Edited by Victoria Canning

2014

Sites of Confinement

Prisons, Detention and Punishment

The European Group for the Study of Deviance and Social Control

Edited by Victoria Canning

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Civil Registry and Migration Department in Cyprus by Victoria Canning

Border Area of Nicosia, Cyprus by

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Train Station Homelessness by

Vickie Cooper

Model of Incarcerated Man, Ruthin Gaol, Wales by Victoria Canning

**CHAPTER 7:**

***Playing The Get Out Of Jail For Free Card:***

***Creating A New ‘Abolitionist Consensus’?***

*David Scott, Liverpool John Moores University, England*

*... whenever experiences shows that certain things do not answer the purpose for which they were intended, then the right to continue ceases. That is, whenever it becomes apparent that certain acts done for the purposes of punishment do not serve the purposes for which they were intended - i.e. do not tend to protect society - then the right to repeat them ceases, and any further repetition of them will be simply a wrong done by society to one of its members, an injury inflicted by the strong on the weak.*

So wrote John Peter Altgeld (1884:50) 130 years ago in his book *Our penal machinery and its victims.* In this classic text Altgeld raised major objections to the imprisonment of children, women and the use of remand, and his critique of the ‘penal machinery’ is all the more interesting because at time of writing he was a serving American Judge. Previous papers have pointed to numerous limitations facing contemporary sites of confinement, indicating that time has once again come to recognise, as Altgeld did, that their repetition is ‘simply a wrong done by society’ by the ‘strong on the weak’.

The case against prisons ‘right to continue’ (Ibid) seems all the more pertinent in our time of ‘hyper-incarceration’ (Wacquant, 2010). Indeed the recent growth in the Average Daily Population (ADP) of prisoners in England and Wales is staggering. At the end of 1992, for example, the ADP stood at around 40,600 prisoners, yet by October 2011 the daily population had surpassed 88,000. Although the ADP has declined in recent months – on Friday 22nd March 2013 there were 84,501 people in prisons and young offender institutions in England and Wales and a further 366 children held in secure children’s homes and secure training centres - prisoner populations are out of control. Despite such exponential growth it remains all too clear that prison does not work, at least when measured against its official aims (Sim, 2009). 47% of adults are reconvicted within one year of release. This figure increases to 60% for ex-prisoners who served sentences of less than 12 months and to as high as 70% for those who have served more than ten prison sentences (MoJ, 2009).

When challenging hyper-incarceration, abolitionists must advocate strategies and tactics that can be adopted in our historical conjuncture and thus be immediately influential. This should not mean compromising abolitionist values or abandoning utopian visions or radical alternatives, but rather being politically astute and having a clear strategy of engagement. The most important question, I think, for penal abolitionists today is ‘what can we do right now to challenge hyper-incarceration and yet at the same time leave open the possibility for radical change?’

Our escape from hyper-incarceration begins by reversing the tide and making small steps towards penal abolition and the creation of a society rooted in the principles of social justice and acknowledgement of common humanity. Any successful intervention must be abolitionist, for it is only by adopting abolitionist principles and values that we can hope to avoid ‘co-option’ (Mathiesen, 1974) and ‘carceral clawback’ (Carlen, 2002). Yet abolitionists cannot achieve this alone. We need a broad based alliance that draws upon penal pressure groups, the liberal penal lobby - penal minimalists, reductionists and moderates – as well as progressive politicians, practitioners and members of the general public. Further, both penal and social transformation can only be achieved through alliances with other radical social movements committed to social justice, anti-violence and human dignity for all. We need a counter-hegemonic strategy and consensus consistent with abolitionist values and sensibilities if we are to effectively dismantle the penal apparatus of the Capitalist State.

I have referred elsewhere to how an abolitionist real utopia (Scott, 2013a, 2013b) would aim to challenge hyper-incarceration whilst at the same time promote radical social and penal transformation. Such an abolitionist real utopia would be grounded within the immanent real world conditions of our historical moment and its strategy for the radical reduction in prison populations would draw upon the ‘attrition model’ and its associated stance of the ‘selective abolition’. Let us consider this further.

