Overcoming obstacles to abolition and challenging the myths of imprisonment

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Introduction

Prisons are social institutions – like schools, hospitals, religious centres. As social institutions they are not merely buildings where organised sets of practices take place, they are places that appear to fulfil a social function that society deems necessary. The version of the prison that operate in many societies today, is a reformed, modern institution that dates back to the late eighteen century (Foucault, 1977; Ignatieff, 1978). Modern prisons were conceived as social institutions that could bring new life. It was thought that by extinguishing the 'criminal' and unvirtuous characteristics of those imprisoned - through the prisons' facilitation of enforced repentance of wrongdoing - a new virtuous and law-abiding individual would emerge out of the penitent-making machine (Ignatieff, 1978). But the ceaselessly 'reformed prisons' over the last two hundred or so years have proved merely to be places that bring violence, suffering and death (Sim, 1990; Scott, 2018). Prison is, at best, a place of meaninglessness and deprivation, but more often of pain and desperation. It is seldom a place of recuperation, personal improvement / development or skills acquisition.

Our concern in this chapter, as abolitionist activist scholars, is with the obstacles and myths preventing the acknowledgement of the insidious role of penal confinement in maintaining social and economic inequalities. What attracts people to the continued use of the prison? Why do prisons have such a stronghold on the hearts and minds of the general public as the only means by which society can maintain order and a system of justice? Many previous critics of the prison have systematically dissected the apparent functions of the prison, juxtaposing its

supposed and symbolic purposes against its harsh and destructive realities (see for example, Rusche and Kirchheimer, 1968; Gilligan, 2000; Mathiesen, 2000; Kupers, 2006). In this chapter, we briefly consider where the debates on the prison keep getting stuck, why human societies seem to be unable to move beyond the prison and what lines of argument might need to be followed for prisons as social institutions to become obsolete.

Prisons as places that have a function

Prisons are perhaps the only social institutions that are consistently legitimated through a commitment to the infliction of pain and suffering. Yet, for many of its contemporary advocates, the use of imprisonment is claimed to be something that can enrich human life. From this perspective, prisons seem to serve a positive function. A prison sentence is sometimes viewed in the public eye as the only acceptable end result of the criminal justice process. Indeed, some victim-survivors and members of the general public associate 'justice' with a person being given a long prison sentence (Taylor, 2019). When exploring the possibilities of prison abolition, one of the first and most significant obstacles is that by not imprisoning the perpetrator a great injustice will be dealt to the victim-survivor.

Prisons are also viewed as a positive influence in society because people believe they can be places of restoration and rehabilitation. The prison as a crucial link in the 'rule of law chain' is the means by which the state acts on behalf of the normative majority to formally denounce and then re-educate unruly citizens (UN Department of Peacekeeping Operations, 2010). Thus, the prison is believed to serve as a positive social reform or 'corrective' tool deployed by a benevolent state and in the interests of the greater good – whether or not they fulfil this purpose in practice or are 'just' places is beside the point. It is their mere presence that serves as a symbol of justice and democracy.

The philosopher Michel Foucault (1977) noted that the prison appears legitimate on a number of levels in advanced capitalist societies. First, the prison appears to be a fair and equal way of paying a debt to society for the wrong someone has done. Second, since the early nineteenth century prisons have had an underlying 'treatment and training' ethos and commitment to 'normalise' those they hold within their walls. Rehabilitation, health and therapy are often seen as central to the basic functions of imprisonment and are therefore not so dissimilar to other social institutions. Third, the power-knowledge-axis of prison data can help to construct new **c**ategories and classifications of delinquents that make certain segments of the population the clear object of penological and criminological knowledge and the control apparatus of the state. The distancing of poor lawbreakers may well result in the creation of a new enemy, but as objects of the criminological gaze, it is possible for experts and penal practitioners to have greater certainty about who will break the law – and thus anticipate, control and separate them from rest of population in the name of safety and public protection (Foucault, 1977).

