

Finding a way out of prison: Portugal, a collaborative model

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Abstract

This article deals with the challenge of overcoming the problems inherent in the prison system while trying to achieve what prison has never delivered on: making society safer. We propose to help combat the populist rhetoric of 'tough on crime' that feeds into imprisonment policies by taking a fresh look at what alternatives to prison are and what they can become. To the extent that such alternatives currently exist, they do so under the shadow of the prison, and as such they often end up doing little more than to serve its paradigm. We propose to turn that dynamic on its head. We look briefly at the history and political developments surrounding prisons. We focus on the United States of America as the dominant global force in this area over the past 50 years and on Portugal as an example on one hand of the socio/political milieu which has stifled reformist efforts, and on the other of a strategy change with regards to drug use offences which, we argue, provides us with a practical model for an effective alternative to current penal practices. Our aim is to stimulate discussion, with a view to eventual change, to counter inflamed dominant discourse and design policies that can meet social needs in the long term.

Keywords: prison; alternatives to prison; Europe; punishment; reintegration

Introduction

The irrationality and shortcomings of prison as the modern model for rehabilitation are broadly recognized¹, as is its failure as a deterrent. Despite

the effort and resources that have been employed across the world in attempting to overcome its fundamental flaws, in over two hundred years no country can claim to have established a model which is effective in preventing or even reducing crime. The global use of prison and its persistence despite the accumulated evidence of its inefficiency in its avowed aims indicates its other and more powerful functions: to discipline and control populations, mainly in the lower strata of society.

The relationship between imprisonment and the structural needs of capitalist development has been analysed extensively. The origins of penitentiary practices owe a debt to Bentham's utilitarianism and the culture of discipline in nascent industrial societies, as well as to the bio-politics of treating people as resources (Foucault, 1975 and 1999). Prison as a structural means to contain the poor (Wacquant, 2000) and the culture of control of which it is a part is both relatively benign and more all pervasive than its more violent predecessors. It is part of structural changes whereby social control has gradually become internalized, which implies both an acceptance of the justness of punishment and of the distinction between bottom-up violence (criminal and dangerous) and top-down violence (necessary and protective) (Dores, 2014).

It was not until the 1970s, when the closing of institutions like mental hospitals became possible, that alternatives to the prison became imaginable, and were imagined. Since then, however, the use of prison has grown exponentially. Alternative measures, rather than helping to bring about the end of the prison, have become a means to widen the scope of the punitive justice model, allowing the state to place ever more people in what is in effect a pipeline of criminalization and recidivism.

In recent years, what for many nations is an apparently unstoppable growth of prison populations and its corollaries has sparked a renewed interest by practitioners, academics and some policy makers in considering more significantly different alternatives to the current model. Focused on the challenge of reversing the increase in recidivism, prosecutions and consequently the number of people subjected to both prison and alterna-

tive sentences, the European Prison Observatory¹ (EPO) has developed recommendations for the adoption of a new perspective on alternatives to prison.

Relying less on prisons, we argue, would not only allow resources to be directed towards crime prevention and social reintegration measures, a more effective way to deal with undercurrent social problems (EPO, 2016b). The proposed model opens up the possibility of transforming traditional justice models from reactive and punitive to proactive and corrective, by empowering not only justice practitioners but offenders themselves to work together in a meaningful and ongoing process aimed at tackling the behavioural as well as the social conditions of the 'offending' individuals.

Portugal, as a member of the EPO, has contributed to its work from both ends of the spectrum. If the Portuguese justice and prison systems serve as a stark example of the inherent problems to the punitive corrections model (Dores et al., 2013), it is also from within its borders that what we argue is the best model for overcoming such problems is drawn. This piece reflects on the work of the EPO, and of the Portuguese team in particular, in developing the ideas encapsulated in the *Manifesto for a New Penal Culture* issued by the Observatory in 2016 (EPO 2016b).

Securitism and the dismantling of the social contract

The institutionalisation of crime prevention measures outside prison; the relatively lower cost of keeping offenders out of prison; the evidence of some crime prevention programmes reducing recidivism; the develop-

¹ The European Prison Observatory was conceived in Lisbon (Dores, 2003a) and realised on the initiative of the Rome based organisation Antigone, with funding from the European Commission. The Observatory studies the relation between the realities of each country, the European Penitentiary Rules and the decisions of the European Court of Human Rights on prison cases. It produces recommendations for good practice and guidance with regards to the adoption of European Court of Human Rights case law. The Portuguese research team is based at CIES-IUL.

ment of universalist welfare policies; the socio-political atmosphere in the 1970s: all of these gave rise to the idea of ending closed institutions like convents, asylums and prisons (Goffman, 1961). To intellectual abolitionism in the 1970s, the irrationality of imposing prison sentences on people who had to be later, and with great difficulty, re-socialized, was so obvious that the development and adoption of alternative penalties to prison seemed unavoidable. However, history gave us something very different. As rehabilitation lost ground on the policy high stakes, it seemed to some that 'nothing worked' and the focus shifted on deterrence as what should be the main focus of prison (Martison, 1974). This thinking may not have been very elaborate, but it reflected the political dominant thought much better than the intellectual sophistication of abolitionism.

