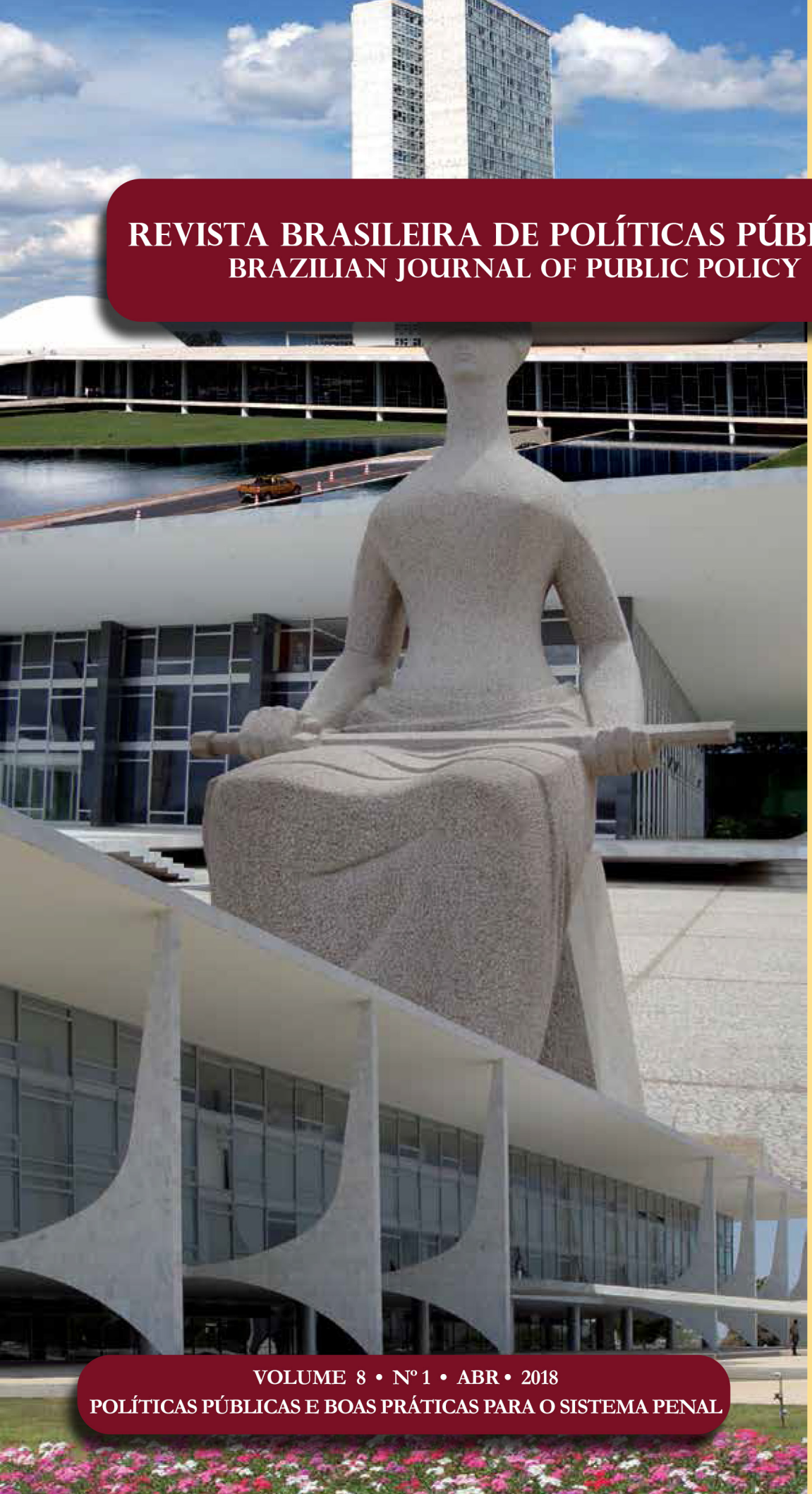

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Penal abolitionism and reformism revisited

Abolicionismo e reformismo penal revisitados

Roger Matthews

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Penal abolitionism and reformism revisited*

Abolicionismo e reformismo penal revisitados

Roger Matthews**

Abstract

For many years, the issue of penal policy has been locked into a debate between abolitionism and reformism. This has resulted in something of a stalemate with the abolitionists being accused of idealism and the reformists being accused of pragmatism or worse. Often presented as two incompatible approaches to the development of penal policy their apparent opposition has arguably served to muddy the waters and create unnecessary divisions. In this paper, the aim is to address this opposition and to move towards a partial synthesis.

