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'ENEMIES OF THE WHOLESOME PART OF THE NATION'

Postcolonial migrants in the prisons of Europe[1]

Binnen de Europese Unie wordt de zichtbare aanwezigheid van niet-blanke migranten steeds meer een anomalie. De EU is immers primair gebaseerd op een scherp onderscheid tussen 'ons' Europeanen en 'de rest'. De verwijdering van migranten uit 'Fort Europa' vindt op twee manieren plaats: extern, door uitzetting, maar ook intern: de populaties van gevangenissen bestaan voor een steeds groter deel uit migranten. Loïc Wacquant betoogt dat Europese staten, net als de VS, niet-blanken in toenemende mate uitsluiten door middel van criminalisering, bestraffing, en opsluiting. Zo vervult de 'strafstaat' een centrale rol in de constructie van de gekleurde illegaal en de criminele buitenlander – twee categorieën die steeds moeilijker te onderscheiden zijn – als de belichaming van alles wat niet Europees is.

In 1989, for the first time in the country's history, the population entering state prisons in the United States turned majority black. As a result of the crumbling of the urban ghetto and of the 'War on Drugs' launched by the federal government as part of a broad law-and-order policy designed to restabilize racial boundaries in the city and reassert state power against the backdrop of rapid economic restructuring and steep welfare retrenchment,[2] the incarceration rate of African Americans doubled in a short ten years, jumping from 3,544 inmates per 100,000 adults in 1985 to a staggering 6,926 per 100,000 in 1995, nearly eight times the figure for their white compatriots (919 per 100,000) and over twenty times the rates posted by the larger countries of continental Europe. If individuals held in jail, sentenced to probation, or released on parole are taken into account, it turns out that more than one of every three young black men aged 18 to 35 (and upwards of two in three at the core of the

big cities in the deindustrializing Rust Belt) find themselves under supervision of the criminal justice system.

The case of North Lawndale, one of the most desolate zones of Chicago's West Side, gives a measure of the depth of penal penetration in the hyperghetto. In 1999 the police recorded 17,059 arrests in this bleak all-black neighborhood for a population of barely 25,800 adults; one third of these arrests were for narcotics offenses, with simple possession comprising three cases in four; of the 2,979 local residents remanded to the Illinois Department of Corrections that year, 1,909 were convicted of drug violations and another 596 of theft, these two infractions accounting for 85% of all entries in state prison from the area. The result of this relentless police and penal purge is that the number of North Lawndale men serving time in state prison (9,893) nearly equaled the male population over age 18 left in the neighborhood (10,585).[3] This makes the carceral institution and its extensions the public service to which urban blacks have the readiest access, well ahead of higher education, health care, or unemployment benefits for example. Indeed, based on imprisonment and mortality figures for 2001, the statisticians of the Department of Justice have computed that the cumulative probability that an African American will be consigned to a state or federal penitentiary (i.e., sentenced to serve at least one year of penal detention) over his lifetime now exceeds 32%, compared to 17% for a Latino and 5.5% for a white man. Nearly one of every four black men in the prime of their adult life (ages 35 to 44) is or has been incarcerated, as against 3.5% for white men in that age cohort.[4]

Extreme though it may be in scale, slope, and velocity, the carceral trajectory of blacks United States in the post-Civil Rights era may be less idiosyncratic than the woolly notion of 'American exceptionalism' would lead one to believe. One could hypothesize that the advanced societies of Western Europe will generate analogous, albeit less sudden and pronounced, situations of lopsided incarceration to the extent that they, too, embrace neoliberal penality and embark on the path of the punitive management of urban inequality and marginality, deploying their prison system not only to curb crime but also to regulate the lower segments of the employment market, to warehouse labor turned redundant, and to hold at bay populations judged disreputable, derelict, and dangerous. From this point of view, Third-World foreigners and quasi-foreigners would be the 'blacks' of Europe at the fin de siècle inasmuch as they occupy a homologous position at the confluence of the system of forces polarizing the occupational structure, fraying the social safety net, and eroding the established ethnonational boundaries and makeup of the countries of the Old World.

With the closing of state-sponsored schemes of foreign labor import in the seventies, the immigrant 'guest worker' from the colonial periphery has mutated into the immigrant *tout court* whose persistent presence at the core is increasingly perceived at once as an occupational threat (he displaces and undercuts native labor), an economic burden (he is unemployed and drains scarce

public services), and a social menace (having failed to 'integrate,' he and his offspring are vectors of corrosive cultural alterity, criminal deviance, and urban violence).

With the acceleration of supranational integration after the Maastricht Treaty and the Schengen Agreements, the visible presence of non-white foreigners has become doubly anomalous since the very drawing of the outers boundaries of the Union is predicated on a clearcut opposition between 'us' Europeans and 'them' the Third-World migrants who are no longer welcome – even as they continue to be direly needed.[5] As we shall see in this paper, the building of 'fortress Europe' in the age of labor flexibility and generalized social insecurity has indeed accelerated a twofold movement of ostracization of unwanted *Gastarbeiter* turned *Ausländer,* through external removal via expulsion and internal extirpation via expanded incarceration directly aimed at those populations embodying the social and symbolic 'exterior' of the emergent postnational Europe. In the process, the penal arm of the state has assumed a pivotal role in articulating the discursive and organizational construction of internal and external insecurity to the point where they have been fused, projecting the darker-skinned illegal or criminal alien – the two adjectives have become virtual synonyms – as the living antithesis of the New European in the making.

Sizing up ethnonational disproportionality

Over the past three decades, nearly all the countries of the European Union have experienced significant and steady increases, and in several cases explosive growth, in their prison population, coinciding with the onset of mass unemployment, the casualization of wage work, and the official curtailment of labor migration. Between 1983 and 2001, these increases reached one third to one half in several of the larger countries, with the number of inmates (including those in remand detention) rising from 43,400 to 67,100 in England, from 41,400 to 55,200 in Italy, and from 39,100 to 54,000 in France. Carceral inflation has been even more spectacular in smaller countries and alongside the Mediterranean, with Portugal (6,100 to 13,500), Greece (3,700 to 8,300), and Ireland (1,400 to 3,000) sporting a doubling and Spain (14,700 to 46,900) and The Netherlands (4,000 to 15,300) more than a tripling of their carceral stock.[6] Despite periodic recourse to mass pardons (for example, in France on Bastille Day every year since 1991) and waves of early releases that have become commonplace (in Italy, Spain, Belgium, and Portugal), the continent's store of inmates has swollen relentlessly and penitentiaries everywhere are full to overflowing.[7]

But, above all, throughout Europe foreigners, migrants and so-called 'second-generation' immigrants of non-Western extraction, and persons of color, who figure among the most vulnerable categories both on the labor mar-

ket and vis-à-vis the social welfare sector of the state, owing to their lower class distribution, paucity of credentials, and the multiple forms of discrimination they endure,[8] are massively over-represented within the confined population, and this to a degree comparable, nay in most places superior, to the 'racial disproportionality' afflicting blacks in the United States.