The notion of policy delivering and increasing social justice, which had been a dominant aim since the nineteenth century, thus began to fade in the 1980s. The popularity of deinstitutionalization as a way to deal with marginalisation and its related problems waned as securitism began to gain ground among justice and penal practitioners (Garland, 2001). The aims of freedom and human rights, promoted in the West and used as propaganda against the Soviet Union and its gulags, somehow managed to quietly vanish into a nightmare. The exchange of freedoms for security became increasingly acceptable: see Guantanamo, Abu Grahیب, CIA secret prisons, internal and external barriers against immigrants, the criminalization of migrants and even of refugees (Butterfield, 2004).

As Sennet (2006) puts it, when the New Left in the 1960s broke with Sovietism and positioned itself against the bureaucracy and the state *in favour* of freedom, no one expected *lack* of freedom to ensue. As people were managed through the scrapping of a long-standing social contract which presupposed some sort of equitable distribution of the proceeds of production between employers and workers, this implied a tacit acceptance to surrender freedom in exchange for a sense of safety in the streets, in schools, at home and at work. Freedom as a civil right became subsumed to corporate freedom, financial freedom, the freedom to exploit labour and natural resources. The management tool, as always, was

fear: the fear of the other (Soviet menace), became fear of the other next door (crime); fear of the change the other might impose (Communism), became fear of the natural process of social, cultural, demographic, and scientific change; fear of the weapons of the other (the Bomb), became fear of the tactics of the other (terrorism).

This shift allowed ontological discriminations between social groups to be gradually (re)built, ultimately in favour of a global elite represented by a similarly globalized political class (Osborne, 2008). It also confirmed in popular discourse the long standing differentiation between the 'deserving' and 'undeserving' poor, national workers and immigrants, white collar and petty criminals. The criminalisation of the latter groups (Palidda, 2011) shares the same ideological ground that is used to justify divisive debt and welfare policies. It serves to identify a targetable group that must be controlled, even pre-emptively and has emboldened a generation of xenophobic politicians (e.g. in Greece, France, Poland, Hungary, Ukraine, Britain, USA).

The neo-liberal *tough on crime* approach

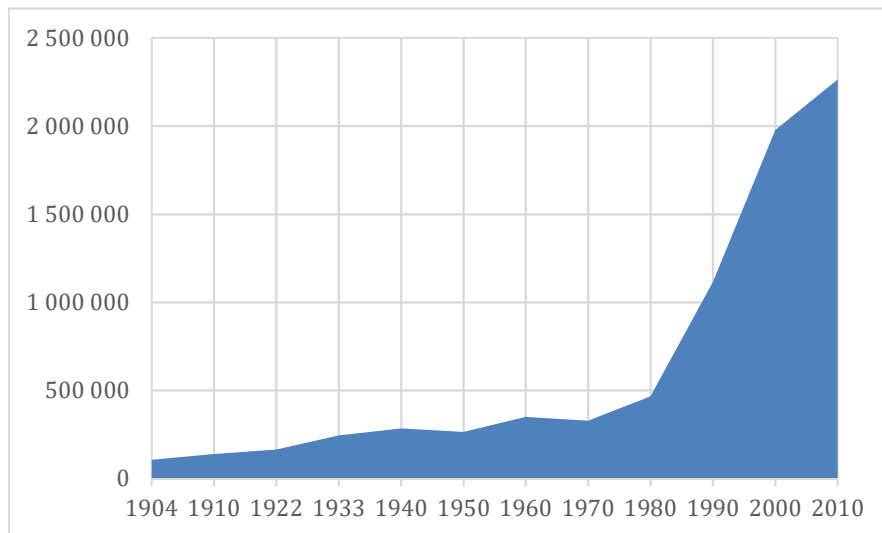
With neoliberalism, policies in the West tipped heavily in favour of the holders of capital: massive shifts of taxpayer revenue to the private sector through wholesale privatisation of public services; taxes for the rich and for corporate entities cut drastically and, in practice, often reduced to nothing; corporate subsidies increased at the same time that social welfare programmes were cut due to lack of tax revenue. This was taking place while developments in automation rendered human labour increasingly more dispensable, and globalised trade facilitated the pitting of workers from parts of the world with very different standards and costs of living against each other in competition for lower wages. Such policy and socioeconomic dynamic shifts required the development of narratives able to intellectually and emotively capture those most affected and to channel their frustrations, anger and fears onto areas not likely to interfere with this global project.

To this end the emotions elicited by violence and crime were gradually moving to the central ground of politics, with parties competing over who was toughest on crime. According to this populist narrative being soft on crime implies weakness or, worse, being on the side of the criminals. It justifies the escalation of oppressive and punitive measures. The security emergency trap can be triggered at any time (Brandariz, 2005), and anger and frustration is diverted onto easily identifiable targets.

The dominance of the neo-liberal economic consensus coincided with and was aided by 'tabloidism' (Amaral et al., 2008). What can be defined as policy making via the tabloids enables a discourse whereby the media and politicians would keep reinforcing and validating a whipped up fear of crime. This produces a sense of urgency, which inhibits calm and reflective political and public discussions over how socially unacceptable behaviour can be stopped or prevented, as well as any dispassionate consideration of the social and economic costs of waging a 'war on crime' and increasing the numbers of people in prison.

Perhaps the prime example – and certainly one much invoked by commentators – of this imprisonment escalation is the United States. Since the 1970s the imprisoned population there has more than quadrupled, from 161 prisoners per 100,000 population in 1972 to 707/100,000 in 2012, leaving the nation holding nearly a quarter of all the world's prisoners (Travis et al. 2014). The desire expressed both by California's Governor Schwarzenegger and President Barack Obama to reduce the number of prisoners has had little practical impact. The ex-president's promise to close Guantanamo did not materialise. The prison lobby, representing the corporations that industrialized the sector, backed by the prison guards unions and other powerful vested interests (such as those maintaining the right of free access to arms and global prohibitionist policies), seems not only unbeatable but unshakable.