Scrutiny of the realities of prisons in practice reveal a very different picture, however. Prisons and the criminal justice process tend to operate in ways that reinforce, rather than correct social inequalities and injustices (Reiman and Leighton, 2010). They are social institutions that fail to consistently maintain human rights standards (Drake, 2018). More than other social institutions prisons have a higher tendency towards incidents of self-harm, suicide, other avoidable deaths and assault (Scott and Codd, 2010). In-prison services, such as medical and dental treatment, nutritional provision or educational resources tend to be of much lower quality than those same services on the outside (see for example: Sim 1990, Greifinger, 2007). Finally, characteristics of delinquency recorded through penological studies in the prison may simply be an artefact of the processes of the criminal law itself or other social control regulations. Such prison-based knowledge may turn out to be counterproductive because it

scapegoats those who get caught up in criminalising processes. Society is lulled into a false sense of security, under the pretence that something is being done and that society is 'safer' when stronger penal policies are applied. Yet the criminal justice process in the main does not lead to people taking responsibility for what they have done, or to the automatic acknowledgement of the voice of the victim / survivor. It may in fact do the exact opposite.

In many ways, the prison has always been a failing and a failed social institution and yet the social demand and apparent need for it persists. It should not be forgotten that the prison has developed as a tool of colonialism and racial capitalism and in many parts of the world fundamentally remains such. Situating prisons within social divisions and structural inequalities should be at the forefront of penal abolitionist theory, politics and praxis. The section that follows begins to try and answer some of these questions, but also presents refuting evidence and arguments that challenge the myths of the prison.

'Something Must be Done' and Prison is the Only Answer

There are a series of myths that underpin the commonly held idea that 'something must be done' in response to wrong-doing and that prison is the only answer. Independent of the origins of the prison (as a tool of colonialism and racialised capitalism, see for example Monchalin (2016) for the former and Calathes (2017) for the latter), in popular culture and in the minds of the voting general public, the prison is the way that society solves its conflicts. In this section we explore and debunk these myths. The first is the myth that although prisons are not 'perfect' and need, at times, to be overhauled and reformed, they are valuable social institutions that are irreplaceable. However, over more than 200 years, many societies have experimented with various prison reform interventions to no demonstrable or consistent avail (Mathiesen, 2000).

At their core, prisons are coercive environments in which genuine treatment, rehabilitation or care cannot be provided because these goals are incompatible with the delivery of punishment. Additionally, pain infliction – no matter how lenient or harsh – is an ineffective means of changing behaviour. There is, however, considerable evidence that punishment (especially severe punishment) encourages violent or otherwise undesirable behaviour (Gilligan, 2000). Thus, the idea that the particular punishment that prisons deliver will transform people and encourage (or force) them to lead better lives upon release is insufficiently evidenced in the majority of cases. In an intentionally punitive environment, reform measures are futile. Through superficially easing moral concerns about the inevitably negative impact of pain infliction, penal reform can actually make it easier for governments to reinforce a given society's reliance on the prison and increase prison expenditure and expansion. The important lesson is that – thus far - no measure of reform has ever remedied the harms generated by the prison.

Another belief about the prison is that it serves society as a necessary threat and consequence and thus is a stalwart defence against a descent into social disorder and chaos. Although, it is rational and appropriate to suggest that there should be a social response to wrongdoing that is proportionate and indicative of social censure, the logic that 'prisons are there because they threaten a consequence or act as a strong, certain and consistent deterrent for crime' is false. Firstly, there is no way to measure an action which does not happen. Secondly, on the basis of the evidence we do have – over two centuries of experimenting with the use of imprisonment – no matter severity of the punishment given, there is surprisingly no consistently provable deterrent effect on rates of crime (Mathiesen, 2000; Scott, 2018). This holds true at different points in history and in different jurisdictions (Drake, 2018). It is even true in places that continue to use the death penalty. In some States that retain the death penalty in the U.S. the

murder rate tends to be HIGHER than some of the States which do not use this ultimate form of punishment (Drake and Scott, 2019a).

It seems to be the case that a state which responds to its people with violence can often expect violence from its people. Punitiveness or harsh responses tend to have the opposite result from that which people imagine. Blame and moral condemnation are based on the assumption that people should 'get what they deserve'. However, this idea often begins at the wrong starting point, that is, at the point when someone breaks the law. But – for the sake of argument – if people really should get what they deserve, then how can people make sense of unjust and unequal societies where everyone does not get the same start in life, the same choices, abilities, and opportunities? People may well make choices, but often these choices are heavily constrained by limited options. Not every member of society has the privilege of living in circumstances of their own choosing. When a society lays the blame for a misdeed solely on the shoulders of an individual, there is a failure to recognise the complex web of social, political and economic factors that may have also played a role. Even philosophers of law who are strong advocates of prisons and punishment have acknowledged that it is impossible to achieve justice through the penal law in a structurally unequal society (Von Hirsch, 1976).

