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The Law That Could Be: Poverty, Power, and Radical Legal Imagination

Investigating the Indirect Criminalisation of Poverty in Western Legal Systems and the Possibilities for Law as a Space of Transformative Justice

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In the face of ongoing human rights violations, we carry a responsibility, not only as legal scholars but as social thinkers, to go beyond merely understanding and applying the law. We must interrogate its origins, its structures, and its consequences. We must ask: *Who does the law serve? Whose interests does it protect? What forms of injustice does it legitimate?* Understanding law is not simply about knowing its rules, but recognizing how power operates through it.

The study and practice of law must be a space of ethical and political commitment. To defend human rights in any meaningful sense is to approach law not as a shield against change, but as a potential tool for emancipation. This work, therefore, does not stop at identifying who is excluded from the law. It aspires to contribute to the radical reimagination of law itself.

I want to thank all the people who have shaped the way I understand the law, not as an abstract system, but as something deeply human. They've taught me to see not just the law differently, but life itself. I am especially grateful to my family for their constant support and for always encouraging my curiosity. To my friends, whose love has shown me the transformative power of everyday care, reminding me that how we relate to one another is itself a political act. And to the political movements that have shaped me, especially feminist unions, pro-Palestinian collectives, and República Baco, thank you for teaching me that collectivity is not only a strategy for resistance, but a way of inhabiting the world.

Abstract

The indirect criminalisation of poverty represents a structural injustice in Western legal systems. While poverty is not formally criminalised, economically marginalized populations are consistently subjected to punitive treatment through administrative regulation, welfare conditionality, and spatial control. Legal systems, often viewed as neutral or rights-based, instead function as instruments of exclusion shaped by neoliberal economic logics and dominant moralities. This thesis builds on Sara S. Greene's theory of legal immobility and draws from critical legal studies, political economy, and human rights theory to interrogate how law contributes to the marginalization of the poor. Through a comparative case study of Spain, France, and the United Kingdom, it examines how diverse legal regimes converge in their punitive governance of poverty. Beyond critique, this investigation contends that confronting inequality requires a radical rethinking of law itself. It develops the concept of radical legal imagination to argue that law must be reclaimed as a space of collective authorship, capable of embodying justice, dignity, and solidarity. By connecting critical legal analysis with imaginative reconstruction, the thesis challenges the normative foundations of legal systems and opens space for alternative, emancipatory legal futures.

Abbreviations

UN – United Nations

DWP – Department for Work and Pensions (a UK government institution responsible for welfare and pensions policy).

ICCPR – International Covenant on Civil and Political Rights (a key international human rights treaty).

UNTS – United Nations Treaty Series (used in legal citations to indicate the official treaty record).

UK – United Kingdom (used as a standard country abbreviation).

EU – European Union (appears in references or URLs, even if not directly discussed in the main body).

UN – United Nations

ECtHR – European Court of Human Rights

ICCPR – International Covenant on Civil and Political Rights

OHCHR – Office of the High Commissioner for Human Rights

ECHR – European Convention on Human Rights

UK – United Kingdom

NGOs – Non-Governmental Organizations

RJ – Restorative Justice

TJ – Transitional Justice

I. Introduction

If poverty is not a crime, why do we treat the poor like criminals? In Western democracies, poverty is not formally criminalised, yet economically marginalized individuals are routinely subjected to punitive treatment.[1] This contradiction forms the starting point of this thesis. While legal systems claim to uphold equality and justice, in practice they often target poverty itself. This occurs through what critical scholars call the *indirect criminalisation of poverty*: a process by which laws and policies, though not explicitly criminal in nature, function in ways that punish the poor.[2] These measures typically operate within administrative, civil, or regulatory domains, such as anti-begging ordinances, restrictions on public space, fines for minor infractions, and conditions attached to welfare benefits.

For the purposes of this investigation, poverty is defined as a human condition characterized by the sustained or chronic deprivation of the resources, opportunities, and power necessary to enjoy an adequate standard of living and to exercise other rights recognized by the United Nations (UN).[3] Additionally, criminalisation is the process by which the state defines certain behaviours as threatening and responds with repressive measures. It operates on two levels: primary criminalisation, which defines "dangerous" conduct through laws and policies, and secondary criminalisation, which targets specifically marginalized individuals through policing, judicial action, and incarceration. In the context of poverty, these processes merge to construct the poor as inherently threatening, prompting legal responses that punish individuals rather than addressing structural inequality.[4]

The thesis engages with human rights theory to emphasize that poverty should not be reframed as a moral or individual failure but as a violation of dignity and economic and cultural rights. According to the UN, poverty systematically undermines the enjoyment of all human rights.[5] Yet, legal systems have largely ignored this structural perspective. The criminalisation of poverty is one of the main ways human rights are undermined, as it produces ongoing legal uncertainty and systematically fails to uphold the principle of formal equality.[6] Human rights discourse remains idealistic unless it critically examines the legal systems tasked with protecting those rights. If we rely on law as the primary vehicle for upholding human rights,

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[1]Loïc JD Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Duke University Press 2009).
[2]Jean Galbraith and others, 'Poverty Penalties as Human Rights Problems' (2023) 117(3) *American Journal of International Law* 397.
[3] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).
[4]Alessandro Baratta, Criminología crítica y crítica del derecho penal: introducción a la sociología jurídico-penal (1. ed. argentina., Siglo Veintiuno Editores Argentina 2002).
[5]UN Human Rights Council, *Guiding Principles on Extreme Poverty and Human Rights* (27 September 2012) UN Doc A/HRC/21/39.
[6]Olivas Díaz, A., *Tendencias del presente penal. La evolución de la política criminal hacia el castigo oblicuo* (conference, Facultad de Derecho de la UNED, Madrid, 15 June 2007).

then it is essential to understand how legal systems function, to rethink their foundations in relation to social and economic contexts, and to engage in a critical analysis that not only identifies their limitations but also proposes transformative alternatives for their improvement.

This research has two main **objectives.** Firstly, it aims to examine how legal systems indirectly criminalise poverty, reflecting law's foundational role in reproducing structural inequality. It explores how legal frameworks are shaped by economic interests, dominant moralities, and political ideologies, resulting in a failure to protect those living in poverty. The second aim of this investigation is to examine the relationship between law and imagination, opening a space for debate about what the law could be. This thesis argues that law also holds the potential to become a structure of transformative possibility. Therefore, it engages with imagination as part of the strategy to rethink legal foundations and envision more just and inclusive alternatives. On this basis,

this thesis investigates to what extent Western legal systems contribute to the indirect criminalisation of poverty, and how and why the law should be reimagined as a space of collective creation, and transformative possibility.

This research adopts Sara S. Greene's **theory of legal immobility** as its core **conceptual framework**. Greene's work illustrates how overlapping local, civil, and administrative laws systematically regulate and constrain the poor, showing that poverty is perpetuated not by isolated policies but by a broader legal architecture across jurisdictions.[7] This thesis extends her insight further: it uses her examples of everyday legal constraints to interrogate the foundations of legal systems themselves. The central claim is that these legal constraints are not incidental, but embedded within a legal framework that structurally reinforces existing socioeconomic hierarchies.[8] To develop this argument, the thesis draws on a range of critical theoretical perspectives, including the work of Loïc Wacquant, Michel Foucault, Roberto Unger, and other scholars in critical legal studies, political philosophy, and legal sociology, whose work challenges the neutrality of legal systems and exposes the power structures embedded in legal reasoning.

Yet this thesis does not end with critique. It also contributes to the imaginative reconstruction of legality. In its second part, the focus shifts from structural analysis to conceptual invention, proposing the notion of **radical legal imagination.** This concept applies imagination to the field of law, rethinking law not as a static institution to be incrementally improved, but as a socially constructed field open to reinvention. Drawing on the work of Cornelius Castoriadis, Roberto Unger, and Costas Douzinas, this research explores how law can be reclaimed as a space of collective authorship, where justice, care, and dignity emerge through creative struggle. Instead of suggesting technocratic reforms, this thesis calls for a fundamental

[7]Sara S. Greene, 'A Theory of Poverty: Legal Immobility' (2019) 96 Washington University Law Review, 753-801.
[8]Georg Rusche, Otto Kirchheimer and Dario Melossi, Punishment and Social Structure (5th printing, Transaction Publishers 1939).

reimagining of law, replacing inevitability with imagination in the pursuit of alternative legal futures.

For this reason, the thesis is **structured** in two major parts. The first part consists of two chapters. Chapter 1 introduces the theory of legal immobility and connects it to broader legal-philosophical critiques about the ideological nature of law. Chapter 2 analyses concrete examples of legal immobility in Spain, France, and the UK. The second part is structured as a single chapter. Chapter 3 explores the relationship between law and imagination, examines its transformative potential, and proposes ways to reimagine the foundations of legal systems. In today's political climate, marked by rising social and economic inequalities and a widespread sense of hopelessness, it is essential to move beyond legal orthodoxy and imagine new legal systems grounded in justice and dignity.

This project adopts a **socio-legal methodology** grounded in critical theory and structural analysis. It is qualitative, theoretical, and interdisciplinary, drawing from critical legal studies, political economy, and legal philosophy. Central to its framework are the concepts of legal immobility, structural violence, and radical imagination. The research is based on the analysis of legal codes, human rights reports, and critical scholarship, and no primary fieldwork is conducted. Empirically, the thesis employs a comparative case study of Spain, the United Kingdom, and France, selected for their contrasting legal traditions, welfare models, and responses to austerity and securitisation.[9] Additionally, for the last chapter, rather than engaging in doctrinal analysis, it employs a normative-theoretical approach to explore alternative frameworks for justice**.**

This thesis **focuses** on **Europe** not only because of its legal diversity, but because the region represents a complex and evolving landscape where liberal democratic ideals often coexist with increasingly exclusionary legal practices. In recent years, European states have undergone significant transformations through austerity, welfare retrenchment, and the securitisation of poverty. These trends have revealed how even formally rights-based and democratic legal systems can produce punitive outcomes for economically marginalized groups. By examining different countries, this thesis aims to understand how similar logics of exclusion operate across diverse institutional arrangements, offering deeper comparative insight into the legal governance of poverty. In the second part of this investigation, the focus is not limited to Europe, as it seeks to address more universal and conceptual dimensions of law.

As part of the **limitations** of the research, this thesis acknowledges the inherent abstraction and openness of its central research question. It is not possible within the scope of a single academic work to comprehensively examine the entire legal system or fully capture the complex relationship between law and poverty. Rather than providing a comprehensive diagnosis, the primary aim is to open a space for critical reflection on the foundations of law. Additionally, the concept of poverty itself presents methodological challenges, particularly given its multifaceted nature. This investigation does not attempt to quantify the relationship between

[9]Michael Cavadino and James Dignan, *Penal Systems: A Comparative Approach* (SAGE 2006).

poverty and specific criminal offences. Instead, it focuses on the less visible ways in which legal structures can produce indirect criminalisation. These mechanisms are often overlooked, in part because they are dispersed across jurisdictions, difficult to trace, or lack clear statistical representation. While these challenges limit the scope for empirical precision, they point to the need for further interdisciplinary and context-based research in this area. As a final note, this investigation acknowledges that poverty is never experienced in isolation. It is deeply interwoven with racialisation, gender inequality, migration status, disability, and other forms of oppression. The decision to approach poverty as an abstract category is a methodological choice, intended to better identify the legal mechanisms through which criminalisation is produced and sustained.

This thesis **contributes** to debates on the future of legal justice in Europe by challenging dominant conceptions of law as neutral, static, or objective. It also engages with the sociology of law by focusing on how legal systems actively participate in the reproduction of inequality. While critical scholarship has questioned legal neutrality, there remains a notable gap in examining how poverty is indirectly criminalises through non-penal mechanisms. This research addresses that gap by revealing how legal structures, often through subtle, everyday practices, contribute to the marginalization of economically vulnerable groups Additionally, the central and most original contribution of this research lies in its exploration of the relationship between imagination and law, mainly through its development of the concept of radical legal imagination. This concept seeks to reframe law as a space of possibility. In proposing this framework, the thesis opens the door for new interdisciplinary approaches to legal theory, especially in the European context, where such imaginative perspectives remain largely absent from mainstream legal discourse. It challenges traditional views of law as rigid and apolitical, instead positioning it as a field that must be constantly reinterpreted, reinvented, and reclaimed.

Finally, it is important to clarify the theoretical position this thesis adopts toward law. It approaches law as a historically situated and structurally embedded apparatus of power. Rather than dismissing law outright, it is explored as a contested terrain, capable of reinforcing inequality, but also enabling social transformation. Law has also played a pivotal role in advancing rights, protecting democratic achievements, and shaping emancipatory struggles. It is precisely because of its normative force and institutional authority that law must be subject to critical analysis. This thesis is not intended merely as a critique of the law, it aims to contribute to a broader project of reimagining law itself, as a living, dynamic space in which solidarity, justice, and collective emancipation are not abstract ideals, but shared political and ethical commitments.

Chapter 1: The Ideological Function of Law and Legal Immobility

This chapter begins from a critical premise: that the law, far from being a neutral and universal instrument of justice, is deeply entangled in the social, economic, and political structures it

purports to regulate.[10] While liberal legal thought traditionally presents law as a safeguard of rights, dignity, and equality, this normative ideal often obscures how legality functions as a mode of governance, particularly over those living in poverty.[11] For marginalized populations, the law can operate less as a space of protection and more as a system of discipline, surveillance, and exclusion. To engage seriously with the indirect criminalisation of poverty, it is therefore necessary to interrogate the very foundations of legality itself.[12]

The chapter is structured in two sections. *Section 1.1* offers a critical analysis of how legal systems produce and legitimize exclusion through three interrelated dimensions: economic structures, symbolic representations, and shifts in state governance. Drawing from Marxist legal theory, symbolic sociology, and critiques of neoliberalism, this section shows how poverty is not simply neglected by legal regimes, but it is actively regulated, moralized, and managed through them.[13]

Section 1.2 introduces the theory of legal immobility as a theoretical tool that helps operationalize these broader dynamics.[14] While the first section draws on large-scale theoretical frameworks, legal immobility makes these abstract insights more tangible by identifying recurring patterns through which the law constrains the lives of the poor. These include practices of calculated exploitation, gratuitous management, and routine neglect, which do not always appear punitive in form, but cumulatively function to immobilize those already structurally disadvantaged. This theory allows for a more grounded, systematic understanding of how exclusion is enacted through everyday legal mechanisms.

This framework also speaks directly to the limits of contemporary human rights discourse. If law itself participates in the reproduction of poverty and inequality, then efforts to advance human rights within legal systems must confront this foundational tension. Rather than treating law as a neutral container for rights, we must critically examine how its underlying structures impact what kinds of rights can be claimed, by whom, and under what terms.[15] In this sense, a clearer understanding of law's role in producing exclusion is not only analytically necessary, it is a precondition for reimagining the possibilities and boundaries of human rights within legal systems.

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[10]Duncan Kennedy, 'Legal Education as Training for Hierarchy' in David Kairys (ed), The politics of law: a progressive critiqued (3rd ed, Basic Books 1998).
[11]Roberto Mangabeira Unger, Law in Modern Society: Toward a Criticism of Social Theory (Collier Macmillan 1976).
[12]K Klare, 'Law-Making as Praxis' (1979) 1979 Telos, 123-135.
[13]Andrew Scull, 'Neoliberalism and the Poor - Loïc Wacquant, Punishing the Poor: The Neoliberal Government of Social Insecurity (Durham, North Carolina, Duke University Press, 2009).' (2009) 50 European Journal of Sociology, 499-503.
[14]Sara S. Greene, 'A Theory of Poverty: Legal Immobility' (2019) 96 Washington University Law Review, 753-801.
[15]Ratna Kapur, 'Human Rights in the 21st Century: Taking a Walk on the Dark Side' (2006) 28(4) Sydney Law Review 665.

1.1. Beyond Neutrality: Law as a Structure of Exclusion

To understand how legal systems contribute to the indirect criminalisation of poverty, it is necessary to move beyond the liberal conception of law as a neutral, rational, and universally protective institution.[16] While often presented as a technical tool for resolving disputes and protecting rights, law operates within broader social, political, and economic structures.[17] Rather than simply delivering justice, it can reinforce existing power relations,[18] particularly those tied to capitalist accumulation,[19] by formalizing and legitimizing dominant ideologies. From this perspective, poverty is not treated as the result of structural exclusion, but as a form of disorder to be regulated, contained, or removed.[20] For example, laws regulating public space, such as bans on loitering, sleeping in public, or scavenging, do not explicitly target the poor, yet they function to penalize survival behaviours associated with poverty.

This requires a shift in how law is conceptualized. It is important to analyse law not as an impartial set of rules, but as a socially constructed and contested field, shaped by ideology and historical struggle.[21] It encodes assumptions about legitimacy, responsibility, and deviance that align with prevailing power structures.[22] Gramsci's theory of hegemony explains this dynamic.[23] For Gramsci, power is sustained not only through coercion but through consent, through the normalization of ruling interests as common sense. Law, in this view, becomes a site where these interests are rendered legitimate. Through what he terms *passive revolution*, legal systems may absorb demands for reform, such as welfare provisions or rights protections, not to dismantle inequality, but to manage dissent and preserve the status quo. These concessions offer symbolic relief while deflecting deeper transformation. In this way, law does not simply impose order, it produces consent to it by shaping what appears reasonable and necessary.

This perspective invites a more structural diagnosis of how law governs poverty. As explained, legal systems do not simply mirror existing ideologies, they participate in their construction and enforcement. To unpack this process, the following part identifies three interlocking dynamics that shape law's role in sustaining exclusion: its economic alignment with dominant modes of production, its power to define and mirror social values of worth, and its

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[16]Alfred R Wallace (ed), Darwinism: Critical Reviews from Dublin Review, Edinburgh Review, Quarterly Review ; [Tab.] (Reprint, Univ Publ of America 1977).
[17]Mariana Valverde, 'Jurisdiction and Scale: Legal `Technicalities' as Resources for Theory' (2009) 18 Social & Legal Studies, 139–157, at 141.
[18]Thomas F Tierney, 'Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France, 1977-78* Edited by Michel Senellart. Translated by Graham Burchell. (London: Palgrave Macmillan, 2007.)' [2008] Foucault Studies 90, 66–67.
[19]Alessandro De Giorgi, Re-Thinking the Political Economy of Punishment: Perspectives on Post-Fordism and Penal Politics (Routledge 2016).
[20]Loïc JD Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Duke University Press 2009), 41–43.
[21]Duncan Kennedy, 'Form and Substance in Private Law Adjudication' (1976) 89 Harvard Law Review 1685.
[22]Massimo La Torre, 'The Hierarchical Model and H. L. A. Hart's Concept of Law' [2013] Revus 141161, 141-161.
[23]Antonio Gramsci, 'Selections from the Prison Notebooks' (1971) International Publishers.

transformation under neoliberal governance. These logics reveal that legal exclusion is not a failure of justice, but an inherent feature of the legal system itself.

a) Economic Logics: The Material Governance of Poverty

From a materialist perspective, legal systems play a fundamental role in stabilizing and legitimizing our current capitalist economies in Europe.[24] Rusche and Kirchheimer's foundational thesis, that each system of production tends to develop forms of punishment aligned with its underlying economic relations, remains central to understanding the link between economic logics and the structures of legal governance and punishment.[25] These authors argue that we must examine how legal systems emerge and evolve, how certain punishments are applied or avoided, and how the intensity of penal practices is shaped, primarily by social forces, especially economic and fiscal ones. This means that changes in the system of production reshape how the state punishes, giving rise to new mechanisms of legal control.[26]

Following a Frankfurt School analysis, we can see clearly how penal forms evolve alongside economic infrastructures: from corporal punishment and exile in pre-industrial societies, to prisons and workhouses in capitalist ones.[27] In the postwar welfare state, the governance of poverty shifted toward social policy, but since the 1970s this has been reversed.[28] Loïc Wacquant captures this shift through the metaphor of the *centaur state*, a liberal head that promotes deregulated markets and an authoritarian body that disciplines the poor through punitive interventions.[29] This duality manifests in what Wacquant calls the converging logics of *workfare* and *prisonfare*. As social protections erode, the state increasingly deploys punitive to manage poverty.[30]

Therefore, in one hand, law operates as a material infrastructure that enables mechanisms of economic extraction, such as regressive tax regimes, punitive welfare policies, or debt enforcement, that facilitate the upward redistribution of resources. On the other hand, it plays a crucial ideological role by producing moral justifications that make these systems socially and politically acceptable, thereby legitimizing economic decisions. Legal discourse interpreted as objective hides their classed impacts. In this sense, law not only provides the rules for new systems of extraction and upward redistribution, it elaborates the ideas used to

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[24]Katharina Pistor, *The Law of Capitalism and How to Transform It* (Yale University Press 2025).
[25]Georg Rusche, Otto Kirchheimer and Dario Melossi, *Punishment and Social Structure* (5th printing, Transaction Publishers 1939), 265–270.
[26]Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Penguin 1991) 89.
[27]Alessandro De Giorgi, 'Punishment, Marxism, and Political Economy' in Alessandro De Giorgi, *Oxford Research Encyclopedia of Criminology and Criminal Justice* (Oxford University Press 2018).
[28]William Fay, 'Neoliberalism and Radical Rights: On the Work and Theory of Law and Organising' (2023) 36 International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique 407.
[29]Andrew Scull, 'Neoliberalism and the Poor - Loïc Wacquant, Punishing the Poor: The Neoliberal Government of Social Insecurity (Durham, North Carolina, Duke University Press, 2009).' (2009) 50 European Journal of Sociology, 499-503.
[30]Nancy Fraser and Linda Gordon, 'A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State' (1994) 19 Signs: Journal of Women in Culture and Society, 309–336.

rationalize them. This insight is central to critical legal studies, which emphasize that law is not outside of power, but actively participates in its reproduction.[31]

These dynamics reflect a broader theoretical critique. Neo-Marxist analysis position law as part of the capitalist superstructure, an institutional and ideological formation that legitimates class relations.[32] Legal categories like private property and criminal liability are not neutral or external to economic life, they are essential tools for organizing it. At the heart of this system is the protection of property, not as a moral entitlement but as a mechanism for sustaining accumulation. In this logic, the poor, precisely because they lack property, are cast either as dependents to be supervised or as threats to be punished.[33] De Giorgi expands this analysis by arguing that under advanced capitalism, legal systems function primarily as instruments for managing "surplus populations": individuals excluded from formal labour markets but still subjected to intense legal and bureaucratic control. Rather than integrating these populations into the economy, legal institutions operate to contain them.[34]

Despite this, the relationship between law and poverty is not entirely determined by economic structures. The legal positioning of marginalized groups within class, race, and gender hierarchies is shaped by a broader constellation of cultural, political, and institutional inequalities.[35] In response, this thesis advocates a *post-reductionist political economy*, one that remains grounded in material critique but also addresses the ideological, symbolic, and bureaucratic mechanisms that normalize legal exclusion, while accounting for other axes of oppression in its analysis.[36]

b) Normative Logics: Constructing the Worthy and the Deviant

The previous section showed how systems of production shape legal mechanisms of exclusion. Yet these mechanisms could not function, nor be widely accepted, without being framed as legitimate. While this research does not focus on discourse analysis, it is still important to acknowledge how the law justifies its actions through moral narratives, stigma, and ideology, revealing its cultural and symbolic functions.

