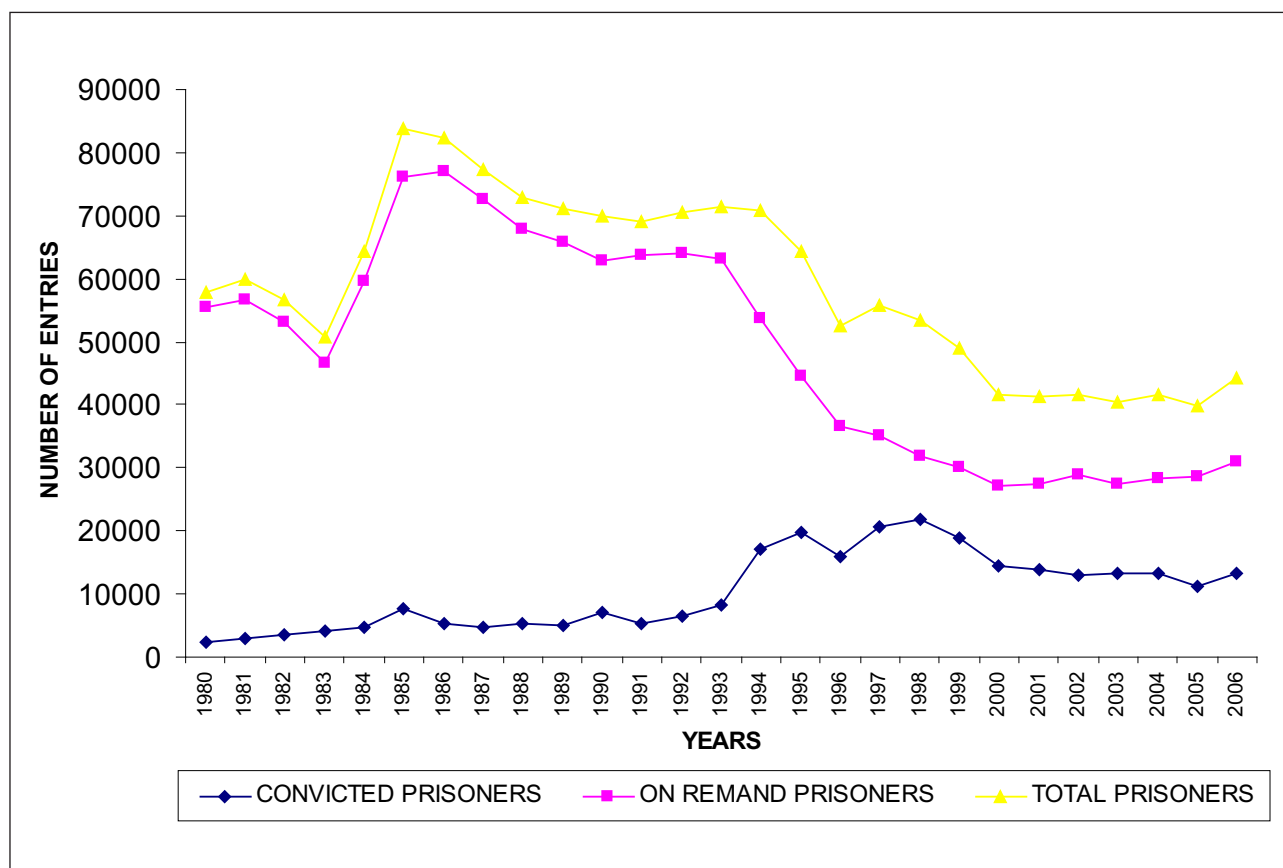


Figure 3. Prison admissions. Spain (1980-2006)

Source: DGIP, *Informe Anual and Estadística General de Población Reclusa. Evolución mensual*. Catalan government, Conselleria de Justicia, *Memoria anual*.

Although the growth of crime rates in the eighties seems the most visible candidate for explaining the increasing incarceration rates between 1980 and 1994, it should also be remembered the lack of alternative policies to incarceration.

Despite the fact that there is no criminological research exploring the increase of crime in the eighties, it seems reasonable to suggest that, among other factors, both raising rates of unemployment after the 1973 crisis, and the big expansion of drugs in the eighties played a role (Garrido, Stangeland, Redondo 2006:139).

In this context, it seems that, on the one hand, there was a lack or very few crime-prevention policies related to drug-addicted people in risk of offending and, on the other hand, the criminal system lacked alternatives to incarceration in order to deal with offenders with many social problems (in fact the first special provision for drug-addicted offender was approved in 1988).

As a result of this process of high level of admissions in prison between 1984-1994, the average prison population reached a pick in 1994, with 48,000 prisoners.

From 1995 to 2000 we find the only period in which incarceration rates did not rise, or even decrease moderately, and this period of stability seems to be due to the fall of admissions in this period. On average, admissions were 68,000 in 1980-1994 and 53,000 in 1995-2000

This fall of prison entries since 1995 seems to be due to a complex number of factors: a moderate reduction of crimes in the mid nineties, the fact that the offences that arrive to the courts after the mid nineties were relatively less serious than in previous years (see *infra* Table 2), less use of remand prison by judges after some decisions of the Constitutional court, and finally extended use of suspended sentence which in the new criminal code of 1995 allowed judges to suspend a sentence up to two years of imprisonment (instead of only one year, as in the previous penal code).

1.2 Increase in prison population between 2001-2006

After a period of stability or even moderate reduction of prison population between 1995 and 2000, the incarceration rates began to rise again, changing from 45,000 average prisoners in 2000 (112 prisoners per 100,000 inhabitants) to 63,000 in 2006 (141 prisoners per 100,000 inhabitants).

The explanations for this new increase are very different to the ones we put forward for making sense of the period 1980-1994. As previously mentioned, we think that the most relevant factor that fuelled incarceration rates during 1980-1994 was a high level of entries in prison, with an average of 68,000 entries per year. But the trend in reduction of prison entries that began in the period of stability of 1995-2000 (53,000 average admissions per year) is even more pronounced in the period 2001-2005 (41,000 average admissions per year). This reduction of prison admission that began in 1994 was only reverted in 2006.

The fact that needs to be explained is what produced such an important rise of incarceration rates during the period 2001-2006 with such a diminished level of new admissions.

To answer this question we have to look at the penal law reforms and, particularly, at the new criminal code of 1995. As we will explain with more detail (epigraph 5), after several attempts of penal reform, Spain laid down a completely new criminal code, adopting two main decisions that would have an important impact on incarceration rates: on the one hand, it raised the minimum penalties for some common crimes and, on the other hand, it abolished the generous system of good time credits that existed in the previous criminal code.

Although the new criminal code expanded the use of suspended sentence, and this factor influenced the reduction of prison admissions, it has not been enough to compensate for the increase in time that offenders have to serve (Cid 2005a and b). All the available data confirm the thesis that prisoners serve much more time with the new criminal code: on the one hand, the average duration of imprisonment has passed from 9.7 months in 1996 to 16.7 months in 2004 (Council of Europe, Space, 2005. 13.1); on the other hand, data on parole reveal a dramatic reduction of paroles granted after the new criminal code, mainly as a result of abolishing good time credits.