TABLE 1 *Foreigners in the carceral population of the European Union in 1997*

Country	Foreign inmates	Prop. of prison population	Prop. foreigners in total population	Ratio
Spain	7,700	18%	1.6%	11.2
Italy	10,900	22%	2.1%	10.5
Greece	2,200	39%	4.7%	8.3
Netherlands	3,700	32%	4.3%	7.4
Portugal	1,600	11%	1.8%	6.1
France	14,200	26%	5.6%	4.6
Belgium	3,200	38%	8.9%	4.3
Sweden	1,100	26%*	6.0%	4.3
Norway	339	15%	3.6%	4.1
US blacks	816,600	47%	12%	3.9
Germany	25,000	34%*	9.0%	3.8
Austria	1,900	27%	9.1%	3.0
Denmark	450	14%	4.7%	3.0
Finland	127	4.5%	1.6%	2.8
Ireland	203	8%	3.1%	2.6
England	4,800	7.8%*	3.6%	2.2

* Estimates

Source: Pierre Tournier (1999) *Statistique pénale annuelle du Conseil de l'Europe, Enquête 1997*. Strasbourg, Editions du Conseil de l'Europe, 17, for European prison figures; OECD (2002) *OECD Social Indicators 2002*. Paris: OECD, table G3, for the percentage foreigner; Bureau of Justice Statistics (2000) *Correctional Populations of the United States 1997*. Washington: Government Printing Office, 2, for blacks in the United States.

As a first approximation of 'ethnonational disproportionality' in the European Union, one may use the percentage of foreigners behind bars weighed by the share of aliens in the country's population. Admittedly, this is an imperfect indicator that should be manipulated with caution since both numerator and denominator are fraught with problems of accuracy, reliability, and consistency across time and national boundaries. It lumps together, in different proportions, immigrants from the global periphery and foreigners from other countries of the Euro-American sphere. Notwithstanding these limitations, this indicator is revealing of striking transatlantic parallels. Table 1 shows that the presence of foreigners inside European houses of detention far exceeds

their weight in the general population in every single nation-state of the continent. And that, in nine of fourteen members of the European Union, the disproportionate incarceration of foreigners is superior to the demographic over-representation of blacks in American jails and prisons.[9]

Even more striking than their sheer overrepresentation behind bars is the fact that, during the very period when rates of black incarceration were sky-rocketting in the United States as the policy of penal management of poverty and inequality was going into full swing, there was a uniform and often spectacular increase, in nearly all European countries, of the share of foreigners in the population under lock, as indicated in Table 2. In the decade 1985-1995, the proportion of aliens confined in jails and prisons rose consistently by 5-percentage points in Spain, England, and Ireland, and by 10 to 15 points in Belgium, Italy, and Germany; the European record for 1995 was held by quiet Switzerland with 57.6% (for a foreign population approaching 20%, resulting in a comparatively low disproportionality).[10] While the documented and undocumented foreign population grew during this period in most of the countries concerned, this growth was limited and cannot possibly account for, say, the doubling of the share of non-nationals among the confined in Italy and Germany.

TABLE 2 *Evolution of the share of foreigners (in %) in the carceral population of selected European countries, 1985-95*

	1985	1995	Increase
Belgium	27.6	41.0	48%
Germany	14.5	29.4	103%
France	26.4	28.5	8%
Italy	8.9	17.4	95%
Spain	10.6	15.5	46%
England-Wales	1.3	7.8	500%
Ireland	1.8	6.4	255%

Source: André Kuhn, Pierre Tournier and Roger Walmsley (2000) *Le Surpeuplement des prisons et l'inflation carcérale*. Strasbourg: Editions du Conseil de l'Europe, 37.

Part of the disproportionate incarceration of European foreigners is presumably caused by their higher overall rates of offending – although this is a contentious issue that cannot be adjudicated empirically in most cases owing to the lack of adequate statistical data – which can itself stem from their skewed class, age, and spatial distribution as well as from the different opportunity structure for life strategies they face.[11] Part of it is likely due, as with blacks in the United States, to the preferential targeting of aliens by the police and their differential processing the courts, as well as to the application of neutral criteria (such as holding a legal job as a condition for release on bail) that systemati-

cally handicap aliens in the administration of punishment. Finally, a fraction of the excess confinement of foreigners derives from offenses such as unlawful entry and residence that by definition cannot be committed by nationals (or only as accomplices), or germane infractions such as the fraudulent fabrication and manipulation of official documents (identity cards, marriage certificates, residence permits, etc.).[12] While it does not allow one to consistently weigh these various factors, a methodical mining of available studies of bias in the penal treatment of aliens and related ethnic categories among nationals confirms both the prevalence and the deepening of the overincarceration of foreigners and immigrants in the European Union. And it confirms that, with the onset of neoliberal hegemony, penal segmentation has become a key modality of the drawing and enforcing of salient social boundaries in the Old World as in the New.

Selective targeting and preferential confinement

In England, following the urban riots of the early 1980s, officially diagnosed as in part 'racial' by the government report of the Scarman Commission, the question of street crime, often reduced to the sole offense of 'mugging,' has been confounded, in public perception as well as in the routine practices of the police, with the presence and demands of subjects of the Empire come from the Caribbean. Whereas British blacks had been viewed as a low-offending group until the mid-seventies, by the mid-eighties 'crime, in the form of both street disorder and robbery, was gradually identified as an expression of black culture'; and 'the populist potential of the black crime theme' enabled the conflation of supposed black crime and black ethnicity to cross the divisions of the political field and suffuse the media.[13] The shift towards authoritarian forms of social regulation, multi-agency policing, and intensified surveillance of 'criminal areas' closely overlapping with inner-city neighborhoods of Afro-Caribbean concentration correlates with the fact that blacks are seven times more likely to be incarcerated than their white or Asian counterparts (and West-Indian women ten times more likely).

This wide ethnoracial gap can be explained in part by the differential propensity of blacks and whites to commit offenses. Much like their American counterparts, blacks in Britain are more likely to engage in street crime due to the fact that they are of lower class provenance and poorer, more likely to suffer high unemployment and to reside in distressed and declining neighborhoods[14] where illegal activities in public space are more common and thus easier to engage in, detect, and repress. But their grossly bloated presence in prison also stems from the cumulative effect of the selective targeting and differential treatment of Afro-Caribbeans by law enforcement agencies: they are more prone than white Britons to be stopped and arrested on general suspi-

cion by the police; to be prosecuted rather than cautioned in the case of juveniles; and to be tried in Crown Courts rather than before magistrates as well as to be remanded in custody, both of which result in a higher rate of prison sentences *ceteris paribus*.[15]

A similar phenomenon can be observed in Germany where the question of *Ausländerkriminalität* has become a staple of political and even criminological debate, as the media and parties across the ideological spectrum fastened on the increased presence of foreigners as the putative cause for urban crime and disorder.[16] The overimprisonment of foreigners and visible nonnational ethnics has increased dramatically over the past two decades, reaching astronomical levels in many regions, even as the overall use of incarceration declined due to a deliberate Malthusian penal policy that reduced the national population behind bars for much of that period. In North-Rhine-Westphalia, for example, Sinti and Roma Gypsies originating from Romania sport incarceration rates more than twenty times that of native citizens; for Moroccans the figure is eight times, and for Turks between three and four times. And the proportion of foreigners among those awaiting trial in detention rose from one-third in 1989 to one-half five years later.