The writings of John Peter Altgeld and William Nagel both espoused embryonic versions of the attrition model, but it is the writings of Faye Honey Knopp and colleagues in their abolitionist handbook *Instead of Prisons,* first published in 1976, that laid down the principles of this approach. In short, the attrition model aims to gradually reduce imprisonment:

*‘Attrition’ which means the rubbing away or wearing down by friction, reflects the* ***persistent and continuing*** *strategy necessary to diminish the function and power of prisons in our society.* (Knopp, 1976: 62, emphasis in original)

In the last thirty five and more years the attrition model has been promoted by abolitionists such as Thomas Mathiesen, Stanley Cohen, Joe Sim and Julia Oparah and I believe it remains one of the most plausible abolitionist strategies yet devised. The associated model of selective abolitionism, which has been advocated by abolitionists such as Pat Carlen, Phil Scraton, Barbara Hudson, Barry Goldson and Deb Coles, is rooted in the assumption that certain categories of lawbreakers must not be sent to prison because of (1) the relative harmlessness of the offence, (2) the vulnerabilities of the person who has broken the law, or (3) that imprisonment has unnecessarily harmful consequences that should, if at all possible, be avoided. Such lawbreakers, albeit perhaps on different grounds, should be deliberately excluded from imprisonment. Alongside Helen Codd, I brought a number of these grouping of prisoners together to present a holistic case for selective abolitionism in our book*Controversial Issues in Prisons* (Scott & Codd, 2010). Here it was maintained that selective abolitionism could be immediately adopted by politicians and penal campaigners who wished to lobby the government for major reductions in the prison population.

It was recognised that such an approach must be conscious of the contradictions and the dangers generated by this strategy. Attrition and selective abolitionism are not enough on their own. They must be understood as part of a wider abolitionist critiques of prisons and criminal processes and as the first steps on a path to a socially just society. On this assumption, I believe the seven well debated ‘tactics’ detailed below may lead us in the right direction and help generate a new abolitionist based consensus. Collectively they entail, to use a metaphor from the popular board game *Monopoly*, playing the ‘get out of jail for free’ card.

1. **Moratorium on all prison building**

I would like to suggest that an anti-prison activist’s first priority should be to organise international, national and local campaigns challenging the moral, economic and political viability of building more prisons. Indeed, stopping the building of new prisons is essential for the success of penal reduction. Moratoriums directly challenge the prison building programmes and are a crucial intervention for the following eight reasons:

1. There is recognition that the level of financial investment in prison building deters politicians from later calling for penal reduction.
2. It provides an opportunity to draw attention to the direct costs of penal incarceration and may allow some discussion of its hidden costs – both human and financial.
3. It is recognises that the inherent harms and pains of penal incarceration cannot removed by improved physical conditions.
4. It can facilitate discussion of how money allocated to prison building could be reinvested in new employment possibilities in the community which do not deliberately inflict pain on other humans.
5. Political pressure is created to develop alternative policies and indicates to politicians that they can no longer simply expand the penal apparatus to deal with pressing social problems.
6. It directly challenges privatization and companies such as Serco and G4S that build prisons, focusing attention on the limitations of private finance initiatives and engendering support by penal practitioners and the liberal penal lobby opposed to privatisation.
7. It provides a focussed campaign against new prisons and there is a strong possibility that such an intervention could generate new alliances.
8. It is something that can be achieved in our historic conjuncture. In the current economic climate economic expenditure is clearly an area of vulnerability and one that can be exploited.
9. **Targeting existing prisons for immediate closure**

A moratorium may help to create the political will, to do something about our high prison populations, and this can be enhanced by calls to close existing prisons (Sim, 2009). Lists of the ‘worst prisons’ can be drawn up in a number of different ways, but perhaps the greatest immediate influence comes from those prisons highlighted in ‘official discourse’ such a reports from Her Majesty’s Chief Inspectors of Prisons [HMCIP]. On such a basis, the following three prisons could be earmarked for immediate closure:

1. HMP Wandsworth, has recently been described by the *Guardian* (13, March, 2013) as “Britain's worst jail”. A 2011 HMCIP report highlights how the prison was ‘demeaning, unsafe and indecent’ where some prisoners were kept locked up for 22 hours day whilst others had no access to showers for months on end. An authoritarian officer culture pertained and there were serious concerns about ‘unnecessary and disproportionate’ prison officer violence. In March 2013 HMP Wandsworth was the fourth most overcrowded jail, exceeding capacity by 448 prisoners (167% over capacity).
2. The third most overcrowded prison in England and Wales in March 2013 was HMP Lincoln, which was 170% over capacity. In the December 2011 report the HMCIP found Lincoln prison ‘unsafe’ with unacceptable levels of bullying, victimisation and assaults. Prisoners lived in ‘filthy conditions’ and were kept locked up for most of the day. Prison officers appeared morally indifferent to the painful realities of prisoners.
3. In a damning HMCIP report from July 2010 HMP Dartmoor was described as having a "pervasive negative culture" grounded in the antiquated principles of less eligibility. Dartmoor prison was unsafe, violent and there was strong evidence of prison officer racism, homophobia and other forms discrimination.

The Prison Service in England and Wales has closed 13 prisons in the last four years, with seven prisons closed in March 2013 - Bullwood Hall; Camp Hill; Canterbury; Gloucester; Kingston; Shepton Mallet; Somerset; and Shrewsbury. Abolitionists need to call for similar clusters of closures without new prisons being opened (Sim, 2009). In the first instance, the targeting of the ‘worst prisons’ (with recognition that there may well be much worse jails than Wandsworth) may prove most persuasive to penal authorities and gain support from other constituents in the penal lobby.

1. **Virtual end of remands in custody**

The prison has been a place of custody holding people awaiting trial for more than 1,000 years (Pugh, 1968). In March 2013 there were 13,000 people in prison on remand. The limitations of pre-trial / preventive detention have been long identified, and have been central to the liberal penal lobby in the UK since at least the publication of *A Taste of Prison* (King and Morgan, 1976) some 37 years ago. Remand prisoners today continue to face significant difficulties, including experiencing more impoverished living conditions than sentenced prisoners (HMCIP, 2012). People on remand have less access to facilities, basic ‘entitlements’ and preparations for their legal proceedings are likely to be greatly inhibited. Each year 29,400 people remanded in custody are not given a prison sentence (Ibid). It is now widely recognised that remand is not necessary to ensure a person’s return to court for trial (Ibid). One way therefore of immediately reducing the prison population is to abolish pre-trial detention for all but the very small number of accused that genuinely present a threat to public safety. Such an initiative could reduce the prison population by around 10,000 in as little as three months.

1. **Decriminalisation of ‘victimless’ / ‘harmless’ acts**

One way to ‘reduce the flow’ of people into prison is to stop imprisoning individuals that have undertaken ‘victimless’ or ‘harmless’ petty offences. I will briefly consider the substance users and drug takers here. Abolitionists have argued that it is important to suspend our judgement on drug taking, arguing that whether we morally approve of them or not, such victimless acts cannot be effectively regulated by the criminal law (Knopp, 1976). There are estimated to be more than 400,000 illegal drug-users in the United Kingdom (Seddon, 2006) and over 250,000 drug takers have been officially defined as ‘problematic drug users’ [PDU’s]. It is estimated that 75,000 PDU’s pass through the prison system annually and that 45,000 PDU’s are currently in prison (NOMS, 2005). Prisons are designed to contain, punish and deliver blame through pain rather than facilitate the care or positive transformation of individuals. In Portugal drug taking and the possession of drugs has been decriminalised and drug problems are now considered a public health issue. Money that would have been spent on penal incarceration is spent on health care, which is around 75% cheaper than the previous penal strategy. As a result there has been both a reduction in heroin usage and in drug-related property offences in Portugal. Extensive evidence from the UK suggests that treatments of drug takers are more likely to be successful in the community than through criminal justice interventions (Bennett and Holloway, 2005). This implies that if treatment is a genuine aspiration it would be more sensible to decriminalise drug taking (Scott and Codd, 2010). Adoption of a public health agenda for drug taking would reduce the prison population by tens of thousands in a very short period of time.