To sum up, the criminal code of 1995 started a new line of bifurcation because, while it allowed a more generous suspended sentence it hardened the length of the sentence for offenders sentenced to prison. Although the two policies have had contradictory effects on prison rates –reducing admissions in the first case and increasing time served in the second case- the data show that the second policy has had more impact and accounts for the increase in incarceration rates since the beginning of the new century.

1.3 Recent trends in incarceration rates

In 2006 the reduction of entries in prison that started in 1994 seems to have come to an end. Entries in prison in 2006 have been 44,000 and the projections for 2007 are around 50,000. The stability of prison entries around 41,000 entries per year has changed.

The main reason for this increasing number of admissions to prisons appears to be the legislative changes of 2003 and 2004 in relation with domestic violence. The new laws on domestic violence transformed the status of the physical assaults from misdemeanors to crimes and in the following years this change has produced a sharp increase in crime convictions for domestic violence that finally have produced an increase in prison admissions.

If convictions keep the high level reached in 2005, not to say if they augment, we will assist to a new rise of imprisonment due to the combination of a severe criminal code that requires for most offenders to serve the full sentence and to an increasing number of offenders entering prison for domestic violence offences.

2 ACTUAL PENAL FRAMEWORK

2.1 Sentencing framework

The Spanish sentencing system may be defined as 'legalistic' because the legislator assumes the main important decisions about sentencing. Nevertheless judges, prosecutors and penitentiary authorities also play an important role, because they are given some important authority to decide on the sentence. The main features of the sentencing system are:

- (i) The law distinguishes between misdemeanors and crimes. Misdemeanors receive usually a fine and convictions for misdemeanors do not count as criminal record. Judges and Courts passed an average of 300,000 convictions per year (a ratio of 7 convictions per 1,000 inhabitants per year), approximately 60% of them for misdemeanors and 40% for crimes³.
- (ii) There is a statutory determinate sentencing system for crimes, with a minimum and maximum penalty for every offence. The judge has the power to determine the exact sentence ('flat time'). For most crimes prison is mandatory and only in some cases the law allows an optional sentence between custodial and non-custodial penalty (Table 1). As a result, approximately 60% of the convictions for crimes receive a prison sentence⁴.
- (iii) There is a statutory fixed line between prison sentences that have to be executed and prison sentences that judges and courts may suspend or replace by non custodial penalties. This threshold is generally fixed in two years. The use of the suspended sentence by judges is high.
- (iv) Prosecutors have the duty to accuse for all the offences known, but the law accepts plea bargaining between the prosecutor and the accused in order to avoid trial. In some cases, the deal is stimulated by a mandatory reduction of the sentence. Around 60% of the convictions for crimes are guilty plea⁵.
- (v) For executed prison sentences up to 5 years, penitentiary authorities have the power to decide between open or closed prison. If the sentence is more than five years open regime is only possible after having served a minimum mandatory sentence of half of the sentence. Parole can be granted by penitentiary judges after having served 3/4 of the sentence or, exceptionally, 2/3 or 1/2. No system of good time credits is available.
- (vi) Recidivist offenders receive a special treatment through the different phases of the sentencing system. If the person has been convicted for the same kind of offence s/he faces a mandatory rise of the sentence (see Table 1). Any previous conviction for an intentional crime also excludes the possibility of suspended sentence. Although there are no special provisions for recidivist offenders in the penitentiary legislation, recidivist offenders suffer a more closed regime and are less released on parole (Tébar 2006).

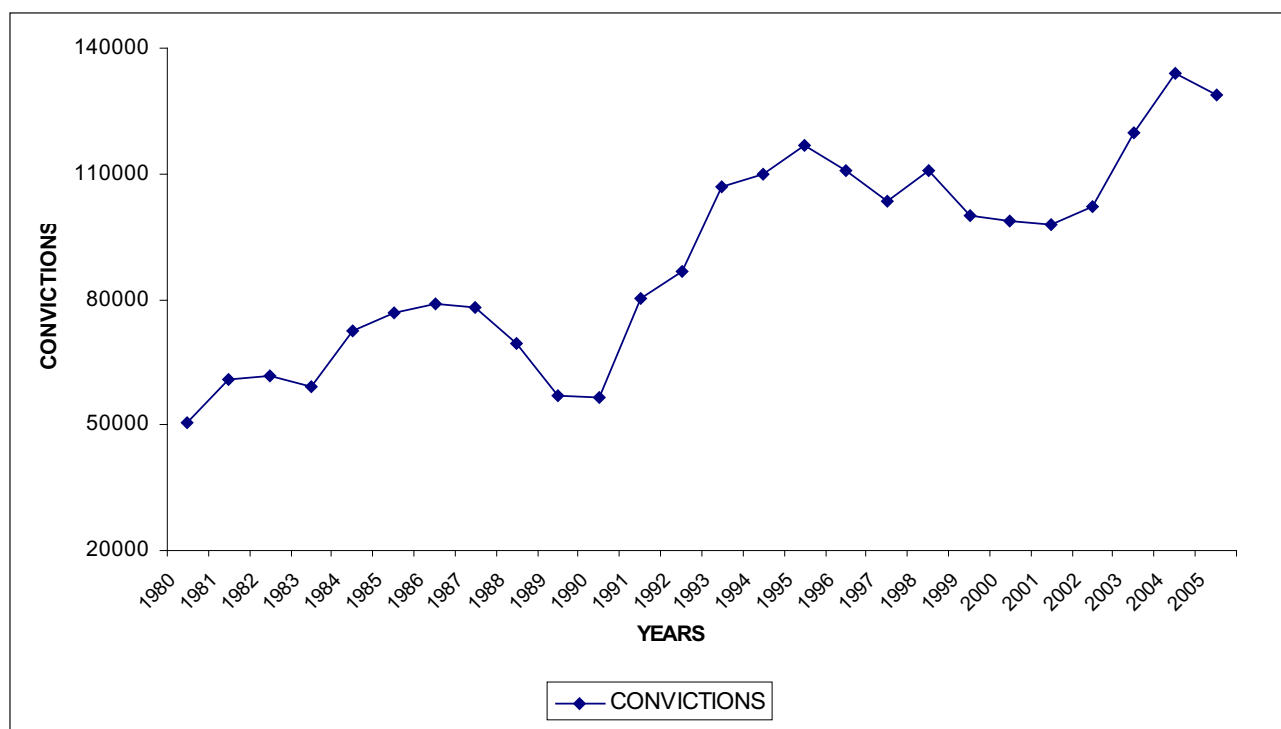
Table 1. Legal sentences for some crimes. Spain

Crime	Legal sentences	Recidivist
Theft (more than 400€)	6-18 months prison	12-18 months prison
Aggravated Theft	1-3 years prison	2-3 years prison
Burglary	2-5 years prison	3 years and 6 months-5 years prison
Robbery	2-5 years prison	3 years and 6 months-5 years prison
Assault (with body harm)	6 months-3 years prison	21 months-3 years prison
Domestic violence	3 months-1 year prison <i>or</i> 31-180 days Community service	7 months and 15 days-1 year prison <i>or</i> 76-180 days Community service
Driving under the influence	3-6 months prison <i>or</i> 6-12 months day-fines (optional addition of community service)	4 months 15 days-6 months prison <i>or</i> 9-12 months day fines (optional addition of community service)
Drug dealing (soft drugs)	1-3 years prison	2-3 years prison
Drug dealing (hard drugs)	3-9 years prison	6-9 years prison
Sexual Assault	1-4 years prison	2 years 6 months-4 years prison
Rape	6-12 years prison	9-12 years prison
Homicide	10-15 years prison	12 years and 6 months-15 years prison
Murder	15-20 years prison	17 years and 6 months-20 years prison

Note: Usual offence without mitigating or aggravating circumstances.