In Germany too, differential rates of offending cannot possibly account for the breadth of such ethnic disparities in incarceration and for their speedy growth in recent years. The widely held belief that teenage foreigners are more prone to delinquency than their German counterparts, for instance, does not withstand a methodical examination of police investigations and court processing.[17]

In the Netherlands, whose carceral population has quadrupled over the past twenty years, as successive governments consciously sought to align Dutch penal policy on the more punitive European mean, and comprised a hefty 43% foreigners in 1993, the probability of being sanctioned with an unsuspended prison sentence is systematically higher for the same first offense when the person convicted is of Surinamese or Moroccan origin.[18] Studies based on laboratory experiments and field observation on the streets have shown that, although the incidence of police arrest is not biased by the ethnicity of suspects, once arrested nonwhites have a greater likelihood of being convicted and of receiving a custodial sanction. In line with the American pattern, in which authorities have historically displayed pronounced indulgence for offenses committed within black neighborhoods, punishment in Dutch society also turns out to be less likely and less severe when the crime victim is a member of a subordinate ethnic category.[19]

After plummeting from 50,000 at the close of World War II to 10,500 in 1968, the prison population of Spain has doubled every ten years since 1975 to return to 55,000 today along with the rise in recorded crime accompanying the democratization of society following Franco's death and the deregulation of

the economy. The growth of casual wage employment and the wide tolerance, even encouragement, of undocumented labor inflow from Morocco against the backdrop of an official policy of rationing of immigration have combined to push growing numbers of African migrants into a legal limbo at the margins of society. Together with xenophobic media campaigns and periodic police sweeps intended to reaffirm state power and stem mounting social anxiety caused by accelerating economic and demographic trends, changes in the criminal code that have hardened sentences for petty crimes against property and narcotics offenses and penal procedures that deny foreigners the benefit of alternatives to short prison sentences (such as week-end custody and day fines) have translated into a doubling of the share of foreigners behind bars since 1985.[20] Among Spanish nationals, a similar process of differential penal targeting and preferential confinement impacts the Gypsies: one of every four Spanish female inmates in the Iberian peninsula is a *gitana*, even though Gypsies comprise only 1,6% of the country's population.[21]

A similar dynamic has crystallized in Greece after the collapse of the Soviet regimes of the Balkans unleashed waves of migrants that have increased that country's foreign stock to nearly half-a-million, half of them coming from Albania, for a total population of ten million. The drastic curtailment of asylum and severe restrictions on immigration adopted as part of the legal construction of the Schengen space; the extension and hardening of penal sanctions for illegal entry, exit, and sojourn, or assistance to the same; the exclusion of undocumented foreigners from essential public services (such as education and health care); the blooming of anti-immigrant attitudes and their swift diffusion through state agencies and the media (according to Eurostat surveys, Greece was among the most tolerant countries of Europe before 1989 but turned into one of the most xenophobic a decade later); the traditional dominance of the police in the definition and deployment of criminal policies conceived as a constituent of 'state security'; the mutual enmity and distrust of the regimes of Athens and Tirana (with the former periodically threatening to expel all Albanians on its territory while the latter menaces to abridge the rights of the Greek minority residing in Southern Albania):[22] all these factors have converged to boost the share of aliens in Greek prisons to a stupendous 40%.

In France, the share of non-nationals in jails and prisons has ballooned from 18% in 1975 to 29% twenty years later, even though foreigners account for only 6% of the country's population and about 15% of police suspects throughout that period. And this figure does not register the pronounced carceral 'overconsumption' of French citizens perceived and treated as foreigners by the police and judicial apparatus such as youths born in France to Maghrebine immigrants ('beurs') or come from the predominantly black French overseas

dominions and territories.[23] So much to say that the cells of France have grown distinctly 'colored' these past years since two-thirds of the 15,000-odd foreign prisoners officially recorded in 1995 originated from North Africa (53%) and Sub-Saharan Africa (16%). That year the jails and prisons of Greater Paris, which hold one fourth of the country's inmates, harbored a population 44% foreigner and thus majority nonwhite (if one recounts French inmates of color).[24]

Aside from their higher unemployment and poverty rates, the 'ethnonational disproportionality' that afflicts residents from France's former colonial empire arises from the fact that, for the same offense, the courts resort to imprisonment more readily when the condemned does not possess French citizenship. Suspended sentences and noncustodial sanctions are practically monopolized by nationals, on grounds that they offer better social and legal guarantees of 'community attachment.' Thus foreigners make up 10% of offenders punished with community service ('travail d'intérêt général') and 13% of those receiving a fine but one-third of persons sanctioned by an unsuspended prison term and over one-half of convicts sent behind bars for more than five years. Demographer Pierre Tournier has shown that, depending on the charges, the probability of being sentenced to prison is 1.8 to 2.4 times higher for a foreigner than for a Frenchman (all persons tried taken together, without regard to prior record).[25]

Far from resulting from an alleged increase in their criminality, as the ambiant xenophobic discourses of elected officials, police experts, and the media would have it, the growing share of foreigners in the confined population of France turns out to be due exclusively to the tripling in twenty years of incarcerations for violations of immigration statutes. If inmates sentenced for this charge are excluded from correctional statistics, the ratio of overincarceration of aliens to citizens drops from 6 to 3. As with blacks in the United States, then, the disproportionate share of foreigners in French houses of detention expresses not simply their inferior class composition but also the greater severity of the penal institution towards them as well as the 'deliberate choice to repress illegal immigration by means of imprisonment'[26] instead of a gamut of noncustodial sanctions, as in earlier decades. This confirms that we are dealing here with penal captivity that is first and foremost a confinement of differentiation or segregation, aiming to keep a definite group separate and to prevent its amalgamation into, or facilitate its substraction from, the societal body – as distinct from 'confinement of authority,' intended to reassert the legitimate power of the state, or 'confinement of safety,' aimed at neutralizing dangerous individuals.[27] This is why such confinement results more and more frequently in deportation and banishment from the national territories that compose the European Union.

The penal management of foreign intrusion and extrusion

To the foreigners and quasi-foreigners held in jails and prisons, often in tiers segregated according to ethnonational origin (as in the jail of La Santé, at the heart of Paris, where inmates are distributed into four separate and hostile wards, 'white,' 'African,' 'Arab,' and 'rest of the world'), one must thus add the tens of thousands of migrants without papers arrested at border-crossings or awaiting deportation, especially owing to the generalization of 'double sentencing' procedures that attach a decree of expulsion to a penal sanction.[28] This floating population is corralled and detained in those state-sponsored enclaves of juridical limbo that are the 'waiting areas' and 'retention centers' which have proliferated across the European Union over the past dozen years.