The link between law and normative logics, in the context of poverty, lies in how moral narratives are constructed to make the criminalisation of the poor appear socially acceptable. The law frames poverty not as a political condition, but as an individual failure, a framing that

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[31]William Fay, 'Neoliberalism and Radical Rights: On the Work and Theory of Law and Organising' (2023) 36 International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique 407.
[32]Duncan Kennedy, A Critique of Adjudication: Fin de Siècle (1. paperback ed, Harvard Univ Press 1998).
[33]José A Brandariz, 'I González Sánchez, Neoliberalismo y Castigo' (2023) 25 Punishment & Society, 1138-40.
[34]Alessandro De Giorgi, *Re-Thinking the Political Economy of Punishment: Perspectives on Post-Fordism and Penal Politics* (Routledge 2016).
[35]Andrew Sayer, 'Class, Moral Worth and Recognition' (2005) 39 Sociology, 947-963.
[36]A De Giorgi, *Punishment and Political Economy* (Alternative Criminologies, Routledge 2017).

legitimizes punitive responses.[37] Through mechanisms of classification, conditionality, and discretion, it embeds poverty with stigma and recasts inequality as justice. Legal institutions, therefore, do not merely regulate, they interpret and produce narratives.[38] When access to housing, or benefits, is conditioned on moralized criteria such as compliance, or parenting skills, the law is not simply managing scarcity, but performing judgment.

These performances translate economic marginality into moral inferiority. Poverty is re-coded as a behavioural defect, and the law becomes the institution that enacts this re-coding under the guise of neutrality. Such laws are often accepted and legitimized by the public simply because they are codified, reflecting a tendency to treat the law as an unquestionable source of moral authority.[39] As a result, the law performs a dual function: it reproduces prevailing moral norms while simultaneously shaping and producing them.

This performance of moral judgment is a form of cultural domination, what Pierre Bourdieu called *symbolic violence*, which is the imposition of social hierarchies that are misrecognized as legitimate.[40] This can be defined as a form of domination exercised through symbols, norms, and classifications that appear legitimate and are often accepted by those they subordinate. The power of law here lies not in direct coercion, the power operates invisibly in its ability to define what is "normal," "responsible," or "public order", and to make these definitions seem self-evident. This framing is key to the indirect criminalisation of poverty. It allows legal systems to target the poor through neutral categories, while denying that poverty itself is being punished. In this context, punishment serves not just to correct behaviour, but to project moral boundaries.

While the law plays a key role in producing moral narratives, it also reflects the cultural assumptions and prejudices that already circulate in society. As Adela Cortina argues, what provides the cultural foundation for the criminalisation of poverty is what she terms *aporofobia*, a pervasive aversion to those who appear to lack value in an economy of exchange.[41] In societies built on exchange, performance, and merit, those who lack market utility are treated not only as unproductive, but as undeserving of public space, sympathy, or protection. This social contempt precedes and legitimizes legal exclusion. It explains why laws that criminalise poor people escape scrutiny because they resonate with a deeper cultural logic in which poverty itself is seen as blameworthy. Aporophobia, in this sense, is not merely an individual sentiment, but a shared cultural logic rooted in the rejection of the poor, reflected in societal values and institutionalized within the legal system. This logic contributes to a

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[37] A Olivas Díaz, *Tendencias del presente penal. La evolución de la política criminal hacia el castigo oblicuo* (conference, Facultad de Derecho de la UNED, Madrid, 15 June 2007).
[38] RA Hinde, 'Law and the Sources of Morality' (2004) 359 *Philosophical Transactions of the Royal Society B: Biological Sciences* 1685.
[39] T Spaak, 'Legal Positivism, Law's Normativity, and the Normative Force of Legal Justification' (2003) 16(4) *Ratio Juris* 469.
[40] JD Schubert, 'Suffering/Symbolic Violence' in M Grenfell (ed), *Pierre Bourdieu: Key Concepts* (Acumen Publishing 2012) 179.
[41] Adela Cortina Orts, Aporofobia, El Rechazo al Pobre: Un Desafío Para La Democracia (Primera edición, Paidós 2017).

dehumanized vision of legality, one in which poverty is seen as a moral failing rather than a social and communitarian problem. If the law is meant to serve people, it must be grounded not in suspicion or exclusion, but in empathy and recognition. A legal system that fails to acknowledge the lived realities of poverty risks becoming a mechanism of control rather than a tool of justice.

Finally, the symbolic work of law also sustains the illusion of legitimacy. Legal systems rely on the perception that exclusion is the result of fair process rather than structural injustice. Yet when the state withdraws material protections and then penalizes the behaviours that arise from that very deprivation, it loses any ethical claim to authority.[42] In this context, punishment no longer operates within a framework of mutual recognition between citizen and state.[43] If those punished are not treated as moral equals, the legitimacy of legal reciprocity collapses. The question, then, is not simply how legality operates, but whether a legal system that fails in its duties of justice can legitimately punish those it has abandoned.[44] For instance, when homeless people are penalized for occupying public space, while the state fails to guarantee housing, the law enforces a contradiction: how can exclusion and obligation coexist within the same legal framework?

c) Political Logics: Neoliberal Governance and Legal Restructuring

Law is not politically neutral. Its priorities, categories, and functions are shaped by the broader political system in which it operates. Any serious analysis of legal exclusion must therefore consider the rise of neoliberalism, not as a background trend, but as a fundamental reconfiguration of how poverty is governed nowadays in Western Europe. While neoliberalism originated in Anglo-American contexts, its influence has deeply reshaped European legal and welfare systems over recent decades. Austerity, deregulation, and welfare retrenchment have not only reduced material protections, but have also redefined the function of law. In this context, indirect criminalisation does not occur by accident: it reflects a broader political shift in which legal mechanisms are increasingly deployed to manage the consequences of social abandonment rather than to address its causes.[45]

As a form of governance, neoliberalism promotes corporate values such as competition, self-interest, decentralization, and individual empowerment. It views state institutions as needing to operate like private businesses, prioritizing efficiency over the public good, and replacing bureaucratic mindsets with market-driven logic to uphold free-market principles.[46] Under neoliberalism, law is reduced to an instrument of state authority and market regulation. It views

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[42]Javier Cigüela Sola, 'Derecho penal y exclusión social: la legitimidad del castigo del excluido' (2015) (43) *Isonomía: Revista de Teoría y Filosofía del Derecho* 129.
[43]Jeffrie G. Murphy, 'Marxism and Retribution' (1973) 2 Philosophy & Public Affairs, 217-243.
[44]Javier Cigüela Sola, 'Derecho Penal y Exclusión Social: La Legitimidad Del Castigo Del Excluido' [2015] Isonomía - Revista de teoría y filosofía del derecho, 129-150.
[45]Andrew Scull, 'Neoliberalism and the Poor - Loïc Wacquant, Punishing the Poor: The Neoliberal Government of Social Insecurity (Durham, North Carolina, Duke University Press, 2009).' (2009) 50 European Journal of Sociology, 499-503.
[46]J Cárdenas Gracia, 'Las características jurídicas del neoliberalismo' (2015) 32 *Cuestiones Constitucionales*.

law as the framework within which a market-based civil society operates, while the judiciary ensures that the rule of law is broadly accepted and effectively enforced.[47] Therefore, neoliberal politics has profoundly reshaped legal systems, strengthening the influence of dominant powers, multinational corporations, and supranational institutions, frequently sidelining the interests of nation-states and their citizens. As a result, states and their legal frameworks have adapted, not primarily to defend human rights and needs of the broader population, but to uphold the demands of an expanding global capitalist order.

The dynamics explored in previous sections, where poverty is framed as deviance and discipline replaces support, are not incidental, but central to the political rationality of neoliberalism. Neoliberal governance combines economic liberalism with social authoritarianism, withdrawing from welfare provision while expanding punitive regulation.[48] Therefore, a network of regulatory regimes, including administrative, civil, welfare, and migration law, produces punitive outcomes.[49] For example, administrative frameworks impose sanctions, suspend benefits, and issue eviction orders that indirectly criminalise poverty.[50] These mechanisms reflect core principles of neoliberal governance: individual responsibility, market discipline, and cost-cutting in social welfare.

These legal practices also reflect neoliberalism's moral framework, in which social abandonment is reinterpreted as individual failure.[51] The legal system thus becomes a tool not only of governance, but of moralization, transforming social abandonment into individual culpability. An individualistic ethos not only predisposes societies to embrace neoliberal reforms, but is itself reproduced by neoliberal structures, reinforcing the belief that individuals alone are responsible for their social and economic position.[52] Economic failure is reframed as a personal shortcoming of the atomized, autonomous subject, while crime is seen as the sole responsibility of the offender, absolving the state and society of any collective accountability.[53]

Finally, this view of how law is intricately connected to politics is further supported by comparative research. Cavadino and Dignan identify significant variation in penal regimes across neoliberal, corporatist, and social-democratic contexts, but also document a global drift toward intensified crime control, characterized by zero-tolerance policing, expanding incarceration, and the proliferation of gated communities.[54] These trends point to a common logic: regardless of ideological tradition, states increasingly turn to legal mechanisms to assert authority, manage dissent, and maintain social order. The growing reliance on penal strategies

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[47]'Katharina Pistor's *The Code of Capital: How the Law Creates Wealth and Inequality*' (2021) 30 Social & Legal Studies 291.
[48]J Cárdenas Gracia, 'Las características jurídicas del neoliberalismo' (2015) 32 *Cuestiones Constitucionales*.
[49]Alessandro De Giorgi, 'Punishment, Marxism, and Political Economy' in Alessandro De Giorgi, Oxford Research Encyclopedia of Criminology and Criminal Justice (Oxford University Press 2018).
[50]'DWP Benefits Statistics' (*GOV.UK*, 2022)
[51] Nancy Fraser and Linda Gordon, 'A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State' (1994) 19 Signs: Journal of Women in Culture and Society, 309-36.
[52]Ibid; see also Andrew Sayer, 'Class, Moral Worth and Recognition' (2005) 39 Sociology, 947-963.
[53]Michael Cavadino and James Dignan, Penal Systems: A Comparative Approach (SAGE 2006).
[54]Michael Cavadino and James Dignan, Penal Systems: A Comparative Approach (SAGE 2006).

reflects not only changing ideas about governance, but a broader shift toward more disciplinary, exclusionary forms of statecraft.

In conclusion, legal exclusion is not accidental but a structural outcome of how law operates within economic, cultural, and political systems. This has direct implications for human rights. If legal systems are not simply failing to protect the poor but are actively involved in their governance and marginalization, then we must reconsider how, and to what extent, human rights can be advanced through those same systems. Before justice can be meaningfully pursued through law, we must first understand the conditions that limit its capacity to protect.

1.2 Legal Immobility: A Structural Diagnosis of Indirect Criminalisation

If legal exclusion is not accidental but structurally embedded, then a more concrete perspective is needed to examine how this exclusion materializes in everyday life. This section introduces Sara S. Greene's theory of legal immobility as a bridge between the broader theoretical logics previously explored and the concrete mechanisms through which the law indirectly criminalise poverty.[55] This theory describes how the everyday operation of law, particularly at the state and local level, functions as a cumulative structure that constrains upward mobility and sustains material deprivation.

This theory shifts attention from high-profile legal decisions to the mundane and dispersed operations of law: fines, administrative delays, eligibility barriers, and the discretionary power of bureaucracies. These are not isolated dysfunctions but overlapping mechanisms that, over time, create what Greene calls a "mesh" of impediments, small legal frictions that, in aggregate, keep economically marginalized individuals in place.[56] Crucially, these dynamics are not confined to any one branch of law. They occur across a wide spectrum, criminal law, civil procedures, family regulation, housing codes, and welfare policy, making legal immobility a cross-cutting structure embedded within the legal system itself.[57]

This section adopts Greene's tripartite schema as an interpretive framework to explore this architecture. Her categories, *calculated exploitation*, *gratuitous management*, and *routine neglect,* represent three interlocking logics through which the law interacts with poverty: by extracting value, enforcing compliance, or withdrawing protection. These categories help reveal how indirect criminalisation takes root across legal domains and why any meaningful

[55]Sara S. Greene, 'A Theory of Poverty: Legal Immobility' (2019) 96 Washington University Law Review, 753-801.
[56]Ibid 493–495.
[57]Ibid 502–506; see also Kaaryn S Gustafson, Cheating Welfare: Public Assistance and the Criminalization of Poverty (New York University Press 2011).

commitment to human rights must begin by interrogating the legal structures that obscure, legitimize, and reproduce inequality.[58]

A) Calculated Exploitation

The theory of legal immobility identifies calculated exploitation as one of three key mechanisms through which the law entraps the poor in structures of long-term disadvantage. At its core, calculated exploitation denotes the deliberate use of legal and quasi-legal structures not merely to manage poverty, but to extract value from it. This is not a deviation from law's egalitarian ideals, but a structural feature of how legality operates under conditions of austerity, neoliberal governance, and fiscal constraint. In such contexts, the legal system increasingly functions not as a guarantor of justice, but as a mechanism for extracting value from economic vulnerability, transforming what should be a public infrastructure of protection into a revenue-generating apparatus of exclusion.

One of the clearest expressions of calculated exploitation, is what Galbraith et al. term "poverty penalties": monetary sanctions and their cascading consequences that disproportionately affect poor individuals.[59] These include fixed fines, administrative fees, late payment surcharges, and costs associated with accessing legal procedures or remedies. These penalties show how the legal order adapts punishment to the needs of economic accumulation.[60] In addition to their regressive effects, poverty penalties also raises significant human rights concerns, since they can violate international principles of non-discrimination and equal protection.[61] As clarified by the Human Rights Committee, facially neutral policies can amount to prohibited discrimination when they disproportionately harm protected groups or impede access to basic rights.[62] Poverty penalties not only extend legal entanglement to the poor, they may also infringe on rights to liberty, proportionality in punishment, and equal treatment under law, especially where detention results from inability to pay.

Additionally, calculated exploitation mechanisms operate through repetition and accumulation, extracting money from poor individuals. This extractive logic is especially visible in the field of criminal justice debt. Courts routinely impose monetary obligations, such as fees for court administration, supervision, or incarceration, without adjusting for income properly.[63] But, as mentioned, exploitation is not confined to criminal law. Administrative law may impose fees as part of their bureaucratic processes. Housing and eviction law can make tenants in precarious

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[58]Sara S. Greene, 'A Theory of Poverty: Legal Immobility' (2019) 96 Washington University Law Review, 753-801.
[59]Jean Galbraith and others, 'Poverty Penalties as Human Rights Problems' (2023) 117 American Journal of International Law, 397-440.
[60]Georg Rusche, Otto Kirchheimer and Dario Melossi, Punishment and Social Structure (5th printing, Transaction Publishers 1939).
[61] Jean Galbraith and others, 'Poverty Penalties as Human Rights Problems' (2023) 117(3) *American Journal of International Law* 397.
[62]ICCPR, art 26.
[63]Alexes Harris, A Pound of Flesh: Monetary Sanctions as Punishment for the Poor (Russell Sage foundation 2016).

conditions face legal processing fees, utility surcharges, or for-profit eviction costs that commodify housing insecurity.[64] In different domains, poverty is not only unprotected, it is made administratively profitable.

These mechanisms are not simply tolerated, they are structurally incentivized. Municipalities facing budgetary constraints often rely on fines and fees as revenue sources, while outsourcing enforcement to private actors in ways that reduce transparency and accountability. [65] Legal institutions, under these conditions, come to depend on inequality to sustain themselves, treating the poor not merely as subjects of regulation, but as resources to be exploited.

b) Gratuitous Management

The second feature of Sara S. Greene's theory of legal immobility, gratuitous management, refers to the ways in which states and localities employ law not merely to support the poor, but to supervise and regulate them.[66] This mechanism governs poverty as a problem of behaviour, character, and compliance. In this framework, welfare is no longer a right but a conditional privilege, and access to basic services is contingent on performances of personal responsibility. The result is a legal regime that governs poverty through moral scrutiny rather than social protection.

These conditions reflect how bureaucratic discretion constructs poverty as a site of suspicion, transforming law from a neutral arbiter into a tool of ideological judgment. For example, street-level actors, caseworkers, housing officials, social officers, have a lot of discretionary power, mediating who gains access to assistance and under what moral terms.[67] This is not simply bureaucratic dysfunction, it is also core feature of neoliberal governance, as explained before. As universalist welfare models erode, the poor are redefined as risky subjects to be monitored and morally rehabilitated.[68] Managerial oversight replaces structural reform, and conditional aid replaces entitlement. The convergence of penal and welfare regimes exemplifies this transformation: permissive toward capital, punitive toward the marginalized. Therefore, in welfare systems, the law shapes behaviour by embedding expectations of productivity, domestic order, and restraint, not only in statutes, but in everyday interactions. This shift echoes broader transformations in state power. As Michel Foucault observed, modern governance operates less through force than through institutions that produce compliant subjects.[69] These

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[64]M Desmond, *Evicted* (Penguin Books 2017).
[65]Jean Galbraith and others, 'Poverty Penalties as Human Rights Problems' (2023) 117(3) *American Journal of International Law* 397.
[66]Sara S. Greene, 'A Theory of Poverty: Legal Immobility' (2019) 96 Washington University Law Review, 753-801.
[67]Michael Lipsky, 'Street-Level Bureaucracy: Dilemmas of the Individual in Public Services' (1980) 10 Politics & Society.
[68]Loïc JD Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Duke University Press 2009).
[69]Michel Foucault, Security, Territory, Population: Lectures at the Collège de France, 1977-1978 (Picador 2009).

types of laws, which scrutinize the behaviour of poor individuals, are disproportionate and demonstrate the legal's power to shape and enforce moral standards.

Thus, at the heart of this dynamic lies a cultural narrative that equates poverty with moral deficiency.[70] Poor individuals are not only economically excluded, but also symbolically degraded, portrayed as dependent, irresponsible, or fraudulent. These narratives do not merely circulate in media or politics, they shape how laws are written, interpreted, and enforced. Adela Cortina's concept of aporophobia, captures the cultural and institutional logic underpinning these policies.[71] Aporophobia in this context justifies intrusive regulation by framing poverty as a deficit of discipline or merit, justifying the withdrawal of protections, the imposition of moral scrutiny, and the denial of full legal recognition to the economically marginalized. In this way, law becomes structurally incapable of recognizing vulnerability unless it conforms to narrow behavioural expectations.[72] In this way, the legal system does more than respond to social realities, it helps construct new moral standards. For example, the concept of public order has shifted significantly: behaviours once considered harmless, like sitting in the street with family members, are now criminalised in some municipalities because they are seen as disturbances to public order. This legal redefinition not only regulates behaviour but also reshapes societal perceptions, instilling the belief that such actions are inherently problematic. Challenging gratuitous management therefore requires more than policy reform, it demands a transformation in how legal systems conceptualize vulnerability and design for inclusion.