Figure 1. Number of prisoners in the USA 1904-2010 (based on census data)



Source: acrosswalls.org

Although understanding the escalation of incarceration in the USA requires a complete analysis of its history, especially as to the politics of race, for our purpose the last 50 years will do. Shortly after the collapse of the Soviet Union – when the United States of America saw itself as the world's only superpower – the 'new gulag Western style' established itself (Christie, 2000), taking shape in the 1980s, especially in California (Gilmore, 2007). What we now regard as the industrial-prison complex grew apace, fuelled by a renewed dedication to the criminal persecution of black and brown Americans despite, and arguably because of, the civil rights victories of the preceding decades. The instrument was the Drug War, begun in earnest by Richard M. Nixon in 1971 (Sharp, 1994): the American prohibition experiment of the early 20th century was picked back up (Woodiwiss, 1988), with the same consequences – gangsterism and corruption (Woodiwiss, 2005). This destructive prescription would be globalized both directly through US pressure on international and national governing bodies to adopt similar and/or supporting policies, and indirectly through the impact of its example of what came to be regarded as legitimate behaviour.

As discussed above, public discourse seems to have accommodated an erosion of the principle of equality before the law (Jakobs and Meliá, 2003) and evidence of state-inflicted ill treatment and torture goes unpunished. One of the most striking examples is perhaps the boasting about the extra-judicial killings of thousands of alleged drug dealers by the Philippine President, Rodrigo Duterte, reportedly applauded by the USA's president elect Donald Trump (The Guardian, 2016b). The expansion of prisons favours and is favoured by this political irrationality. What happened in Guantanamo and the Iraqi prisons under American control was a replica of what was happening, and continues to happen, in the USA's own prisons (Perkinson, 2004). Techniques and institutional tolerance for torture were brought to Iraq and Cuba with the rest of the American arsenal. But they also were, and continue to be exported, via for example the maximum-security prison model. In such an environment alternatives to imprisonment, rather than represent the hope of bringing more effective and anti-discriminatory tools to the fight against crime, are straightjacketed by an ideology which keeps them reduced to just another compensatory blanket for the feelings of social insecurity that have justified the securitarian drift (Ferreira, 1997).

The relation between imprisonment and crime rates: Portugal as a case study

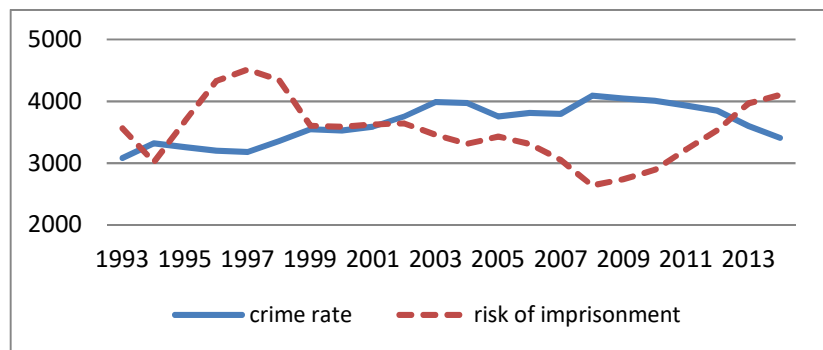
Like other Western nations, Portugal in the neo-liberal era has witnessed the rise of a political class whose policies are rooted in fear and social divisiveness. Portugal is among the developed countries with the highest levels of social inequality (OECD, 2013), a dynamic which amplifies social problems, including crime (Wilkinson and Pickett, 2009).

In the years following the April Revolution of 1974 in Portugal the number of prisoners was small (e.g. 3,633 in 1976), but the numbers rose steadily. In the 1990s, when prisons moved to the political centre stage, the growth of the prison population sped up, from 7,877 in 1991 to 12,808 by 1999 (Pordata, 2017).

The rate of recorded crime also rose in Portugal during this period. Trend data are only available from 1993 onwards: they show that in 1993 the total of crimes recorded by police was 307,333; this number rose steadily, to a high of 431,977 in 2008, from where it dropped to 356,032 in 2015 (DGPJ, 2017). What is interesting about these numbers is the fine print in the government statistics, which indicates that beyond the addition of new categories of crimes throughout this period, many of the years that show increases in crime rates include figures from government enforcement agencies that had not been previously considered. The work of teasing out what are actual crime rate increases and what is politically (policy) driven statistical inflation remains to be done.

As Jock Young (1999), among others, has pointed out, there is no unambiguous correlation to be found between the risk of imprisonment and recorded crime rates. For example, after a peak in 1997 the risk of imprisonment decreased in Portugal, while the rates of recorded crime continued to rise for a decade (see Figure 2).

Figure 2: Rates of recorded crimes and risk of imprisonment, Portugal 1993-2014



Source: DGPJ (1993-2013); Pordata (1993-2013)

Risk of imprisonment= $n.$ prisoners/ $n.$ crimes \cdot resident population

Crime rate= $n.$ crimes/ $pop.$ (per 100,000 inhabitants)

The post-1997 decline in the risk of imprisonment coincided with President Jorge Sampaio ending the practice of periodic amnesties (which had worked as pressure valves for overcrowded prisons). This had the effect

of putting a brake on sentencing practices that had contributed to a saturated system, with prison health near collapse under the strain of an epidemic of infectious diseases (e.g. drug use related, TB). However, Portuguese prisons have continued to operate above capacity (with the exception of a drop in 2007-08). The previous year, 1996, Portugal had become the country among Council of Europe nations with the most reported prison deaths – five times the average of all the other Council Europe nations (Tournier, 1998).