Keywords: Abolitionism. Reformism. Debate. Idealism. Pragmatism.

Resumo

Por muitos anos, a questão da política penal foi encerrada em um debate entre abolicionismo e reformismo. Isso resultou em um impasse com os abolicionistas sendo acusados de idealismo e os reformistas sendo acusados de pragmatismo ou pior. Muitas vezes apresentado como duas abordagens incompatíveis para o desenvolvimento da política penal, sua aparente oposição provavelmente serviu para enlamear as águas e criar divisões desnecessárias. Neste artigo, o objetivo é abordar essa oposição e avançar para uma síntese parcial

Palavras-chave: Abolicionismo. Reformismo. Debate. Idealismo. Pragmatismo.

1. Introduction

During the 1960s and 1970s a series of publications began to link the words "prison" and "crisis" as critiques of the apparent failures of the prison system began to grow[1]. In this period, there were growing calls on both sides of the Atlantic for the reduction or removal of imprisonment as the dominant form of punishment. It was in this period of "decarceration" that penal abolitionism gained considerable currency. At the forefront of the abolitionist movement was Thomas Mathieson, who in his highly influential

* Artigo convidado

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1 BOTTOMS, A.; PRESTON, R. *The Coming Penal Crisis*: Scottish Academic Press. Edinburgh: Scottish Academic Press, 1980.

The Politics of Abolition sought to provide an outline of an abolitionist approach[2]. In many respects his work remains an important point of reference for abolitionists since its aim was to provide a rationale and strategy for abolishing prisons.

2. The Politics of Abolition

It is important at the outset to distinguish between two waves of abolitionism. The first, which was a "hard" form of abolitionism and closely associated with the early writings of Mathieson in which he expresses a deep scepticism about engaging in the conventional array of prison reforms. During this period, there was a strong anti-imprisonment ethos and a belief that major changes were possible. The second wave involves a more tolerant and flexible view of reform, which developed at a later date in which prison populations were increasing on both sides of the Atlantic and the possibility of removing prisons through a process of attrition seemed less and less likely. Consequently, while there remained some "closet" hard line abolitionists others became more willing to engage in humanitarian reforms although formally expressing a commitment to abolitionism.

In *The Politics of Abolition* Mathieson[3] pointed out that well-meaning reforms can all too easily become incorporated into an expanding penal system. Consequently, he attempted to develop a strategy that would allow activists to avoid becoming complicit in shoring up the prison system by developing what he called competing or "negative reforms". These reforms, he suggested, would compete with and contradict the existing system and unlike 'positive reforms' remain open-ended demands rather than fully formed alternatives. These negative reforms, he argued, should be designed to call the existing system into question and to continually build them up through what he calls "didactic activity". Through this process, it is suggested, the 'expelled' and others will come to see the failures of the existing system and take action.

Although Mathieson is no doubt correct in pointing out the way in which well-meaning reforms become co-opted, the distinction between positive and negative reforms is not as clear cut as he suggests. For example, so-called negative reforms such as limiting prison construction or decarcerating certain groups of offenders does not necessarily involve competing reforms. Limiting prison construction in periods of fiscal constraint can provide a useful rationale to policy makers, while at other times it will result in greater overcrowding, and the deterioration in the conditions of prisoners, without actually competing with the logic of imprisonment. By the same token, removing certain categories of offenders from prison may well serve to religitimise the system by sending out the message that prisons are more justifiable because they only contain the most serious and most dangerous criminals. On the other hand, many of the reforms that Mathieson and his followers would call "positive" can have a seriously destabilising effect on the prison system. Providing better conditions, opening prisons up to greater scrutiny and accountability, challenging disciplinary practices, controlling levels of abuse and brutality can all make the failings and limitations of the prison system more visible.[4]