Greene's framework makes clear that gratuitous management is not peripheral, but central to how legality governs the poor. When recognition is made conditional on moral conformity, law ceases to be a protective institution and becomes a gatekeeper of worthiness. This challenges the liberal ideal of equal legal dignity. Under gratuitous management, justice becomes a conditional good, and rights must be earned.

c) Routine Neglect

The third axis of legal immobility theory, routine neglect, reveals how legal systems reproduce poverty not only through action, but through inaction. Unlike calculated exploitation or gratuitous management, routine neglect does not regulate or punish directly. Instead, it operates through silence: legal categories, procedures, and institutions systematically fail to recognize the lived realities of poverty.[73] In this way, poverty becomes invisible to law, not because it is irrelevant, but because the law is structured to exclude it as a meaningful category of analysis or redress. This passive disattention contributes to the indirect criminalisation of poverty by

[70]Nancy Fraser, Justice Interruptus: Critical Reflections on the 'Postsocialist' Condition (Routledge 2014).
[71]Adela Cortina Orts, Aporofobia, El Rechazo al Pobre: Un Desafío Para La Democracia (Primera edición, Paidós 2017).
[72]Loïc JD Wacquant, Punishing the Poor: The Neoliberal Government of Social Insecurity (Duke University Press 2009), 41–43.
[73]Sara S. Greene, 'A Theory of Poverty: Legal Immobility' (2019) 96 Washington University Law Review, 753-801.

normalizing disadvantage, limiting legal recourse, and perpetuating exclusion through bureaucratic omission.

This form of legal harm is subtler but equally damaging, representing what the law refuses to acknowledge. Most legal systems do not treat poverty as a legally relevant status. While many European constitutions explicitly prohibit discrimination on the basis of social or economic standing, this formal commitment shows a disconnection between constitutional guarantees and their actual enforceability. The normative frameworks frequently lack effective implementation mechanisms, leaving these protections largely symbolic. Many legal processes lack proper protocols or regulations that adequately address poverty as an issue. Additionally, there is also a notable gap in how well legal professionals, judges, lawyers, and others, acknowledge the realities of poverty. This isn't just about economic hardship, poverty intersects with other forms of oppression and requires a deep awareness of how privilege operates across society. This gap in awareness contributes to the frequent failure of constitutionally guaranteed rights to translate into meaningful protections in practice.

This practical failure to recognize and address poverty legally is not simply an issue of policy or enforcement, it reflects a deeper structural limitation within the legal system itself. To understand this, Gunther Teubner's theory of autopoiesis might be useful. Although this thesis does not fully agree with the view that the legal system operates as a completely separate entity from political systems, this thesis also understands law as a system that processes meaning through binary codes: legal/illegal, valid/invalid, without engaging broader ethical demands.[74] In doing so, law can become detached and insensitive to social suffering, "closing itself off" from real-world injustices. By strictly adhering to its own internal logic, precedents, procedures, and doctrines, the legal system risks perpetuating inequality and overlooking marginalized or excluded groups. Consequently, the legal system exhibits what can be described as structural blindness. When legal categories or concepts fail to incorporate the realities and demands of poverty into their frameworks, they effectively enforce silence and act in ways that marginalize those affected.

This critique aligns with critical legal theory. As Juan Ramón Pérez Lledó notes, legal neutrality can mask structural domination.[75] Routine neglect is a form of structural violence, a mechanism through which inequality is perpetuated without overt coercion. Evictions without alternatives, fines without ability-to-pay considerations, or benefit suspensions without recourse exemplify how absence becomes harm.[76] Critical legal theorists emphasize that such forms of neglect are embedded within legal and institutional frameworks that reproduce social hierarchies. By exposing these dynamics, critical legal theory calls into question the legitimacy of legal systems that claim neutrality while perpetuating exclusion and inequality.

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[74]Gunther Teubner, 'Autopoiesis in Law and Society: A Rejoinder to Blankenburg' (1984) 18 Law & Society Review, 291–301.
[75]JA Pérez Lledó, 'Teorías críticas del derecho' in FJ Laporta San Miguel and E Garzón Valdés (coords), *El derecho y la justicia*, vol 2 (1996) 87-102.
[76]Johan Galtung, 'Violence, Peace and Peace Research' (2018) 15 Organicom, 33–56.

The dehumanizing effects of this dynamic are profound. Legal formalism reduces people to case numbers, eligibility thresholds, or automated scores, erasing the emotional, social, and material complexities of poverty.[77] For example, digital welfare systems frequently require online-only applications, automated assessments, or rigid deadlines that many vulnerable individuals cannot meet. These systems prioritize efficiency, but often exclude by design. The abstraction of law allows institutions to treat suffering as technical failure, and vulnerability as noncompliance. As human rights scholars have noted, this procedural rationality undermines the very ideals of dignity and equality that legal systems claim to uphold. To counteract these effects, it is imperative to develop legal systems that are more empathetic and communitarian, ones that reject the notion of law as a rigid, emotionless framework. After all, law governs real people with complex lives, not abstract entities. A humane legal system must acknowledge and respond to these lived realities, integrating compassion and flexibility into its operation to truly uphold justice.

In conclusion, routine neglect may represent the most quiet yet corrosive form of legal immobility. It does not operate through visible repression but through omission, by allowing systemic inequality to continue unnoticed. Precisely because it evades recognition, this mechanism renders poverty legally irrelevant and politically invisible. If, as this thesis contends, the indirect criminalisation of poverty is embedded within legal structures, then addressing routine neglect is not merely a matter of improving service delivery, it is a necessary confrontation with the structural exclusions that undermine the very ideals of justice, dignity, and human rights.

1.3. Conclusion

This chapter has argued that the law is not merely a framework for resolving disputes or protecting rights, but a social institution that reflects and reinforces wider structures of inequality. Moving beyond formalist assumptions, it examined how law indirectly criminalises poverty through three interrelated dimensions: its economic alignment with dominant modes of production, its power to define and mirror social values of worth, and its transformation under neoliberal governance. Each of these logics, demonstrates that legal exclusion is a patterned and systemic outcome.

To ground this argument in a more operational framework, the chapter introduced Sara S. Greene's theory of legal immobility.[78] Her categories, calculated exploitation, gratuitous management, and routine neglect, help illustrate how the cumulative effect of legal norms, procedures, and omissions constrains upward mobility and reinforces poverty as a legally regulated condition. The next chapter turns to a comparative perspective, examining how these dynamics manifest across different legal systems in Europe.

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[77] Adela Cortina Orts, Aporofobia, El Rechazo al Pobre: Un Desafío Para La Democracia (Primera edición, Paidós 2017).

[78] Sara S. Greene, 'A Theory of Poverty: Legal Immobility' (2019) 96 Washington University Law Review, 753-801.

Finally, this analysis raises a deeper question for human rights: how can right protections succeed in legal systems that are structurally implicated in the very forms of exclusion they claim to redress? If legal neutrality hides domination, and if justice is distributed conditionally, then a human rights approach that ignores these dynamics risks legitimizing the status quo.

Chapter 2: Comparative Legal Case Studies

The previous chapter explored how legal systems actively contribute to the indirect criminalization of poverty. Drawing on Sara S. Greene's concept of legal immobility, it was argued that the law can function as a structure of indirect criminalization: extracting value from the poor, subjecting them to moral and bureaucratic control, and rendering their needs invisible through institutional neglect.[79]

This chapter turns to the European context to investigate how these patterns manifest in practice. Across the European Union, nearly one in five people, approximately 95 million individuals, are at risk of poverty or social exclusion.[80] Yet this figure fails to reveal the deeper logic by which poverty is actively produced and managed through daily encounters in legal systems.[81] Focusing on Spain, France, and the United Kingdom, this chapter investigates how these dynamics unfold within distinct legal frameworks.

While inspired by U.S.-based critiques of punitive governance, this chapter does not assume a mechanical transposition of the American model to Europe. Western European countries, especially those with strong Catholic or social-democratic traditions, retain elements of the welfare state that reduce the direct expansion of punitive regimes.[82] These systems, characterised by regulatory intervention, coalition-based governance, and a more autonomous judiciary, have, for example, not embraced mass incarceration to the same extent as their neoliberal counterparts. However, this does not preclude the emergence of what scholars have described as a "European road" to the punitive state: a gradual and subtle convergence of social policy and penal control that targets marginalized groups through both welfare conditionality and bureaucratic repression.[83]

This comparative perspective is particularly important given the limited application of the theory of legal immobility in Europe. Applying this theory is relevant because traditional approaches to poverty law often adopt a narrow lens, overlooking how intersecting legal

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[79]Sara Greene, 'A Theory of Poverty: Legal Immobility' (2019) 96 Washington University Law Review 753.
[80]Eurostat, 'Living Conditions in Europe - Poverty and Social Exclusion' <DOI:10.2908/ilc_pees01n>.
[81]Victoria Esposito, 'A Systemic Reimagining of Poverty Law' (2023) 31 Georgetown J on Poverty L & Pol'y 1.
[82]Loïc JD Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Duke University Press 2009) 23.
[83]Loïc JD Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Duke University Press 2009) 23.

domains structurally sustain socioeconomic exclusion.[84] By focusing on the cumulative effects of legal governance, this chapter examines how Western European states, despite differing traditions, use law as a tool of social and economic regulation.

As such, the analysis adopts Greene's tripartite schema, calculated exploitation, gratuitous management, and routine neglect, as a diagnostic tool.[85] These categories reveal how legal systems indirectly criminalizes poverty, while also linking this process to the broader theoretical frameworks discussed in the first chapter.

2.1. Spain

a) System Overview

The Spanish state's approach to poverty governance had a significant transformation following the 2008 global financial crisis.[86] While Spain had long maintained constitutional commitments to social rights, such as housing (Art. 47), social security (Art. 41), and human dignity (Art. 10),[87] the crisis exposed the fragility of these guarantees in practice. As unemployment increased and public discontent intensified, the state responded not by expanding welfare protections but by shifting toward surveillance, conditionality, and legal containment.

This shift marked what many scholars describe as a punitive turn in Spanish legal and political culture.[88] Under the conservative government of Mariano Rajoy (2011–2018), austerity policies dismantled key aspects of the welfare state. Simultaneously, legal and administrative systems were recalibrated to control those most affected by crisis, especially the unemployed, street vendors, sex workers, and the unhoused. Although Spain did not witness a mass incarceration boom like the U.S., it developed a hybrid strategy of penal expansion and bureaucratic repression that allowed the state to discipline poverty without invoking formal criminal law.

Firstly, the penal expansion reflects how Spain use their punitive apparatus to manage social fallout.[89] Since the 1990s, over thirty reforms to the Penal Code have expanded criminal categories, increased penalties, and limited judicial discretion.[90] Despite low crime rates, Spain ranks among the EU's highest in incarceration, and sentences disproportionately fall on the

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[84] Anne L Alstott, 'Neoliberalism in US Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State' (2014) 77(4) *Law and Contemporary Problems* 25, 41–42.
[85] Sara Greene, 'A Theory of Poverty: Legal Immobility' (2019) 96 Washington University Law Review 753.
[86] Sebastián Royo, 'From Boom to Bust: The Economic Crisis in Spain 2008–2013' in Sebastián Royo, *Why Banks Fail* (Palgrave Macmillan US 2020).
[87] Constitución Española (Spain, 1978)
[88] Deborah García Magna, 'El Giro Punitivo En España. ¿Lo Resistirá El Estado Del Bienestar?' (2018) 66 Estudios de Deusto 281.
[89] Loïc Wacquant, *Prisons of Poverty* (Expanded edition, University of Minnesota Press 2009).
[90] Francesc Baena Garcia, *'La criminalización de la pobreza: la cara oculta de la doctrina neoliberal'* (Trabajo de Final de Grado, Universitat Oberta de Catalunya 2017) 51.

poor, particularly for offences related to property or drugs.[91] Alternatives to prison have been reduced, parole restricted, and sentence lengths extended. Therefore, imprisonment in Spain functions less to isolate dangerous individuals than to manage economic marginality.[92]

Secondly, the bureaucratic repression is explained by Spanish scholars through the concept of *burorrepresión*. In its strict form, it refers to the use of administrative sanctions and local ordinances to suppress protest. In its broader form, it functions as a mechanism to manage the perceived dysfunctionality of socially excluded or impoverished groups.[93] These measures operate through fines, licensing rules, and procedural barriers that criminalize poverty by other means.

Finally, it is important to notice that this punitive evolution and bureaucratic repression operates alongside recent attempts by Spain's progressive coalition government to restore elements of the welfare state, including expanded housing programs and enhanced social protections.[94] The result is a structurally ambivalent system in which welfare provision and punitive governance operate simultaneously. This tension illustrates how poverty governance in Spain is shaped by overlapping and conflicting logics of care and control.

b) Legal Instruments

In recent years, Spain has expanded its use of administrative law as a primary mechanism for regulating poverty-linked behaviours. This has enabled the state to impose sanctions without engaging criminal courts, effectively bypassing the procedural safeguards of due process. Two legal instruments are especially illustrative: the Ley Orgánica 4/2015 de Protección de la Seguridad Ciudadana[95] (commonly known as the *Gag Law*) and an increasing array of municipal ordinances aimed at the regulation of public space.

Adopted in the aftermath of social unrest, the *Gag Law* introduced a system of administrative infractions punishable by substantial fines, some exceeding €30,000, without requiring judicial review. While often associated with the regulation of protest, the law also penalizes conduct closely linked to poverty and migration, such as informal street work, refusal to identify oneself to police, or offering solidarity to undocumented individuals.[96] The absence of income-adjusted

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[91]Deborah García Magna, 'El Giro Punitivo En España. ¿Lo Resistirá El Estado Del Bienestar?' (2018) 66 Estudios de Deusto 281.

[92]Corinne Rostaing, 'Les détenus: de la stigmatisation à la négociation d'autres identités' in Serge Paugam (ed), *L'exclusion: l'état des savoirs* (Éditions La Découverte 1996) 355.

[93]Pedro Oliver Olmo (ed), *Burorrepresión: sanción administrativa y control social* (Bomarzo 2013).

[94]Gobierno de España, *Plan de Recuperación, Transformación y Resiliencia. Componente 19: Plan Nacional de Competencias Digitales* (2021); Ministerio de Derechos Sociales y Agenda 2030, *Estrategia Estatal para las Personas sin Hogar 2021–2025* (2021).

[95]Ley Orgánica 4/2015 de Protección de la Seguridad Ciudadana (Spain, 2015).

[96]Amnistía Internacional, *España: el derecho a protestar, amenazado* (Amnesty International Publications 2014).

penalties[97] and the presumption of administrative authority over judicial review make the law disproportionately affect economically marginalized individuals.

At the municipal level, local governments have increasingly adopted *Ordenanzas de Civismo y Convivencia* (civility and coexistence ordinances), which also impose fines for activities such as begging, sleeping in public spaces, street vending, scavenging, or offering informal services (e.g., helping drivers park).[98] These ordinances, often justified in terms of *public order*, *tourism*, or *urban aesthetics,* target visible poverty rather than addressing its structural causes. In some cities, such as Alicante and Seville, individuals experiencing homelessness have been fined repeatedly for behaviours essential to survival. Though several of these ordinances have been partially overturned by regional courts,[99] enforcement frequently adapts via alternative legal provisions, such as general prohibitions on loitering or broad clauses under the *Gag Law* (e.g., "disobedience to authority").[100]

Together, these legal instruments constitute a regulatory framework that governs poverty not through direct criminalization, but through a system of bureaucratic penalties. By using administrative penalties to manage the consequences of exclusion, Spanish authorities are governing poverty through mechanisms that are opaque, discretionary, and less accountable. While this section mainly focuses on administrative and spatial regulation, other legal domains, including penal reform and welfare conditionalities, will be addressed in the critical analysis below.

c) Critical analysis

Calculated Exploitation

In the Spanish context, calculated exploitation manifests through a complex network of legal and administrative structures that extract value from the poor while masking this extraction in formal legality. Calculated exploitation is evident in the *Gag Law* and municipal civility ordinances, which impose disproportionate fines for behaviours linked to poverty. These financial penalties, often justified as a means to maintain public order, function as revenue-generating tools that disproportionately affect individuals least able to comply and reflect a deeper legal aversion to poverty itself.

Scholars have termed these sanctions "poverty penalties", defined as monetary sanctions that disproportionately burden low-income individuals and generate cascading consequences for

[97]Ley 39/2015 del Procedimiento Administrativo Común de las Administraciones Públicas (Spain, 2015).
[98]Ministerio del Interior and Federación Española de Municipios y Provincias, *Convenio Marco de Colaboración, Cooperación y Coordinación en materia de Seguridad Ciudadana y Seguridad Vial* (Spain).
[99]STSJ CAT 8959/2019 (TSJ Cataluña, 18 September 2019) ECLI:ES:TSJCAT:2019:8959; TSJ Comunidad Valenciana, Sala de lo Contencioso-Administrativo, Sección 4ª, Procedimiento Ordinario 000142/2022 (Spain, 2022).
[100]Ley Orgánica 4/2015 de Protección de la Seguridad Ciudadana (Spain, 2015) art 36(6).

non-payment.[101] For the poor, these penalties do not end with the initial fine, failure to pay may trigger additional financial obligations or lead to custodial sentences, further entrenching economic exclusion. This creates a self-perpetuating cycle in which poverty becomes criminalized through the inability to satisfy legal debts.

In Spain, administrative fines cannot lead to imprisonment,[102] but they can disproportionately impact poor people by resulting in bank account seizures, exclusion from social assistance, worsening their marginalization. However, criminal fines can indeed lead to imprisonment, and are imposed for minor offences such as petty theft, driving without a licence, or repeated low-level infractions. These penalties disproportionately impact the poor, particularly given that the vast majority of prisoners in Spain come from low-income backgrounds and are frequently incarcerated for precisely these types of minor infractions.[103]

Criminal fines that can lead to imprisonment are justified under Article 53 of the Spanish Penal Code,[104] which allows unpaid administrative or criminal fines to be converted into imprisonment, typically at a rate of one day for every two unpaid daily units. While theoretically this mechanism should be applied with consideration for the offender's financial capacity, in practice, no robust procedure exists for verifying economic hardship. Consequently, individuals experiencing poverty may be incarcerated not for serious crimes, but for their inability to pay a sanction. This undermines the principle of proportionality in sentencing and transforms poverty into grounds for legal punishment.[105] Through this example, we can broaden the concept of calculated exploitation, not defined only as the extraction of *monetary* value from the poor, but also as the appropriation of other important forms of value, such as dignity or a person's time.

This raises serious questions under both Spanish constitutional law and international human rights law. Article 14 of the Spanish Constitution affirms equality before the law and prohibits discrimination based on social or personal status.[106] Yet the operation of poverty penalties reinforces stratification rather than correcting it. Similarly, under Article 9 of the International Covenant on Civil and Political Rights (ICCPR), no one shall be subject to arbitrary detention.[107] The imprisonment of individuals solely for failing to pay fines, fines imposed in lieu of custodial sentences, violates this principle, especially when such imprisonment falls more readily on the poor than the wealthy.

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[101]Jean Galbraith and others, 'Poverty Penalties as Human Rights Problems' (2023) 117(3) *American Journal of International Law* 397.
[102]Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas (BOE n.º 236, 2 October 2015).
[103]Isabel Serrano Maíllo, 'Delincuencia y pobreza: la economía de los presos' (8–9) *Boletín de la Facultad de Derecho (UNED)*.
[104]Código Penal (Spain, 1995) art 53.
[105]Código Penal (Spain, 1995) art 36.
[106]Constitución Española (Spain, 1978) art 14.
[107]International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 9.

This system invites deeper ethical critique. Legal scholar Cigüela Sola draws a distinction between crimes that harm fundamental values (e.g., life or bodily integrity) and those that disturb public order (e.g., loitering, disobedience). In the latter cases, the legitimacy of state punishment is weak, especially when the state has failed to provide for basic needs. He invokes the principle of *inexigibilidad*, which means that the law cannot reasonably demand compliance from those it systematically excludes. In this view, calculated exploitation is not merely a matter of legal design or economic policy, it signals a crisis of legitimacy within the legal system itself.[108]

Gratuitous Management

Gratuitous management refers to how legal and administrative systems monitor, assess, and moralize poverty. Rather than addressing structural exclusion, the state responds to poverty through behavioural scrutiny, governing the poor not as rights-holders, but as risks to be managed. Under this logic, assistance becomes conditional, and legal protections are made contingent on demonstrations of discipline, productivity, or compliance.

In Spain, this is clearly visible in the design of social assistance programmes, such as the minimum income schemes (MIS) on a regional level. Regulated, for example in Ley 15/2001, de 27 de diciembre, de Renta Mínima de Inserción en la Comunidad de Madrid.[109] In many autonomous communities (such as Madrid or Andalucía), access to minimum income support is subject to highly invasive bureaucratic evaluation. Recipients must sign "inclusion agreements" (*itinerarios de inserción*) requiring not just job-seeking or training, but behavioural commitments such as school attendance of children, participation in financial literacy courses, or therapeutic programmes. Caseworkers hold wide discretionary power to decide whether a recipient is cooperating, and failure to comply, even due to reasons linked to poverty itself, such as lack of transport or internet, can result in sanctions or benefit termination.[110]

These programmes govern poverty through conditional legality: turning basic rights into provisional rewards for good conduct. The legal system here functions as a disciplinary filter, sorting the "deserving" from the "undeserving" poor through a bureaucratic gaze. This model reproduces a moralized vision of poverty, in which legal inclusion is based on conformity to behavioural norms set by the state. This is also reflected in the lack of coordination between social services and punitive structures. Instead of channelling vulnerable populations toward housing, employment, or mental health assistance, municipalities escalate punitive contact

[108]Javier Cigüela Sola, 'Derecho penal y exclusión social: la legitimidad del castigo del excluido' (2015) (43) *Isonomía: Revista de Teoría y Filosofía del Derecho* 129, 144.
[109]Ley 15/2001 de Renta Mínima de Inserción en la Comunidad de Madrid (Spain, 2001).
[110]Fundación FOESSA, *Informe FOESSA 2019 sobre exclusión y desarrollo social en España* (2019).

through repeated fines, police interventions, and even criminal referrals for non-compliance.[111] This legal loop a spiral of exclusion, in which people move from administrative sanction to full penal entanglement, not because of increasing dangerousness, but because they fail to conform to middle-class norms of order, productivity, and invisibility.[112]

Politically, this shift reflects the neoliberal reframing of social policy. Not even the classification of the Minimum Insertion Income (RMI) schemes as a subjective right has been sufficient to withstand the harshness of austerity policies. These policies, together with the prevailing neoliberal agenda, have produced disintegrative dynamics characterised by the criminalization, individualization of responsibility, and social control of recipients. The various reforms introduced, whether through new regulatory developments or accompanying budget legislation, have led to a progressive hardening of the system.[113]

Routine Neglect

Routine neglect describes the systemic failure of legal institutions to assist or protect economically vulnerable populations. This means, a clear inaction from the state. In Spain, this passive form of exclusion is deeply entrenched in both legal and administrative systems. This indirect criminalization occurs through the state's indifference to its own protective duties.