The Portuguese government, faced with a neglected prison system and challenges by prisoners (successive hunger strikes) and the Bar Association (highlighting the lack of legal representation and support for most of the many pre-trial detainees), took a number of steps in 2001 to take control of the situation, including the development of security wings, a high-security prison and a rapid intervention team that could be deployed by the Directorate of Prisons. The use of open prisons was reduced (Lusa, 2006).

Despite several independent critical reports from 1996 to 2003 and a government appointed commission which issued a very critical report in 2004, legislative reforms were not initiated until 2007.

What we see in Portugal in most of the 1990s is that the risk of imprisonment went up significantly, while the level of crime remained stable. From the late 1990s the risk of imprisonment reduced and the crime rate started increasing. The trends were reversed once more at the time of the global financial crisis – and with new legislation on criminal justice in 2007 – when the crime rate tended to decrease and the risk of imprisonment to increase. It is difficult to find a credible correlation between these two phenomena.

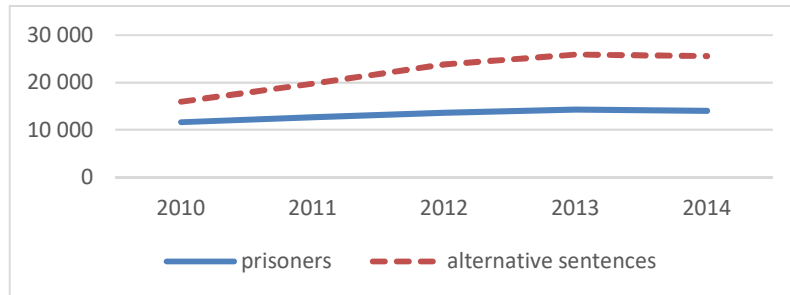
The conclusion is that the risk of imprisonment and the crime rate do not have any proven correspondence; nor do the political decisions and consequent policies (e.g. in relation to sentencing) that affect risk of imprisonment have to do with crime levels (recorded or otherwise). What polit-

ical decisions and policies seem to relate to and impact upon instead is the level of imprisonment in the country.

Alternatives: in the shadow of the prison

Alternative sentences as they are currently understood are a tool in the neo-liberal arsenal of control: measures ancillary or complementary to prison. They exist in the shadow of prison, as a component of the retributive philosophy of an eye for an eye and a tooth for a tooth. As they are, rather than distancing individuals from prison, they bring them closer to it. Whether they are suspended sentences, electronic monitoring, community service, or other programmes placing the offender under the direct control of some segment of the criminal justice system, the results tend to be the same: the individual is subject to stigma, conditions, and the looming threat of prison. Alternative measures to imprisonment have mainly ended up contributing to a net-widening phenomenon in the criminal justice system.

In Portugal this phenomenon is particularly evident. Although alternatives to prison had been on the books since 1982, only in 2006, on the occasion of an international conference held in Portugal on the issue of probation services, did the government declare its intention to encourage the judiciary to adopt them (Lusa, 2006). By 2014 there were more than 25,000 individuals serving alternative sentences, in addition to a record level of prisoners (over 14,000), compared to around 4,947 individuals serving alternative sentences and 12,889 incarcerated in 2005 (Dores et al., 2015).

Figure 3. Numbers serving prison and alternative sentences in Portugal

Source: Space II (2010-2014)

Although these numbers can be seen as a significant achievement, in real terms they are far from a success story. Firstly, although indeed there are a lot more people under alternative sentences, the prisons continue to be over capacity. This means that the increase in the number of people serving alternative sentences is due to those who previously would not have come under the jurisdiction of the criminal justice system. Whether these are people convicted for newly criminalised behaviours or individuals whose offences previously would not have been deemed sufficiently severe to merit punishment, the result is the same: there are many more people caught up in the prison pipeline.

Secondly, although the Portuguese legislation contains specific provisions for tailored reintegration plans for each prisoner, this is dead letter in practice. Monitoring and support services working towards the social reintegration of those leaving prison or serving alternative sentences are residual or non-existent (Dores et al., 2015). This means that alternative sentences generally translate into prison sentences when the person violates conditions or commits a new offence. In this way, alternative sentences, rather than reduce prison population, bring more pressure to the system, as it must deal with ever greater numbers getting caught in the revolving-door effect that is recidivism.

These dynamics mean that alternative sentences, as they exist today, are nearly as fit for purpose as prisons themselves. They serve to hide the

heavy-handedness of the penal system from the more liberal minded, and to convince the more conservative minded that there is no alternative to harsh punishment. This process makes the demagoguery of tough-on-crime sloganeering a low-hanging fruit for politicians.

While the Portuguese situation is of course not generalizable, net widening takes place even in countries with better developed supervisory and support programmes, as a study of eight EU countries shows (Tabar et al., 2016). The problem is not necessarily that the programmes in themselves are flawed, but that, because the underlying philosophy is fundamentally punitive, the rehabilitative potential is lost, and even perverted, by the structural (political and social) dynamic in which they must function. The UK, for example, is a nation where practitioners often express frustration that such socio-political dynamics largely thwart the positive potential of the programmes they are trying to implement (EPO, 2016a).