Paradoxically, however although Mathieson attempts to develop a fairly uncompromising critique of what he calls "reforms of the non-abolishing kind" the approach developed in *The Politics of Abolition* is inconsistent. For example, he claims that KROM (the Norwegian Association for Penal Reform) with whom he is closely associated are to be supported when they try to work for improvements for prisoners and engage in reforms that "do not abolish and unmask" since he claims "this does not constitute a problem if con-

2 MATHIESON, T. *The Politics of Abolition*. London: Martin Robertson, 1974.

3 MATHIESON, T. *The Politics of Abolition*. London: Martin Robertson, 1974.

4 RYAN, M.; SIM, J. Campaigning for and Campaigning Against Prisons: Excavating and Reaffirming the Case for Prison Abolition. In: JEWKES, Y. (Ed.). *Handbook of Prisons*. Collumpton: Willan, 2007.

tinual interpretation of short-term improvements takes place in a perspective of abolition"[5]. But how does one know if certain reforms will actually lead to abolition? As suggested above there is no logical or practical connection between so called "negative reforms" and abolition. He concludes on the defeatist note that:

> Concerning our future, it is perhaps doubtful whether we will in fact manage to avoid incorporation in the establishment. Possibly, the most important 'result' of our political struggle will be the extended knowledge we have acquired concerning the difficulties of remaining unincorporated[6].

This pessimistic statement, would seem to undermine Mathieson's abolitionist aspirations and his rejection of positive reforms, particularly when he states in his later writings that the abolition of prisons will not occur in the foreseeable future.[7]

One aspect of the hard version of abolitionism is Mathieson's commitment to "the unfinished". That is, a reluctance to present detailed alternatives that can lead to the construction of unrealistic and untenable models that can be readily dismissed. However, if reforms are to be introduced alternatives have to be identified and justified as the second wave abolitionists came realise. However, despite the formal commitment not to spell out alternatives we have seen a growing interest amongst abolitionists in informalism which is frequently presented as a more appropriate and effective way of dealing with conflict and "problematic situations".[8] Mathieson[9] himself advocates a system in which not only prisons are abolished but that the criminal justice system is dismantled. In this "brave new world" it is envisaged that victims will not report offences to criminal justice agencies, but rather be encouraged to "lump it", since it argued that reporting the offence to the police and having the offender imprisoned does little for the victim. This apparently includes rape victims - because we are told some 80 per cent of rape cases are dropped in Norway! The preferred response is for the victim to receive help in the form of sympathy, and financial compensation - possibly combined with victim-offender restitution scheme. The offender in this model is not to be prosecuted but helped financially and emotionally.

During the 1980s critical and radical criminologists argued consistently against these forms of informal justice on the grounds that "haves" tend to come out better than the "have nots", while the significance of formal adjudication is that the state takes on the defence of the victim and at least creates a more level playing field, while maintaining certain rights and legal safeguards[10]. As Maureen Cain[11] concluded in her critique of informal justice these options are neither cheaper, more humane or more effective. In effect, they set up an elaborate infrastructure of agencies to deal with conflicts that would have previously been handled informally. Thus, paradoxically so-called informalism often turns out to be the formalisation of that which was previously informal[12]. Despite these critiques, informalism in its various guises has continued to be advocated by abolitionists and was revitalised in the form of restorative justice in the 1990s. The limitations, however remain, and restorative justice either serves to disenfranchise the victim and extend the net of social control, while replacing the strong formal concept of guilt for the weaker notion of shame. Rather than providing aa credible alternative to the criminal justice system it results in the construction of a parallel mode of adjudication, staffed by a new breed of quasi-professionals[13].

5 MATHIESON, T. *Silently Silenced*. Winchester: Waterside Press, 2004. p. 119.

6 MATHIESON, T. *Silently Silenced*. Winchester: Waterside Press, 2004. p. 119.

7 MATHIESON, T. The Abolitionist Stance: A Response' Paper presented at ICOPA X11 conference Kings College London, 2008. actionicopa.org; MATHIESON, T. *The Politics of Abolition Revisited*: Taylor and Francis, 2014.