2.2 Rates of convicted offenders for crimes since 1980

The evolution of convicted offenders per crimes from 1980 to 2005 follows a similar pattern than the evolution of crimes and admissions in prison. Increasing crimes in the eighties and high level of entries in prison until 1994 has its correspondence in the rising number of convictions for crimes that passed from 50,000 in 1980 to 115,000 in 1995 (a 130% increase). After 1995 we find stability in convictions until 2002, followed by an important increase between 2003 and 2005

**Figure 4.** Evolution of convicted offenders for crimes. Spain (1980-2005)

Source: INE. Judicial Statistics.

The puzzle is how to explain the stability or moderate increase in convictions from 1995 to 2005 with the important fall in prisons admissions that we have detected in the same period (Figure 4). As before stated, the more immediate factors that explain the fall in prison admissions during this period are the lesser use of the remand prison and the greater use of suspended sentences.

The question we want now to explore is if these decisions about remand prison or suspended sentence were favored by the fact that during those years crimes dealt by judges were less serious than those dealt in the preceding years. From the Table 2 we may find some moderate confirmation of this hypothesis, because the addition of the convictions for the more relevant violent crimes plus aggravated theft and burglary diminished their prevalence after 1995.

Table 2. Evolution of rates of convictions for violent crimes and serious property crimes

Crime	1980-1985	1986-1990	1991-1995	1996-2000	2000-2005
Aggravated theft/burglary	23.4%	33.9%	28.4%	24.5%	15.6%
Robbery	3.1%	3.6%	6.2%	5%	4.7%
Bodily injury(*)	4.2%	3.5%	3%	3.7%	10.4%
Sex crimes	1.2%	1%	1%	0.8%	1%
Drug dealing	1.8%	6%	7.6%	6.4%	6.5%
Homicide/Murder	0.5%	0.5%	0.3%	0.2%	0.3%
All 6 crimes	34.6%	48.3%	46.5%	40.9%	38.5%
Average convicted	63,000	68,000	100,000	105,000	117,000

Source: INE (Judicial Statistics).

(*) Including all assaults (even without bodily injury) considered as a domestic violence crime.

The only crime that does not follow the same pattern is bodily injury which has suffered a very sharp increase in convictions in the period 2000-2005 but this change is due to the fact that, as we mentioned before, a new regulation of domestic violence passed in 2003 raised the status of every domestic assault from a misdemeanor to a crime. In fact the increasing number of convictions from 2003 to 2004 and 2005 (once the new law was implemented) is entirely explained by offenders convicted of domestic violence⁶. And as we explained before, the increasing number of convictions after the reform of 2003 has finally brought to an increase in admissions to prison since 2006.

2.3 Sentencing practice of the Courts since 1980

The sentencing practice has been since recently a much neglected topic by Spanish academics. Given the lack of research and the fact that judicial statistics are very shortcoming⁷ we really do not know how the use of discretion by courts has changed since 1980. The only existing research focused on the application of the alternatives to prison laid down by the criminal code of 1995 (Cid and Larrauri et al.2002). This research will be the main source for this epigraph.

Although we do not know which part of responsibility the judges have in accounting for the important number of admissions in prison in the period 1980-1994 it is possibly true that the legal system did not offer them many alternatives to avoid the use of prison. The only alternative that they had was suspended sentence, but it was only applicable to prison sentences until one year and valid only for first offenders.

The legal system changed in 1995, when the new criminal code raised the threshold of the suspended sentence up to two years and added the possibility of replacing a two years prison sentence with other non custodial sentence (Community Service Order or fine).

The research of Cid and Larrauri et al. (2002) was aimed to know if Spanish judges were using their discretion in order to achieve a decarceration effect. With this aim, the research analyzed a sample of

1425 offenders convicted in 1998 by judges of Barcelona, with competence to deal with crimes punishable with a maximum sentence of three years prison. The results of the research are summarized in Table 3.

Table 3. Use of alternatives to prison by Spanish judges

Type of alternative	Percentage accepted
Suspended sentence (first offenders)	84%
Suspended sentence with probation for drug addicted offenders (recidivist offenders)	38%
Replacement of a custodial sentence for fine of community service (recidivist offenders)	12%

Source: Cid and Larrauri et al. (2002).

The interpretation of the results by the authors of the research was two-fold: on the one hand, it was indisputable that the suspended sentence was very accepted by judges and, on the other hand, it seemed that the new system of alternatives to prison was quite ineffective in avoiding the use of prison for recidivist offenders of non-serious crimes.

As a conclusion we can say that although the use of alternatives is far away of what we consider desirable, judges used extensively the new power given by the law when it raised the threshold of the suspended sentence and this seems the crucial factor to explain the reduction of admissions in prison from the period 1995-2000 (53,000 average admissions per year) to the period 2001-2005 (41,000 average admissions per year), in which the new criminal code was full implemented (Cid 2005a).

2.4 Practice of release

The evolution of the use of parole shows that from 1984 to 1995 there is a basic stability in the number of paroles granted – around 25 paroles per 100 convicted prisoners –. After 1996 there is a progressive reduction of the number of paroles granted, reaching an average from 1996-2006 of 15 paroles per 100 convicted offenders (a 40% fall in paroles) (Figure 5).