A truer alternative: dealing with problems outside prison

According to the European Prison Observatory (2016b) the Portuguese policy of substance decriminalisation has been effective in dealing with drug abuse and can be used as a framework for tackling other problematic behaviour. In existence since 2001, this alternative approach towards substance users, who had previously been left largely in the hands of the criminal justice system, has proven remarkably efficient in dealing with the many problems associated with drug misuse, including criminal behaviour, by combating both the social conditions that favour it and its harmful social consequences (*ibid*).

A punitive, criminalising approach to drug use creates the conditions for a lucrative and violent parallel economy by fuelling organised crime manufacture and supply networks. Illicit drugs trafficking networks facilitate arms trafficking and the associated financial corruption and money laundering schemes, damaging both the local and international institutional and political fabric (Fabre, 2003). The health, financial, emotional harm

this approach causes individuals and their families is immensely damaging. To some degree a punitive approach dehumanizes us all. As groups directly and indirectly associated with criminal behaviour are segregated and marginalised, they develop marginal cultures; such marginal cultures arise an atavistic resentment and fear in the mainstream, which are used to justify control and punishment (Wacquant, 2001).

The Portuguese policy of drug use decriminalisation sought to bring problematic users in from the cold, so to say. The criminalisation model makes all other remedies contingent upon the notion that at the root of the problem lies a moral flaw which the individual must choose to correct for any other support to be 'deserved'. Instead, the government decided it was high time to treat users as citizens who, whether or not self-inflicted, suffer from a condition as deserving of attention, understanding, support and remedy as type 2 diabetes (another, arguably, self-inflicted health condition prevalent in modern society) (João Goulão in EPO, 2016a).

Although the use and possession of drugs for personal use (up to a maximum limit set in law) remains illegal, it has been dealt with in Portugal since 2001 by the Ministry of Health, who took over jurisdiction from the Ministry of Justice. In the decriminalised system, people found using or in possession of illicit drugs are directed not to the criminal justice system but to a health/harm reduction infrastructure that was put in place with the specific purpose of supporting and reintegrating them.

The Service of Intervention on Addictive Behaviours and Dependencies (SICAD)² is the Ministry of Health organisation that spearheads a nationwide network of support, at the centre of which are the Commissions for the Dissuasion from Drug Abuse (CDTs³). The Commissions work in all the

² Portuguese acronym for Serviço de Intervenção nos Comportamentos Aditivos e nas Dependências

³ Portuguese acronym for Comissão para a Dissuasão da Toxicodependência

districts of Portugal as reception and evaluation centres for substance users who have been issued a summons to present themselves, either by the police (because they were stopped and found in possession of a specified amount of any illegal substance), or by the courts as an alternative to conviction. They may also attend because they have been referred to their local Commission by their school or parents or because they themselves seek the support and services available.

Attendance to CDTs is voluntary and non-compliance with CTDS' directions does not carry a criminal penalty. CDTs can issue fines (*coimas*), a civil instrument which is generally used as a last resort and kept at very low levels, as it is seen as counter-productive to impose further financial burdens, especially on problematic users (Silvestri, 2015). Yet, not only do an overwhelming majority of the individuals who have been referred attend the Commissions and accept to undergo an evaluation process, but most of them also agree to comply with the recommendations issued by the CDT's expert panel⁴ (e.g. a tailor made treatment programme, attendance requirements etc.). What explains such a remarkable success?

The human psyche naturally avoids/resists/fights aggressive/antagonistic/confrontational situations, especially when it sees itself at a disadvantage. This well-established survival mechanism is a fundamental obstacle to the traditional punitive justice model in achieving rehabilitative aims. Even when a programme is part of an alternative-to-prison approach as they currently exist, the fact of it being imbedded within the antagonistic ('you are a marginal and we are going to set you straight') framework establishes an interaction based on perceived aggression and actual resistance which colours all that follows regardless of how it is presented.

⁴ A national study of a representative sample conducted by SICAD found that over 95% of individuals called before the CDTs accept the recommendations made by the expert panel (Carapinha and Guerreiro, 2016)

The CDTs avoid this problem by distancing themselves as much as possible from coercive, antagonistic, authoritarian dynamics. This 'is reflected in the layout and visual elements of their physical spaces, and of the rooms where the hearings take place in particular: everyone sits around a table and the atmosphere is informal. The trappings of institutional settings are dispensed with. The intent is to avoid resembling a court and its signifiers. The sitting arrangements are non-hierarchical and put only a minimal amount of distance between the two sides' (Silvestri, 2015).

The first encounter between the CDT's panel and the person who has been referred to them has been described by João Goulão, SICAD Director, as 'more similar to a doctor's consult than a court proceeding' (EPO, 2016a). It allows for a relation of trust to get established between the practitioners and the people who come to be assessed and guided by them and is essential in setting the groundwork for a collaborative process.

Both prior to the initial evaluation, and subsequently throughout the entire process, regardless of how involved the recommendations issued by the CDT's expert panel are, great care is taken by the CDTs to protect the privacy of the subjects by keeping all data and communications confidential.

This therapeutic/harm-reduction approach has proven remarkably successful when compared to the previous punitive regime. Since its introduction in 2001 the number of people imprisoned for drug related offences in Portugal has significantly decreased, as have drug related infectious diseases and drug overdoses (see Silvestri, 2015). These outcomes, although largely dependent on the complex of state, private and civil society resources brought to bear, are contingent upon the understanding that people are much more likely to thrive in a corrective process that above all empowers, giving them responsibility over the direction of their lives, free of stigma and overhanging threats.