A 1999 parliamentary commission on France's retention centers likened entering them to 'entering another country, in another epoch, far away from the Republic,' and forthrightly deplored the appalling conditions of overcrowding and lack of hygiene, the rampant violation of rights, and the multifarious administrative irregularities committed in them.[29] A concurrent report by the Cimade, a non-governmental agency charged by the French government with assisting the populations passing through these facilities (where length of stay averages four to five days), reveals the common reliance by the authorities on improper documents, the theft of the personal papers and belongings of detainees, the near-total absence of legal counseling, and repeated instances of expulsion of single adolescents as well as children born in France and sick persons under medical treatment (including detainees suffering from full-blown AIDS), all in an effort to accelerate procedures, disengorge the establishments, and increase the yearly count of the deported.

In Belgium, where the number of aliens held in the custody of the Bureau des Etrangers increased ninefold between 1974 and 1994, persons consigned in the detention centers for foreigners 'en situation irrégulière' fall under the authority of the Interior Ministry (in charge of public order) and not of Justice, and they are thus omitted from the statistics of the correctional system. Conditions in them evince the same routine denial of rights, services, and dignity, as in their French counterparts. Five so-called closed centers, surrounded by a double row of barbed-wired fences and under permanent video surveillance, serve as launching pad for the deportation of 15,000 foreigners each year: this is the official government target number given as express proof of the 'realistic' immigration policy implemented with the professed aim of cutting the ground out from under the far right, which meanwhile has continued to prosper like never before.[30]

In Italy, deportation orders quintupled in only four years to peak at 57,000 in 1994, even though there are ample indications that illegal immigration subsided during that period and that the vast majority of foreigners who do not have proper papers enter the country legally to fill 'black market' jobs dis-

dained by the natives – as the government of Massimo D'Alema implicitly rec-
ognized when it increased by a factor of six the number of residence and work
permits initially granted as part of the 'regularization' program launched in
winter 1998.[31]

Under the provisions of the Schengen and Maastricht treaties aiming to accel-
erate juridical integration so as to ensure the effective 'free circulation' of citi-
zens of the Union, immigration has been redefined by the signatory countries
as a continental and, by implication, national matter of security, under the same
heading as organized crime and terrorism, onto which it has been grafted at the
level of both discourse and administrative regulation.[32] Throughout Europe po-
lice, judicial, and prison practices and policies have converged in that they are
applied with special diligence and severity to persons of non-European pheno-
type, who are easily spotted and made to bend to penal injunctions, to the point
that one may speak of a process of criminalization of immigrants that tends,
through its destructuring and criminogenic effects, to (co)produce the very
phenomenon it is supposed to combat, in accord with the well-known mecha-
nism of the 'self-fulfilling prophecy.'[33] Its main impact indeed is to push its tar-
get populations deeper into clandestinity and illegality, to feed their fear of au-
thorities, and to foster the durable structuring of specific networks of sociability
and mutual help as well as of a parallel economy that escapes state regulation,
an outcome well-suited to justifying in return the special attention given to
them by law enforcement agencies.[34] Managing immigration with the penal
wing of the state transmutes bureaucratic violations into criminal acts and fos-
ters the selective police targeting and differential treatment by the courts that
amplify initial differences between natives and aliens in the composition and
incidence of offending and forces foreigners to live in a submerged world in the
shadow of legality, setting off a fatal dialectic of criminality and criminalization
that becomes self-sustaining with the added pressing demands of the journalis-
tic and political field for dramatic displays of the state's capacity to tame this in-
sidious threat to national cohesion and European integrity.

   With the redefinition of peregrination from outside the European compact
as a problem of 'security' synecdochally linked to crime, the expulsion of un-
documented foreigners and alien convicts sentenced to territorial banishment
has turned into a media theater onto whose brightly-lit stage elected officials
vie to step up and display their professed resolve to 'stop clandestine immigra-
tion' – and thus symbolically stem the tide of unemployment, delinquency,
dependency, and assorted cultural maladies commonly attributed to it.

Penal expulsions are intended to reaffirm legality, yet they induce a multiplica-
tion of administrative irregularities (the deported often have not exhausted
their legal recourses and appeals or they are later found to be ineligible for evic-
tion) and a routinization of illegalities as well as state-sanctioned violence that

can escalate to homicidal proportions. Of the 23,100 individuals placed in France's 'waiting zones' in 2001, some 14,000 were ejected abroad, including 1,733 under close police escort following their refusal to board flights back to their presumed home country – the refusal rate among convicted aliens deported under 'double sentencing' is considerably higher, nearing one third. In such cases, the exilees must be pushed, pulled, and dragged aboard the plane and then physically suppressed throughout the journey. They are commonly injected with sedatives in blatant violation of French law, their hands and feet bound with manacles and chains, their mouths taped shut with duct tape, their torsos immobilized with belts or blankets. They are forcibly manhandled, with physical commotion frequently causing trauma, injury, and in several instances death – as in the case of Semira Adamu, a Nigerian asylum seeker smothered to death in Brussels by two border policemen while being held under duress onto her airliner seat on a Sabena flight bound for Lagos in September 1998. These 'charters of aliens' further undermine the rule of law in that they appear to violate both protocol 4 of the European Convention on Human Rights and article 19 of the Charter of Fundamental Rights of the European Union, which stipulates that 'collective expulsions are forbidden' and that 'no one can be sent away, expelled or extradited to a state where there exists a serious risk that he [sic] will be subjected to the death penalty, tortured, or receive other inhumane or degrading sanctions and treatments.'[35] Officials of the European Union have defended the legality of the policy by arguing that these are not 'collective expulsions' but 'grouped expulsions' of persons each of whom has been served an individual decree of eviction.

Penalization, depolitization, racialization

In many respects, the spread of the ritualized mass expulsion of illegal or convicted aliens in the European Union as penal spectacle stands as the structural analogue to the reintroduction of chain gangs, striped uniforms, and assorted shaming punishments harking back to a bygone era of social cruelty towards black convicts in the United States.[36] First, it fullfills the same function, namely, to convey to the witnessing public the resurgent penal fortitude of the authorities by staging their commitment to act in an openly retributive manner towards categories that conspicuously disrupt the (supra)national symbolic order. And it offers an expressive vehicle for the social amplification and cultural legitimation of collective feelings of resentment toward these same categories.