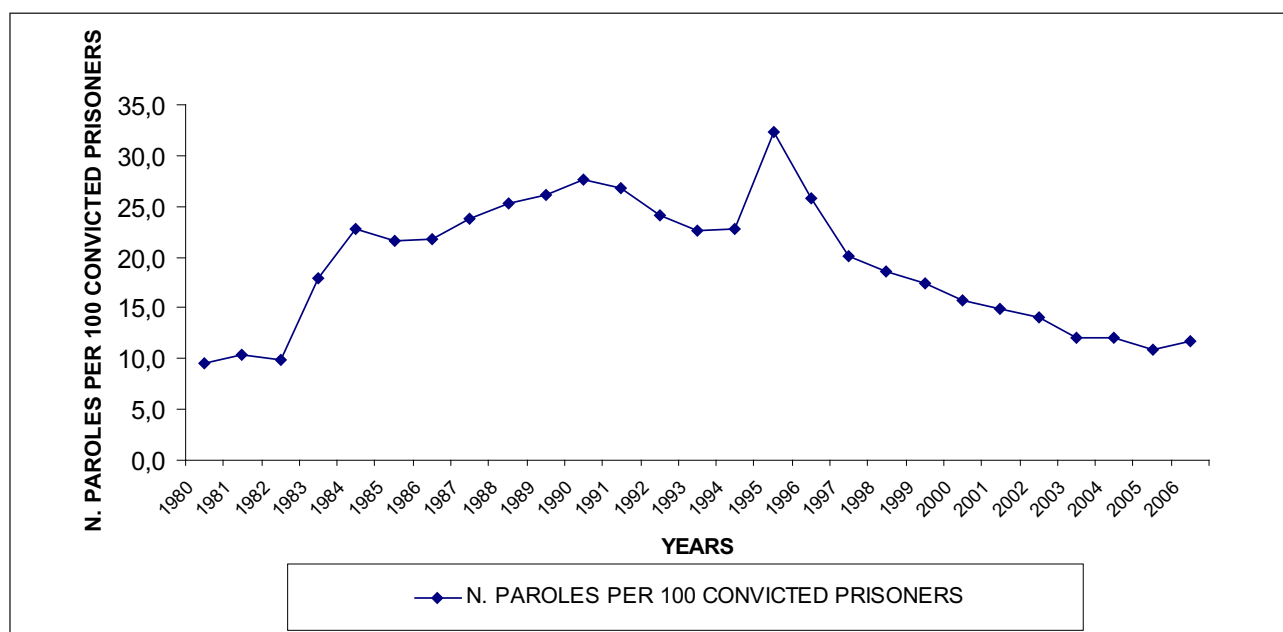


Figure 5. Paroles granted. Spain (1980-2006)

Source: *Anuario estadístico de España*; Catalan Government, *Consejería de Justicia, Memoria anual*.

The explanation for this important fall in paroles after 1995 lies in the increased penalties and in the abolition of good time credits done by the new criminal code of 1995. Prisoners who served their sentence according to the old criminal code could benefit from a 1/3 to 1/2 of remission of the sentence for good behavior and participation in treatment activities. Given that good time was compatible with a system of discretionary parole that could be granted after having served 3/4 of the sentence (computing time served and good time) this implied that after having served between 1/3 or 1/2 of the sentence most convicted prisoners were eligible for parole.

The consequence of harsher penalties and abolition of good time was a progressive reduction of the number of convicted prisoners that were eligible for parole, because only prisoners that had served effectively $\frac{3}{4}$ of the sentence (or exceptionally $\frac{2}{3}$) could benefit from parole (Tébar 2006).

Alternative explanations for the reduction of granted paroles could be a more restrictive policy in the granting of parole to eligible prisoners due to the new requirements of the reform of 2003 (Tamarit 2007) or to the increasing number of foreigners in prison (Tébar 2006). Available data from the Catalan administration give some moderate confirmation to these two hypotheses, but it seems clear that the reduction of the number of parolees granted between 1996 and 2006 is not due to the reduction of the use of parole by penitentiary authorities (Figure 6).

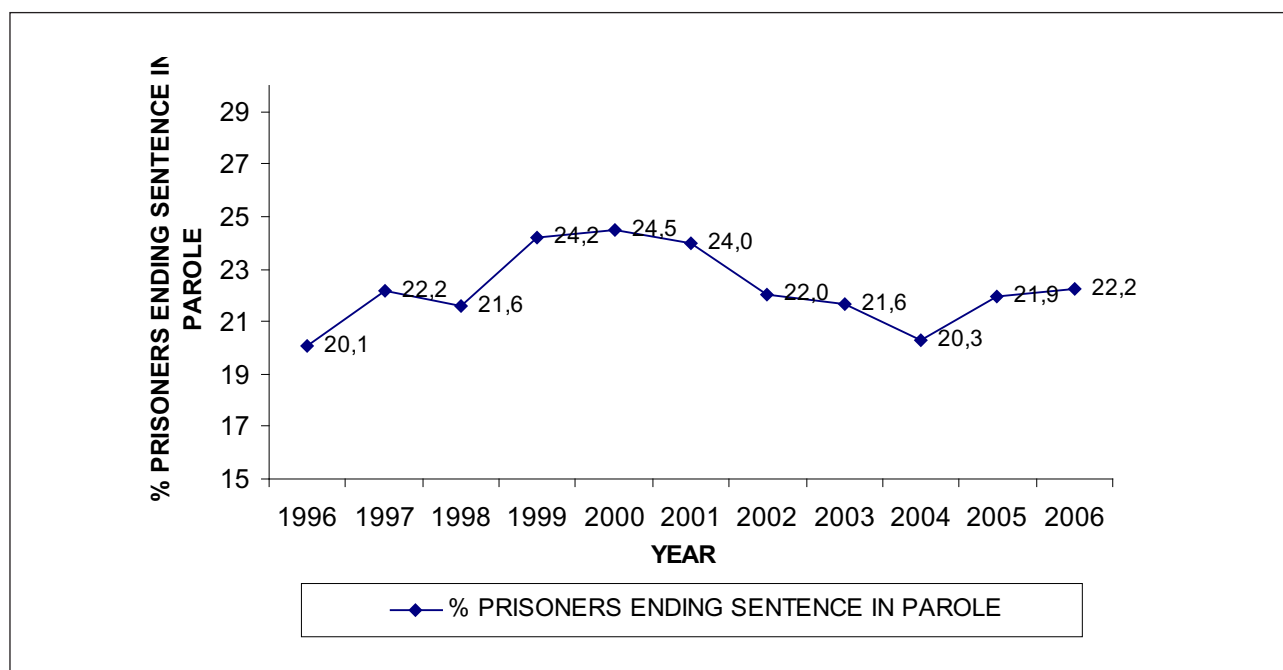


Figure 6. Convicted prisoners ending their sentence in parole. Catalonia (1996-2006)

Source: Information to the authors by the Catalan Government, SSPRJJ.

To sum up, the new criminal code, besides increasing penalties for some common crimes, abolished good time credit and this implied an important increase in the time being actually served, so it leads to a reduction of the number of prisoners eligible for parole and as a consequence in the number of paroles granted.

The reduction of the number of parolees due to the requirement of more time served before been eligible, could have been moderated in case there would have been a change in parole policy, based on extending the number of prisoners that finished their sentence in parole. But this policy has not been favored due, among

other factors, to a more punitive framework after the reform of 2003 and to the increasing number of foreigners in prison.

3 PENAL LAW REFORMS SINCE THE LAST 25 YEARS

The main reforms in Spain can be explained by a brief reference to two different epochs. The first one corresponds after Franco's death in 1978 to the elaboration of a new penal code (1995). The second one corresponds to the penal reforms done by the conservative party (2003).

From 1978 until 1995 Spain could be loosely considered within the category that Cavadino and Dignan (2006) name 'conservative corporatism'. We hesitate to label this first period 'penal welfarism' since in Spain rehabilitation has meant 'to avoid desocialization by imposing a prison sentence', more than to intervene positively in the form of social help.