The epistemological and operational shift of the kind that took place in Portugal towards drug use situates practitioners and the people they

work with in very different dynamics from the ones operating in current criminal justice systems and are likely to benefit both groups. Instead of having to chase after and convince often uncooperative individuals, practitioners can involve their clients in a collaborative process. For society as a whole too this approach is a win-win. The process gets much better results, at a fraction of the cost (see e.g. Gesaworld 2013), of previous strategies.

Even more importantly, society avoids the most counterproductive aspect of the traditional prison/alternative corrective model: tell people they are 'other', and surround them with nothing but other such labelled individuals and inevitably a sense of identity based on marginality is created. Such an identity brings corresponding behaviours, values, outlooks, and goals. Prisons are often referred to as 'universities of crime', not only because they concentrate a certain type of expertise, but because it is there that many people define themselves in personal terms, learn skills and connect to the available networks. People make choices and decisions in accordance to their idea of who they are and what is expected of them. In prison this generally means choices and decisions which rather than realise positive expectations actually reproduce negative ones. The prison model paradoxically expects the individual to challenge the negative identity it is structured to reinforce. The result tends to work exactly in opposition to society's interest as individuals seek to affirm and define that identity.

Arguments for a new penal culture

In the last two centuries, prison has mainly been said to serve two purposes: to deter (via the fear of or the actual stigma and punishment) and/or to rehabilitate. By most measures, neither has been effective. A long standing movement has sought to reform prison in order to improve its rehabilitative functions, to curb its excesses and improve the treatment of prisoners.

Reforms do not, however, address the social discrimination that is symbolically reinforced by the penal system through processes of selective criminalization. More importantly, prison reforms fail to achieve their goals in that they cannot distance the individual from what prison represents. Reforming the prison means accepting that the prison as an institution can work, but punishment and rehabilitation are not easy bedfellows.

Punishment (beyond the damage it causes psychologically and the sort of message it provides), as institutionalised in the criminal justice system, generates labels and stigmas that brand individuals for the rest of their lives, making it very difficult if not impossible to achieve the latter and reintegrate into a society that brands them as outsiders. Crimes are social, ideological and legal constructs, and as such they are arbitrary, but once the individual is saddled with the label of criminal the impact is all too objective and consistent. Many practices that are aberrant crimes today - slavery, ethnic cleansing, apartheid, child labour exploitation (examples are legion) - were legal in the not-so-distant past, and those who engaged in them accepted as respectable citizens. Similarly, future generations may well look back on practices that are today generally tolerated as aberrant and criminal (for example, driving cars that spew pollutants, killing animals for sport, etc.).

The arbitrariness and subjectivity of crime can also be seen in how similar behaviour is very differently categorised and treated according to the perpetrator: a poor person defrauding someone of a few pounds can be popularly constructed as a worthless criminal deserving of a stiff prison sentence, while a rich man defrauding thousands of people of their life savings can become President of the United States (Cassidy, 2016). Yet, if it is easy enough to recognise the incongruities of the construct (crime), the implications of the label, once officially stamped, seem much harder to fully grasp, much less manage. Even in those countries where the criminal theoretically maintains all rights and prerogatives of citizenship once the sentence is served, the stigma of the label is nearly impossible to escape. For this reason criminals are marginalised, and the implications of this are severe, not only for the individual, but for society in general: the

individual is largely restricted to marginal life options, and society must absorb the results of those options being realised.

How society deals with unwanted and harmful behaviour has profound implications. Blaming and scapegoating those who are officially branded as 'bad' may satisfy an urge for redress or serve as an outlet for frustrations, but does not actually solve the individual and social issues underlying criminalised and other socially undesirable behaviours. The thing we want, a sense of security, escapes our grasp. Even accepting the dominant construction of crime, we see that, as things are, that subset of undesirable behaviours is very difficult to get a handle on both in terms of scope and control. You can think of undesirable, rule breaking and/or harmful behaviour we often shorthand as 'crime' like a pyramid, at the base of which is the unknowable number of total such acts committed; then, in ever decreasing numbers the higher up the pyramid, are the acts that are reported to the authorities, then those recorded by the police, then those that are investigated, then the actual arrests, then prosecutions, and finally, at the very top of the pyramid, a very small number of convictions. All of it meaning that the system as it exists is very inefficient at identifying, solving, and, above all, protecting society from undesirable behaviours.

If the criminal justice system is to aim for a truly corrective social role, it will require the participation of those who are at the centre of the challenge: the perpetrators. We propose that such collaboration can be achieved.

As the very successful Portuguese experiment has proven, treating offenders in a way that, beyond avoiding stigmatisation, does everything to draw the person into, rather than away from, society and its core institutional and structural dynamics, by empowering them to constructively take charge of their lives is much more productive than traditional puni-

tive approaches. Resistance to treatment⁵ can be overcome more easily; the problems of stigmatisation and marginalisation are avoided; and, even more importantly, with empowerment, a dynamic of responsabilisation develops which holds the individual accountable for her/his actions for life, unlike traditional punitive models in which accountability ends with the completion of the sentence. The possible practical models for this are a matter for later discussion, but its key is that, if responsibility lies with power, the obvious dynamic difference from the current paternalist punitive model to one of collaborative empowerment is a shift of responsibility which is a powerful tool for accountability.