8 CHRISTIE, N. Conflicts as Property. *British Journal of Criminology,* v. 17, p. 1-19, 1977; HAAN, W. de. *The Politics of Redress*: Crime, Punishment and Penal Abolition. London: Unwin Hyman, 1990; SCHEERER, S. Towards Abolition. *Contemporary Crisis,* v. 10, n. 1, p. 5-20, 1986.

9 MATHIESON, T. A New Look at Victim and Offender: An Abolitionist Approach. In: BOSWORTH, M.; HOYLE, C. (Ed.) *What is Criminology?* Oxford: Oxford University Press, 2011.

10 ABEL, R. The Contradictions of Informal Justice. In: ABEL, R. (Ed.). *The Politics of Informal Justice*. New York: Academic Press, 1982. v. 1.

11 CAIN, M. Beyond Informal Justice. In: MATTHEWS, R. (Ed.) *Informal Justice*. London: Sage, 1988.

12 COHEN, S. Taking Decentralisation Seriously. In: LOWMAN, J. et al. (Ed.) *Transcarceration:* Essays in the Sociology of Social Control. London: Gower, 1987.

13 DALY, K. Restorative Justice: The Real Story. *Punishment and Society,* v. 4, n. 1, p. 55-79, 2002. MATTHEWS, R. Reintegrative

One of the unfortunate legacies of the first wave of abolitionism is the reluctance to engage to seek improvements in prison conditions, since it is maintained that they only serve to religitimise the system. The most debilitating phrase associated with this approach is "a prison, is a prison, is a prison" which means that whatever improvements you make people remain incarcerated and therefore there is no point in engaging in short-term reforms[14]. The messages that tend to be associated with this pessimistic position include:

- If reforms are effective they only religitimise the penal system
- That there is a historical relationship between penal reforms and the expansion of imprisonment
- Reforms that challenge the prison system tend to get absorbed or neutralised
- Reform has the effect of refining the system in ways that facilitate its capacity to target the most vulnerable people
- The rhetoric of rehabilitation obscures the further entrenchment of the prison
- The pursuit of "alternatives to custody" invariably leads to net-widening.
- There is always a mismatch between intentions and outcomes
- You may change or improve certain aspects of incarceration but you leave the overarching structure intact.

These claims are debilitating and disarming and serve to dissuade observers from engaging in reforms. What all serious activists know, however, is that even small reforms can be beneficial and that successful reforms often lead to further reforms.

In contrast to these defeatist messages associated with some of the more hard line abolitionists, the second wave of abolitionists - who might be referred to as 'partial' or selective' abolitionists - maintain that although prisons do not reduce crime, deter offenders and are often counterproductive, they are prepared to engage in what they see as progressive reforms. Angela Davis, for example, although claiming that prisons are obsolete argues that certain groups like the mentally ill should not be imprisoned[15]. Instead of using prisons as a 'dumping ground' for the mentally ill, the drug addicted, and the impoverished, Davis advocates the development of welfare programmes for vulnerable communities. She re-engages with the reform--abolition debates flagged up by Mathieson, but provides a significantly different response. Thus:

> The most difficult questions for advocates of prison abolition is how to establish a balance between reforms that are clearly necessary to safeguard the lives of prisoners and those strategies designed to promote the eventual abolition of prisons as the dominant form of punishment. In other words, I do not think that there is a dividing line between reform and abolition. For example, it would be utterly absurd for a radical prison activist to refuse to support the demand for better health care inside Valley State, California's largest women prison, under the pretext that such reforms would make the prison a more viable institution[16].

In addition, Davis in line with other second wave abolitionists remains committed to a policy of decarceration, the development of alternatives to custody, the removal of certain categories of offenders from

Shaming and Restorative Justice: Reconciliation or Divorce? In: AERTSEN, I.; DAEMS, T.; ROBERT, L. (Ed.). *Institutionalizing Restorative Justice*. Collumpton: Willan, 2006.

14 CARLTON, B. Penal Reform, Anti-Carceral Feminist Campaigns and the Politics of Change in Women's Prisons, Victoria, Australia. *Punishment and Society,* v. 10, n. 10, p. 1-25, 2016; HANNAHMOFFAT 2001; CARLEN, P. Carceral Clawback: The Case of Women's Imprisonment in Canada. *Punishment and Society*, v. 4, n. 1, p. 115-121, 2002; SHAYLOR, C. Neither Kind Nor Gentle: The Perils of Gender Responsive Justice. In: McCULLOCH, M.; SCRATON, P. (Ed.). *The Violence of Incarceration*. New York: Routledge, 2009.