One of the clearest examples of routine neglect is Spain's approach to housing insecurity. Article 47 of the Spanish Constitution affirms the right to decent and adequate housing, yet institutional responses remain consistently inadequate.[114] Eviction orders are often processed and executed without sufficient safeguards, such as requirements to assess the socioeconomic vulnerability of those affected. Although the 2023 Housing Law (Ley por el Derecho a la Vivienda)[115] introduced important legal tools to reduce evictions and speculative pressures, its uneven implementation across autonomous communities has left many tenants without effective protection.[116] This legal failure does not directly punish poverty, but it allows housing insecurity to become a route into further marginalization, including potential penal consequences for those forced into informal housing ("*Okupa*s") or street life.

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[111]Ignacio González Sánchez, 'Redefiniendo la pobreza y la penalidad: la formación del Estado neoliberal' (2011) Revista Española de Sociología.

[112]Iñaki Rivera Beiras, 'Violencia estructural e institucional, crímenes de Estado y guerra: una "nueva" ruptura epistemológica en la criminología' in Cristina Fernández-Bessa and others (eds), *Contornos bélicos del estado securitario: control de la vida y procesos de exclusión social* (2010) 83.

[113]Francisco Stepa Maestre, Enrique Ferri Fuentevilla and Lucía Navarro Ardoy, 'La Renta Mínima de Inserción desde una perspectiva lexicométrica: una aproximación al discurso de las personas perceptoras' (2024) 19(1) *OBETS: Revista de Ciencias Sociales* 71.

[114]Constitución Española (Spain, 1978) art 47.

[115]Ley 12/2023 por el Derecho a la Vivienda (Spain, 2023).

[116]La PAH, 'Los desahucios aumentan en el primer trimestre de 2024' (*Plataforma de Afectados por la Hipoteca (PAH)*, 8 June 2024).

Another central expression of routine neglect in the Spanish legal system is the bureaucratic inaccessibility that characterises both legal aid and social protection schemes. Although Spain formally guarantees free legal assistance, chronic underfunding, long delays, and limited capacity undermine its effectiveness, especially for vulnerable populations such as migrants, Roma communities, and unhoused individuals.[117] Simultaneously, access to basic income programs like the *Ingreso Mínimo Vital* (IMV) is hampered by complex procedures, digital exclusion, and administrative inertia. Applicants often wait months without resolution or face rejection due to technical errors and rigid eligibility criteria.[118] Together, these institutional barriers constitute a form of what we called *burorrepresión*, a mode of punitive governance that operates through administrative obstacles rather than overt criminalization.[119] By making access to rights procedurally burdensome or indefinitely deferred, the legal system deepens marginalization while preserving a facade of formal legality. It is important to approach social policy and penal policy as systems already function together at the lower levels of the social and spatial hierarchy.

2.2. France

a) System Overview

France's approach to poverty governance is shaped by its Republican model of universalism, a legal and ideological framework that asserts equal treatment of all citizens without adequately addressing distinctions based on sex, race, or class.[120] This colour-blind legalism covers deep structural inequalities. While not the central focus of this study, the intersection of poverty and race is essential to understanding poverty governance in France, where exclusion often follows racialized lines.

The *banlieues* are one of the clearest examples of how France indirectly criminalizes poverty. The term refers to a ring of residential areas surrounding the urban core. Although "periphery" can denote both affluent and disadvantaged neighbourhoods, *banlieue* has taken on a pejorative meaning, commonly associated with low-income housing estates predominantly inhabited by immigrant families and marked by persistent poverty, unemployment, and state surveillance.[121] However, French law remains institutionally silent on these demographic disparities.

Sociologist Loïc Wacquant characterises this condition as "advanced marginality," in which stigmatized territories are managed through a dual regime of underfunded welfare support and

[117]José Luis Garrido, 'Un ataque a la Justicia Gratuita' (*Diario Córdoba*, 23 February 2017).
[118]'Alarma por la lentitud en la tramitación del Ingreso Mínimo Vital' (*www.elsaltodiario.com*).
[119]Pedro Oliver Olmo (ed), *Burorrepresión: sanción administrativa y control social* (Bomarzo 2013).
[120]Vincenzo Cicchelli and Sylvie Octobre, 'Republican Universalism at the Test of French Multicultural Society: Cultural Diversity and Social Cohesion According to Young People' (2022) 5(2) *Populism* 184.
[121]M Angélil and C Siress, 'The Paris "Banlieue": Peripheries of Inequity' (2012) 65(2) *Journal of International Affairs* 57.

overactive penal surveillance.[122] These areas operate as zones of exception, in which normal procedural guarantees are weakened and public order overrides social protection. The securitization of these territories intensified after the 2015 terrorist attacks, when a state of emergency expanded police powers and relaxed procedural safeguards.[123] Although officially framed as neutral public safety measures, these zones correspond closely to impoverished, racialized urban spaces, effectively transforming poverty into a trigger for heightened surveillance.

Regarding French welfare system, this has remained much more comprehensive and well-funded than those of most countries.[124] However, it too has experienced welfare retrenchment, especially in the post-2008 period. Rising long-term youth unemployment, housing insecurity, and the erosion of local services have produced territorialized inequalities, as explained previously. These economically unequal territories have experienced a significant increase in policing and repression. As anthropologist Didier Fassin has shown, police practice in these areas operates within a *moral economy*, one that interprets minor infractions not just as breaches of law, but as breaches of normative order.[125] Within this economy and society: poverty, racial difference, and perceived incivility are treated as interlinked threats. The law, therefore, does not criminalise poverty in a direct, statutory sense, but governs it through a spatialized regime of suspicion, administrative control, and discretionary policing that renders poverty both visible and punishable.

In conclusion, France governs poverty through territorial stigmatization and bureaucratic securitization, justified under the rhetoric of universalism. Legal institutions treat these territories less as communities in need of support, and more as risks to be contained. The result is a system in which social insecurity is not legally named, but is structurally managed through punitive governance.

b) Legal instruments

As explained, in the French legal system, poverty is not criminalised through direct statutory prohibitions, but rather through a layered architecture of public order and security laws that regulate urban space, conduct, and mobility. The legal governance of poverty is grounded in three intersecting strategies: the penalization of minor infractions in marginalized territories, the normalization of exceptional policing powers under anti-terrorism law, and the spatial regulation of public presence through municipal by-laws.

A central mechanism is the formalization of daily offence policing in low-income neighbourhoods, particularly through the deployment of the Brigades Anti-Criminalité

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[122]L Wacquant, 'Territorial Stigmatization in the Age of Advanced Marginality' (2007) 91 Thesis Eleven 66.
[123]E Dück and R Lucke, 'Same Old (Macro-)Securitization? A Comparison of Political Reactions to Major Terrorist Attacks in the United States and France' (2019) 25(84) *Croatian International Relations Review* 35.
[124]Michael Cavadino and James Dignan, Penal Systems: A Comparative Approach (SAGE 2006) 131.
[125]D Fassin, 'Compassion and Repression: The Moral Economy of Immigration Policies in France' (2005) 20(3) *Cultural Anthropology* 362

(BAC).[126] These units focus on "incivilities", a legally vague term encompassing loitering, noise, or non-compliance, and often use broad penal code offences such as *outrage à agent* (contempt of officer) and *rébellion* (resisting arrest) to convert minor encounters into legal proceedings. The 2007 Loi relative à la prévention de la délinquance institutionalized this model by expanding the authority of mayors and local police to intervene in family, housing, and youth-related matters.[127] This legal infrastructure allows for discretionary identity checks (*contrôles d'identité*) and stop-and-frisks that disproportionately target racialized youth in the banlieues, reinforcing a cycle of legal exposure.[128] This results in a cycle of provocation and punishment, whereby ordinary behaviours in stigmatized areas are pathologized and sanctioned.[129]

The second axis of this framework lies in the consolidation of emergency powers into ordinary law. After the 2015 terrorist attacks, France adopted the Loi SILT (2017), *Loi renforçant la sécurité intérieure et la lutte contre le terrorisme*, which embedded state-of-emergency powers into the permanent legal code (*Code de la sécurité intérieure*).[130] Under SILT, prefects may authorize house searches, curfews, movement restrictions, and closures of community spaces without prior judicial approval. While framed as counter-terrorism measures, their implementation disproportionately affects residents of *quartiers prioritaires*, who are already marked by spatial and ethnic stigma. The extension of legal power into every day policing turns marginalized urban areas into zones of legal ambiguity, where procedural safeguards are weakened, and state intervention becomes more frequent and less constrained.[131]

A third pillar involves the municipal regulation of visible poverty. Although national vagrancy laws were repealed in 1994,[132] several French cities have enacted local decrees (*arrêtés municipaux*) banning *mendicité agressive* (aggressive begging), particularly in tourist zones or commercial districts.[133] Cities such as Paris, Lyon, and Nice enforce temporal or spatial bans on begging, justified as efforts to maintain public order or urban aesthetics. These by-laws use administrative sanctions to displace and marginalize poor populations from key public spaces. Though legally distinct from criminal punishment, their function is to render poverty invisible and expel it from spaces of normative visibility.[134]

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[126]'Brigades Anti-Criminalité - BAC' (*Maintien de l'ordre*).
[127]Loi n° 2007-297 du 5 mars 2007 relative à la prévention de la délinquance (JORF n° 55, 6 March 2007).
[128]Ministère de l'Intérieur, M VALLS, and Ministère de l'Intérieur, *Circulaire Du 30 Juillet 2012 Relative à La Mise En Oeuvre Des Zones de Sécurité Prioritaires (ZSP)* (2012).
[129]M Angélil and C Siress, 'The Paris "Banlieue": Peripheries of Inequity' (2012) 65(2) *Journal of International Affairs* 57.
[130]Loi n° 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme (JORF n° 255, 31 October 2017).
[131]V Codaccioni, *Justice d'exception: L'État face aux crimes politiques et terroristes* (CNRS Éditions 2015).
[132]Loi n° 94-89 du 1 février 1994 instituant une peine incompressible et relative au nouveau code pénal et à certaines dispositions de procédure pénale (JORF n° 28, 3 February 1994).
[133]Angelique Chrisafis, 'Paris Bans Beggars from Most Popular Shopping and Tourist Hotspots' *The Guardian*.
[134]La Défenseure des droits, *Pour une protection effective des droits des personnes Roms: Contribution à la stratégie nationale* (2022).

In sum, French legal instruments collectively construct a framework of spatialized legal vulnerability. Through low-threshold offences, discretionary police powers, and exceptional administrative controls, entire communities become subject to intensified legal scrutiny, not due to individual conduct, but due to where they live, how they appear, and what their presence is assumed to signify. As such, the French legal system sustains a form of indirect criminalization that is no less powerful for being covert.

c) Critical analysis

Calculated exploitation

In France, calculated exploitation functions through a legal architecture that imposes monetary and penal burdens on structurally marginalized populations, particularly in the *banlieues*. Unlike more overt fiscal extraction, this exploitation operates through minor legal sanctions that escalate into broader legal and economic harms.

Firstly, municipal decrees banning *mendicité agressive* (aggressive begging) or loitering may seem administratively trivial, but they disproportionately target the visibly poor in commercial and tourist zones, issuing fixed fines that do not account for financial capacity. For individuals living in poverty, the inability to pay these fines can trigger additional sanctions, debt accumulation, or even exclusion from public benefits, as we explained in the Spanish case through the concept of *poverty penalties*. These measures quietly shift the financial cost of inequality onto the poor themselves, converting poverty into a legal liability and a source of revenue for the state.

Secondly, there has been a marked increase in the criminalization of minor infractions. In working-class, racialized suburbs, routine behaviours, such as loitering, speaking loudly, or perceived non-compliance with police authority, are frequently escalated into formal offences. Legal provisions such as *outrage à agent* (contempt of officer) and *rébellion* are disproportionately applied, often transforming mundane encounters into criminal records. These offences rely heavily on police discretion, resting on subjective interpretations of disrespect or resistance. As such, their use reflects not a neutral enforcement of the law, but a moralized exercise of authority that imposes legal and financial penalties for perceived deviance.

This dynamic raises serious concerns regarding the principle of legality, a cornerstone of international human rights law.[135] This principle requires that laws be sufficiently precise and accessible, enabling individuals to foresee and regulate their conduct accordingly. However, legal categories such as “public disorder” or “rogue and vagabond” are overly broad and vague, encompassing behaviours that pose no genuine threat to public order or the rights of others. By failing to meet the criteria of legal certainty, necessity, and proportionality, such laws

[135]Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of the United States of America* (23 April 2014) UN Doc CCPR/C/USA/CO/4, para 19.

undermine basic human rights protections and legitimize punitive interventions that are neither justified nor lawful under international standards.[136]

Theoretically, these mechanisms reflect the concept of symbolic violence, which is the invisible forms of domination that operate through norms, classifications, and legal categories, making power appear legitimate.[137] In the French *banlieues*, seemingly neutral infractions like *outrage à agent* or bans on "incivility" are disproportionately applied in racialized, poor areas, turning moral judgments into legal sanctions. This kind of enforcement reinforces social hierarchies without relying on overt force, encouraging those affected to internalize their marginalization.[138] Following this, acts such as vandalism or resistance to police should not be interpreted as individual behavioural problems, but as expressions of collective frustration rooted in systemic neglect. This dynamic creates a cycle of urban violence: state repression provokes resistance, which is then used to justify further control. In this way, the law does not merely punish poverty, it actively constructs the poor as deserving of punishment.

In conclusion, in France, calculated exploitation transforms poverty into legal and financial liability through discretionary enforcement and vague infractions. The law targets marginalized populations not for harmful acts, but for visible deviation from norms of order and civility. This legal framework imposes material burdens while reinforcing symbolic hierarchies, making exclusion appear legitimate.

Gratuitous Management

In the French context, gratuitous management manifests through a contradictory mix of welfare expansion and moralized surveillance. Over the past decade, French authorities have introduced a range of targeted assistance programs , including subsidized youth employment, vocational training schemes, universal healthcare, and broader access to the *Revenu de solidarité active* (RSA), which replaced the *Revenu Minimum d'Insertion* (RMI) in 2009, all aimed at supporting economically vulnerable populations.[139] However, these programs increasingly operate under a disciplinary logic, where access to social protection is conditioned on behavioural conformity. Welfare is no longer extended as an unconditional right, but as a contingent benefit, dependent on compliance with state-defined norms of order, productivity, and responsibility.

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[136]Amnesty International, *Decriminalization of Homelessness and Extreme Poverty: Submission to the UN Special Rapporteurs on Extreme Poverty and the Right to Adequate Housing* (IOR 40/7204/2023, September 2023).
[137]JD Schubert, 'Suffering/Symbolic Violence' in M Grenfell (ed), *Pierre Bourdieu: Key Concepts* (Acumen Publishing 2012) 179.
[138]M Angélil and C Siress, 'The Paris "Banlieue": Peripheries of Inequity' (2012) 65(2) *Journal of International Affairs* 57.
[139]Loïc Wacquant and Philosophy Documentation Center, 'Ordering Insecurity: Social Polarization and the Punitive Upsurge' (2008) 11 Radical Philosophy Review.

This disciplinary framework is particularly evident in cases where parents of children found truant or delinquent may face suspension of family allowances. Here, welfare becomes a tool of behavioural correction, reinforcing the notion that poverty stems from individual failure rather than structural exclusion. The replacement of social workers and street educators with magistrates and local officials who issue warnings, monitor behaviour, and enforce penalties reveals a shift from support to supervision.[140] This transformation reflects a deeper normative assumption: the poor are not governed as rights-holders, but as risky subjects whose conduct must be constantly assessed and shaped.

Gratuitous management is also visible in the evolution of policing practices in the *banlieues*. Laws such as the 2007 *Loi relative à la prévention de la délinquance* and the 2017 *Loi renforçant la sécurité intérieure et la lutte contre le terrorisme* have enabled a strategy of daily offence policing, wherein law enforcement patrols marginalized urban zones with the goal not of investigating serious crime, but of performing symbolic control through ID checks, stop-and-frisks, and sanctioning of incivilities.[141] These practices are deeply racialized and classed, disproportionately targeting immigrant-origin youth in housing estates. In this sense, gratuitous management describes not only the excessive moral scrutiny imposed on the poor, but the paradoxical deployment of infrastructures to discipline and exclude.

Therefore, the very populations identified as recipients of welfare are simultaneously subjected to intensified police surveillance. In this way, state interventions reinforce what Wacquant terms a "double regulation", soft social support on one side, and hard penal repression on the other.[142] Zones of exceptional law emerge, where the threshold for state intervention is lowered, and bureaucratic discretion merges with moral judgment. These dynamics reveal how gratuitous management is not only about legal control, but about constructing the poor as morally suspect.

Routine neglect

Routine neglect in the French context refers to the systemic failure of legal and social institutions to uphold the basic rights and protections promised to vulnerable populations. Unlike direct criminalization, this form of neglect is passive and structural. It is the resul of chronic underinvestment, bureaucratic opacity, and institutional disregard, particularly in the domains of housing, justice, and public services. In France, this form of legal immobility is especially visible in the disconnection between the promise of formal equality and the practical erosion of rights in marginalized spaces.

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[140]Loïc Wacquant and Philosophy Documentation Center, 'Ordering Insecurity: Social Polarization and the Punitive Upsurge' (2008) 11 Radical Philosophy Review.
[141]M Angélil and C Siress, 'The Paris "Banlieue": Peripheries of Inequity' (2012) 65(2) *Journal of International Affairs* 57.
[142]Loïc JD Wacquant, Punishing the Poor: The Neoliberal Government of Social Insecurity (Duke University Press 2009.

One of the clearest examples of routine neglect lies in the treatment of the *banlieues*, where overpolicing is matched by under-protection. Although designated as *quartiers prioritaires de la politique de la ville* (QPV), these areas suffer from persistent disinvestment in public infrastructure, education, and social services.[143] The very label of "priority neighbourhood" ostensibly signals state intervention, yet the lived reality is one of absent or fragmented support. Housing is often substandard, youth employment initiatives are underfunded, and local services are overstretched.[144] This disparity is not merely economic, it becomes a legal failure when state actors do not fulfil the obligations set forth in the French Constitution and *Loi n° 2007-290*, including the right to dignified housing.[145] Therefore, legal entitlements, such as those related to anti-discrimination, housing guarantees, or access to social assistance, exist in statute, but are difficult to invoke in practice due to administrative opacity, slow response times, or lack of legal coordination.

Legal aid offers another window into this neglect. While France guarantees legal assistance to those without means, access is constrained by limited lawyer availability, long processing times, and administrative hurdles.[146] For residents of QPV or recent migrants, navigating legal protections becomes an arduous task, further complicated by language barriers and digital exclusion. Though formally available, the law often remains out of reach in practice, contributing to legal alienation and deepening existing inequalities.[147] Additionally, judicial practices impact marginalized individuals because there are disproportionately funnelled through fast-track procedures like *comparution immédiate*, which prioritize speed over fairness and overlook structural factors such as unemployment or housing insecurity.[148]

Ultimately, routine neglect in France is not a passive omission, but a structural form of immobility. It is the quiet, everyday reproduction of inequality through institutional silence, procedural inaccessibility, and the abdication of responsibility. By failing to act where action is needed most, the law becomes complicit in maintaining the very conditions it claims to protect.[149]

2.3. United Kingdom

a) System overview

[143]'SIG Politique de La Ville'.
[144]Clément Rivière, 'Didier Lapeyronnie, Ghetto Urbain. Ségrégation, Violence, Pauvreté En France Aujourd'hui' [2009] Lectures.
[145]Loi n° 2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale (JORF n° 55, 6 March 2007).
[146]Odoxa, *Baromètre des droits en France et de l'accès au droit* (Conseil National des Barreaux 2023).
[147]Observatoire national de la politique de la ville (ONPV), *Rapport 2020: Vulnérabilités et ressources des quartiers prioritaires* (ONPV 2021).
[148]European Network of National Human Rights Institutions (ENNHRI), *State of the Rule of Law in the European Union 2024* (April 2024).
[149]SS Silbey, 'After Legal Consciousness' in B Garth and A Sarat (eds), *How Does Law Matter?* (Northwestern University Press 1998).