The idea the EPO proposes (EPO, 2016b), and we expand upon, is to advance the Portuguese model for dealing with low level drug offences, with the necessary adjustments, to a much broader spectrum approach to criminal justice. The challenges are obvious but, we would argue, so are the benefits: a strategy that can both make society safer, and help those typically most rejected by society, humanizing both the individual and society as a whole.

If a society without prisons is too difficult to imagine at this point, that is OK. The strategy here is not to abolish prison, but to invert the present structural dynamic. Currently, to the extent that alternatives to prison exist, they do so firmly planted under the dominant shadow of the prison, and as such they often end up doing little more than to serve that paradigm. We propose to turn that dynamic on its head: place the prison under the dominant shadow of an alternative system similar to what has been outlined above. Rather than being criminalised, offenders would be asked to take – or to share - responsibility for their own reintegration based on acknowledging their problem behaviour and seeking to understand its causes and working to resolve existing issues in collaboration with practitioners. Prison should become a tool of last resort, left to the

⁵ Treatment here is meant as in all that constitutes rehabilitative efforts, be it social support, counselling, guidance, therapy, education, etc.

courts in dealing with cases where society's safety cannot at this point be addressed by any other means.

The European Prison Observatory has made this Herculean task its own but, of course, it cannot do it alone. Addressing the current irrationality in the field of sentencing involves transforming the culture and attitudes of many, including the police and prosecutors, as well as changing the populist discourse, focused as they are on dominant and established typologies of behaviour. Ultimately the necessary changes will depend on the political will to make them happen, and this requires that all stakeholders invest themselves in discussing and developing the idea, as well as educating each other and the public as to the challenges and proposed solutions. Only then can a new approach to crime begin to take form.

Like all difficult tasks, this one is better tackled with a good, solid, and well developed alternative to what is being challenged. It is that work, of building ideological and practical muscle upon the strong bones of this idea, that we must come together to concretise.

Conclusion

As Soering (2004) points out in the expressive title of his book, prisons are 'An Expensive Way to Make Bad People Worse'. Dominant social and political constructs have created a simple but constrictive notion on how undesirable behaviour is to be controlled. Culturally we are trapped in and by the notion that incapacitating the perpetrators is the only way to deal with it. However, as the Portuguese experience of drug use decriminalisation shows, this assumption can be successfully challenged.

Prisons in particular, and criminal justice systems generally, are both symbolic of and tools for fending against the 'other', that which is a perceived threat to the health and security of our communities. Following an organic analogy, we can think of society as an organism and the criminal justice system as its immune system. The primary function of an immune

system is to identify threats to the body, and, beyond mounting immediate defences, to develop antibodies to protect it for the future. To do this, the criminal justice system must become capable of identifying the *systemic* failures and flaws which make societies vulnerable to systemic threats (like poverty, marginalisation, inequality and their consequences). Criminal justice systems and societies in general will not be able to eradicate or significantly reduce problems by treating symptoms, and by treating them with punitive plasters. Instead, we argue that working proactively *with* the people who in one way or another offend the rules of society in ways that are disruptive or harmful is at least less harmful in itself and at best much more constructive.

As Durkheim put it, societies cannot survive without some deviant, creative, innovative, anomic practices (Dores, 2003b), but an exponential growth of anomie is damaging to society and is likely to happen in situations where social cohesiveness decreases. As shown in Wilkinson and Pickett's influential study (2009), health and social problems are strongly correlated to inequality, more specifically to inequalities in wealth. The more unequal a society, the less cohesive it is, and the more it suffers from anomic behaviour. More cohesiveness and less income inequality are systematically associated with less anomie and fewer social problems.

Like other social problems, crime is best prevented by increasing cohesiveness and decreasing income inequality. What we hope our debate (and the social sciences which should support it) can inspire is a holistic approach to the prevention of crime, rather than the atomistic strategy typically employed by Western culture, thus beginning to bring society together (build social cohesion) at the point where it sees itself farthest apart.

References

- acrosswalls.org (2014). *Prisoners in the U.S. from 1900*.
<http://www.acrosswalls.org/datasets/prisoners-us-from-1900/> Accessed 25 March 2017
- Amaral, J., Branco, M., Mendonça, S., Pimenta, C., Reis, J. (2008). Ciência económica vai nua. *Público*. <http://www.publico.pt/opiniao/jornal/a-ciencia-economica-vai-nua-286514>. Accessed 24 February 2017.
- Brandariz, J. (ed.) (2005). *Guerra Global permanente - la nueva cultura de la inseguridad*, Madrid: Catarata.
- Butterfield, F. (2004). Mistreatment of Prisoners Is Called Routine in U.S. *The New York Times*, 8 May.
- Carapinha, L., Guerreiro, C. (2016). *Intervenção das CDT e alterações nos comportamentos na perspetiva dos indiciados*. Lisboa: SICAD
- Cassidy, J. (2016). Trump University: It's Worse Than You Think. *The New Yorker*, 2 June.
- Christie, N. (2000). *Crime Control as Industry - Towards Gulags, Western Style*. London: Routledge.
- Direção-Geral da Política de Justiça (DGPJ) (1993-2013). *Estatísticas da Justiça, crimes registados*.
http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_636214620787343750. Accessed 12 February 2017.
- Dores, A. (2003a). *Prisões na Europa – um debate que apenas começa/ European Prisons – a debate that just begins*. Oeiras: Celta.
- (2003b) Proibicionismo e Anomia – uma apresentação do conceito estados-de-espírito. Lisbon: ISCTE.
- (2014). Violence in Society. *Pensamiento Americano*, 7(13), 144–162.