Although it is true that crime and prison rates increased in the first period, what scholars highlight of that epoch is the 'invisibility' of penal policy (Varona 2000). Criminal policy was not an electoral issue, and one can assume in this period an implicit 'bipartisan consensus' (Downes and Morgan 2007), based in a set loose of assumptions: prison needs to be kept to a minimum, penalties have the goal to rehabilitate the offender.

Besides the absence of criminal policy discussions, and notwithstanding some political confrontations, the reasons that explain the lack of a vociferous law and order discourse are according to Medina (2006) the fact that when Franco dies the emphasis can't be on control but on civil liberties, the influence of legal scholars, the majority of which adhere to a liberal agenda and exert an influence on the socialist party who was in government from 1982 to 1996, and the existence of a jurisprudence focused on the defense of legal guarantees.

The penal reforms in this period tend to be explained by a reference to democratization (i.e. abolishment of death penalty), or modernization (i.e. decriminalization of some sexual offences like adultery).

FIRST PERIOD (1995): This first period finishes with the approval of the New Penal Code (NPC) of 1995. If we concentrate on penalties this NPC is characterized by two elements: on the one hand it is greeted as 'introducing alternative punishments in Spain', on the other, according to the most extended opinion it increases overall severity.

We will now focus on the increase of severity. This affirmation is probably due to different reasons: an increase in prison sentences in the most common offences of (for example, robbery); the abolition of good time credits, without the enough reduction of prison sentences, and a special regime that avoided totally the granting of parole.

Each of these changes was justified by a series of reasons, as an example the special regime was justified on the grounds of terrorism; and the abolition of good time credits obeys to the criticisms that were unanimously launched against this system. Good times were criticized, although being the Spanish doctrine unaware of it, for the same reasons as in USA (Jacobs 1982), this is, for being automatic (meaning that it was not based on an individualized assessment) and for 'emptying' judges' sentence, meaning that people served much less time than what the courts had sentenced to.

But it seems to us that what need to be explained are the reasons why a criminal code approved by a socialist party (with the abstention of the conservative party) in the absence of a general punitive climate increases overall severity. We can provide three tentative answers:

- a) the influence of liberal legalism which produced as a consequence the abolition of good time credits, and at the same time the lack of 'evidence led knowledge', which resulted in a lack of accuracy of how much incarceration impact this would have;

- b) the lack of a reductionist culture (Rutheford 1986), which means that Spanish liberals tend to desire to punish other things instead of punishing less. Additionally the concern and discussion focuses on the expansion of criminal law (Silva 1999), but not so much with the actual number of persons being sent to prison;
- c) the pulls towards punitivism felt by the socialist party. Penal law professors that were intervening in the reform process assert how fear of crime and security were more visible since Franco's death and therefore it was especially important for the socialist government not to appear soft on crime.

In a process that resembles the 'hiding away the skeletons in the cupboard' that New Labour went through, in order to distance itself from any permissive aura (Downes and Morgan 2007), this led to specific instructions about what minimum penalties some offences should have (robbery, drug traffic, and aggravated bodily injures). The goal was precisely to avoid the benefit of suspended sentence (Quintero, personal communication) which was being amplified to cover prison sentences up to 2 years.

In any case, according to our view the implementation of the NPC represents the entrance and triumph in Spain of the 'truth in sentencing' philosophy and is probably the main responsible for the increase of imprisonment during the period 2001-2006. Additionally the most relevant factor in explaining the increase of incarceration rates is the abolition of good time credits⁸. In Table 4 one can see the increase in length of prison sentences that took place.

Table 4. Time to be served by offences. Comparison 1973 Criminal Code (with further reforms) and 1995 Criminal code

Offence	1973 criminal code (including further reforms of 1983 and 1988)			1995 criminal code
	Minimum penalty	Time to be served with partial good-time	Time to be served with full good-time	Minimum penalty Time to be served
Theft (300 €)	1 month	20 days	15 days	6 months
Burglary (300 €)	50 months	36 months	25 months	24 months
Robbery	6 months	4 months	3 months	24 months
Armed Robbery	50 months	36 months	25 months	42 months
Drug dealing (hard drugs)	28 months	18 months	14 months	36 months
Assault	1 month	20 days	15 days	6 months
Rape	12 years	8 years	6 years	6 years
Homicide	12 years	8 years	6 years	10 years

Note: Offences without aggravating or mitigating circumstances. Parole not considered.

SECOND PERIOD (2003): The second relevant moment in order to understand Spanish evolution and its shift towards a politicization of criminal policy is 2003, when the conservative political party then in government undertakes a series of reforms aimed mainly at reinforcing truth in sentencing.

This shift begins probably in part thanks to the socialist party, then in opposition. The Socialist party launched a campaign in 2002 under the heading 'Enough impunity, priority for victims: security for all', which transformed insecurity or fear of crime into an electoral issue (Rechea, Fernández and Bénitez 2004; Soto 2005). The Spanish socialist party didn't link the increase in crime to leniency but accused the conservative party of having favored private police, and in a wink to their electorate they promised more *public* police. Nevertheless it seems clear that this strategy was influenced by the English model of Tony Blair (Medina 2006), and as Downes and Morgan (2007) point out "[These policy transfers] would hardly have been gestated but for the association with electoral success".

Some aspects of this decision of the socialist party need more reflection: crime had increased during the eighties, there had been some key cases of moral panics, news about crime were indeed more salient in the

mass media, public opinion was beginning to be more concerned with insecurity; also one is left to wonder about the final impact of this campaign in the electoral success of 2004, and the reasons that account for the lack of persistence of this punitive discourse at the national elections of 2008⁹. Nevertheless the conviction was that

(...) politicians have discovered that in penal law –or more precisely in increasing the penalties of criminal law- lay many votes. We face bad times (Gimbernat 2004).

In any case conservatives were not going to lose this battle so in 2003 they initiated a series of reforms which main targets were terrorism and organized crime, recidivism, preventive detention, immigrants and domestic violence and which culminated in 2003 in a global reform of the penal code. All these reforms were passed with the consent of socialist party giving way then to a new consensus, but this one based in a loose set of law and order assumptions, i.e. the victim needs to be protected, the criminal must serve its entire sentence and compensate the victim.

The avalanche of reforms went almost all in the same direction, for example: i. prison sentences could be imposed up to 40 years; ii. increasing the possibilities to impose preventive detention; iii. making domestic violence always an imprisonable offence; iv. requiring a minimum mandatory sentence when offences have a penalty of five years imprisonment; v. requiring the payment of civil responsibilities to the victim before granting parole; vi. abolishing parole for terrorist and organized criminality; and vii. requiring the compulsory expulsion of migrants in irregular situation convicted of offences punished with prison up to 6 years (López 2003).

Although the reforms increasing truth in sentencing trends haven't had for the moment a great impact on incarceration rates, due among other factors to the restrictive interpretation that professors and judges have done of them, they do have a profound *symbolic impact* of indicating a more punitive discourse that might influence all the agents that adopt small decisions within prisons (Liebling 2004).