Next, 'charter deportations' turn out to be just as financially ruinous, organizationally wasteful, and penologically pointless – if not counterproductive – as contemporary chain gangs. The latter were reinstituted with much fanfare in August of 1995 by the state of Alabama (and later by Florida, Arizona, Wis-

consin, and Iowa), whose Department of Corrections took the trouble to organize media visits and bus tours for tourists to come witness the shackling of inmates made to break rocks inside of Livermore penitentiary. But a short four years later this experiment in vengeful punishment had to be aborted as it turned out to be legally intractable (there were no grounds to exclude women convicts from such gruesome work), practically troublesome (the measure was supposed to strike at violent convicts but the inmates shackled to clean ditches alongside roads had to have low-security classification lest their visible presence outside stoke public fear); and excessively costly in that it required too many guards for too few inmates.[37] Similarly, expulsion under 'double sentencing' is a labor-intensive operation that absorbs a growing share of the resources of the border police, derails the normal processing of inmates, and aggravates prison overcrowding: many foreign convicts facing a decree of deportation choose to serve their sentence in full rather than opt for an early release since they will be transfered from the prison straight into a remote retention center; they then often commit additional crimes, physically resist, self-mutilate or attempt suicide (e.g., by swallowing razor blades on the day of their deportation) to avoid eviction thousands of miles away, which leads them to serve additional time behind bars for 'refusal to comply' with a banishment order. And they generate vitriolic controversy and intense public and legal scrutiny that make for fast diminishing political and journalistic returns when incidents such as the death of a deportee breaks into the top of the news (thanks to video footage) or leads to years of litigation embroiling leading political figures.[38]

Much like the stylized reassertion of retribution for retribution's sake that temporarily obviates the need to face the absence of an operant philosophy of incarceration in the United States, the fixation on the politics of the intrusion and extrusion of extracommunitarian aliens serves as a substitute and subterfuge for the lack of a policy of incorporation of immigrants and assimilated categories. The hysterical obsession with the former contrasts sharply with, and indeed serves as mask for, the 'vertiginous void of public action' as regards the latter.[39] And, just as rolling out the carceral system to restrain and contain the troublesome segments of the Afro-American community in the remnants of the historic Black Belts allows the United States to continue to avoid addressing the threefold legacy of slavery, Jim Crow, and the urban ghetto, as well as the persistently peculiar position of blacks in America's social and symbolic space (as expressed by their inordinately high levels of residential segregation, near-total ethnic endogamy, and the subtle undercurrent of denigration in public perception),[40] the deployment of the penal apparatus to deal with immigration enables Europe to shun facing its deep-seated entanglement in the fate of the postcolonial societies of its former empire as well as the multifarious forms of social and state ostracization that continue to derail the path of non-European migrants in national life even as they gain legal status.

On both sides of the Atlantic, penalization operates as a conduit for the depoliticization of problems, ethnoracial division and immigrant incorporation, that are quintessentially political in that they engage the definition of core 'membership' in the national or supranational community.[41] This transmutation of political issues – inclusion-exclusion from the civic compact and state-to-state relations – into technical questions of order maintenance along the country's internal or external borders liable to receive a penal solution through the targeted activation of the police, courts, and carceral apparatus whereby established or putative members of the civic compact are made over into deviant bodies to be marked, neutralized, and removed, is emblematic of neoliberal penality. So is the paradoxical articulation of high technology – airplanes, advanced video surveillance systems, massive electronic data bases that can be consulted from countless locations to instantly determine the juridical status of any individual – and antiquated imagery: in the United States, public chain gangs are meant to evoke a bygone epoch of racially inflected penal punitiveness directly descended from the days of Southern slavery; in Europe, airplane expulsions reactivate the cultural logic and long dormant representations of transportation and penal relegation as practiced by Britain and major continental countries from the seventeenth to the nineteenth century. It is no happenstance, then, if mass deportation by charter flights and chain gangs share a profoundly archaic quality.[42]

Finally, the generalization of 'double sentencing' laws in Europe not only helps produce the very criminality such laws are meant to suppress via the geographic 'neutralization' of would-be offenders in that they force an ever-growing and self-centered population of undocumented aliens and returning deportees into a submerged life made of illicit employment, administrative subterfuge, unstable residence, identity manipulation, and avoidance of the authorities, all of which normalize and intensify delinquent activities. It also institutes a bifurcated and asymmetric juridical space: the nationals are sanctioned once, for the criminal offense they have perpetrated; the foreigner on the other hand, even when legally established and socially integrated, is struck twice, once for the acts (s)he has committed and a second time for who (s)he is. His or her very being triggers an extra dose of punishment, sending the unmistakable signal that (s)he is not part of the emerging European civic community. This differential treatment partakes of the racialization of foreigners insofar as it treats foreignness as an inherently criminal property that automatically warrants an aggravation of retribution. Being an extracommunatarian alien thus functions as a permanent and indelible penal handicap much in the manner that we have seen convict status does in the United States.

Now, anti-immigrant sentiments in European countries have a long and lush history. Foreigners and visible 'ethnics' throughout the continent have been recurrently associated with the gamut of disorders ranging from public health threats and political dissidence to sexual degeneracy and street crime

since the onset of the urban industrial era. The trajectory of transborder migration across the Old World is stamped by the contrapuntal interplay of ascending nationalism and gusting xenophobia.[43] But, if anti-foreign animus is a relative constant or at least a regularly recurring factor, the configuration crystallizing at the turn of the millenium differs from previous iterations of capitalist transformation and ethnonational conflict in at least three important respects:

1 Old World nationals presently face, as it were, a *double menace*: the one arises *from below* through the consolidation of unwanted 'foreign intrusion' in the nether regions of social space made more palpable by the gradual conversion of labor migration into settlement migration; the other comes *from above*, in the guise of a juridical and bureaucratic process of European integration that converges with the global neoliberal revolution to strip the national state from its capacity to penetrate and protect the social body. This pincer movement exacerbates the sense of group vulnerability and rivalry at the bottom of the social structure and intensifies the quest for collective scapegoats as well as the urge to exclude rather than absorb them.[44]

2 The deployment of the police, courts, and prisons to tackle extracommunitarian foreigners partakes of a broader, epochal shift from the social-welfare to the penal treatment of problem categories and territories in the dualizing metropolis. To be more precise, the 'extrusion' of immigrants from both declining lower-class neighborhoods (via disproportionate arrest, prosecution, and incarceration) and from the national territory (via criminal expulsion and administrative banishment) serves as *spearhead* to implement the penalization of urban poverty designed to complement economic deregulation and welfare retrenchment insofar as it elicits less resistance and even generates support for such punitive policy from among the precarious fractions of the native working class that constitute its main foil.