Dores, A., Pontes, N. and Loureiro, R. (2013). *Prison Conditions in Portugal*. Rome: Antigone Edizioni

Dores, A., Pontes, N. and Loureiro, R. (2015). *Alternatives to Prison in Europe: Portugal*. Rome: Antigone Edizioni

European Prison Observatory (EPO) (2016a). *Alternatives – Out of the Shadow*. Lisbon.

http://www.prisonobservatory.org/index.php?option=com_content&view=article&id=28:manifesto-for-a-new-penal-culture&catid=14:alternative&Itemid=130 Accessed 20 January 2017.

----- (2016b). *Manifesto for a new penal culture*. Rome.

http://www.prisonobservatory.org/index.php?option=com_content&view=article&id=28:manifesto-for-a-new-penal-culture&catid=14:alternative&Itemid=130 Accessed 20 January 2017.

Fabre, G. (2003). *Criminal Prosperity: Drug Trafficking, Money Laundering and Financial Crises After the Cold War*. New York: Routledge.

Ferreira, E. (1997). *Crime e Insegurança em Portugal: Padrões e Tendências (1985-1996)*, Oeiras: Celta.

Foucault, M. (1975). *Surveiller et punir : naissance de la prison*, Paris: Gallimard.

----- (1999). *Microfísica do Poder*, Rio de Janeiro: Graal.

Garland, D. (2001). *The Culture of Control – Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press.

Gesaworld SA (2013) *External evaluation, National Plan Against Drugs and Drug Addictions 2005-2012*, Lisbon: Governo de Portugal

Gilmore, R. (2007). *Golden Gulag – prisons, surplus, crisis and opposition in globalizing California*. Berkeley: University of California Press.

Goffman, E. (1961). *Manicômios, Prisões e Conventos*, S. Paulo: Perspectiva.

Jakobs, G. and Meliá, M. (2003). *Derecho Penal del Enemigo*, Madrid: Cuadernos Civitas.

Lusa (2006). Governo quer incentivar medidas alternativas às penas de prisão. *Público*, 22 September.
<https://www.publico.pt/sociedade/noticia/governo-quer-incentivar-medidas-alternativas-as-penas-de-prisao-1271032>. Accessed 12 February 2017.

Martinson, R. (1974). What works? Questions and answers about prison reform. *The Public Interest*, (35), pp.22–54.

Osborne, P. (2008). *The Triumph of the Political Class*. London: Pocket Books.

Organisation for Economic Co-operation and Development (OECD) (2013) *Income Inequality 2013*, <https://data.oecd.org/inequality/income-inequality.htm>. Accessed 25 January 2017.

Palidda, S. (ed) (2011). *Racial Criminalization of Migrants in the 21st Century*. London: Ashgate.

Perkinson, R. (2004). The Banality of Abu Ghraib. *Project Syndicate*.
<https://www.project-syndicate.org/commentary/the-banality-of-abu-ghraib?barrier=accessreg>. Accessed 21 January 2017.

Pordata (1993-2013) *Reclusos: total e por sexo – Portugal*.
<http://www.pordata.pt/Portugal/Reclusos+total+e+por+sexo-271>
Accessed 12 February 2017.

Sharp, E. (1994). *The dilemma of drug policy in the United States*. New York: HarperCollins.

Silvestri, A. (2015) *Gateways from Crime to Health: The Portuguese Drug Commissions*. London: WCMT.

Sennett, R. (2006). *The New Culture of Capitalism*. Yale University Press.

Soering, J. (2004). *An Expensive Way to Make Bad People Worse: An Essay on Prison Reform from an Insider's Perspective*. New York: Lantern Books.

SPACE II (2010-2014). *Council of Europe Annual Penal Statistics*. Strasbourg: Council of Europe.

Tabar O., Miravalle M., Ronco D. and Torrente G. (2016). *Reducing the prison population in Europe: Do community based sentences work?* Rome: Antigone Edizioni.

The Guardian (2016a). *Chilcot report: key points from the Iraq inquiry*. 6 June. <https://www.theguardian.com/uk-news/2016/jul/06/iraq-inquiry-key-points-from-the-chilcot-report>. Accessed 20 January 2017.

The Guardian (2016b). *Philippines' deadly drug war praised by Donald Trump, says Rodrigo Duterte*. 2 December. <https://www.theguardian.com/world/2016/dec/03/philippines-rodrigo-duterte-donald-trump-white-house-invite>. Accessed 20 January 2017.

Travis, J., Western, B. and Redburn, S. (eds) (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington, DC: The National Research Council.

Tournier, P. (1998). *space I Statistique Pénale Annuelle du Conseil de l'Europe*, Enquête 1997. Paris.

Wacquant, L. (2000). *As Prisões da Miséria*, Oeiras: Celta.
------(2001). *Deadly Symbiosis: when ghetto and prison meet and mesh*. University of California, Berkeley.

Wilkinson, R. and Pickett, K. (2009). *The Spirit Level – why more equal societies almost always do better*, London: Penguin Books.

Woodiwiss, M. (1988). *Crime, Crusades and Corruption - Prohibitions in the United States, 1900-1987*, London: Piter Publisher.

----- (2005). *Gangster Capitalism: The United States and the Global Rise of Organized Crime*, London: Constable.

Young, J. (1999). *The Exclusive Society*, London: Sage.