A further key claim by advocates of prison is that it protects society by reducing crime rates. Is this also a myth? This argument claims that the more people there are in prison, the safer society will become. It is often stated and believed by people in society that prison sentences ensure there will be less crime. So are these claims correct? Finding a direct relationship between imprisonment and crime rates is not a straight-forward task. This is partly because international comparisons would be one of the best ways to confirm a relationship between imprisonment and crime rates, but such comparisons are nearly impossible (Scott, 2013).

Different police services count rates of crime in different ways, even within a relatively small legal jurisdiction such as England and Wales. This problem becomes even more complex in (geographically) large countries with complex legal jurisdiction boundaries such as in the United States. Likewise, prisoner numbers are not always uniformly collected either (Drake and Scott, 2019b). Despite the difficulties, however, there have been a number of carefully researched studies that have demonstrated that increasing imprisonment rates have any sustainable or significant effect on crime rates (King et al., 2005; Lappi-Seppälä, 2008; Reiman and Leighton, 2010). There is strong evidence that reliance on prison to reduce crime is definitely not the most effective way to achieve reductions in crime and that working to reduce social inequalities would be a more effective approach (King et al., 2005; Ruche and Kirchheimer, 1969; Box, 1987).

The myths of the prison, however, do not end here. The idea 'that something must be done' in response to wrongdoing is often closely tied to the widely held belief in society that in order to protect the rule of law (and again, guard against social disorder), it is necessary for the guilty to punished. However, the counter argument to this is that the rule of law should be accountable first and foremost to those it is intended to protect, as opposed to those it rules against (Drake, 2018). By focusing on actions against perpetrators as a measure of the law, society loses its focus on compensating, responding to and caring for victims (Taylor, 2019, Thuma, 2019). Thus, a major reconfiguration of the way the legal system works would be a necessary first step to overcoming the obstacles to abolition (Scott, 2018). This is especially urgent in the modern world where prisons – more than ever – are little more than symbols of an older, antiquated, bleak, inefficient and technologically backward time. A new approach to thinking about how a modern society manages harm, crime and victimisation is long overdue.

Obstacles to Gaining Public Support for Reducing the Use or Abolishing the Prison

A significant obstacle to gaining collective social agreement that the use of the prison should be drastically reduced or dismantled altogether is, of course, fear and anxiety about dangerousness and the personal threat people sometimes pose to one another. Such fears are often based upon the 'myth of dangerousness' (Drake, 2011). It is important, however to recognise that, for the most part, prisons are not 'filled' with dangerous people. In England and Wales, around 60% of the prison population are held for non-violent offences (Sturge, 2019). And, of the roughly 40% who have committed a violent offence (including sexual offences), very few indeed have been deemed so dangerous that they cannot be released (as of 2016, 70 people were serving whole life sentences, Evans, 2016). The imagined monsters of our nightmares – that is, the serial killer or the otherwise wildly dangerous individual – are exceptionally rare. The average person who enters prison has low educational attainment and poor literacy/numeracy skills, is unemployed and comes from a lower income or impoverished background (Rabuy and Kopf, 2015). There is a stronger link, therefore, between poverty and prisons than there is between dangerousness and prisons.

The way people tend to think about dangerousness and the structures put in place to protect people from various dangers need to be reconsidered. Prisons, and the harms that prisons respond to, distract people from thinking more carefully about a wider range of dangers that are more imminently and universally harmful than 'street crime'. By the same token, serious interpersonal crimes are, of course, a grave concern for any society. However, removing people from society for a period of time and placing them in a prison does not ensure that they will return to society as less dangerous. It is true that during a prison sentence, a person may well be incapacitated and therefore prevented from harming others in society for the duration of their sentence (although they may continue to harm one another within the prison walls).

However, removing people from society and placing them in the artificial and often violent and fundamentally anti-social environment of a prison does not guarantee that they will be able to return to safely return to society.