3 Penalization strikes at vulnerable and stigmatized categories against the backdrop of the *decomposition of the working class and its historic territories* such that no centripetal forces of solidarity can effectively counteract it. In previous eras of economic transformation, industrial conflict and union mobilization supplied both an operant organizational vehicle and a potent idiom to unify the disparate segments of the labor force issued from various countries, to fuse issues of work and community, and to convert 'foreigners into nationals.' By swamping nationality with class in and around the workplace, unions and assorted laborers associations joined with left parties to fashion a compact bloc presenting collective claims to the state that cut across and even erased putative ethnic lines in the public sphere. Nowadays, the fragmentation of the working class into atomized households facing a structural crisis of reproduction simultaneously on the labor market, in the neighborhood, and in the school system just as they are being deprived of voice in the political field by the rightward shift of socialist parties has stripped unskilled immigrants

from the institutional and cultural buffer they enjoyed in the previous era of class consolidation anchored by the Keynesian-Fordist compact.[45]

It is not hostility against foreigners that is novel, then, nor the degree of cultural alterity or phenotypical distinctiveness of the latest wave of migrants that explains the sharp spike in the salience of foreigners on the criminal scene and their massive presence in the prisons of Europe. Rather, it is the vastly greater capacity and propensity of the state to deploy its penal resources at both the national and the supranational levels to 'resolve' the problems they pose or embody,[46] whether real or imagined, connected to transborder perigrination or displaced from the broader broiling arenas of work, place, and identity. Indeed, exclusionary impulses and punitive formulas have dominated the media construction and bureaucratic management of extracommunutarian migration throughout Europe, with limited legalization schemes, expanded border control, and mass deportation the three most prevalent responses given throughout the continent to the continuation of transnational movement, family reunification, and irregular labor import. The extensive discursive cum organizational linkage between the 'domestic side' of the criminal justice system and its 'foreign side' fostered by the accelerating construction of a European-level system of penal measures to check the intrusion and amplify the extrusion of unwanted aliens is a novel phenomenon.

Darker skinned, uneducated, unattached and uncouth, prone to crime and violence: undocumented immigrants are not so much 'non-persons' leading an invisible existence in the shadowy zones of the city, as Alessandro Dal Lago has suggested,[47] as anti-persons, negative tokens whose conspicuousness enable the germinating transnational personhood of Europeans to be delineated and affirmed via sociosymbolic contraposition, much like African slaves operated as anti-citizens in the early decades of the American Republic. On this account, the police targeting, court treatment, and correctional weight of postcolonial foreigners, immigrants, and assimilated categories – Maghrebines and '*beurs*' in France, West Indians in England, Turks and Roma in Germany, Tunisians and Yugoslavs in Italy, Moroccans and Gypsies in Spain, Africans in Belgium, Surinamese in Holland, Angolans in Portugal, and Albanians in Greece – constitute a veritable litmus test, a shibboleth for Europe.[47] Their evolution allows us to assess the degree to which the European Union resists or, on the contrary, conforms to the American policy of criminalization of urban poverty and marginality as complement to the generalization of social insecurity and the destabilization of ethnic hierarchy in the metropolis. Like the carceral fate of blacks in the United States, it gives us a precious and prescient indication of the type of city and society and state that Europe is in the midst of building onto the scaffolds of triumphant neoliberalism.

Conversely, the trend toward a deepening of the carceral division between (First-World) nationals and (Third-World) foreigners in the prisons of Europe

via the punitive containment and penal ejection of undesirable migrants reveals this hidden truth about African Americans: though they have formally been citizens of the Union since passage of the Fourteenth Amendment to the u.s. constitution in 1868, and even as they finally gained effective access to the suffrage in 1965, to the degree that they cannot compensate for the negative symbolic capital of 'race' by sufficient holdings and conspicuous displays of economic and cultural capital, blacks continue to be treated by the penal wing of the American state as foreigners in their own country, as the internal exiles that they have been since landing on American soil under bondage in 1619.[49] They are handled in the manner of 'enemies of the wholesome part of the nation,' to recall the choice words of Alexis de Tocqueville who, as prophet of liberal society, farsightedly discerned in the influx of immigrant workers streaming into industrializing Paris in the mid-nineteenth century 'an enemy mass that must be surveilled with firmness and eventually dealt with without mercy'.[50]

Notes

1 This article is adapted from chapter 6 of *Deadly symbiosis: race and the rise of neoliberal penality* (2005) Cambridge: Polity Press.

2 For a stimulative analysis of the political determinants of the punitive turn during this period, Katherine Beckett (1997) *Making Crime Pay: Law and Order in Contemporary American Politics*. New York: Oxford University Press; for an account of the War on Drugs in the context of America's alternating cycles of toleration and repression of narcotics over the past century, David F. Musto (1999) *The American Disease: The Origins of Narcotic Control*. New York: Oxford University Press (3rd ed.), chapter 12.

3 Lise McKean and Jody Raphael (2002) *Drugs, Crime, and Consequences: Arrests and Incarceration in North Lawndale*. Chicago, IL: North Lawndale Employment Network, mimeo, October, 6-8. I have corrected several computation errors in this report and cite only figures that do not involve double countings.

4 Thomas Bonczar (2003) *Prevalence of Imprisonment in the US Population, 1974-2001*. Washington, DC: Bureau of Justice Statistics Special Report, August, 6-7.

5 Adbelmalek Sayad (1999) *La Double absence. Des illusions de l'émigré aux souffrances de l'immigré*. Paris: Editions du Seuil, 417-426; Andrew P. Geddes (2000) *Immigration and European Integration: Towards Fortress Europe?* Manchester: Manchester University Press; Bernhard Santel (1995) *Migration in und nach Europa. Erfahrungen, Strukturen, Politik*. Leverkusen: Leske und Budrich; and Verena Stolcke (1995) Talking Culture: New Boundaries, New Rhetorics of Exclusion in Europe. *Current Anthropology*, 36 (1) February, 1-13.

6 Pierre Tournier (2002) *Statistique pénale annuelle du Conseil de l'Europe, Enquête 2001*. Strasbourg: Editions du Conseil de l'Europe, Vol. 1, 10. It should be noted that the larger increases affect countries that have small prison populations and started from inordinately low rates of incarceration. For a more nuanced analysis of trends by country, André Kuhn (1998) Populations carcérales: Combien? Pourquoi? Que faire? *Archives de politique criminelle*, 20 (Spring), 47-99; Sonja Snacken, Karl Beyens and Hilde Tubex (1995) 'Changing Prison Populations in Western Countries: Fate or Policy? *European Journal of Crime, Criminal Law and Criminal Justice*, 3 (1) 18-53; and the data periodically compiled by the International Center for Prison Studies at King's College in London.

7 André Kuhn, Pierre Tournier and Roger Walmsley (2000) *Le surpeuplement des prisons et l'inflation carcérale*. Strasbourg: Editions du Conseil de l'Europe, 136-137.

8 John Wrench, Andrea Rea and Nouria Ouali (eds.) (1999) *Migrants, Ethnic Minorities. and the Labour Market: Integration and Exclusion in Europe*. London: Palgrave Macmillan.

9 This directly refutes the notion, accepted as a matter of common sense among most European and American criminologists, that 'the extraordinary overrepresentation of African Americans in the population incarcerated or under criminal justice supervision is not found on the same scale in European countries' in the case of foreigners (Pierre Landreville (2002) Va-t-on vers une américanisation des politiques de sécurité en Europe? In: Laurent Mucchielli and Philippe Robert (eds.) *Crime et sécurité. L'état des savoirs*. Paris: Editions La Découverte, 424-433, at 429).

10 This rate is a product of the recent Malthusian policy of Switzerland as regards both political asylum and labor import in spite of the country's long tradition of mass migration and continued need for foreign workers (coming mostly from Italy, Spain, and Portugal), the correlative lack of administrative resources devoted to their management, and the prevalent view that aliens are now overly populous and excessively dissimilar culturally (Jean-Michel Bonvin (1996) Les réponses suisses au phénomène migratoire. *L'Année sociologique*, 46 (2) 449-473).