The United Kingdom's approach to poverty governance has evolved through centuries of moralised welfare and punitive legal control, shaped by the historical legacy of the Poor Laws and a deeply entrenched class hierarchy. In recent decades, this approach has been reshaped by a distinctly neoliberal political economy, one that aligns the UK more closely with U.S.-style punitive welfare regimes than with the continental models of Spain or France.[150] Across successive governments, Thatcherite, New Labour, and Conservative, a clear through line has emerged: the state has progressively dismantled the post-war welfare system, replacing it with mechanisms of conditional support, behavioural monitoring, and bureaucratic sanction.[151]

This shift crystallised with the introduction of Universal Credit, which merged six benefits into a single payment system governed by digital administration, long waiting periods, and rigid behavioural requirements.[152] Sanctions for infractions such as missing appointments or insufficient job-search activity can leave claimants without income for weeks or months. Critics describe this architecture as a "secret penal regime," where the poor are not punished through criminal law, but through administrative deprivation, often without legal representation, procedural safeguards, or proportionality.[153] Poverty becomes a regulated status, governed not by support but by compliance.

Simultaneously, the UK has expanded legal and administrative mechanisms to target the visible manifestations of poverty and so-called "anti-social behaviour".[154] Perhaps more explicitly than in Spain or France, British policy discourse distinguishes between the "deserving" and "undeserving" poor: the former are compliant and employable, the latter , perceived as unproductive or disorderly. Law becomes a tool for moral sorting, reinforcing this binary through sanctions and exclusion.

This punitive turn intensified during the austerity period of the 2010s, under the Conservative-Liberal Democrat coalition and later Conservative governments. Severe cuts to social protection were accompanied by an intrusive sanctions regime under Universal Credit. By 2019, tens of thousands of unemployed or disabled people in Britain were living without any income, relying on food banks to survive.[155] While these sanctions are formally administrative, their function mirrors that of criminal penalties: to discipline and deter through the withdrawal of subsistence.

Within this system, the logic of neoliberal conditionality is fully operational. Echoing again Wacquant's notion of the "centaur state," the UK remains liberal and permissive for the

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[150]Loïc JD Wacquant, Punishing the Poor: The Neoliberal Government of Social Insecurity (Duke University Press 2009).
[151]Michael Cavadino and James Dignan, Penal Systems: A Comparative Approach (SAGE 2006) 131.
[152]Secretary of State for Work and Pensions, *Universal Credit: Welfare That Works* (Department for Work and Pensions 2010).
[153]David Webster, 'Benefit Sanctions: Britain's Secret Penal System' (*Centre for Crime and Justice Studies*, 2015).
[154]Anti-Social Behaviour, Crime and Policing Act 2014 (UK), c 12.
[155]Filip Sosenko and others, *State of Hunger: a study of poverty and food insecurity in the UK* (The Trussell Trust, November 2019).

economically integrated, yet disciplinarian for those at the margins[156]. As scholars like Alessandro De Giorgi note, these policies serve not to alleviate poverty, but to manage the "surplus populations" created by neoliberal restructuring, transforming social exclusion into a bureaucratised regime of punishment.[157]

b) Legal instruments

In the United Kingdom, poverty is governed through a fragmented yet coherent legal architecture that blends administrative sanctions, residual criminal law, and spatial regulation. The cumulative effect of these instruments is the indirect criminalisation of poverty and the bureaucratic management of the poor.

The welfare system exemplifies the impact of these mechanisms on marginalised communities. Under the Universal Credit regime, claimants can face benefit sanctions for minor infractions, such as missing appointments or failing to demonstrate adequate job-search activity, leading to the suspension of vital income. While administrative in nature, this system functions as a punitive apparatus, operating without the procedural safeguards of criminal law and disproportionately harming vulnerable individuals.[158]

At the municipal level, local authorities have adopted a wide array of civil powers to regulate public space. Chief among these are Public Spaces Protection Orders (PSPOs)[159], which allow councils to ban behaviours associated with visible poverty, such as rough sleeping, begging, loitering, or the erection of tents. Although formally civil, breaching these orders constitutes a criminal offence, effectively transforming non-compliance with local norms into prosecutable conduct. The Anti-Social Behaviour, Crime and Policing Act 2014[160] further expanded these powers, introducing tools such as Criminal Behaviour Orders (CBOs)[161] and Community Protection Notices (CPNs)[162], all of which have been widely deployed against the homeless and street-involved populations. These legal measures address the visible signs of poverty in the name of public order, reinforcing exclusion while avoiding structural solutions.

Additionally, monetary fines serve as an additional means of social regulation. Individuals can be prosecuted or even imprisoned for non-payment of civil debts such as council tax, or fined for offences like failing to pay the TV licence fee. Regulation 47 of the Council Tax (Administration and Enforcement) Regulations 1992[163] permits magistrates to impose

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[156] Loïc JD Wacquant, Punishing the Poor: The Neoliberal Government of Social Insecurity (Duke University Press 2009).
[157] Alessandro De Giorgi, *Punishment and Political Economy* (1st edn, Routledge 2017).
[158] BBC News, 'Universal credit rollout delayed yet again' (BBC News, 16 October 2018).
[159] Anti-social Behaviour, Crime and Policing Act 2014, pt 4, ch 2 (Public Spaces Protection Orders).
[160] Anti-Social Behaviour, Crime and Policing Act 2014 (UK), c 12.
[161] Crown Prosecution Service, 'Criminal Behaviour Orders' (CPS, 2020).
[162] Anti-social Behaviour, Crime and Policing Act 2014, pt 4, ch 1 (Community Protection Notices).
[163] The Council Tax (Administration and Enforcement) Regulations 1992, reg 47.

custodial sentences for unpaid tax debts, a practice that continues to land individuals in prison each year.

Taken together, these instruments do not criminalise poverty directly, but they construct a diffuse and punitive system in which poverty becomes a site of legal vulnerability. Through overlapping mechanisms, the UK legal framework renders poverty both visible and punishable, embedding economic marginality within the logic of governance itself.

c) Critical analysis

Calculated Exploitation

In the United Kingdom, calculated exploitation operates through a uniquely expansive regime of fines, fees, and debt-based sanctions that disproportionately burden the poor. Unlike Spain or France, where the regulation of poverty combines punitive measures with stronger social protections, the UK's legal architecture reflects a distinctly neoliberal orientation. Here, monetary penalties and bureaucratic sanctions are not incidental but systemic, forming a revenue-generating infrastructure that extracts value from those already in economic precarity.

At the core of this dynamic lies the benefit sanctions regime under Universal Credit, which imposes financial penalties on individuals for behavioural non-compliance, such as missing a job-centre appointment or failing to submit evidence of job search activity. These sanctions frequently result in the total loss of subsistence income for extended periods. As mentioned, David Webster describes the UK's benefit sanctions regime as a "secret penal system", since it is a parallel form of punishment that bypasses the procedural safeguards of the criminal justice system.[164] Unlike formal prosecutions, sanctions are imposed unilaterally by Department for Work and Pensions (DWP) officials, without access to legal representation, transparent hearings, or the presumption of innocence. There are no judges, no juries, and limited opportunities for appeal. Sanctions can strip individuals of all income for weeks or months, leading to hunger, homelessness, and psychological harm, consequences often more severe than those resulting from minor criminal convictions. This system violates core human rights principles, including the right to social security (Article 9 ICESCR)[165], the right to a fair hearing (Article 6 ECHR)[166], and the prohibition of inhuman or degrading treatment (Article 3 ECHR)[167]. By punishing poverty through opaque and disproportionate means, this sanction's regime undermines both justice and human dignity.

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[164]David Webster, 'Benefit Sanctions: Britain's Secret Penal System' (*Centre for Crime and Justice Studies*, 2015).
[165]International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 9.
[166]Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art 6.
[167]Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art 3.

In parallel, the enforcement of monetary sanctions deepens this logic of extraction. Minor debts such as unpaid council tax or TV licence fees are subject to legal escalation, disproportionately impacting low-income households. Regulation 47 of the Council Tax (Administration and Enforcement) Regulations 1992[168], for instance, allows for imprisonment in cases of non-payment, a punishment formally civil but materially coercive. Between 2011 and 2017, hundreds were jailed or given suspended committal orders for such debts, effectively turning economic inability into legal culpability.[169] Similarly, prosecutions for TV licence non-payment, of which over 40,000 occurred in 2022, fall overwhelmingly on women and the elderly, reflecting a broader pattern in which enforcement targets the most vulnerable.[170]

Therefore, the use of bailiffs to collect fines and debts adds substantial costs to the original sum owed, often pushing already struggling families into deeper hardship. As Citizens Advice exposes, many people are forced to choose between basic necessities and repaying fines, or even take out high-interest loans to avoid enforcement action.[171]

Through these mechanisms, calculated exploitation in the UK does not simply reinforce economic marginality, it actively generates it. Monetary penalties, administrative deprivation, and legal escalation transform poverty into a source of institutional revenue, while simultaneously delegitimising the poor as legal and moral subjects.

Gratuitous Management

In the United Kingdom, gratuitous management describes a mode of poverty governance that intervenes excessively in the lives of the poor without meaningfully improving their conditions. This dynamic is most clearly exemplified by the widespread use of Public Spaces Protection Orders (PSPOs).[172] Like Spain and France, these orders are framed as neutral instruments for maintaining public order, PSPOs empower local councils to ban specific behaviours in designated areas, often targeting actions associated with homelessness such as rough sleeping, begging, or erecting tents.[173] Despite their civil nature, breaches of PSPOs can trigger criminal sanctions. Their use transforms visible poverty into a public nuisance, displacing vulnerable populations from urban centres without addressing the structural causes of their deprivation, similarly creating marginalized neighbourhoods like the French *banlieues*. In effect, these measures reflect an aesthetic governance of public space, focused on cleansing urban environments rather than alleviating hardship.

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[168]The Council Tax (Administration and Enforcement) Regulations 1992, reg 47.
[169]ICP Alliance, *Is it a crime to be poor? Briefing Paper* (ICP Alliance, January 2021).
[170]ICP Alliance, *Is it a crime to be poor? Briefing Paper* (ICP Alliance, January 2021).
[171]Citizens Advice, 'Bailiffs' (Citizens Advice).
[172]Anti-social Behaviour, Crime and Policing Act 2014, pt 4, ch 2 (Public Spaces Protection Orders).
[173]Philip Alston, Special Rapporteur on extreme poverty and human rights, 'Statement on Visit to the United Kingdom' (OHCHR, 16 November 2018).

Gratuitous management also characterises the operation of the Universal Credit[174] welfare system. These systems not just extract value from the poor, as examined in the previous section, they also impose strict conditionalities, digital compliance, constant job-seeking verification, and behavioural monitoring, that frequently delay or deny assistance. This bureaucratic scrutiny becomes a moral test, where aid is contingent on conformity to behavioural norms rather than need.

These practices also carry a performative function: they demonstrate that "something is being done" about poverty and disorder, even as the underlying inequalities are left untouched. In this sense, gratuitous management masks policy inaction with bureaucratic hyperactivity, using law and administration to control, sort, and stigmatize the poor, while denying them effective avenues of redress.

Routine neglect

Routine neglect in the United Kingdom operates like in Spain and France, through institutional failures that deny basic protections to poor populations. As explained, this form of governance manifests in chronic underfunding, administrative complexity, and a legal indifference that allows poverty to deepen while formally maintaining rights on paper.

One of the most visible expressions of routine neglect lies in the UK's housing crisis. Despite legal entitlements to housing support, benefit caps and budget cuts have rendered these protections hollow. Social housing stock has been depleted, and housing benefit has failed to keep pace with rising rents, pushing vulnerable families into insecure private rentals or homelessness.[175] Charities and parliamentary reports estimate that over one million children now live in destitution, while thousands of families face eviction due to inadequate assistance.[176] Yet enforcement policies, such as PSPOs and dispersal orders, continue to punish rough sleeping without addressing its root causes, a clear example of punitive measures filling the vacuum left by social inaction.

The welfare system reproduces this pattern. The UK has been one of the European countries that has most significantly reduced its investment in social assistance.[177] This reduction is not merely a fiscal adjustment, but a political decision that reflect the increase in neoliberal governance. Vulnerable groups, including people with disabilities, mental health conditions, or lacking digital access, are especially affected. Many fall through the cracks, receiving no support at all due to missed forms, technical errors, or inaccessible procedures. Legal aid and access to justice have similarly deteriorated. The 2012 Legal Aid, Sentencing and Punishment

[174]GOV.UK, 'Universal Credit' (GOV.UK).
[175]Shelter England, 'Loss of social housing' (Shelter England).
[176]House of Commons Work and Pensions Committee, 'Universal Credit: is the roll-out working?' (6 May 2022) HC 188.
[177]Organisation for Economic Co-operation and Development (OECD), 'Social Expenditure Database (SOCX)' (OECD)

of Offenders Act (LASPO)[178] drastically reduced eligibility for legal assistance, particularly in housing, welfare, and immigration cases. Poor individuals often cannot secure legal representation to challenge unfair sanctions, evictions, or benefit refusals, effectively excluding them from the rule of law.

2.4. Conclusion

The comparative analysis of Spain, France, and the United Kingdom reveals that while each country deploys different legal and institutional mechanisms, all three converge in using law to govern poverty through indirect criminalisation. Despite differences in political culture, welfare architecture, and legal traditions, the underlying logic is strikingly similar: poverty is increasingly managed not through protection or redistribution, but through surveillance, discipline, and exclusion.

However, the modalities differ. Spain presents a more hybrid model. While still shaped by neoliberal pressures and post-crisis austerity, its legal strategy leans more heavily on administrative fines (*burorrepresión)* and local ordinances. Spain does not exhibit the same level of racialized territorial policing as France or the systemic sanctioning of benefits as in the UK, but it nonetheless manages poverty through fines, evictions, and bureaucratic barriers, mechanisms that entrench precarity while masking punitive intent.

By contrast, France retains a stronger welfare infrastructure, but overlays it with territorialized repression and racialized surveillance. The French model hinges on the spatial governance of poverty through moralised policing and exceptional legal zones, particularly in the *banlieues*. While it lacks the bureaucratic repression of the UK sanctions regime, it substitutes this with a system of moral order enforcement grounded in symbolic violence and spatial stigmatization.

Moreover, The UK exemplifies a more clear neoliberal workfare model, where poverty is managed through bureaucratic sanctions, behavioural conditionality, and the logic of personal responsibility. This model closely resembles U.S. patterns and departs from the more universalist traditions of continental Europe.

Finally, routine neglect is a shared mechanism across all three contexts. Despite formal commitments to social protection, each state increasingly governs poverty through institutional withdrawal, allowing housing shortages, service cuts, and long delays to function as de facto forms of exclusion. This slow violence reflects a broader recalibration of the welfare state, from a provider of rights to a manager of risk.

[178]Legal Aid, Sentencing and Punishment of Offenders Act 2012.

This comparative section gives concrete shape to the abstract theories discussed in the first part of the thesis, particularly the role of law in moralising, politicising, and ultimately producing poverty. By analysing the indirect criminalisation of poverty in Spain, France, and the UK, we see that law is not merely a response to social inequality, but an active force in its reproduction. This concludes the first part of the thesis. The second part now turns to a more constructive task: exploring how legal imagination might offer new ways to rethink law beyond its punitive and exclusionary functions.

Chapter 3: Imagining Otherwise — Law as a Site of Critique, Creation, and Radical Possibility

The first part of this thesis examined how modern European legal systems contribute to the indirect criminalization of poverty, through structural exclusion, moralization, and punitive governance. This second part turns toward something more difficult and urgent: imagining what comes next. While the preceding chapters have traced the limitations and harms embedded in legal structures, this section proceeds from a position of hope. It maintains that law, despite its historical complicities with hierarchy and control, can change and be a structure of transformative possibility. The challenge is not just to identify alternative justice models, but to examine the underlying premises of law, how justice is defined, by whom, and for what purpose. To do this, we must return to the roots of legal thinking and radically reimagine its structures and values. What if law were not fundamentally a system of control, property, and punishment, but a space of collective invention? What if legality could be understood not as a fixed institutional framework, but as a site of cultural, epistemic, and political possibility, where alternative futures can be imagined and practiced?

This part of the thesis draws from the work of thinkers such as Cornelius Castoriadis, José Medina, Costas Douzinas, Mariame Kaba, and Ruth Levitas, among others, who have challenged the assumed neutrality and punitive framework of legal systems. They call for an active praxis of legal imagination: one that not only critiques but reimagines law's role in society. If, as Castoriadis suggests, law is an "imaginary institution", then it can also be reimagined, resisted, and remade.[179]

This chapter proceeds from the assumption that we must not simply add more humane policies to an otherwise punitive structure. Rather, we must ask deeper questions about the epistemological and ontological foundations of law itself. Why is theft criminalized, but dispossession is not? Why is poverty treated as a behavioural problem rather than a structural failure? But this is not a call for utopia in the abstract. Rather, it is a methodological and political commitment with the purpose to engage with imagination as part of the strategy. Not to reform punishment with gentler language, but to question why punishment is considered

[179]Cornelius Castoriadis, *The Imaginary Institution of Society* (MIT Press 1987).

necessary at all.[180] It is not the goal to add empathy to unjust systems, but to design justice from other values entirely, like care, solidarity, mutual responsibility, and collective flourishing.[181]

The sections that follow move from critique to possibility. Section 3.1 examines why legal reform is insufficient when pursued within a punitive and aporophobic legal framework. Section 3.2 then builds the theoretical foundations for radical legal imagination, beginning with an analysis of law as a social imaginary (3.2.1), followed by a deeper engagement with radical imagination as a form of collective resistance and utopian method (3.2.2), and culminating in the concept of radical legal imagination as a critical and constructive legal methodology (3.2.3). Section 3.3 turns to real-world practices where law is already being reimagined: through liberatory legal design (3.3.1), radical imagination from the margins (3.3.2), reimagining legal education (3.3.3), law, narrative, and the aesthetics of justice (3.3.4), and practical experiments (3.3.5). Together, these sections propose that law is not only a terrain of discipline or critique, but a field of creative struggle, where new legalities can be imagined.

Although this chapter does not focus directly on poverty, this choice is intentional. The aim here is to step back and reflect on the deeper ideas that shape how the law operates, especially the ways it defines harm, justice, and responsibility. Rather than addressing poverty through concrete examples, this investigation explores the broader legal and moral frameworks that make its criminalization possible. These abstract reflections are not separate from material realities they are meant to help us understand the roots of legal thinking that often reinforce exclusion. By working at this level, the chapter hopes to open space for imagining legal futures that could better respond to poverty and inequality in more just and humane ways.

Finally, this second part of the thesis remains firmly rooted in the field of human rights. It argues that human rights must be understood not only as legal norms but as imaginative commitments: to dignity, to equality, and to a more liveable world. If rights are to be more than aspirational texts, they must be rethought from the ground up, not only protected through litigation but also through structural transformation. Imagination is a vital instrument for resisting structural inequality and envisioning more just and inclusive alternatives that respect human rights. If we lose the ability to imagine justice otherwise, we risk becoming resigned to the world as it is. [182]

3.1 - Reform Is Not Enough

[180]Mariame Kaba, Naomi Murakawa and Tamara K Nopper, *We Do This 'til We Free Us: Abolitionist Organizing and Transforming Justice* (Haymarket Books 2021).
[181]Adrienne M Brown, *Emergent Strategy: Shaping Change, Changing Worlds* (AK Press 2017); Hallie Pope, *'Liberatory Legal Design and Radical Imagination'* (2022).
[182]Mark Fisher, *Capitalist Realism: Is There No Alternative?* (John Hunt Publishing 2009).

In the face of growing inequality, carceral expansion, and the normalization of social exclusion, law often appears as the last available recourse for justice. Legal reform, through rights expansion, procedural guarantees, or humanitarian exceptions, has long been the dominant framework through which liberal democracies attempt to address structural harm. Yet these reformist mechanisms, however necessary in the short term, have repeatedly failed to transform the underlying logics that criminalize poverty, and reproduce inequality. This section argues that reform, when pursued within the existing legal-punitive framework, is not only insufficient, it is structurally incapable of delivering justice for those most affected by systemic violence.

As scholars such as Ratna Kapur and Costas Douzinas have shown, human rights and legal protections, while often mobilized in the name of emancipation, have also served to legitimate dominant power structures. Kapur critiques what she calls "freedom in a fishbowl", the illusion of legal progressiveness that masks deeper hierarchies and exclusions. Even when the law is used to protect rights, it can also reproduce racialized, gendered, and class-based boundaries of recognition and entitlement.[183] Legal discourse, in this sense, creates our understandings of justice. Douzinas similarly warns that rights can become "the alibis of power," maintaining the legitimacy of a liberal order that has no intention of being radically altered.[184] These authors explain the limitations of not developing mechanisms beyond the punitive framework, as reform alone does not manage to address existing structural problems, which continue to be reproduced in different ways.

The co-optative capacity of law is neither accidental nor new. Drawing on Antonio Gramsci, we can understand legal reform as a form of "passive revolution," in which the ruling order absorbs critiques not to surrender power, but to reinforce it.[185] Legal systems in capitalist democracies are particularly adept at neutralizing demands for structural change by translating them into manageable legal terms, terms that often preserve the very frameworks they claim to reform.