From the perspectives of those who are imprisoned the picture of imprisonment can be extremely bleak.   Through their confinement, prisoners lose access to a number of basic legal and civil rights. As many prisoners are poorly educated or have mental health issues, there are concerns that, in the context of living in a closed prison environment, they are vulnerable to exploitation and abuse. This may especially be the case if it is believed that profits can be made from prisoners, through what has been termed the prison industrial complex (Davis, 2003). Rather than being a danger to others, becoming a prisoner may actually be quite dangerous, especially if you are from an impoverished social background with lower educational attainment (Scott and Codd. 2010). One example of the exploitation of prisoner populations is the exploitation of prisoners as subjects in medical trials.

From the 1950s through to the 1970s, there was mass experimentation on prisoners in the United States for medical and scientific purposes. For example, in 1952, 396 prisoners at Ohio State Prison were injected with live human cancer cells. From 1967 to 1968, a small number of prisoners in California were incapacitated for days while testing succinylcholine, a neuromuscular compound that paralysed muscles so that the prisoners could not move. Most medical trials were largely 'Phase 1 trials', when a chemical substance is checked if it is safe for human consumption (i.e. to test if the drug is dangerous or toxic to humans) before the next phase of tests, which assess the drug's effectiveness as a treatment or cure (Washington, 2006). A notorious example of medical trials on prisoners was at Holmesburg Prison, Philadelphia, where University of Pennsylvania dermatologist Dr Albert M. Kligman conducted numerous

experiments on prisoners. He was initially invited to the prison in 1951 to treat an outbreak of athlete's foot (Washington 2006; Hornblum, 2007).

Over the next 23 years, Kligman conducted experiments for at least 33 major corporations in the pharmaceutical and cosmetic industries (Hornblum, 1998; 2007). Prisoners were paid around $3 USD for each session in which they were experimented on. However, they did not always know which chemicals they were being exposed to, or why, highlighting ethical concerns about lack of 'informed consent'. Prisoners were injected with, or exposed to, a variety of substances and diseases. While at Holmesburg, Kligman also performed chemical-warfare tests for the army and the CIA. Prisoners were exposed to the psychedelic drug, LSD, and a 'truth drug' that was planned to be used to interrogate spies. Unsurprisingly, prisoners developed long-term health problems, such as hair loss, chronic skin problems, ulcers, breathing difficulties, internal organ damage and cancers, as well as claiming radical mental changes following the experiments (Hornblum, 1998; 2007; Washington, 2006). Although most medical experiments in prisons in the United States ended in the 1970s (human experimentation in Holmesburg stopped in 1974), since that time a number of states have allowed a small number of medical tests (including those regarding HIV/AIDS treatments) on prisoners, but this has been tightly monitored (O'Gostin, 2007). Nevertheless, this case indicates that prisons are, at times, extremely dangerous places for prisoners and not only because they may be in danger of physical threat and violence from other prisoners and from prison staff.

Thinking further about the different ways understandings of safety and dangerousness need to be considered in relation to the prison, it is vitally important that the use of the prison cannot and does not serve as a means for challenging structural violence. If anything, it reinforces it

(Scraton and McCulloch, 2009). If heightened public protection and reduction in violence and harm is what societies hope to achieve – particularly for women, children and other vulnerable groups – then they first need to consider why acts of violence, such as domestic and sexual violence (for example), occur in the first place (Carlton and Russell, 2019). These types of crimes are associated with power imbalances and social structures that objectify, demean and treat women, children and other vulnerable groups as less than fully human (Carlton and Russell, 2019; Thuma, 2019)). Societies that tolerate inequalities or that refuse to fully recognise the rights and autonomy of all social members are complicit in the violence that is then perpetrated against these groups (Spivak, 1988). When horrendous interpersonal violence against vulnerable people happen the first priority must, of course, be to ensure the safety of the person concerned. Additionally, if the goal of a justice system is to denounce or condemn particular actions and to try to prevent them happening again, then imprisonment is not the most efficient means of achieving these goals.