11 Godfried Engbersen and Joanne van der Leun (1999) Illegality and Criminality: The Differential Opportunity Structure of Undocumented Immigrants. In: Khalid Koser and Helma Lutz (eds.) *The New Migration in Europe: Social Constructions and Social Realities*. London: Palgrave Macmillan, 199-223. The gamut of strategies of subsistence and social incorporation of illegal immigrants in four major Dutch cities is documented by Joanne van der Leun (2003) *Looking for Loopholes*. Amsterdam: Amsterdam University Press.

12 For a thorough discussion of the thorny problems of categorization, measurement, and inference posed by the nexus of immigration and crime in the case of France, see Pierre Tournier and Philippe Robert (1991) *Étrangers et délinquances, les chiffres du débat*. Paris: L'Harmattan.

13 Paul Gilroy (1987) Lesser Breeds Without the Law. In: *'There Ain't No Black in the Union Jack': The Cultural Politics of Race and Nation*. Chicago, IL: University of Chicago Press, 72-113, citation p. 109; see also Ellis Cashmore and Edward McLaughlin (eds.) (1991) *Out of Order? Policing Black People*. London: Routledge.

14 Tariq Modood et al. (1997) *Ethnic Minorities in Britain: Diversity and Disadvantage*. London: Policy Studies Institute.

15 Monica A. Walker (1989) The Court Disposal and Remands of White, Afro-Caribbean, and Asian Men in London. *British Journal of Criminology*, 28 (4) Autumn, 353-367, and Roger Hood (1993) *Race and Sentencing*. Oxford: Oxford University Press.

16 Michael Walter and Michael Kubink (1993) Ausländerkriminalität: Phänomen oder Phantom der (Kriminal-)Politik? *Monatsschrift für Kriminologie und Strafrechtsreform*, 76, 306-317.

17 Rainer Geissler and Norbert Marissen (1990) Kriminalität und Kriminalisierung junger Ausländer: Die tickende soziale Zeitbombe – Ein Artefakt der Kriminalstatistik. *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 42 (4) December, 663-687.

18 Josine Junger-Tas, Ethnic Minorities and Criminal Justice in the Netherlands. In *Ethnicity, Crime, and Immigration*, Tonry (ed.), *op. cit.*, 257-310.

19 Marianne Junger (1988) Racial Discrimination in Criminal Justice in the Netherlands. *Sociology and Social Research* 72 (4) July, 211-216. A more nuanced approach would be needed here to take into account the diversity and dispersion of trajectories of immigrant incorporation into Dutch society of the Moluccans, Surinamese, Antilleans, Turks, Moroccans, and Eastern Europeans (Hans Vermeulen and Rinus Penninx (eds.) (2000) *Immigrant Integration: The Dutch Case*. Amsterdam: Het Spinhuis), as well as the class factors with which they

interact, as indicated by Godfried Engbersen (1995-1996) The Unknown City. *Berkeley Journal of Sociology* 40 (1995-1996), 87-111.

20   Manuel Martín Serrano (1993) Los efectos sociales de la política inmigratoria. *Política y Sociedad* 12, Spring, 37-43; José Cid and Elena Larrauri (1998) Prison and Alternatives to Prison in Spain. In: Vincenzo Ruggiero, Nigel South, and Ian Taylor (eds.) *The New European Criminology*. London: Routledge, 146-155; and Iñaki Rivera Beiras (ed.) (1999) *La Cárcel en España en el Fin del Milenio*. Barcelona: Editorial M.J. Bosch.

21   Gabriela Hernández et al. (2001) *Mujer gitanas y sistema penal*. Madrid: Ediciones Metyel, 15, 19, 20-22, and 30-45.

22   Vassilis Karydis (1996) Criminality of Immigrants in Greece: Issues of Policy and Theory. In: Salvatore Palidda (ed.) *Délit d'immigration/Immigrant Delinquency*. Brussels: European Commission, 117-134, and Sofia Vidali (2001) Politique de prévention et de sécurité en Grèce: le contrôle politique, passé et présent. *Déviance et société* 25 (4) 515-531.

23   *Beur*, a street slang (*verlan*) term for 'arabe,' designates so-called second-generation North Africans, the French offspring of Algerian, Moroccan, and Tunisian immigrants drawn to France during the 'thirty glorious years' of postwar economic growth.

24   Gilbert Gailliègue (2003) *La prison des étrangers, clandestins et délinquants*. Paris: Imago, 13.

25   Pierre Tournier (1996) La délinquance des étrangers en France: analyse des statistiques pénales. In: Palidda (ed.) *Délit d'immigration/Immigrant Delinquency*, *op. cit.*, 149-150.

26   Tournier, La délinquance des étrangers en France, *op. cit.*, 158.

27   This ideal-typical distinction between three forms of confinement is elaborated by Claude Faugeron (1994) Légitimité du pénal et ordre social. *Carrefour* 16 (2) March, special issue on 'Ethique, démocratie et droit pénal', 64-89.

28   Under penal law in France as in several other European countries, foreigners can be subjected to '*double peine*': they are sanctioned, first, by imprisonment for the offense they committed (including illegal entry and sojourn) and, second, by expulsion from European territory after they have served their sentence in the case of undocumented immigrants or legal aliens deemed to 'pose a threat to public order' (a clause routinely invoked by the authorities to deport repeat offenders).

29   Louis Mermaz (2001) *Les geôles de la République*. Paris: Editions Stock. Mermaz is a former cabinet member under Mitterrand's first term and a subsequent President of the French national assembly.

30   Laurence Vanpaeschen et al. (1998) *Les barbelés de la honte*. Brussels: Luc Pire; Fabienne Brion (1996) Chiffrer, déchiffrer: Incarcération des étrangers et construction sociale de la criminalité des immigrés en Belgique In: Palidda (ed.) *Délit d'immigration/Immigrant Delinquency*, *op. cit.*, 163-223; and Fédération internationale des droits de l'homme (1999) *Les centres fermés en Belgique, l'arrière cour de la démocratie*. Brussels: LIDH.

31   Salvatore Palidda (1996)La construction sociale de la déviance et de la criminalité parmi les immigrés: le cas italien. In: Palidda (ed.) *Délit d'immigration/Immigrant Deliquency*, *op. cit.*, 231-266; Antonio Golini and Salvatore Strozza (1998) Immigration and Foreign People in Six Italian Metropolitan Areas. *Studi Emigrazione* 35 (129) March, 65-86. For an account of the chaotic policing and penal containment of unwanted immigrants in five Italian portal cities, read Stefano Galieni and Antonella Patete (2002) *Frontiera Italia*. Troina: Città Aperta Edizioni.