Following these thoughts, Tove Stang Dahl adds another perspective, emphasizing that legal reforms need to take into account deeper, non-legal factors driving the issues they aim to solve[186]. He also uses Antonio Gramsci to explain that "law is an important part of the cultural hegemony that men have in our type of society, and a cultural hegemony means that a ruling group's special way of viewing social reality is accepted as normal and as a part of the natural order of things, even by those who are in fact subordinated by it."[187] Therefore, when efforts to solve a poor person's problem rely solely on legal reform, they leave untouched the power

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[183]Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar Publishing 2020) 17–35.
[184]Costas Douzinas, *The Radical Philosophy of Rights* (Routledge, Taylor & Francis Group 2019) 102–115..
[185]Antonio Gramsci, *Selections from the Prison Notebooks* (Lawrence & Wishart 1971) 105–120.
[186]Jeff Carolin, 'When Law Reform Is Not Enough: A Case Study on Social Change and the Role That Lawyers and Legal Clinics Ought to Play' (2014) 23 Journal of Law and Social Policy 107.
[187]Anthony Alfieri, 'The Antinomies of Poverty Law and a Theory of Dialogic Empowerment' (1987) 16 N.Y.U. Rev. L. & Soc. Change 659.

held by those who created the unjust laws in the first place. Legal engagement, even through reform, can end up stripping the issue of its political dimensions,[188] making the current system appear fair and legitimate, even when it continues to harm those it's meant to support.[189] In this way, reform risks reinforcing the idea that the issue is just a flaw in the law, something fixable with minor tweaks, rather than recognizing it as a political, cultural, and economical problem that calls for a more profound shift in how power is structured. Legal critique traditions have called this issue legal centralism, defined as the idea that law is the only possible terrain for political transformation. However, this legal centralism limits both activism and scholarship, where the most that can be expected is a more compassionate administration of injustice. Within this framework, visionary or transformative goals are often set aside in favour of what is legally achievable, and radical demands are reduced to modest reforms that ultimately preserve existing power structures.

In conclusion, through reform it is difficult to redistribute power or dismantle exclusion, our historical moment demands us to think outside the existing juridical order. Reform aims to preserve the system by correcting its flaws, but when the law itself is part of the problem, reform has limited capacity to provide a meaningful solution

3.1.1. Trying alternatives, but not achieving results

To acknowledge the limits of reform is not to dismiss the importance of harm reduction or the genuine efforts of those working to humanize and change justice systems from within. Awareness has grown around initiatives that explore alternative ways of managing judicial systems, models such as restorative justice, transformative justice, and even redistributive legal approaches have opened important cracks in punitive legality. They offer frameworks that challenge the state's monopoly on justice, reframe crime as harm rather than transgression, and imagine accountability rooted in care and repair rather than punishment. These models have emerged in response to profound dissatisfaction with conventional criminal justice systems and have been shaped by feminist, decolonial, abolitionist, and community-led struggles.[190]

In Europe, restorative justice (RJ) has gained growing institutional support, especially following the 2012 EU Victims' Rights Directive. Programs such as youth circles in Italy, victim-offender conferences in the UK, and Catalonia's juvenile RJ initiatives demonstrate efforts to centre dialogue and reintegration.[191] Some of these programs show clear benefits, including lower recidivism and greater victim satisfaction, especially when supported by NGOs and embedded in community networks. However, even these alternatives are not immune to

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[188]Anthony Alfieri, 'The Antinomies of Poverty Law and a Theory of Dialogic Empowerment' (1987) 16 N.Y.U. Rev. L. & Soc. Change 659.

[189]Anthony Alfieri, 'The Antinomies of Poverty Law and a Theory of Dialogic Empowerment' (1987) 16 N.Y.U. Rev. L. & Soc. Change 659.

[190]Mariame Kaba, Naomi Murakawa and Tamara K Nopper, *We Do This 'til We Free Us: Abolitionist Organizing and Transforming Justice* (Haymarket Books 2021)

[191]EU Forum for Restorative Justice, "Restorative Practices in Europe" (2022); Ian D Marder, 'Restorative Justice and the Council of Europe: An Opportunity for Progress' (*Penal Reform International*, 2018).

co-optation. Restorative justice programs often lack genuine dialogue risk reinforcing a managerial logic of efficiency rather than transformation.[192] Moreover, by individualizing harm, RJ frequently fails to confront the structural conditions, such as poverty, trauma, racism, and state violence, that underpin many interpersonal conflicts. Feminist and decolonial critics have noted that without structural awareness and community autonomy, restorative programs can reproduce power hierarchies, retraumatize survivors, or reassert control under a progressive lens.[193]

Transformative justice (TJ) emerged in response to these critiques. Developed by Black, Indigenous, and queer-feminist organizers in North America, TJ centres structural harm and can also refuse state intervention. It builds accountability processes within communities themselves, grounded in shared political commitments and radical care. While rare in formal European contexts, TJ principles are being enacted by grassroots projects, such as Berlin's UmGäng collective or the European Sex Workers' Rights Alliance, that address violence without calling the police or relying on criminal prosecution.[194] These efforts recognize that for many marginalized people, the state is not a neutral protector but a source of ongoing harm. Still, TJ also faces limits. It is resource and labour-intensive, often invisible to public institutions, and relies on dense webs of trust that are hard to sustain in conditions of precarity. Additionally, even the most radical alternatives can risk reproducing dominant logics if they do not interrogate deeply the structure.[195] Again, the fact that a model rejects the state does not guarantee that it escapes hegemonic moral and legal imaginaries.

Acknowledging these limitations is essential. The point is not to romanticize either traditional or alternative justice forms, but to recognize their constraints when they operate inside, or adjacent to, a juridical framework that remains grounded in punitive, exclusionary, and moralizing logics. These models are valuable not as endpoints, but as partial roadmaps openings toward a more radical transformation.

What is needed, then, is not only institutional critique or procedural redesign, but a deeper shift in the cultural and symbolic foundations of law itself. As Castoriadis reminds us, institutions, including the law, are not inevitable, they are the product of collective imagination.[196] To remake justice, we must begin by rethinking the imaginary that legitimizes legal authority, defines harm, and organizes whose lives are protected, and whose are punished. The next section of this chapter stems from this premise.

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[192]EU Forum for Restorative Justice, "The idea of Restorative Justice and how it developed in Europe"; Ian D Marder, 'Restorative Justice and the Council of Europe: An Opportunity for Progress' (*Penal Reform International*, 2018)

[193]Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2002).

[194]'Transformativejustice.Eu' (29 April 2025).

[195]Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar Publishing 2020) 145–161.

[196]Cornelius Castoriadis, *The Imaginary Institution of Society* (MIT Press 1987) 145–160.

3.2 - What's New: Foundations of Radical Legal Imagination

The previous section showed the limits of legal reform in addressing the criminalization of poverty. This section turns to a different kind of proposal, one that is less institutional and more conceptual. The proposal of this thesis is to think differently, to take seriously the role of imagination in shaping the law. This may seem abstract at first, but it's not new. Every constitution, every declaration of rights, every legal concept was imagined before it was created and became real. The problem is that once these creations are institutionalized, they tend to harden. They are no longer seen as choices, but as facts. We forget that they are the products of specific historical and political moments, and that they can be changed.

This perspective, that law is a creation of the social imaginary, has been developed by thinkers such as Cornelius Castoriadis and others in critical theory. However, its application in legal and policy debates, particularly in Europe, remains relatively limited. At the same time, various social movements, feminist, abolitionist, decolonial, have long used imagination as a tool for resistance and creation. They are already experimenting with alternative forms of justice, care, and accountability, even if their work is not always recognized within the legal field, these practices deserve closer attention.

The sections that follow build a foundation for this proposal. Section 3.2.1 outlines the notion of the social and legal imaginary, drawing on the work of Castoriadis. Section 3.2.2 examines the idea of radical imagination as developed by critical theorists and social movements. Finally, section 3.2.3 introduces the concept of radical legal imagination—a perspective that approaches law not as something to be repaired, but as something to be fundamentally reimagined. his is not a rejection of law, but an invitation to reclaim it, to understand it as a site of collective authorship, and to acknowledge that what has once been imagined can be imagined differently.

3.2.1 – Law as an Imaginary Institution

To imagine a new legal order, one that no longer criminalizes poverty, we must first understand how the existing one was imagined into being. Law is not a neutral, pre-given framework, it is a historical and symbolic construction rooted in the cultural, economical, and ideological foundations of the societies that produce it. This section engages with the work of Cornelius Castoriadis, Roberto Unger, and Costas Douzinas to uncover the ontological and political stakes of legal imagination. These authors, each from distinct intellectual traditions, converge in viewing law not as a static institution but as a dynamic product of social meaning, power, and creative possibility.

Firstly, Cornelius Castoriadis's theory of the *social imaginary significations* provides a powerful framework for rethinking the origins and functions of legal systems. In *The Imaginary Institution of Society*, Castoriadis asserts that society is not simply organized through rational calculation or material necessity, but through a process of radical imagination that generates

values, institutions, and norms ex nihilo.[197] This *radical imagination*, a term he reserves for the unique human capacity to create meaning where none existed before, manifests at the collective level as the *social imaginary*, a shared network of symbols, significations, and institutions that constitute a given social world.[198] Within this framework, law appears not as a mirror of natural order or moral truth, but as one of the most powerful expressions of a society's imaginary self-conception.

Law, according to Castoriadis, is not derived from a divine or metaphysical source, but from the social imaginary that legitimates it. For example, the idea of a constitution, or a specific policy, is not a timeless artifact but a contingent expression of how a society imagines its authority and justice. Institutions such as private property, civil rights, and criminal sanctions are crystallizations of past imaginative acts that have been sedimented into normality.[199] But when imaginary creations become formal institutions, they often harden over time and come to seem natural or inevitable. This hides the fact that they were originally human inventions. He calls this *heteronomy*, a condition where societies forget that they created their own laws and institutions, and start treating them as unquestionable.[200] In the context of this thesis, the danger lies in the dominant legal imaginary that treats poverty as disorder and punishment as justice, rendering alternative frameworks almost unthinkable

Secondly, Roberto Unger, writing from the tradition of Critical Legal Studies, builds on similar premises while focusing more explicitly on law's institutional dimensions. In *What Should Legal Analysis Become?*, Unger argues that law has become imprisoned within what he calls *institutional fetishism*, a worldview that treats legal and political institutions as fixed and necessary rather than contestable.[201] For Unger, law is not merely a set of rules to be interpreted but a field of *institutional imagination*, a site where society can rethink the design of its basic arrangements.[202] Then, legal analysis should not be confined to doctrinal consistency or procedural refinement, it should aspire to reconstruct the legal frameworks.

Unger's radical anti-necessitarianism, that there are no natural or necessary forms of social life, mirrors Castoriadis's insistence on creation ex nihilo.[203] For both thinkers, the existing legal order is only one among many possible configurations. This means that human societies are not bound by any natural or necessary laws, everything about how we live together is invented, and can be reinvented. However, Unger places particular emphasis on the potential of legal practice to act as a vehicle of transformation. He calls for a legal imagination that not only criticises the status quo but also envisions concrete alternatives: pluralistic democracies,

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[197]Cornelius Castoriadis, *The Imaginary Institution of Society* (MIT Press 1987) 127.
[198]Cornelius Castoriadis, *The Imaginary Institution of Society* (MIT Press 1987) 145–150.
[199]Cornelius Castoriadis, *The Imaginary Institution of Society* (MIT Press 1987) 147.
[200]Cornelius Castoriadis, *The Imaginary Institution of Society* (MIT Press 1987) 260.
[201]Roberto Mangabeira Unger, *What Should Legal Analysis Become?* (Verso 1996) 5.
[202]Roberto Mangabeira Unger, 'The Critical Legal Studies Movement' (1983) 96 Harvard Law Review 561, 570–578.
[203]Roberto Mangabeira Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy* (Verso 2004).

solidaristic economies, and legal systems that support collective empowerment rather than elite reproduction.[204]

Even though Unger's vision is more related to reformism, there is an interesting point that he makes. He argues that law is not just as a symbolic tool that adjusts to the existing order, but as something that can help reshape it entirely. He still believes there's room for law to play a real role in pushing for change. Regarding his thoughts, this thesis has been clear from the beginning: law has mostly been used to control, punish, and maintain the status quo. Changing the legal system from within is difficult, especially because it risks repeating the same superficial fixes that characterize many reform efforts. However, this doesn't mean the law should be ignored. If we recognize that law is deeply intertwined with culture, economics, and politics, and remain critically engaged with it, we can still imagine a radically different legal system and rework its underlying structures. Despite its limitations, law must not be excluded. Just as other fields are rethinking their roles in shaping a better world, the law, too, must be re-examined, challenged, and transformed. Real change may not begin with the law, but the law must move in step with broader transformations if we are to achieve meaningful progress.

Thirdly, Costas Douzinas offers a complementary and critical perspective on the legal imaginary by turning to rights discourse. In *The Radical Philosophy of Rights*, Douzinas deconstructs the liberal notion of rights as universal, ahistorical, and emancipatory.[205] From this perspective, rights aren't timeless truths grounded in reason or nature. Instead, they're shaped by shifting political desires. They reflect how a society defines its moral and legal limits, who gets recognized as a subject, and what kinds of harm are seen as worth addressing.[206]

Douzinas, drawing on psychoanalysis and post-structuralism, insists that law is saturated with desire, ideology, and narrative. The liberal rights framework, with its emphasis on individual autonomy and formal equality, constructs a legal subject that is abstract, rational, and implicitly privileged. This framework fails to recognize how legal systems reproduce structural exclusions, particularly against the poor, racialized, or otherwise marginalized.[207] Rights can function as both tools of resistance and instruments of discipline. However, Douzinas does not abandon rights. Instead, he calls for a radical reappropriation of rights discourse by social movements. Feminist, decolonial, and abolitionist struggles have used rights not to stabilize the legal order but to subvert and expand it. These movements engage in what we might call *counter-imaginaries*, which are creative redefinitions of justice that disrupt the dominant narratives and open space for new subjectivities and claims.[208]

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[204]Roberto Mangabeira Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy* (Verso 2004) 195-204.
[205]Costas Douzinas, *The Radical Philosophy of Rights* (Routledge, Taylor & Francis Group 2019) 1–5.
[206]Costas Douzinas, *The Radical Philosophy of Rights* (Routledge, Taylor & Francis Group 2019) 85-89.
[207]Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Hart Pub 2000) 33-39.
[208]Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Hart Pub 2000) 101-104.

Bringing these three thinkers together enables a more profound understanding of the legal imaginary. Castoriadis explains that law is a historical product of the social imaginary, and that autonomy requires reappropriating this creative power. Unger pushes legal thought beyond critique, showing how it can be a space for imagining and building new institutions. It's not just about pointing out what's wrong, but thinking up what else is possible. Douzinas, meanwhile, reminds us that even the legal concepts we treat as untouchable, like rights, are shaped by politics and imagination. That means they can be undone, reworked, or turned against the system that created them.

What all these authors have in common is their refusal of legal fatalism. The law, they argue in different ways, is not merely what is written in codes or enforced in courts, it is what society collectively imagines as real, legitimate, and desirable. To confront the criminalization of poverty, we must therefore confront the legal imaginary that sustains it. This means not only criticizing punitive laws but also cultivating new imaginaries of justice, solidarity, and care to build completely new punitive frameworks. Radical imagination is not utopian in the pejorative sense, it is what happens when we reject the idea that the current order is all there is. It's the refusal to accept the status quo as natural or necessary, and the quiet certainty that a more just legal world isn't just possible, it's already being dreamed up and acted on.

In the end, this section reveals that the legal order is not a natural container but a creative space, one shaped by power, desire, and shared symbols. By understanding law as a product of the social imaginary, we open space for imagining law otherwise. This is where the concept of radical imagination becomes essential. If law is an outcome of what societies collectively envision as order and legitimacy, then to undo the criminalization of poverty, we must cultivate new visions, new significations, and new institutional blueprints. The next section explores what is radical imagination, understood as the generative capacity to create other worlds, and how it can become the conceptual and political ground on which these new legalities are constructed.

3.2.2 What is Radical Imagination?

While there are many ways to think about transforming the legal system, this thesis focuses on a less explored yet potentially powerful approach: radical imagination.

Radical imagination is the capacity to envision change that lies at the centre of both individual thought and collective action. It is "radical" in the etymological sense, reaching into the *radix*, the roots, of social reality, and in the political sense, challenging what is taken as natural, neutral, or necessary. It refuses the closure of the present and insists that other worlds are not only possible but already in formation. It's not a romantic fantasy, it is a vital tool for resistance and a way of knowing that makes transformation possible.

As explained before, philosopher Cornelius Castoriadis understood the radical imagination as the ontological power through which all institutions are created: law, money, the state, and identity are not fixed structures but temporary crystallizations of shared meaning. It is thus both the source of institutional order and the force capable of disrupting it. Max Haiven and Alex

Khasnabish expand this concept into a political method. For them, radical imagination is "the capacity to envision alternatives to dominant social, political, and economic institutions not simply as an abstract exercise but as an integral part of collective action."[209] It emerges not in isolation but through struggle, organizing, and everyday acts of refusal and creativity. In this sense, radical imagination is not a thing we possess, it is something we *do,* collectively. Nowadays, there is the need to stop "living in the ancestral imagination of others", since, as discussed in the prior sections, the structures we inhabit, courts, prisons, property regimes, are not natural, they are the materialization of someone else's dream, often dreams of exclusion and control.[210] Societies need to use imagination as an act of liberation. Better said, imagination must be our first act of liberation. Before we can transform society, we need to envision what a truly just world looks like. What if justice wasn't rooted in punishment, but in healing? What if our institutions weren't designed to control us, but to care for us? The first step is to ask: *What do we want instead?* Only once we've imagined the world we're aiming for can we begin to think about how to build it. Imagination isn't a distraction from strategy, it's the foundation of it. Take, for example, protests against the police. If you ask a protester, "Okay, you oppose the police, but what would you put in their place?" Most people don't yet have an answer. And that's not a failure, it reveals that resistance is only one part of the struggle. The other part is just as important: dreaming, proposing, and building what comes next.

We might activate imagination through interdisciplinary dialogues, shared storytelling, or community rituals that expose the injustice of the present and open paths to the possible.[211] Radical imagination has three main feature, according to Haiven and Khasnabish:

a) Destructive and Generative

Radical imagination is simultaneously a force of negation and construction. As legal scholar Richard Delgado illustrates, counter-narratives in law serve to dismantle dominant logics while building new frameworks of meaning.[212] It is a "portal", a space to negate the present order and incubate alternative visions.[213] Then, imagination precedes change, at least change that's deliberate. This duality is what makes it politically volatile, since it disrupts but also proposes. In legal terms, this means challenging structures that criminalize poverty, not merely by critique, but by imagining justice again, rethinking the foundations of law.

b) Collective

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[209]Max Haiven and Alex Khasnabish, *The Radical Imagination: Social Movement Research in the Age of Austerity* (Fernwood Publishing ; Zed Books 2014).
[210]Adrienne M Brown, *Emergent Strategy: Shaping Change, Changing Worlds* (AK Press 2017) 17.
[211]J Paulson, 'The Uneven Development of Radical Imagination' (2010) 4(2) *Affinities: A Journal of Radical Theory, Culture, and Action* 33.
[212]Richard Delgado, 'Storytelling for Oppositionists and Others: A Plea for Narrative' (1989) 87 Michigan Law Review 2411
[213]J Paulson, 'The Uneven Development of Radical Imagination' (2010) 4(2) *Affinities: A Journal of Radical Theory, Culture, and Action* 33.

Radical imagination is not only introspective, it is social. It flourishes in "shared landscapes" of struggle and mutual recognition.[214] Abolitionist Mariame Kaba emphasizes that we cannot imagine differently alone: "We are deeply entangled in the very systems we are organizing to change… Being intentionally in relation to one another… helps to not only imagine new worlds, but also to imagine ourselves differently."[215] This relational dimension is important because it breaks through internalized oppression and expands our imaginative horizons beyond what is individually thinkable.

c) Joyful and Playful

Finally, radical imagination is not solely serious. It is also "juicy," in the words of Fraizer.[216] Robin D.G. Kelley cautions that revolutionary ideology can sometimes suppress joy, yet joy is essential to sustaining liberatory practices.[217] Humour, play, and desire can puncture dominant narratives and reveal their absurdity. As Gouge argues, satire and storytelling help expose the contradictions of legal orders that present themselves as natural and moral.[218]

After explaining these three main features of radical imagination, it is important to understand imagination as a transformative force. The theory of radical imagination has so similarities to utopian theories, that's why we must also turn to Ernst Bloch's theory of the utopian function. For Bloch, imagination is not merely aesthetic or psychological, it is ontological. It is how human beings disclose the "not-yet," the horizon of what could be. Hope, for Bloch, is the fuel of imagination: "hope knows itself as the utopian function," and that function materializes first in ideas, dreams, and anticipatory symbols.[219] Bloch's insights hold powerful implications for legal thought. Bloch's utopian imagination allows legal actors to distinguish between what is merely imaginable and what is practically emancipatory.[220] In his view, the radical imagination is praxis, it is meant not only to interpret the world, but to change it. Various authors working with utopian ideas and methods draw on the concept of radical imagination to ground their proposals in reality, using it as a bridge between theory and practice. For example, Ruth Levitas extends this line through her concept of *utopia as method*.[221] Utopia is not a static vision of perfection but a critical and heuristic tool. It asks us to imagine the future as a field of political and social inquiry. In legal terms, this means treating the law as a speculative and generative

[214]Max Haiven and Alex Khasnabish, *The Radical Imagination: Social Movement Research in the Age of Austerity* (Fernwood Publishing ; Zed Books 2014) 4.
[215]Mariame Kaba, Naomi Murakawa and Tamara K Nopper, *We Do This 'til We Free Us: Abolitionist Organizing and Transforming Justice* (Haymarket Books 2021).
[216]Fraizer in Keeanga-Yamahtta Taylor, *How We Get Free: Black Feminism and the Combahee River Collective* (Haymarket Books 2017) 140.
[217]Robin DG Kelley, *Freedom Dreams: The Black Radical Imagination* (Beacon Press 2002) 15.
[218]Melissa C Gouge, 'Human Rights in Play, Transnational Solidarity at Work: Creative Playfulness and Subversive Storytelling among the Coalition of Immokalee Workers' (2016) 42 Critical Sociology 861.
[219]Ernst Bloch, 'The Principle of Hope. Vol. 1' (MIT Press 1995) 144.
[220]Ernst Bloch, 'The Principle of Hope. Vol. 1' (MIT Press 1995) 145.
[221]Ruth Levitas, *Utopia as Method: The Imaginary Reconstruction of Society* (Palgrave Macmillan 2013) 1–11.

space. Levitas describes utopia as "the imaginary reconstitution of society" a project of transforming what we think is possible.[222]

Finally, radical imagination also shapes our moral and political agency. It can forge or sever ties of solidarity, distort or empower empathy.[223] It plays a role in both epistemic injustice and emancipatory reconfiguration. Oppressive imaginaries stigmatize poverty, justifying its punishment. Liberatory ones challenge the logics of deservingness and reconstruct the moral architecture of legal relations. Thus, radical imagination is not just a political tool, it is an epistemic responsibility.