1. **Raise the age of criminal responsibility**

Criminal processes control and regulate the behaviour of children and young adults. Official data indicate that lawbreakers reach peaks in offending rates in the mid teens - although such data can and should be problematised as it is based on officially recorded ‘crimes’ and negates much adult crime undertaken in private spaces. Penal custody seems grossly inappropriate for children and young adults, for they are unlikely to have the life experience or coping skills required to deal with either punitive environments or the loss of close personal relationships. Most children imprisoned are not persistent offenders - with many having only one or two previous offences - and are most likely to have committed petty property offences. Imprisoned children are characterised by poverty, family instability; emotional, physical and sexual abuse; homelessness, isolation, loneliness, self-harm and disadvantage (Goldson, 2005; Goldson and Coles, 2005). Many children in custody have learning difficulties; been placed on the child protection registry; have self harmed in the past; and have grown up in state care homes. Raising the age of criminal responsibility to initially 14 and the later to 16 would allow for alternative ways of dealing with children in trouble come to prominence. For those people under the age of 18 the courts should be asked to restrict interventions to police warnings, suspended sentences or unconditional discharges and thus de-naturalise the idea that confinement is suitable for any child. Human rights and children’s charities would be natural allies and would broaden the basis of an abolitionist consensus.

1. **Diversion of vulnerable people from criminal processes**

There are a number of people with vulnerabilities imprisoned today that should be diverted from the criminal process, but here I focus exclusively upon people with mental health problems. Mental health problems are often linked with homelessness, poverty and unemployment, and *The Social Exclusion Report* (2002, cited in Scott, 2008: 116) notes that

* 80% of prisoners have mental health problems (66,000 people)
* 20% of male and 15% of female sentenced prisoners have previously been admitted to a mental hospital
* 95% of young prisoners aged 15 to 21 suffer from a mental health problem.

Prolonged passivity leads to isolation and the prison place presents a serious danger to the mental health of those confined. Numerous aspects of the daily prison regime are potentially damaging: crowding; frustrations dealing with the minuet of everyday life; lack of mental or physical stimulation; the preponderance of negative relationships rooted in fear, anxiety and mistrust; physical, emotional, sexual or financial exploitation; and inadequate care with an over-emphasis on medication (Scott and Codd, 2010).

Political momentum for the diversion of people with mental health problems reached a new crescendo as recently as March 2011, when the then Justice Secretary Ken Clarke called for enhanced diversion schemes. There are currently over 100 adult Criminal Justice Liaison and Diversion schemes (established 1999) in England which assess and advise on mental health needs of offenders, sometimes referring for offenders for treatment rather than punishment. From April 2013, Health and Wellbeing Boards will commission health and social care services, including those with mental health problems. Abolitionists should try and influence the new Health and Wellbeing Boards to enhance provision for diversion. Whilst conscious of the problems of ‘net widening’ (Cohen, 1985) and recognition that detention in a mental health institution may be just as problematic as being confined in a penal one, highlighting the inappropriateness of punishing people with mental health problems could mean that tens of thousands of people are diverted from prison.

1. **Decarceration of vulnerable and harmless people from custody**

Finally we turn to the immediate removal people from prison. As detailed above, there are number of prisoners with vulnerabilities that have undertaken relatively harmless acts, but I will focus here only on women prisoners. Over a third of all adult women in prison have no previous convictions, and most women sentenced to imprisonment are sentenced for non-violent offences, with the largest group being sentenced for drug offences (Ministry of Justice 2008). The numbers of women prisoners has slightly fallen in recent times and on the 22nd March 2013 there were 3,968 women in prison. Women are not imprisoned for the seriousness of the act perpetrated, but rather because of *who* they are: women who do not conform to a particular expectation of womanhood are those most likely to find themselves in prison (Scott and Codd, 2010). Most women offenders are not dangerous and approximately 3,000 of the women in prison could be released in a matter of weeks via early release; probation; home monitoring; and amnesties. Sentencers could also pilot the introduction of waiting lists for women offenders.