15 DAVIS, A. *Are Prisons Obsolete*? New York: Seven Stories Press, 2003.

16 DAVIS, A.; RODRIGUEZ, D. The Challenge of Prison Abolition: A Conversation. *Social Justice,* v. 27, n. 3, p. 212-218, 2000.

prison and challenging the "prison industrial complex"[17]. Most second wave abolitionists would probably agree with these objectives, but the question remains of how they are to be realised and how their achievement is linked to the overall aim of abolition. The solution to these questions abolitionists suggest is based on the development of a case against imprisonment and mobilising appropriate social support.

3. The Problem of Strategy

Whatever reforms we would like to introduce there arises a problem of strategy. Whether we want to decarcerate certain categories of prisoners or improve prison conditions there is a question of implementation. For the most part academic researchers, prison reform organisations and independent think tanks rely on a small band of supporters and funding sources in order to send out a message to policy makers and the general public that either contains a critique of current policies or involves some suggestions about the future direction of policy. However, the effectiveness of these groups is uncertain and even if there is an agreement on policy it is unclear which agents or mechanisms will facilitate their activation.

It is apparent from Mathieson's account of his work with prison reform groups in Norway that they were not prepared to engage in the kind of large scale transformation of the prison system that he advocated. Indeed, the only example of a full-blown abolitionist intervention is the notorious Massachusetts Experiment carried out by Jerome Miller in the 1970s. This initiative, in brief, involved the closing down of all juvenile reformatories in the State of Massachusetts "virtually overnight" before any alternatives had been arranged[18]. Only after the reformatories were closed did Miller and his associates relocate the young offenders in a variety of community based options, while some young people returned home or were placed in foster care. Miller claimed that the most effective alternative programmes were those that sprang up as a makeshift response to a particular crisis. He acknowledged, however, that what happened in Massachusetts would not be allowed to take place in most other States and that it was the particular "liberal configuration" in Massachusetts coupled with his unique role as Head of the Massachusetts juvenile justice system that allowed the policy of radical deinstitutionalisation to take place.

It is clear from Mathieson's involvement with prisoner rights groups that he believes that academic researchers should be directly involved in prison issues. Although placing "the expelled" at the centre of his activities he is sceptical about the possibility of prisoners threatening the system and instead advocates an alliance between prisoners and working class organisations who have according to Mathieson "concrete interests in common"[19]. However, as David Greenberg has argued the this downplays the class antagonism between the working class and the expelled and their concerns about crime and victimisation. Establishing connections with working class organisations would only make sense according to Greenberg "if people found the existing reality so oppressive that nothing could possibly be worse' and although many people concede that there are serious problems with the prison system 'they often believe that alternatives would be worse"[20].

Other commentators have proposed the formation of wider social movements to campaign for prison reform. Julia Sudbury (2004), a self-proclaimed abolitionist, for example claims that in the US there has been a popular movement against the prison industrial complex involving youth of colour[21]. Her aim is to link anti-prisons campaigns to the wider issues of militarisation and globalisation and makes reference to

17 CARLEN, P.; WORRALL, A. *Analysing Women's Imprisonment*. Collumpton: Willan, 2004.

18 MILLER, J. *The Last One Over the Wall*: The Massachusetts Experiment in Closing Reform Schools. Ohio: Ohio state University, 1998.

19 BROWN, D.; HOGG, R. Abolition Reconsidered: Issues and Problems. *Australian Journal of Law and Society,* v. 2, n. 2, p. 56-75, 1985.

20 GREENBERG, D. Reflections on the Justice Model Debate. *Contemporary Crisis,* v. 7, p. 313-327, 1983.

21 SUDBURY, J. A World Without Prisons: Resisting Militarism, Globalised Punishment and Empire. *Social Justice,* v. 31, n. 1-2, p. 9-30, 2004.

an organisation called "Critical Resistance" which includes students, scholars, prisoners and their families in association with a number of other groups that have opposed the prison-building programme in north America. Similarly, Bree Carlton[22] in Victoria, Australia reports on the development of anti-carceral feminist campaigns involving community groups, trades unions as well as women's and refugee rights groups[23].