In conclusion, the radical imagination is destructive, generative, collective, and joyful. It is not a impossible tool, but a survival imperative. Crucially, it has the potential to provide the foundation for envisioning legal systems that do not criminalize vulnerability but cultivate justice through care, mutuality, and transformation. But if radical imagination can unsettle dominant orders and activate new social meanings, what happens when we turn this power directly toward the legal field itself? The next section develops this idea further by introducing the concept of *radical legal imagination*, an approach that refuses to merely interpret or reform the law as it exists, and instead dares to reimagine what law is for, who it serves, and how it might be radically rewritten from the ground up.

3.2.3 - Radical Legal Imagination: Applying the Otherwise

After exploring how law is an imagined structure, this thesis introduces a new concept: radical legal imagination. Coined in this investigation as one of the first uses of the term in academia, radical legal imagination refers to the act of applying radical imagination to legal theory and practice. It is not only a theoretical concept, it can also serve as an approach or methodological orientation. It functions as a critical lens through which to interrogate existing legal structures and offers a set of generative practices. While this concept is still in its early stages and requires further research before it can be fully developed into a theory, this thesis positions radical legal imagination as a necessary framework for bringing innovative and future-oriented thinking into the core of legal theory. It begins with a more fundamental provocation: What happens when we stop asking how to improve current legal systems, and instead ask what law could look like if it were built on entirely different foundations?

Many activist movements have envisioned alternatives to policing, prisons, and private property, radical legal imagination uses these inputs and urges us to rethink law entirely. It encourages us to reject the assumption that law must always be tied to ownership, authority, or exclusion, and to explore what legal systems grounded in solidarity and collective well-being might look like. It helps us to completely rethink the foundations of legal systems, a complex task, but the first step to achieve real justice.

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[222]Ruth Levitas, *Utopia as Method: The Imaginary Reconstruction of Society* (Palgrave Macmillan 2013) 1–12.
[223]José Medina, *The Epistemology of Resistance: Gender and Racial Oppression, Epistemic Injustice, and Resistant Imaginations* (Oxford University Press 2013) 252, 256, 266.

To engage in this kind of imagination is to recognize that legal categories like "crime," "punishment," or even "rights" are not natural or inevitable. They are socially produced, and, like any social construct, they can be questioned, reshaped, or even discarded. Radical legal imagination, use as a strategy, helps make visible the assumptions that underlie our legal thinking and creates room to imagine otherwise. It is a useful way of making space for possibilities that are typically treated as unrealistic or unthinkable. Importantly, radical legal imagination is not about offering total alternatives. It does not assume that law can be easily replaced, or that we can step outside legal frameworks entirely. Rather, it holds space for legal ambiguity, for the in-between zones where new practices emerge before they are recognized, where institutions are repurposed, and where mistakes and failed ideas are allowed.

Importantly, the use of radical legal imagination as a methodology implies that critique is not enough. It is not satisfied with exposing injustice, it pushes further, daring to imagine what kind of legalities might emerge from other ways of living, knowing, and organizing. At the same time, it acknowledges its limits. It cannot, by itself, dismantle structural violence. It may be dismissed as naïve or impractical. And like any emancipatory discourse, it risks being depoliticized, aestheticized, or co-opted by the very institutions it seeks to transform. For this reason, radical imagination must remain grounded in struggle. It must stay accountable to those most affected by legal violence, the communities, movements, and bodies that urgently need new forms of justice.

Still, despite these tensions, radical legal imagination matters. Without it, we remain confined within the boundaries of critique. While critique is essential, it cannot stand alone. Imagining new legal frameworks is a way of challenging the assumption that the current system is the only viable one. Imagination creates space not only to reject what exists, but to begin constructing what could take its place. In the next section, I will explore concrete expressions and theoretical expansions of this approach, presenting situated examples that demonstrate the practicability of radical legal imagination, not as fixed models, but as openings for reflection, experimentation, and debate.

3.3 - Applications and Theoretical expansions of Radical Legal Imagination:

If radical legal imagination invites us to rethink the foundations of law, then the next step is to ask how this can be practiced in the real world. This section moves to analyze concrete expressions and theoretical expansions of this approach, not to offer definitive models or technical solutions, but to explore how radical imagination is already shaping legal and extra-legal spaces in situated, often informal ways.

These practices are not unified or complete. They are experiments, attempts to apply different values to the way we think about law. Some happen within institutions, and other take place completely outside legal systems, built through community organizing or collective care. What they share is a refusal to treat law as rigid structure, and a willingness to ask what law could become if grounded in solidarity, accessibility, and shared responsibility.

The following five subsections trace different ways where radical legal imagination is already taking root and what can we learn from that, with the aim to keep investigation this concept. This section begins with legal design, not as a tool for improving court systems, but as a political method for redesigning how law is experienced. Then, it look at decolonial, abolitionist, and anarchist legal practices that build justice outside the state. The third part turns to legal education and asks how law schools can shift from reproducing exclusion to fostering creativity. After that, it explains the role of narrative and aesthetics: how storytelling, visual practices, and collective memory reshape what law feels like. And finally, this section explains some activities that could be done to explain this concept. They show that radical legal imagination is not just a concept, it is a powerful idea.

3.3.1. Rethinking Law Through Design

Reimagining law requires more than critique: it demands tools capable of unmaking dominant narratives and prototyping new ones. Legal design, applied with radical imagination, have the potential to be that tool. While mainstream legal design has gained popularity in law schools, courts, and legal tech, it remains largely reformist. Focused on enhancing efficiency, accessibility, and user experience, most legal design initiatives operate within the confines of dominant legal frameworks. In contrast, radical legal imagination activates legal design as a method of inquiry, critique, and transformation.

Legal design's origins lie in the rise of "design thinking," a human-centred methodology that gained traction as a problem-solving approach in tech and public policy. Its initial application to law focused on simplifying documents, streamlining court processes, and building more accessible legal interfaces. But these interventions, while helpful, risk preserving deeper structural injustices. As Hallie Jay Pope argues, many legal design efforts "aim to improve the law without questioning the systems of domination that it upholds."[224]

To move beyond reformism, Pope and Trotter propose liberatory legal design, grounded specifically in radical imagination. This form of design treats law as a cultural and political construction open to reconfiguration.[225] It is animated by her author following the three core feature of radical imagination theory: it is destructive and generative, collective, and joyful.[226]

a) Destructive and Generative

Radical legal imagination destabilizes what law is in order to propose what law could be. Roberto Unger's theory of institutional imagination is critical here. Unger rejects the "legalist worldview," a perspective that treats legal institutions as static and timeless. Instead, he argues that lawyers and citizens must view law as a site for social innovation, where even foundational

[224]Hallie Pope, 'Liberatory Legal Design and Radical Imagination' (2022).
[225]Hallie Pope, 'Liberatory Legal Design and Radical Imagination' (2022).
[226]Max Haiven and Alex Khasnabish, *The Radical Imagination: Social Movement Research in the Age of Austerity* (Fernwood Publishing ; Zed Books 2014).

categories like property, contract, and crime can be reimagined.[227] He warns that legal education often trains students to "the inevitable", to make injustice seem acceptable rather than challenge it.[228] In contrast, Unger calls for a more imaginative approach: uncovering the hidden possibilities within legal systems and finding ways to activate them creatively.[229]

This resonates with Pope's design pedagogy, in which students storyboard utopian legal futures and imagine alternatives to eviction courts, debt prosecution, and adversarial justice.[230] These speculative practices are concrete acts of institutional reimagination.

b) Collective Praxis

As Max Haiven and Alex Khasnabish emphasize, radical imagination is a shared capacity that emerges through grassroots struggle and mutual invention.[231] Pope and Trotter operationalize this through participatory design workshops, where students and community members collaboratively redesign legal systems. In one such exercise, participants imagined landlord-tenant disputes resolved through facilitated community circles rather than punitive courts.[232]

This kind of practice aligns with what the Design Justice Network describes as design that "decenter the designer" and prioritizes the voices of those historically marginalized by legal and technological infrastructures.[233] Most design processes reproduce inequality by encoding the biases of dominant social groups, what Patricia Hill Collins calls the "matrix of domination"[234] , therefore this model seeks to reverse this by co-creating with, not for, communities.

Another example is the work of Fondazione innovazione urbana, which has a Civil Imagination Project in Bologna, in which through "pacts of collaboration," citizens and local government co-design public services and shared spaces. Though not explicitly framed as legal design, these pacts constitute a reimagination of legal relationships between state and citizen, moving from adversarial to cooperative models.[235]

c) Joyful and Playful

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[227]Roberto Mangabeira Unger, 'The Critical Legal Studies Movement' (1983) 96 Harvard Law Review 561, 6–9.
[228]Roberto Mangabeira Unger, 'The Critical Legal Studies Movement' (1983) 96 Harvard Law Review 561, 4.
[229]Roberto Mangabeira Unger, *What Should Legal Analysis Become?* (Verso 1996) 13.
[230]Hallie Pope, 'Liberatory Legal Design and Radical Imagination' (2022) 6–7..
[231]Max Haiven and Alex Khasnabish, *The Radical Imagination: Social Movement Research in the Age of Austerity* (Fernwood Publishing ; Zed Books 2014).
[232]Hallie Pope, 'Liberatory Legal Design and Radical Imagination' (2022) 7.
[233]Sasha Costanza-Chock, *Design Justice: Community-Led Practices to Build the Worlds We Need* (The MIT Press 2020) 3.
[234]Sasha Costanza-Chock, *Design Justice: Community-Led Practices to Build the Worlds We Need* (The MIT Press 2020) 2.
[235]'Civic Imagination' (*Fondazione innovazione urbana.it*).

Third, radical legal imagination embraces pleasure, humour, and creativity. These affective registers are often suppressed in legal work, but they are vital to sustaining transformation. Pope reflects this ethos in her design classroom, where students invent legal superheroes and speculate wildly.[236] Gouge also highlights the subversive role of humour in puncturing dominant narratives and exposing their arbitrariness.[237] Humour can reveal the internal contradictions of legal authority by mocking its formality, rigidity, or pretensions to neutrality. In this sense, laughter is not just entertainment, it becomes a political act. By exaggerating or parodying the rituals of legality, humour punctures the illusion that law is inevitable. Gouge explains that humour "pokes a hole through often-undiscussed but official versions of everyday reality," exposing how legal authority is sustained by arbitrary norms and exclusions. A concrete example of this is the street theatre performances staged by housing justice activists in New York City, where tenants dress as "judges" and "landlords" to satirize eviction proceedings in public parks.[238] These performances mimic the courtroom, but with exaggerated roles, turning legal scripts into parody. The goal is not only to entertain, but to expose how eviction law systematically favours property owners and criminalizes poverty. By making the absurdity of these dynamics visible, humour invites audiences to question the justice of the legal system and imagine alternatives.

This approach is similar to Dunne and Raby's work on critical and speculative design, which uses fiction and play to imagine alternatives that lie just beyond the realm of acceptability. Critical design does not merely solve problems, it reveals and reconfigures them.[239] For example, Phoebe Walton's project *James v. Birnmann*, developed at the RCA, constructs a fictional legal future governed by AI. Through performance and animation, the project critiques the myth of legal neutrality and calls for more accountable juridical imaginaries.[240]

There are three different considerations that we could contemplate about legal design:

1. Design as Speculative Jurisprudence

Moreover, critical design's power lies in what Bhatnagar and Jackson call disclosive skills: reconfiguration (centring marginal practices), cross-appropriation (adopting external tools to critique internal systems), and articulation (clarifying dispersed practices to focus on what matters).[241] These skills enable legal designers to make visible the submerged structures and assumptions that constitute legal systems.

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[236]Keeanga-Yamahtta Taylor, *How We Get Free: Black Feminism and the Combahee River Collective* (Haymarket Books 2017) 140.
[237]Melissa C Gouge, 'Human Rights in Play, Transnational Solidarity at Work: Creative Playfulness and Subversive Storytelling among the Coalition of Immokalee Workers' (2016) 42 Critical Sociology 861.
[238]*Fair Play for Housing Rights: Mega-Events, Olympic Games and Housing Rights* (COHRE 2006).
[239]Anthony Dunne and Fiona Raby*, Speculative Everything: Design, Fiction, and Social Dreaming* (The MIT Press 2013) *ch vii.*
[240]Phoebe Walton, 'James v Birnmann: The Potential of Critical Design for Examining Legal Issues' (2022) 4-6.
[241]Sankalp Bhatnagar, 'What Legal Design Is as Opposed to Could/Should Be' (2022).

Walton and her collaborators also advocate for designing with theories, drawing from Rosi Braidotti, Arturo Escobar, and the Design Justice Network to infuse legal design with ontological plurality and epistemic multiplicity.[242] From this perspective, law is not a monolith but a contested space where multiple worlds, bodies, and forms of justice coexist and collide. The Ontological Design approach, for instance, suggests that designing legal systems is always an act of world-making. As Fry and Escobar argue, design either reproduces dominant ways of being or opens space for plural, community-rooted legalities.[243] In Chile, for example, community courts embody an emergent legal ontology that resists centralization and promotes localized, relational forms of justice.[244]

2. Beyond Design Thinking

This expanded practice contrasts sharply with dominant "design thinking" paradigms, which frame law as a user experience problem. While helpful for reform, such approaches rarely address the epistemic violen**ce** embedded in law.[245] As Phoebe Walton argues, legal design must resist being reduced to product development and instead embrace critical, reflective practice.[246]

In speculative design, fiction becomes a method. Inspired by Ursula K. Le Guin's dictum that "imaginative fiction trains us to imagine alternatives," these practices challenge the boundaries of what is legally thinkable.[247] Through scenarios, visualizations, and legal fictions, designers generate plausible impossibilities, tools to destabilize the status quo and open the radical legal imagination.

3. Toward a Transformative Legal Design Ethos

Radical legal imagination, when fused with speculative design, enables us to see law as a space for storytelling, co-creation, and systemic reinvention. It is the convergence point of critique and creation. Liberatory legal design provides a methodology for answering these questions. It combines legal design with radical legal imagination, to reclaim law as a medium of hope and experimentation, where new legal forms can be prototyped not to perfect existing systems, but to generate alternatives grounded in lived experiences and collective imagination.

This approach does not aim to replace traditional legal systems with a new blueprint overnight. Rather, it opens space for situated, speculative interventions, legal fictions, counter-institutions, community-based justice models, that resist dominant paradigms while gesturing toward new

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[242]Joaquin Santuber and Jonathan Edelman, 'Designing with Theories: Producing Legal Design Diffractively in Courts of Justice' [2022] DRS Biennial Conference Series.
[243]Tony Fry, *Design as Politics* (English ed, Berg 2011); Arturo Escobar, *Designs for the Pluriverse: Radical Interdependence, Autonomy, and the Making of Worlds* (Duke University Press 2018)..
[244]Joaquin Santuber and Jonathan Edelman, 'Designing with Theories: Producing Legal Design Diffractively in Courts of Justice' [2022] DRS Biennial Conference Series.
[245]Karma Dabaghi, 'Beyond Design Thinking and into Speculative Futures in Legal Design' (2022).
[246]Phoebe Walton, 'James v Birnmann: The Potential of Critical Design for Examining Legal Issues' (2022).
[247]Ursula K Le Guin, *The Left Hand of Darkness* (Ace Books 1969).

ones. One illustrative example is the work of participatory defence collectives, where grassroots groups support individuals facing criminal charges by collaboratively producing "social biography packets" to humanize defendants in court. This practice challenges the dehumanizing logic of the legal system and creates space for storytelling, family narratives, and community support to influence legal outcomes. Participatory defence reframes law as a site of collective intervention and care. This type of practice contributes to radical legal imagination by demonstrating how communities can reshape legal processes from below, blending resistance, narrative, and legal strategy in ways that point beyond reform and toward new, liberatory legal futures.[248]

3.3.2. Radical Imagination from the Margins

Radical legal imagination is not born in elite law schools or high courts. It emerges from the margins, from the experiences of those most harmed by the legal system, and from the collective practices of communities who are already building alternatives. This section explores how feminist, abolitionist, and postcolonial thinkers have theorized imagination as both a survival strategy and a political methodology. Across these traditions, imagination is not a luxury, it is a necessity for liberation. Throughout this section, the investigation explores how these practices can help us build upon the concept of radical imagination.

Mariame Kaba, a central figure in prison abolition, contributes to this idea by stating: "We must imagine and build the world we want to live in, it is an essential part of abolitionist work."[249] For Kaba, imagination is not separate from political strategy but central to it. Abolition is not about absence, not simply the removal of police or prisons, but about presence: the creation of new institutions, practices, and values that support safety, accountability, and care. She describes abolition as a speculative project, rooted in experimentation and practice: "We do this 'til we free us," as she titles her book. That is, we don't wait for the perfect plan; we begin by imagining and acting in the now. Examples include community-based response teams in cities like Chicago and Oakland, which organize safety without relying on police, often through local conflict mediation, shared agreements, and transformative justice circles.[250]

Kaba's approach is grounded in the long tradition of Black feminist thought that sees imagination as a practice of survival, memory, and futurity. Scholars like Saidiya Hartman, Audre Lorde, and Angela Davis have emphasized that dominant legal and political structures are built on the erasure of Black life, and that imagining otherwise is both an act of refusal and of care. In this tradition, radical imagination is not a dream of some abstract utopia, but a concrete response to historical violence and present injustice. One example is the participatory defence model used by grassroots groups like the Community Justice Exchange, where

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[248]'Participatory Defense | Silicon Valley De-Bug' (*sv-debug*).

[249]Mariame Kaba, Naomi Murakawa and Tamara K Nopper, *We Do This 'til We Free Us: Abolitionist Organizing and Transforming Justice* (Haymarket Books 2021) 12–15.