According to our data of all these reforms the one most likely to have an impact on incarceration rates is the criminalization of 'gender violence' (Larrauri 2007). This is due mainly to the (conservative) penal reform done in 2003 which transformed this offence into an imprisonable one. Judges sentence to prison in 82% of the occasions, surely counting on suspended sentence (Bottoms 1987), but as research shows 27% of people do enter prison as a result of this (Larrauri and Antón 2007). Criminalization has been additionally increased due to the (socialist) penal reform in 2004, which raised penalties when the man is the aggressor, and transformed two more gender offences into imprisonable ones.

The (only?) non pessimist note of this development is that since the penal reforms in 2003 incarceration becomes a public problem for liberal legal scholars (Grupo de Estudios Política Criminal 2003). According to our hypothesis this is due mainly to three elements: the fact that truth in sentencing legislation is launched by a conservative government, the diffusion of empirical knowledge thanks to the European imprisonment statistics which consistently point to the high position that Spain occupies in the rank, and finally to the entrance of an Anglo culture which spells out the shift to a punitive turn, best exemplified by the work of Garland (2001), which receives an unprecedented attention by Spanish legal scholars (Diez Ripollés 2004).

To summarize: a New Penal Code of 1995 done by socialist government which besides introducing alternatives to imprisonment, increases overall severity. Additionally the abolition of good time credits as a product of 'liberal legalism', with no study of what the incarceration impact would be. This is followed by a series of penal reforms done by the conservative party with the agreement of the socialist party, which punish

the recidivist, reinforce truth in sentencing traits, establish minimum mandatory for serious offences, elevate prison sentences up to 40 years, create suitable enemies like gender violence or traffic offences and culminate in the reform of the penal code in 2003. Although the full impact of the implementation of all these reforms remains to be seen, the symbolic force of the reforms of 2003 is the awareness that in Spain finally crime one can also speak of ‘populist punitiveness’.

A word must be said about juvenile penal law (Fernández and Rechea, 2006). A new law was passed in 2000 which has been modified since then four times. Suffice it to say that the last modification done in December 2006, under a socialist government, foresees the possibility for the group of youngsters of 16-17 years old in case of crimes against life, sexual aggressions or terrorism, to be closed in an institution up to 10 years, followed by a probation term of 5 years, with a minimum mandatory sentence of half the time. In other cases labelled as ‘extreme seriousness’ the time of the sentence is 6 years, with a minimum mandatory sentence of one year, followed with 5 years probation. One has just to recall that the judge must consider extreme seriousness always that the youngster is recidivist.

If we take into account that in previous 1992 legislation and still now the general rule is that measures directed to juveniles could not last longer than 2 years, one can observe the profound shift that has taken place in juvenile penal justice. If there is a legislation where one can speak of an exacerbate incapacitation ideology, meaning: emphasis on recidivism, minimum mandatory sentence, increased use of closed institutions, an increase in length of sentences, and use of victims, this is surely the one directed to the population of 16/17 years old¹⁰.

3.1 More serious punishment, e.g. for violent and/or sexual offences

Also here we can distinguish a liberal from a more punitive epoch. The first one, after Franco’s death until the New Penal Code (1995), is characterized by a modern and liberal mood. Instead of ‘crimes against honesty’ one speaks of sexual freedom, there is a wish to reduce penalties (from 12/20 years for rape to 6/12) and in general there is the goal of limiting penal intervention in sexual matters. One should remember however that the reduction, as we have pointed several times, was severely curtailed by the abolition of good time credits, which finally produced the same amount of sentence being served (Table 4).

This liberal mood was transformed due to some scandals about little punishment in some cases involving minors of 12 years and maybe also due to the impact of crimes against young people that were being known in Belgium in 1996. A penal reform in 1999 and the general reform in 2003 signaled the change of climate, and taking as a starting point the protection of minors it increased the array of behaviors to be punished also for adults and it augmented penalties generally. Crimes that were associated with the conservative Franco era like ‘corruption of minors’ or prosecuting pimps was reintroduced.

The third moment is the recent discussion in September-October, 2007. The scenario is well known: a person convicted of rape is about to leave prison after having served a sentence of 14 years. He has not received treatment, since in Spain it is voluntary, or has received it, but psychologists assert that ‘the probabilities that he will reoffend range to 80%’. He leaves the prison and with the help of prison administration finds some place to live and the press discover him.

The Catalan judicial system reacted creating a commission of experts – criminal law professors, judges and lawyers – which had to discuss the proposal launched by Sarkozy about ‘chemical castration’. Persistently the role of the experts has been to backfire these proposals and other similar like the ‘name and shame campaigns’ coming to the conclusion that a discrete police surveillance will do. The president of the commission concluded that society need to reflect if it accepts the risk to free a person that has raped ‘in the same way that it accepts the risk of hundred of people that drive and produce 3000 deaths each year’ (*El País* 14/09/07).

Nevertheless a future reform of the penal code foresees some of the following measures establishing minimum mandatory sentence, strengthening the requirements to be eligible for parole, allowing for the first time in Spanish legislation to impose a measure – supervised freedom – after the sentence has been served (Robles 2007). For now the socialist party in government doesn't have a majority necessary to approve a reform of the penal code, but this might be a matter of time.

People would be surprised to learn that sexual crimes represent for example in 2003 only 0,8% of all the crimes reported to police, and that Spain has according to the ICVS the second lowest percentage of victimization (Garrido, Stangeland, and Redondo, 2006). Nevertheless they represent for example in 2007 a 6% of the incarcerated people due to the long sentences they receive (DGIP, 2007).

3.2 Developments of drug policy

To cut a long story short in order to give a hint of the legal developments we will just point out to the increase of penalties for trafficking with drugs. In the reform of 1983, that corresponds to the liberal moment lived after socialist victory in 1982, punishment for trafficking with drugs was reduced from the previous penalty of 6/12 years to 6 months/6 years. The reform of 1988 due to the international pressure increased penalties and the NPC passed by the socialist party just reaffirmed these penalties and aggravated the *minimum penalty to 3 years* imprisonment.

The impact that drug policy has on incarceration rates is considerable due to the following facts: although convictions for drug traffic represent only 6% of the total, these account for 28 % of prison population due to the length of the sentence; and the establishment of a minimum penalty of three years, which avoids the possibility of suspended sentence granted only to prison sentences of two years.

Notwithstanding this the counter aspects are: in Spain consumption is not a criminal offence, and the Supreme Court operates quite consistently a jurisprudence of imposing limits to these penalties, according to which for example shared consumption is not considered a penal offence, and donation by a relative to an inmate is not considered to be traffic (which otherwise could be punished with 13 years imprisonment!). So if one had to generalize we could speak of a severe legislation and more benign courts (Muñoz and Diez Ripollés 2004).

And finally as we will see in the next epigraph an attempt to grant suspended sentence for people with drug addictions that has increased from two years, to three and now to five years.

3.3 Tendencies to decriminalize and to deinstitutionalize by extending community sanctions

As we have just explained the NPC (1995) has been criticized for increasing overall prison sentences, but at the same time it has been greeted for being the penal code that introduced 'alternative punishments to prison'. In Spain we consider 'alternative to imprisonment' ('community sanctions' is not used since the word community strains credibility) suspended sentences, suspended sentences with drug treatment, and fines. And actually as novelty the NPC just introduced CSO and transformed fines into day/fines.