**Not only, but also...**

The above seven tactics are well rehearsed and many are shared across the political spectrum of the penal lobby but from an abolitionist perspective it is crucial that they are not be deployed in isolation of wider critiques of criminal processes or introduction of social reforms rooted in social justice. Abolitionists must constantly guard against the possibility that the arguments of the attrition model / selective abolition being co-opted or to justify the responsibilisation of offenders and subsequent negation of their care post-release (Hannah-Moffat, 2001). Abolitionists must also ensure that this strategy is not used to obfuscate the inherent harms and pains of imprisonment. The concern can perhaps be best illustrated through a consideration of ‘suicidal ideation’. Prisons are deadly. One prisoner takes their own life every week in prisons in England and Wales and the likelihood of a prisoner taking their own life is between four and eleven times higher than the general population (Scott and Codd, 2010). Coping is a tenuous, relative and fluid concept that ebbs and flows over time. Somewhere between one third and one half of the prison population have suicidal thoughts, and many have recently thought about taking their lives. If such figures are accurate this would involve somewhere in the region of 42,000 people (Ibid). The prison place is a toxic environment and all humans placed in such a degrading and damaging place are vulnerable to its structured harms. Abolitionists must therefore continue to question the core assumptions of the penal rationale and not focus exclusively upon prisoners who can most easily be defined as ‘vulnerable’, whatever its political utility.

Abolitionists recognise that the law reflects the interests of those who hold power rather than upholding a widely accepted moral code. Most people are regular law breakers yet most ‘criminal acts’ are not penalised. For every 100 serious crimes reported, 25 people are arrested, 12 are convicted and three end up in prison (Knopp, 1976). Those that are imprisoned are disproportionately from working class, poor and impoverished social backgrounds (Sim, 2009). Abolitionists must keep at the forefront of the debate the problems of economic and social inequalities and strive to develop of alliances with social movements promoting human rights and social justice. Undoubtedly we must, somehow, try to create a new ‘abolitionist consensus’ that can make a difference here and now. Yet at the same time abolitionists and anti-prison activists must also continue to aspire to live in, and fight for, a *world without prisons*.

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**APPENDIX 4:**



**The Centre for the Study of Crime, Criminalisation and Social Exclusion**

**in partnership with**

**The European Group for the Study of Deviance**

**and Social Control**





**Sites of Confinement**

**22nd March 2013**

**Liverpool John Moores University**

**68 Hope Street, Liverpool**

This day conference offers an opportunity to critically discuss increases in the uses of confinement and incarceration in relation to neoliberalism, globally as well as in the UK. With activists, researchers and academics working in prisons, detention centres and camps, it will consider the roles of social structures, power, and lived experience in relation to confinement. Importantly, this conference will consider increases in incarceration as a method of social control in areas of extreme deprivation, as well as with marginalised groups.

This conference is free to attend, but limited to 80 participants. Please book in advance.

As this is a free event, lunch will not be provided. However, refreshments will be available throughout the day.

The Centre for the Study of Crime, Criminalisation and Social Exclusion

Liverpool John Moores University

www.ljmu.ac.uk/HSS/CCSEResearchCentre.htm

The European Group for the Study of Deviance and Social Control

www.europeangroup.org

To book a place, please register here: [http://confinement.eventbrite.com/#](http://confinement.eventbrite.com/)

For more information please contact Dr. Victoria Canning, e: v.canning@ljmu.ac.uk

The Centre for the Study of Crime, Criminalisation and Social Exclusion

**Liverpool John Moores University**

**Conference Schedule:**

**9am: Conference Registration**

9.20am: **Victoria Canning**

*Welcome and Outline*

**Section One: Problematising Confinement**

9.30am: **Emma Bell**

*The Confines of Neoliberalism*

10am: **Vickie Cooper**

*Semi-Penal Hostels and Networks of Punishment in the Community*

10.30am: **Andrew Jefferson**

*Confinement and Subjectivity: sites, embodied practices and entangled encounters*

**11am: Break and Refreshments**

**Section Two: Detention, Asylum and the State**

11.30am: **Monish Bhatia**

*Creating and Managing 'Mad', 'Bad' and 'Dangerous': The role of Asylum Control Industry*

12pm: Roundtable: Asylum and Detention

*Supporting Asylum Seekers at ‘Revive’*

**Eloise Cockcroft** and ‘**Revive’** service users will informally discuss the challenges

faced by people seeking asylum in terms of increased criminalisation,

detention and incarceration

**1.30pm: Lunch break**

**Section Three: Where from Here?**

2.30pm: **David Scott**

*Escape Routes: Exit Strategies from Global Hyper-incarceration*

3pm: **Joe Sim**

*Exploring 'the edges of what is possible': Abolitionist Activism and Neoliberal Austerity*

3.30pm: **Launch**

*European Group for the Study of Deviance and Social Control:*

*Prisons and Punishment Working Group*

3.45pm: Questions, Comments and Open Discussion