Prison environments are full of power imbalances, racial and sexual violence, discrimination and hierarchical social relationships (Taylor, 2019). All of these elements of the prison environment can, therefore, reinforce the same ideas and social divisions that those who perpetrate hate crimes bring into prison with them in the first place. Prisons utilise and reinforce imbalanced and harmful power relations and are more likely to exacerbate hateful ideas rather than challenge or reverse them. Thus, removing a perpetrator of interpersonal violence or hate crime from society altogether and placing them in isolated, brutal conditions is surely the worst action to take if the goal is for them to learn to live more safely and with greater tolerance alongside other social members (Scraton and McCulloch, 2009l Scott and Codd, 2010; Taylor, 2019).

Listening to Those Who Ask for Alternatives

Prison abolitionists question the moral and political justifications of imprisonment and call for the radical reduction or elimination of the use of prisons as they are currently constituted. Abolitionists are concerned about the harmfulness that prison causes to those imprisoned, victims, families, prison staff and society at large. They are also concerned with the continued failure of prisons to fulfil any of their stated aims or purposes. Prisons have continually failed to 'solve' people's problems through 'treatment' or other 'rehabilitation' strategies. Many former prisoners have written or spoken about their in-prison experiences in ways that illuminate the suffering associated with imprisonment (Martin, 1955; Boyle, 1977; Collins, 1998). Prisons are, first and foremost, places of punishment. Rehabilitation and punishment are incompatible. The basic structure of the prison is ill-suited to showing people how to live safely in a free society. The idea of rehabilitation is also too narrowly focused on trying to change or 'treat' an individual. Prisons are more closely linked to poverty than they are to dangerousness (as discussed above). The individualised focus of prisons mean that they are unable to address any of the social conditions – education, limited employment or housing options, community support structures – that need to be met for people to be able to live better and more safely in society.

Likewise, prisons very often, do not serve the interest of victims of crime (Sered, 2018). Although it is true that some victim-survivors call for prison sentences and equate 'prison' with 'justice', many have been disillusioned by their contact with the criminal justice system. That is, the interests of victims are not well served by current criminal justice process practices or by the use of the prison. Many victims want a) never to be harmed again by the perpetrator

and b) for the perpetrator never to harm anyone else in this way again (Sered, 2018). Very few victims of crime actually call for vengeance (Renvioize, 1988; Scott and Codd, 2010; Sered, 2018). Moreover, vengeance itself can be profoundly damaging for victims who may become "consumed by the wound". And, in this way, a response to crime motivated by a thirst for revenge can fail victims as much, if not more, than it fails perpetrators and society at large. There is no doubt that when a serious harm occurs something must be done in response. There must be some attempt to realign the imbalance and the injustice that has occurred. But this should be tangible and meaningful and, crucially, not produce further harms – to anyone – including the perpetrator. Indeed, it is often the case that many perpetrators had previously been victims themselves (Scott and Codd, 2010). There is also often a false dichotomy between 'victims' and 'perpetrators' (Drake and Henley, 2014). Most importantly – for victims – sending someone to prison certainly does not ensure the person will never commit the same crime again. And, in fact, in some cases it can make it more likely for the person to return to the same kinds of activities upon release (Foucault, 1977; Taylor, 2019).

Community solutions for many 'crimes' have been proven to be more effective and better value for money. Voluntary and community led interventions which have directly engaged with people in their own community have often proven to be the most effective of all (see for example, Dronfield, 1981). Abolitionist alternatives are not grounded in the deliberate infliction of pain. As a result, they are more humane than any prison sentence could ever be.

Ideally, the process towards overcoming the obstacles to abolition and challenging the myths of imprisonment should be generated from the ground up in given communities and in given societies. Ideas from other places and cultures can be used as inspiration. People and societies need to adopt what works best within the social, cultural, political and economic conditions of

their own context and work to unleash themselves from the bindings of beliefs that are not serving them and from moralistic traditions. Abolishing the penal apparatus of the State is a step-by-step process. Alternatives to the criminal justice process need to be understood within the wider envelope of a commitment to social and transformative justice. Alternatives mean building a society in which the conditions are suitable for a wide range of interventions that can handle troubles, conflicts and disputes of all kinds.