[250]Saidiya V Hartman, *Wayward Lives, Beautiful Experiments: Intimate Histories of Social Upheaval* (1st ed, W W Norton & Company, Incorporated 2019); Audre Lorde, *Sister Outsider: Essays and Speeches* (Crossing Press 1998); Angela Y Davis, *Are Prisons Obsolete?* (Seven Stories Press 2003).

criminalized individuals co-develop legal strategy with movement lawyers, reframing defence as a collective, not individual, act.[251] This participatory defence model developed by Silicon Valley De-Bug exemplifies radical legal imagination in action. Families and communities organize together to support people facing charges, transforming courtrooms from sites of isolation to spaces of collective resistance.[252] Participatory defence hubs use tactics like social biography videos, court mapping, and collective strategy sessions to reduce sentences and shift legal outcomes, but more importantly, they reframe legal engagement as a communal act of empowerment. These hubs challenge the idea that justice belongs to lawyers or courts. Instead, they reclaim the courtroom as a space where power can be redistributed and legal narratives contested. As Raj Jayadev and Pilar Weiss argue, these practices are not "services" but incubators of long-term transformation, where those once criminalized become leaders in a growing movement to redefine what justice means.[253]

Adrienne Maree Brown further elaborates this vision in her theory of "emergent strategy." She writes that social transformation happens not through top-down blueprints, but through decentralized, relational, iterative processes. "What we practice at the small scale sets the pattern for the whole system," she writes[254]. In this view, radical imagination is a mix of the ways we relate to each other, in movements, communities, neighbourhoods, that shape what justice becomes at larger scales. This insight is profoundly legal: it asks us to consider how micro-practices of accountability, decision-making, and care already constitute alternative legalities. Another example comes from the Bronx, where the Bronx Freedom Fund, an abolitionist community bail fund, not only posted bail for hundreds of individuals but invited those same people into leadership roles within the organization. Some became court watchers, others began organizing "know your rights" workshops, and a few joined local campaigns to end cash bail altogether. In doing so, those once targeted by the system became co-creators of a different legal future, transforming a temporary intervention into a sustained site of collective agency.[255]

Additionally, we are experiencing an "imagination crisis," produced by economic austerity, ecological anxiety, and digital overstimulation. To rebuild imagination, particularly radical legal imagination, we must create the material, emotional, and collective conditions that make imagining possible.[256] One response to this crisis can be seen in the work of the Design Justice Network, where communities marginalized by the legal system co-create tools, from visual contracts to storytelling-based rights education, that reflect their own values and experiences. These practices do not merely improve access; they expand the imaginative terrain of what law

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[251]Raj Jayadev and Pilar Weiss, 'Organizing Towards a New Vision of Community Justice' (*LPE Project*, 9 May 2019).
[252]'Participatory Defense | Silicon Valley De-Bug' (*sv-debug*).
[253]Raj Jayadev and Pilar Weiss, 'Organizing Towards a New Vision of Community Justice' (*LPE Project*, 9 May 2019).
[254]Adrienne M Brown, *Emergent Strategy: Shaping Change, Changing Worlds* (AK Press 2017) 23.
[255]'The Bronx Freedom Fund' (*The Bronx Freedom Fund*); 'Model, Impact, Strategy' (*The Bail Project*).
[256]R Hopkins, *From What Is to What If* (Chelsea Green Publishing 2019) 112–15.

can look and feel like. By fostering spaces for creative legal co-design, these initiatives help restore the emotional and political capacity to imagine justice otherwise.[257]

Postcolonial thinkers like Ratna Kapur also warn that dominant imaginaries, especially in law, are deeply colonial and racialized. The human rights subject, she argues, is imagined as an autonomous, secular, rights-bearing individual, a figure that excludes many ways of being, especially those tied to collective identity, spiritual life, or relational subjectivity[258]. Kapur calls for a "post-liberal imagination", a vision of law that does not universalize the norms of Western liberalism, but welcomes plural, hybrid, and subversive legalities. For example, Indigenous communities may prioritize land as a living entity, not as property, a worldview largely unintelligible within settler law. In Latin America, decolonial thinkers and Indigenous movements have advanced similar critiques. The *buen vivir* paradigm, grounded in Indigenous cosmologies, reimagines law not as a tool of extractive control, but as a relational practice that harmonizes human and more-than-human life. Legal recognition of the rights of nature in Ecuador and Bolivia reflects, however imperfectly, an alternative legal imagination rooted in reciprocity, not domination[259]. These efforts demonstrate that the margins are not outside the legal imagination, they are its most fertile ground.

In all these traditions, radical imagination is inseparable from lived struggle. It emerges in resistance to violence, but also in the daily labour of care, dreaming, and co-creation. It manifests not only in texts and theories but in music, ritual, community practice, and storytelling. It is enacted when people write alternative budgets, build mutual aid networks, or perform speculative legal theatre. These are not symbolic acts, they are prefigurative legalities, rehearsals of a world in which justice is not punishment, but solidarity. While this section is not directly related to radical legal imagination, it aims to show how imagination operates in other areas of life, in order to learn from those practices and apply their insights to our reimagining of law.

Finally, radical imagination from the margins does more than critique dominant law, it offers counter-worlds. These worlds may not yet be codified in statutes, but they exist, in the minds of organizers, the rituals of movements, and the practices of resistance. While many of the examples shared in this section emerge from outside Europe, or may not appear directly focused on poverty, this does not mean they are irrelevant. Poverty is entangled with other forms of oppression, racialization, colonization, gendered violence , and cannot be separated from the broader logics of exclusion that these practices resist. Moreover, imagination is shaped by where we grow up, what we're taught to believe is possible, and which lives are treated as valuable. Looking toward other cultural and political contexts is not about idealizing them, but

[257]Sasha Costanza-Chock, *Design Justice: Community-Led Practices to Build the Worlds We Need* (The MIT Press 2020) ch 4.
[258]Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar Publishing 2020) 33–36.
[259]'Ecuador's Rights of Nature: A New Legal Momentum?' (*JHULR*, 12 June 2024) 7–19.

about expanding our field of vision. To imagine justice beyond punishment, we may need to learn from other cosmovisions.

3.3.3 - Reimagining Legal Education

Legal education is not merely a transmission of knowledge, it is a site where power is internalized, hierarchies are reproduced, and the boundaries of legal imagination are quietly policed. From its very structure, law school trains future legal professionals to think of law as neutral, hierarchical, and apolitical. Students are taught to suppress emotion, ignore systemic injustice, and approach law as a closed logic of precedent and procedure. As Duncan Kennedy observed in his seminal critique, law school functions as "ideological training for willing service in the hierarchies of the corporate welfare state" by conditioning students to see the world through depoliticized, technocratic frames, rather than contesting the structures they are preparing to uphold.[260]

This training disproportionately benefits those already familiar with the unspoken codes of elite institutions. Across Europe, legal education remains classed and exclusionary. As highlighted by the Radical Law Students Project, law schools often attract and favour students from privileged backgrounds who are already aligned with liberal capitalist values, while working-class or racialized students often face alienation, symbolic violence, or forced assimilation into the dominant legal culture.[261] The result is a reproduction of a legal field that is both politically apathetic and socially detached.

Depoliticization in law schools is not simply a lack of activism, it is a deeper epistemic problem. When legal education discourages students from engaging with politics, ethics, or emotion, it narrows the possibilities of what law is imagined to be. As Kennedy puts it, even radical students "learn to put away their 'childish' emotions and accept the capitalist results that follow from 'legal reasoning'".[262] This ideological training produces legal professionals who may manage injustice with competence, but rarely question its structural foundations.

The lack of engagement from European law faculties in mobilizations for Palestine, compared to the visible student protests in the humanities or social sciences, is a contemporary example. While students across Europe occupied campuses to denounce genocide and imperial complicity, many law students remained silent, or were actively discouraged from political engagement by faculty and administration. This silence is not incidental.

Here, radical legal imagination offers both a critique and a proposal. It challenges the epistemological frameworks that treat law as apolitical and proposes instead that legal education become a space for critical consciousness, creative speculation, and social

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[260]Duncan Kennedy, 'Legal Education and the Reproduction of Hierarchy' (1982) 32 Journal of Legal Education 591.
[261]JR Sievert, 'Dignifying Imagination in Legal Education' in M Kim, D Jackson and JR Sievert (eds), *Legal Design: Dignifying People in Legal Systems* (Cambridge University Press 2024) 44.
[262]Duncan Kennedy, 'Legal Education and the Reproduction of Hierarchy' (1982) 32 Journal of Legal Education 591.

transformation. Following Paulo Freire's pedagogy of praxis and bell hooks' notion of "engaged pedagogy," law schools must be reimagined as communities of co-creation, where students are not passive recipients of doctrine but co-authors of more just legal futures.[263]

Among the practical applications of radical legal imagination in legal education we can include:

1. **Transforming curricula**: Introduce interdisciplinary courses that centre abolitionist, decolonial, and feminist legal theories. Encourage students to read speculative fiction, legal ethnodrama, or utopian theory alongside case law, to develop the imaginative capacity to envision legal systems beyond punishment, property, and profit.[264]

2. **Design justice in legal training**: Drawing from liberatory legal design, students can co-create legal tools in collaboration with marginalized communities, such as community contracts, visual law guides, or rights toolkits rooted in care rather than coercion.[265] This shifts law from a service to a relationship.

3. **Political engagement**: Establish space for law students to engage with current struggles, not just through moot courts but through participatory defence, policy organizing, or community tribunals. For instance, programs like *participatory defense hubs* in the U.S. allow students to work alongside impacted families to challenge the legal process from within.[266]

4. **Inclusive pedagogy**: Shift the classroom model from competition and elitism to collaboration and community. Embrace trauma-informed practices, value lived experience, and create space for students to bring their whole selves, including anger, grief, and hope, into legal analysis.

5. **Critical clinical practice**: Move beyond traditional legal aid models and design clinics that work in partnership with social movements. Instead of individual casework alone, students might support campaigns for prison closure, housing justice, or migrant rights using litigation, education, and organizing.[267]

Of course, radical legal imagination has its limits. Institutions are resistant, and professors are often trained within the very logics they must now unlearn. Moreover, imagination can be co-opted—reduced to "innovation labs" that improve efficiency without challenging domination.

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[263]Bell Hooks, *Teaching to Transgress: Education as the Practice of Freedom* (Routledge, Taylor & Francis Group 1994).
[264]Steven L Thorne, John Hellermann and Teppo Jakonen, 'Rewilding Language Education: Emergent Assemblages and Entangled Actions' (2021) 105 The Modern Language Journal 106.
[265]Hallie Pope, 'Liberatory Legal Design and Radical Imagination' (2022); 'Liberatory Design' (*National Equity Project*).
[266]JRaj Jayadev and Pilar Weiss, 'Organizing Towards a New Vision of Community Justice' (*LPE Project*, 9 May 2019).
[267]Sameer M Ashar, 'Law Clinics and Collective Mobilization' (2008) 14 Clinical Law Review 355.

Yet even so, without imagination, law school will continue to produce functionaries of injustice, not agents of transformation.

As Adrienne Maree brown reminds us, "what we practice at the small scale sets the pattern for the whole system." Law schools are precisely the small scale where new practices must begin. They are laboratories for future lawyers, but they can also become laboratories for future legalities.

3.3.4 - Law, Narrative, and the Aesthetics of Justice

If radical legal imagination demands a fundamental rethinking of what law is and what it could become, then narrative must be one of its core tools. Law is not only composed of statutes, procedures, and institutional actors, it is also a cultural narrative. It tells stories: about who is innocent, who is dangerous, and who deserves protection or punishment. These legal stories encode the dominant values, exclusions, and fears of the societies that produce them. To transform the law, we must also transform the stories that sustain it.

This section explores how radical legal imagination appears through narrative, visual, and performative practices, not as supplemental or symbolic gestures, but as core methods for re-signifying legality. These forms of storytelling make visible what legal formalism often erases: histories of violence, structures of inequality, emotional truths, and collective memory. By disrupting dominant legal narratives, these practices open space for alternative forms of justice rooted in empathy, relationality, and imagination.

The tradition of critical legal storytelling, developed through feminist, critical race, and queer legal theory, has long argued that law is shaped by whose stories are heard, and whose are silenced. Scholars like Richard Delgado, Mari Matsuda, and Patricia Williams have emphasized the political force of counter-narratives: stories from the margins that reveal the supposed neutrality of law as a mask for racial, gendered, and economic domination.[268] José Medina's concept of "epistemic injustice" further deepens this critique, showing how legal systems actively marginalize the knowledge of those harmed by the very institutions meant to protect them.[269]

These insights are not confined to academia. In practice, communities around the world are reclaiming narrative as a legal act. One compelling example is the use of legal ethnodrama, collaborative performances based on the lived legal experiences of marginalized people. In the UK, the "*Justice in a Day*" project invited young people to act out criminal proceedings based on real cases, prompting them to question the assumptions embedded in legal processes. In the U.S., the Restorative Justice Theater Project has used drama to help survivors of violence and

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[268]Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (Third edition, New York University Press 2017); Mari Matsuda, 'When the First Quail Calls: Multiple Consciousness as Jurisprudential Method' [1989] Women's Rights Law Reporter.

[269]José Medina, *The Epistemology of Resistance: Gender and Racial Oppression, Epistemic Injustice, and Resistant Imaginations* (Oxford University Press 2013); Mari Matsuda and others, *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (Westview Press 1993).

former prisoners co-create stories of harm and repair, offering alternative scripts for justice outside the courtroom.[270] Additionally, Humphrey et al. (2025), for example, created an *ethnodrama* based on interviews with 36 trans, intersex, and LGBTI activists in Malta, Australia, and the UK. The participants responded to a fictional law, the Acquired Sex and Intersex Status Bill, constructed from real-world legislation. The play created a performative space where alternative legal imaginaries could be voiced and collective frustrations transformed into creative resistance.[271]

Visual practices are also part of this aesthetic insurgency. Projects like the "Million Dollar Hoods" data maps in Los Angeles visualize how public money is disproportionately spent incarcerating residents of specific neighbourhoods.[272] Similarly, courtroom sketch artists like Molly Crabapple and Diala Brisly have used illustration to portray the emotional and political context of trials, challenging the authoritative imagery of legal institutions. Additionally, Gandolfo shows how maps, usually instruments of colonial control, can be transformed into political narratives that reclaim space and identity.[273] These interventions do not merely illustrate justice, they challenge what justice is allowed to look like.

Zines, audio storytelling, and podcasts are increasingly important as well. The "Beyond Prisons" podcast in the U.S., or the "Justice, Interrupted" series in the UK, invite listeners into alternative legal imaginaries, where the voices of incarcerated people, survivors, and abolitionist organizers shape the discourse.[274] In Latin America, "Radio Justicia Comunitaria" (Community Justice Radio) shares indigenous and campesino justice practices in local languages, preserving plural legal knowledge in the face of state erasure.[275] In Europe, Utopian storytelling is also being explored through arts-based and sensorial methodologies. the *Shared Futures* project in Finland invited elderly participants to imagine the world 100 years from now through embodied, non-verbal exercises, drawing, listening, and spatial play. The project demonstrated how radical imagination emerges from sensory interaction and community dialogue, not just abstract theory.[276] These informal practices may seem minor, but they matter. They show that justice is not only legal, it is also linguistic, emotional, and relational.

All these different examples use a radical legal imagination approach in their projects, they use innovative methods to try to think how the law could be. These are clear examples of the

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[270]D De Girolamo, 'Collective Dissent as Legal Consciousness in Contemporary British Theatre' (2022) 31(1) *Social & Legal Studies* 99; Harvey Humphrey and others, '*As Is* and Co-Creating Theatre From Research to Stage: The Play's The Thing' (2025) 30 Sociological Research Online 487.

[271]S Salmenniemi, I Perheentupa and H Ylöstalo, 'Political Imagination and Social Change' (2025) 30(2) *Sociological Research Online* 345

[272]'Million Dollar Hoods Project' (*Million Dollar Hoods*).

[273]L Gandolfo, 'Utopian Cartography and Political Imagination' (2025) 30(2) *Sociological Research Online* 363.

[274]'Beyond Prisons: A Podcast On Prison Abolition' (*Beyond Prisons Podcast*, 7 April 2025); EF Thompson, *Justice Interrupted: The Struggle for Constitutional Government in the Middle East* (Harvard University Press 2013).

[275]*"'Papel de Las Radios Comunitarias En El Proceso de Consolidación de La Paz En Colombia'.*

[276]Emma Fält, 'Shared Futures: A Long-Term Multiform Artistic Collaboration That Invites People to Imagine Futures' (2025) 30 Sociological Research Online 501.

powerful use of radical legal imagination to change the foundations of law. Crucially, these narrative and aesthetic interventions are about building the cultural infrastructure for legal transformation. Therefore, stories, images, performances, and rituals create the affective and symbolic conditions under which new legalities can be conceived and felt. In short, narrative is not decorative to law. It is constitutive of it. And radical legal imagination must claim this terrain boldly, not only rewriting the rulebook, but the stories through which justice is lived, contested, and redefined.

3.3.5 - A Practical Experiment: Performing the Radical Legal Imagination

One of the central arguments of this thesis is that law is not only an institutional machinery, it is also a cultural field, a social practice, and, mainly, a space of imagination. If the law is made in parliaments and courts, it is also made, undone, and remade in cafés, kitchens, collectives, classrooms, and on the stage. Following Paulo Freire's pedagogy of praxis and Bell Hooks' concept of engaged pedagogy,[277] this thesis proposes one exercise that put radical legal imagination into practice as a framework. As both thinkers insist, emancipatory learning, and by extension, emancipatory justice, emerges through participatory, dialogical processes rooted in lived experience and collective reflection. These principles have guided the creation of the proposed activity. Although small in scale and not yet widely applied, they serve as clear and accessible examples of the abstract ideas discussed throughout this chapter.

Exercise: **"What If Justice Had No…"**

The purpose of this exercise is to engage participants in the practice of radical legal imagination by critically examining and destabilizing the assumed necessity of core legal institutions, such as judges, courts, police, or prisons. The goal is not to offer immediate solutions, but to encourage speculative thinking about the social, ethical, and political foundations of justice systems, and to imagine alternative structures grounded in other values such as mutual accountability. It reflects the deeper objective of this thesis: to challenge punitive and exclusionary legal logics and to reimagine law as a space of possibility.

An example of methodology could be to divide participants into small groups. Each group is assigned to one foundational legal institution, for example judges, courts, or prisons.

They are asked to collaboratively reflect on four guiding questions:

1. What functions does this institution currently serve in society?

2. What kinds of power, harm, or exclusion does it reproduce?

3. What would happen if it no longer existed? What fears, gaps, or crises might arise?

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[277] Paulo Freire, *Pedagogy of the Oppressed* (Continuum 2000); Bell Hooks, *Teaching to Transgress: Education as the Practice of Freedom* (Routledge, Taylor & Francis Group 1994).

4. What alternative practices, relationships, or systems could fulfill its intended goals without reproducing violence or hierarchy?

Groups are encouraged to engage in free dialogue, supported by visual aids (paper, post-its, whiteboards) or sketching. The exercise concludes with short presentations and open discussion, highlighting not consensus, but divergence, tension, and imaginative openings.

This pedagogical experiment embodies the principle of radical legal imagination, not merely as a conceptual tool, but as a transformative praxis. This exercise was informally applied to a group of ten students from different disciplines. What emerged wasn't a summary of findings, but something more like a collective sense of unease with how law is usually taught and understood. In that space, it became clear how unfamiliar it felt to speak about justice with uncertainty, or to approach it through emotions. What followed after the workshop ended was perhaps even more telling. No one left. People stayed, sitting in circles, discussing how practices like this might be brought into universities, communities, or institutions. What stood out wasn't the clarity of the answers, but the willingness to ask different questions. That in itself was a kind of beginning. That's why this research has not included the answers in this research, because the important part was that it generates more questions than answers.

3.4. Conclusion

This chapter fundamentally challenges the notion that the current legal system is unchangeable and highlights the limitations of traditional reform efforts, as they operate within punitive frameworks. Building on this critique, this chapter explains that law is a structure product of collective imagination shaped by societal values, myths, and symbols. Thus, it presents law as an "imaginary institution", a construct of collective meaning that can be reimagined, and liberated from its rigid and entrenched forms.

Central to this reimagining is the concept of radical imagination, a collective, destructive, yet generative force capable of envisioning and building alternative worlds. It is not merely an idealistic wish but a practical methodology that has been demonstrated through innovative practices such as community-based legal design, storytelling, and participatory activism. These efforts show how law can be reconfigured beyond traditional institutions, emphasizing relationally, joy, and creativity as fundamental values.

This chapter aims to connect theories of radical imagination with the legal field by introducing the concept of radical legal imagination. It explores how law schools, art, and grassroots movements can become spaces for cultivating speculative thinking and for unsettling legal authority. Crucially, it shows that the most transformative legal imaginaries often come from those excluded from the law's protection, abolitionist, Indigenous, and decolonial actors who enact justice outside state structures.

Finally, this chapter does not aim to offer definitive answers, but rather to open a space for questioning how legal systems might be fundamentally rethought. As existing frameworks

continue to reproduce exclusion and inequality, it becomes essential to think beyond established models. This chapter seeks to mark a point of departure, a conceptual and political invitation to imagine law otherwise, and to explore what more just and transformative legal futures could look like.

Conclusion

This thesis began from the premise that poverty, while not legally defined as a crime, is often treated as one in practice. Despite formal commitments to equality and neutrality, legal systems frequently operates in ways that stigmatize and penalize those living in economic precarity, reinforcing broader patterns of exclusion and control. Drawing on the concept of indirect criminalisation and Sara S. Greene's theory of legal immobility, this research has demonstrated that the law actively regulates poverty through mechanisms such as surveillance, bureaucratic sanction, spatial exclusion, and moral judgment. These practices, though not explicitly criminal, function as disciplinary tools that sustain socio-economic hierarchies rather than dismantle them.

A comparative analysis of Spain, France, and the United Kingdom reveals that indirect criminalisation is not an exception, but a structural feature of contemporary legal systems. Despite variations in legal culture and policy, each state deploys legal and administrative measures that construct poverty as a form of disorder to be managed and contained.

Yet this thesis is not limited to critique. Its second objective has been to reimagine law through the lens of radical legal imagination. Law is not simply a fixed institution to be improved from within, it is a socially constructed field that can be reinvented. If the law can function as a tool of exclusion, it also holds the possibility of becoming a space for repair, solidarity, and collective reinvention. This imaginative horizon does not offer ready-made solutions but opens a space for thinking differently about what law is and what it could become.

That said, this research is necessarily partial. The examples provided here are illustrative, not comprehensive. A deeper examination of indirect criminalisation would require engagement with a broader range of legal fields, such as family law, civil law, and immigration law, where exclusion is produced through less visible but equally powerful mechanisms. Moreover, poverty itself is not a singular or neutral category. It is deeply entangled with other forms of oppression, including race, gender, disability, and migration status. Any future research must adopt an intersectional approach to understand how legal systems interact with multiple, overlapping forms of inequality.

Finally, while this thesis has proposed the idea of radical legal imagination, much more work is needed to explore how imagination might shape legal practices, participatory norm creation, or transformative institutional design. This research does not close a debate, it opens one. If law is to be a vehicle for justice, it must be reclaimed as a dynamic, creative, and collective project. In the face of deepening inequality and legal cynicism, imagining alternative legal futures is not only necessary, it is an ethical and political imperative.

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