32   Didier Bigo (1992) *L'Europe des polices et la sécurité intérieure*. Brussels: Editions Complexe. The officially stated goal of the Schengen treaty was to establish a transnational legal and administrative framework to reduce crime while encouraging open borders (Paul Kapteyn (1991) 'Civilization under Negotiation': National Civilizations and European Integration – The Treaty of Schengen. *Archives Européennes de Sociologie* 32 (2) Spring, 363-380.

33 Robert K. Merton (1968) The Self-Fulfilling Prophecy. In: *Social Theory and Social Structure*. New York: The Free Press, 3rd expanded edition, 475-490.

34 On this process of the criminalization of immigrants, see the comparative works assembled by Allesandro Dal Lago (red.) (1998) *Lo straniero e il nemico*. Genoa: Costa e Nolan; on the Dutch case, Godfried Engbersen (1997) *In de schaduw van morgen: Stedelijke marginaliteit in Nederland*. Amsterdam: Boom; and on the German case, Michael Kubink (1993) *Verständnis und Bedeutung von Ausländerkriminalität: Eine Analyse der Konstitution sozialer Probleme*. Pfaffenweiler: Centaurus.

35 See *Chartes des droits fondamentaux de l'Union européenne*, available on line at the site of the Ligue des droits de l'homme: <www.ldh-france.asso.fr>. Mass expulsions of aliens have been chronically denounced by Amnesty International, the International Observatory of Prisons, and other human rights organizations in the major countries of Europe.

36 The racial tenor of public chain gangs comes from the fact that the last inmates to be visibly punished in this fashion in the interwar South were African Americans: 'The chain gang of mostly black convicts working the roads of the Deep South came to exemplify the brutality of southern race relations, the repressive aspect of southern labor relations, and the moral and economic backwardness of the region' (Alex Lichtenstein (1996) *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South*. London: Verso, 160.

37 Harry E. Allen and Julie C. Abril (1997) The New Chain Gang: Corrections in the Next Century. *American Journal of Criminal Justice* 22 (1) Fall, 1-12; Nancy A. Ozimek (1997) Reinstitution of the Chain Gang: A Historical and Constitutional Analysis. *Boston University Public and International Law Journal* 6, October, 753-757; and (1999) Alabama Chain Gang Revival Ends. *Corrections Professional*, 19 November.

38 Viz. the media commotion caused by the back-to-back deaths in January of 2003 of two undocumented migrants, the 52-year-old Argentine Ricardo Barrientos and the 24-year-old Ethiopian Mariam Agos, during their forcible expulsion on Air France flights, or the tristely exemplary case of Arumum Sivasampu Esan, a Tamul asylum-seeker killed during a desperate thirty-minute tussle with border police who had taped his mouth shut with medical bandage, manacled his hands in his back, bound his feet, and tied him to his airline seat with a blanket. The case was pursued by immigrant rights association and took three prosecutors and seven years to reach the courts. The French Minister of the Interior at the time was then called to publicly account for the incident (La mort oubliée d'un demandeur d'asile lors d'une reconduite en 1991. *Le Monde*, 2 October 1998).

39 Jean Faber (2000) *Les Indésirables. L'intégration à la française*. Paris: Grasset, 15-16, who goes on to write: 'France no longer knows what to do with its immigrants. It has labored relentlessly to regulate their entry and exit, with all the more ferocity as it was fleeing the question, otherwise more important, of what to do with those who remain with us' (Faber is the pseudonym of a high-ranking state official formerly in charge of immigrant 'integration policy' in the French government, a domain he contends is a political and bureaucratic wasteland).

40 Studs Terkel (1992) *Race: How Blacks and Whites Think and Feel About the American Obsession*. New York: Anchor Books, and Correspondents of the New York Times (2001) *How Race is Lived in America*. New York: Times Books.

41 Seyla Benhabib (1999) Citizens, Residents, and Aliens in a Changing World: Political Membership in the Global Era. *Social Research* 66 (3) Fall, 709-744, and Michael Walzer (1983) Membership. In: *Spheres of Justice*. New York: Basic Books, 31-63.

42 David M. Oshinsky (1996) *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice*. New York: Free Press; A. Roger Ekirch (1987) *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775*. Oxford: Clarendon Press; and Etienne Balibar, Monique Chemillier-Gendreau, Jacqueline Costa-Lascoux and Emmanuel Terray (1999) *Sans-papiers, l'archaïsme fatal*. Paris: Editions La Découverte.

43 Robert Miles (1993) The Articulation of Racism and Nationalism: Reflections on European History. In: John Wrench and John Solomos (eds.) *Racism and Migration in Western Europe*, eds. (Oxford: Berg) 35-52; Rainer Bauböck, Agnes Heller and Aristide R. Zolberg (eds.) (1999) *The Challenge of Diversity: Integration and Pluralism in Societies of Immigration*. Aldershot: Ashgate Publishing; Jeffrey Cole (1997) *The New Racism in Europe: A Sicilian Ethnography*. Cambridge: Cambridge University Press; Catherine Wintol de Wenden (1999) *L'Immigration en Europe*. Paris: La Documentation française; and Klaus J. Bade (1999) *Europa in Bewegung. Migration vom späten 18. Jahrhundert bis zur Gegenwart*. Munich: Verlag C.H. Beck.

44 Pierre Bourdieu et al. (1999 [1993]) *The Weight of the World: Social Suffering in Contemporary Society*. Cambridge: Polity Press, esp. 23-36, 106-122, 317-320. There are partial historical precedents: xenophobic stereotyping and hostility towards foreigners in Southeastern France in the 1930s was intensified by the sense of vulnerability of the country's borders to foreign powers during that decade, as argued by Paul Lawrence (2000) 'Un flot d'agitateurs politiques, de fauteurs de désordre et de criminels'. Adverse Perceptions of Immigrants in France between the Wars. *French History* 14 (2) June, 201-221.

45 See, in the French case, Maryse Tripier (1990) *L'Immigration dans la classe ouvrière en France*. Paris: CIEMI and L'Harmattan, esp. chapter 6, for the age of class consolidation, and Stéphane Beaud et Michel Pialoux (1999) *Retour sur la classe ouvrière*. Paris: Fayard, for the era of sociospatial dislocation and cultural dissolution.

46 The acceleration of the top-down creation of a European penal space after the 1992 Maastricht Treaty and the 1997 Amsterdam Treaty is tracked by Françoise Tulkens, Vers une justice pénale européenne? In: *Crime et sécurité, op. cit.*, 414-23.

47 Alessandro Dal Lago (1999) *Non-Persone. L'esclusione dei migranti in una società globale*. Milano: Feltrinelli.

48 Pierre Bourdieu (1998) The Fate of Foreigners as Shibboleth. In *Acts of Resistance: Against the Tyranny of the Market*. Cambridge: Polity Press, 15-18 (my translation).

49 For an analysis of the civic disenfranchisement of felons as a form of domestic deportation, read Nora V. Demleitner (1999) Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences. *Stanford Law and Policy Review* 11, Winter, 153-168.

50 Alexis de Tocqueville (2000) *Souvenirs*. Paris: Gallimard/Folio, 212 (I thank Massimiliano Guareschi for pointing out to me this precious reference).