How to Make the Prison Obsolete

There is no single solution to resolving social and interpersonal conflicts. The idea that there can be one is another myth that the use of the prison perpetuates. The move towards dismantling the prison means constructing new models. It means building communities of inclusion and strengthening social bonds. People are less likely to be fearful of 'crime' if they feel a sense of connection to their local communities. Fear and insecurity around 'crime' are often closely tied to people feeling socially isolated. Fear of victimisation is significantly decreased when there are strong local communities and support mechanisms for people to participate in community activities and opportunities to get to know their neighbours better and learning to value and respect everyone's right 'to be'. Although measuring the relationships between community ties and 'fear of crime' is complicated by other variables (most notably because social and economic inequalities often blight high crime areas sharpening tensions and conflict rather than fostering closer human connectedness) there is empirical evidence from Nordic Countries, which themselves are grounded more holistically in welfare policies and economies promoting social integration, indicating that a stronger culture for promoting the welfare of others and collective solidarity has a significant impact on both perceptions and recorded rates of 'crime' (Christie, 2004, Uglevik and Dullum, 2011).

It is inaccurate to suggest that human beings are "naturally" selfish or interested only in their own, individualised flourishing. No person is an island and we are all social beings whose very survival is interconnected with one another and with our social and natural environments. We cannot thrive without the help and support of other people. Human nature and human survival is dependent on being grounded in notions of mutual aid and collaboration and human beings may well have a natural or innate predilection to help and care for other people. There are everyday examples of human beings helping others when they are in trouble, from small acts of kindness like offering advice on directions when someone is lost to attempts to rescue other unknown people when their lives are imperiled (with the classic example given by Peter Kropotkin (1903) in the early 1900s of the people who in flimsy lifeboats in coastal towns across the UK would risk life and limb in treacherous waters to rescue survivors of shipwrecks). There are also wonderful tales of hospitality to strangers when people have been dependent on others for guidance and assistance, most recently evidenced in the accounts of George Mahood or Peter Mortemor, whose travels across the UK were dependent upon the generosity of the general public (Mahood, 2014; Mortemor, 1999).

To move toward making the prison obsolete it is vital that questions surrounding the rationale of prisons and punishment become more common-place. Such collective questioning could, then pave the way for the promotion of transformative rather than restorative justice, where society is more focused on transforming the lives of 'victims' and 'offenders' and of creating communities that are more inclusive, more loving and more accepting of one another. Interim or more immediate solutions to interpersonal harm and violence can be considered in the form of:

- non-penal alternatives to punishment such as voluntary therapeutic communities;

- healing-based communities populated by so-called law-breakers and their families;

- places of sanctuary and refuge for both offenders and victims;

- mediation and conflict handling services;

- focusing on victim needs, compensation and care;

- adopting a 'do no further harm' principle in any new policy decisions taken;

- non- punitive detention (for perpetrators who have extreme and complex needs);

- intensive community supervision;

- intensive therapeutic intervention;

- civil law measures;

- peace bonds enforced by careful and humane supervision.

Introducing the above changes or initiatives might be difficult, but any interventions must be predicated upon principles where both the means and the end of the response to the problematic conduct are founded on respect, dignity and a more socially responsible society.

Conclusion

Prisons are often troubled institutions run on an imperfect application of rules (Fitzgerald and Sim, 1979). Due process, accountability, transparency and following guidelines and rules are important for the preservation of human dignity and understandings of 'justice'. It is crucial that any alternative in place of the criminal justice process has appropriate oversight and accountability. Alternatives require an awareness of the dignity and human rights of all parties, and a sensitivity to the ethic of care to ensure fairness and humane treatment. Moreover, it is the case that no crime or harm is exactly the same as another. The uniqueness of every fracture that occurs in society or in our relations with other people demand a unique response. There needs to be a raft of alternatives rather than just one though which we collective seek to resolve

our conflicts and differences.   Appropriate responses are always best negotiated with all parties involved.   The needs of the individuals and the safety of victims/survivors, future victims/survivors and of perpetrators should be a high priority, but creating a society that foregrounds human flourishing and fulfilment across all its social institutions should be paramount.

Creating and living in a peaceful society takes a significant amount of on-going work. It requires the building of social justice and community capacities, and investment in the economy, education, and housing. Overcoming the obstacles to abolition and challenging the myths of imprisonment that have legitimated the prison for the last 200 years is a key task for abolitionist praxis in the 21st Century. If society is able to begin to relinquish its reliance on the harmful and ineffective prison as a social institution, it can then, in turn, begin the building process of finding fairer, more just and equitable solutions to our deepest and most fearsome social problems.

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