In general, with the exception of suspended sentence, one can say that the possibilities of alternative punishments being implemented were scarce due mainly to: a threshold of 2 years imprisonment for common offences like robbery or drug traffic which were precisely raised in order to avoid suspended sentence; a requirement of not having criminal record; the lack of adequate funding of these programs by the administration; and a resistant judicial culture that tends to avoid its use since there has been no provision of officers that help with its implementation (Cid and Larrauri 1997).

In Table 5 we can see a general overview of the Spanish sentences.

Table 5. Sentences for crimes. Spain (2005)

Sentence	Number	%
Fine*	50000	38,8
Prison (executed)	42000	32,6
Suspended sentence	28000	21,7
Probation	2000	1,5
CSO**	7000	5,4
Convicted Offenders	129000	100,0

* Including cases where the sentence is fine and forfeiture of driving licence, and including cases of replacement of the prison sentence by fine.

** Direct sentence (alone or combined with fine) or replacement of a prison sentence.

Source: Data on custodial and non custodial sentences (Ine Base); Data on probation (Martin 2007 and Valero, 2006); Data on CSO (Blay 2007). Data on suspended sentence and in replacement of the prison sentence is based on an extrapolation of the research done by Cid and Larrauri (2002)¹¹.

If we try to reflect on tendencies we might point out to the following. Contrary to England (Newburn 2007) there has not been decay in the use of fine in Spain. But as hypothesis one could think that the desire to be more interventionist – due to punitiveness or to rehabilitation needs – might also produce a decrease in the use of fine in the future.

Concerning suspended sentence its increased use due to the amplification that the NPC produced up to approximately 40% of all prison sentences (Cid 2005a). For the future this trend might continue in the following years, since the legislator keeps punishing many ‘middle class’ offences with prison (i.e. driving quick), forcing therefore judges to impose a prison sentence, which they frequently suspend afterwards. On the other hand if the punitive discourse influences the small decisions of penal agents, public prosecutors and judges, might be less willing to grant suspended sentence.

Another tendency might be the approximation of a suspended sentence model to a probation model, meaning the timid attachment that judges do to the suspended sentence of conditions. This is just visible in two areas: gender violence where the conditions attached are compulsory and can be called control rules (prohibition to approximate or communicate) and treatment rules (obligation of following treatment programs); and in traffic offences where the suspended sentence is normally accompanied by the obligation to do a traffic education program.

Concerning work for the community (CSO): since its introduction in the NPC 1995 its implementation had been negligible. And as we recall the year 2003 symbolizes the politicization of crime in Spain. But since punishment tends to be ‘volatile and contradictory’ (O’Malley 1999) also in Spain these punitive reforms have paradoxically extended the array of offences that can be punished with this penalty.

The reforms of 2003 gave judges in three crimes a direct option between prison or community sentence. This way of providing for a community sentence might favour its use by judges, more than the previous way which required the judge first to impose a prison sentence, and second to think if and how he can suspended it or substitute it (for fine or CSO).

Additionally what explains its expansion of CSO is that the offences to which it can be directly imposed are driving under alcohol influence, and domestic violence which for example in 2005. So if one looks at the figures we see a very big increase 1996-2006.

Table 6.

Total	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Sentences	1	158	435	734	925	859	896	888	2.354	7.555

Source: Blay (2007).

Unfortunately the opinion that sees this increase as rising overall punitiveness is not misled (Blay 2007). This is due to the fact that in the case of domestic violence since it was a misdemeanour it did not result in prison, and the transformation of a misdemeanour into a crime in 2003 is probably what explains the biggest increase in CSO. Therefore it is true at least in this case that CSO does not substitute prison.

Finally the 2003 reform also expanded the term of suspended sentence up to 5 years for people with drug addictions (before it was 3 years and the general limit is 2 years). According to our data (Table 3) judges use this possibility in far fewer cases than they use common suspended sentence. We think this obeys mainly to the fact that drug addiction needs to be proven in the courts, and lawyers willing to do this extra work are not generally available for this group of offenders, to the lack of facilities where to implement these treatment programs, and finally to the existence of a judicial discourse that states that there are treatment programs inside prisons.

So to summarize, the major deinstitutionalization is being produced at the moment by a still considerable use of fine, and an increased use of suspended sentence. All the other community punishments that require more intervention from the administration and the offender play still a very marginal role in the overall system.

4 THE ROLE OF THE MASS MEDIA CONCERNING THE PENAL POLICY AND PENAL LAW REFORMS

Although Spain doesn't have a tabloid press comparable to England, nevertheless crime appears frequently in the general press. According to research done from the period 1995-2004, the three main newspapers in Spain have increased the volume of news devoted to crime from a 5% in 1995 to a 25,6% in 2002, slightly decreasing in 2003 to a 20.1% (Rechea, Fernández, and Benítez 2004).

This increase does not reflect the 'reality' of crime since mass media coverage did not grow during the eighties when crime was raising (Medina 2006), and it increased precisely in the period when crime was diminishing (see Table 2). Additionally, in an analysis of the main Spanish newspaper, in the period 2001-2003, homicide occupied a 30,57% of the news, but it only represented a 0,06 of the crime registered by the police (Soto 2005). The media not only gives a distorted image of crime, but also serves as a vehicle for the demands of police trade unions and prison officers, who are the main suppliers of crime data (Rechea, Fernández and Benítez 2004; Soto 2005)

If media have increased their attention to crime, and this coverage doesn't reflect an increase in crime, it is plausible to point out to the importance of the campaign launched by the socialist party in 2002, and responded promptly by the conservative party, as responsible for the sharp increase in news referring to criminality (Rechea, Fernández, and Benítez 2004; Fuentes 2005; Soto 2005; Medina 2006). Admittedly it is difficult to establish precise causal links in a process that involves public opinion, mass media and politicians, but as Beckett (1997) points out, more than 'democracy at work' one could plausibly argue also in Spain for politician leading the feelings of insecurity to which he finally has to respond (Pratt 2007).

As we shall see all this attention did produce variations in public concern, precipitating and offering a justification to the penal reforms, in terms of 'responding to social demands of being more effective in front of delinquency', that took place in 2003, the previous year of the general elections.

A last comment concerning gender violence presence in the news. Beginning in 1989 when a woman that appeared in a TV program was afterwards burned by her husband, several penal reforms took place, which recurrently increased prison terms. The great and almost daily attention the media devotes to the most dramatic cases has produced the impression that homicides rates in Spain are higher than in other European countries, this not being the case (Stangeland 2005), and although their coverage was first greeted, this year has finally seen calls to restrict their attention fearing that it might increase violence against women.

5 ATTITUDES TOWARDS PUNISHMENT AND DIFFERENT SANCTIONS AND REQUIREMENT TO SANCTION IN THE GENERAL POPULATION AND THE MEMBERS OF THE JUSTICE SYSTEM

There isn't to our knowledge general research about punitive attitudes in Spain (Varona 2007). Probably the best instrument is the European Crime and Safety Survey (EU ICS 2005), according to which Spain is within the countries that less opt for a prison sentence and where approximately 50% of the people favor a community service order.

This result seems to correspond to research that has been done in Barcelona, and Catalunya, where to the same question used in the ICVS, between 40 and 60% of Catalans opt for a community service order (Soria 1995; Sabate, Aragay, and Torrelles, 1997; Luque 1999), and Malaga, although in this last study a little hardening in public opinion is detected when comparing research done in 2005 to 1994 (García, Pérez, and Benitez, 2006). But another tendency might be detected in the Eurobarometer 66 European Commission (2007) whereas, although fewer than in other European countries, still 81% of Spaniards think that criminals are treated with too much tolerance and should be handled more severely.

A second possibility to discover punitive attitudes is to look for fear of crime. Opinion polls in Spain are carried out in Spain by CIS¹² who tends to ask about insecurity feelings, being difficult to disentangle to what this insecurity feelings correspond, although most of the people think in drug traffic (Medina 2003; Rechea, Fernández and Benítez 2004). Nevertheless there is general agreement among researchers that fear of crime is for the period 1995-2004 in a third position much below unemployment and terrorism (Thomé and Torrente 2003; Rechea, Fernández and Benítez 2004; Fuentes 2005; Soto, 2005; Medina 2006).

A result which is also confirmed by the Eurobarometer 64 (European Commission 2005) which detects fear of crime only as a 5th concern, below migration, terrorism, unemployment and accomodation. The EU ICS (2005) also confirms that in Spain fear of crime is below European average, but people feel more unsafe than the average, which is probably due to a bigger presence of drug related problems.

A third clue to punitive attitudes is victimization rates. According to EU ICS (2005) crime has been dropping in Spain since 1998 and victimization rates are the lowest in Europe, with the exception of robbery. Victimization studies done in Barcelona detect however an increase for the period 2000-2004 (without reaching the level of the eighties) (Sabaté, Murrià, Costa, Gonzalez, Queralt, Pons, and Sintes 2004), and might help explain why for Catalan people insecurity is mentioned as the first concern in 2005 closely followed by migration (ESPC 2006).

Another proxy for punitive attitudes is to find out to what people attribute delinquency. According to Thomé and Torrente (2003) approximately 75 % of the people attribute it to drug consumption, around 20% to inequality, and only a scarce 3% to leniency. Although Medina (2006) points out to the fact that whereas in 1991 only 20,2% of the population attributed crime problems to migration, this figure had increased to 74,6% in 2002.

Finally, levels of underprotection (Downes 2007), and lack of trust in political institutions (Lappi-Seppälä 2007), apparently being the first one high in Spain and low the second, could also be related to punitive attitudes, but we are not aware of specific research about these topics in Spain. So to conclude, although one can also trace in Spain the phenomena of upgrading public voice (Ryan 2003), there is comparatively very little knowledge of public opinion or public attitudes towards crime.

OUTLOOK: FURTHER ACTUAL REFORM TENDENCIES EITHER TO REDUCE THE PRISON POPULATION AND PRISON OVERCROWDING OR TO EXPAND THE PRISON SYSTEM

We think that the two trends that in Spain contribute to the enlargement of the prison incarceration rates, the larger time served by prisoners and the criminalization of new phenomena, will continue in the future.

Additionally as we have seen there are discussions of how to enlarge supervision after the sentence has been served and liberal legalism doesn't seem capable of resisting this pulls. Insofar we are still trapped in the punitive turn.

The optimist note is that some of the indicators used by Garland (2001) suggesting the presence of a 'culture of control' are still absent in Spain. We certainly witness a politicization of crime, a mass media focus, and a sense of crisis that things are worse. But on the other hand we don't sense a decline of rehabilitative discourse or the existence of a management style among the main officers and civil servants that work in the penal system. Also some politicians that have to manage the system wish to decarcerate, if only they knew how, if only they hadn't raised so much the emotional tone (Downes and Morgan 2007), if only they could do 'good by stealth' (Green 2006).

Our third and last comment is also ambivalent. As we have seen liberalism is certainly among penal professors and an important part of the judiciary. But if our impression is right the goal of minimizing the reach of penal law, is not exactly followed by a reflection and suggestions of how to reduce prison growth. Nevertheless incarceration is now seen as a problem and not as a solution, so maybe receptivity to discourses focused on how to reduce prison growth might increase.

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NOTES

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- ² The number of arrestees by the police passed from 130,000 in 1980 to 229,000 in 1989 (a 71% increase) (computing all type of arrests). The data from 1990 to 1994, computing only arrestees for offences, shows an increase of 10%, from 185,000 in 1990 to 204,000 in 1994. Source: Ministerio del Interior, *Anuario estadístico*
- ³ Source: INE (Convictions for misdemeanours and for crimes, average 1998-2004).
- ⁴ Source: INE (Sentences for crimes, Average 1998-2005).
- ⁵ Source: INE (Average 1998-2004: 57%).
- ⁶ The offenders convicted of crimes in 2003 were 119,000 and in 2004 and 2005, in average 131,000. This gives as a result 24,000 more offenders convicted in 2004 and 2005, with respect to 2003. The offenders convicted for bodily injury were 7,000 in 2003 and in 2004 and 2005 were, on average, 23,000, which gives as a result 32,000 more offenders convicted for bodily injury in 2004 and 2005, with respect to 2003.
- ⁷ The judicial statistics do not give a complete vision of the sentencing process because they only reflect the sentence passed by courts, neglecting if the prison sentenced has been suspended or replaced by a non-custodial sentence.
- ⁸ Other explanations Tamarit (2007:30) point out the increase in the penalties of drug traffic offences and property crimes (theft and robbery) and restrictions on parole as causes for the increase in prison rates.
- ⁹ Local prevention officers detect in municipalities big problems due to migration arrivals, where local people express the feeling of abandonment and impunity (in front of phenomena linked to migration like 'pisos patera', apartments where 30 or 40 people might sleep) and have no doubt that conservative politicians are promising 'mano dura', the Spanish equivalent of law and order.
- ¹⁰ Not too give a distorted picture one should note that due to opportunity principle and other diversions mechanisms (mediation/reparation), and although slightly decreasing, in 2005 a 40% of youngsters are dealt without a process.
- ¹¹ In the study of Cid and Larrauri et al. (2002) – focused in the offences punishable with a maximum sentence of three years, which represent approximately 80% of the total offences – prison was executed in 20% of cases. But taking into account recent research that shows an increased use of prison in domestic violence offences, we consider that the present ratio might be around 25% (Larrauri and Antón 2007). Regarding offences punishable with a sentence of more than three years prison, which represent approximately 20% of the total crimes dealt by judges and courts, there is no research about the use of suspended sentences. Over the basis of some clues – number of entries in prison, plea bargaining – we consider that the use of prison in these cases should be high (around 60%). The result is that 32% of the total crimes is punished with prison.
- ¹² Centro de Investigaciones Sociológicas (CIS) www.cis.es

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