Michelle Alexander also advocates the formation of coalitions with the aim of building a new public consensus[24]. In Alexander's opinion, piecemeal criminal justice reforms will never be able to dismantle incarceration. She is critical of civil rights organisations and their reluctance to take up the issue of imprisonment, which she sees as a product of racial prejudice and what she calls "colour-blindness". She recognises the widespread hostility to those labelled as "criminals" and is also dismissive of disconnected advocacy strategies and argues that there is a need to confront the "deeply flawed public consensus", but provides little indication of how this is to be achieved, except for advocating the formation of a social movement.

The recurring problem with attempts to build class alliances as both Greenberg and Alexander note is the deep rift across class lines between the expelled and the working class. According to Michel Foucault the historical construction of "crime" is based on a conflict between the working class and the underclass, but the paradox is that while imprisonment is mainly reserved for the underclass its principle function is to remind the working class of the dangers of non-conformity and the possibility of losing their place on the labour market[25].

Foucault, himself, however founded the Information Group on Prisons (GIP) in France in the 1970s which was dedicated to "giving voice" to the prisoners themselves. He claimed that his efforts were not so much directed to reforming prisons or establishing links with the working class organisations that was the objective of the GIP but rather to reintegrate prisoners into political struggles[26]. Although he claimed that his work with the GIP provided the motivation for his later works on discipline, resistance and power, there is a tension in Foucault's politics between his chosen mode of intervention and his writings on the wider structural issues associated with the modern prison. Moreover, there is some uncertainty and ambiguity in Foucault's politics since he resists presenting a clear normative position and like Mathieson is openly suspicious of attempts to formulate any substantive normative alternatives to the humanism which he rejects. Gilles Deleuze commenting on Foucault's involvement with the GIP, which only lasted two years, was that that the GIP were responsible for some minor changes but that within a few years the situation was exactly as before[27].

To date, although there are a growing number of activists who have tried to campaign against the use of imprisonment there remains a problem of strategy and of securing a broad base of support for prison reform or abolition. However, there can be little doubt that those speaking out against imprisonment are now doing so with louder voices and with greater confidence and this in itself may be a sign of a significant change of public mood. Moreover, public opinion research indicates a degree of support for non-punitive measures for certain offences[28].

22 CARLTON, B. Penal Reform, Anti-Carceral Feminist Campaigns and the Politics of Change in Women's Prisons, Victoria, Australia. *Punishment and Society,* v. 10, n. 10, p. 1-25, 2016.

23 BALDRY, E.; CARLTON, B.; CUNNEEN, C. Abolition and the Paradox of Penal Reform in Australia. *Social Justice,* v. 41, n. 3, p. 168-188, 2015.

24 ALEXANDER, M. *The New Jim Crow:* Mass Incarceration in the Age of Colorblindness. New York: The New Press, 2011.

25 FOUCAULT, M. *Discipline and Punish*: The Birth of the Prison Allen Lane, 1977.

26 HOFFMAN, M. Foucault and the "Lesson" of the Prisoner Support Movement. *New Political Science*, v. 34, n. 1, p. 21-36, 2012; SIMON, J. Michel Foucault on Attica: An Interview. *Social* Justice, v. 18, n. 3, p. 26-34, 1991; WELCH, M. Pastoral Power as Penal Resistance. *Punishment and Society,* v. 12, n. 1, p. 47-62, 2010.

27 DELEUZE, G. Foucault and the Prison. In: SMART, B. (Ed.) *Foucault:* Critical Assessments. London: Routledge, 1994. v. 111.

28 CARLTON, B. Penal Reform, Anti-Carceral Feminist Campaigns and the Politics of Change in Women's Prisons, Victoria, Australia. *Punishment and Society,* v. 10, n. 10, p. 1-25, 2016; SUNDT, J. et al. Public Willingness to Downsize Prisons: Implications from Oregon. *Victims and Offenders,* v. 10, p. 365-378, 2015.

However, just as the distinction between positive and negative reforms is unsubstantiated, so the link between short term negative reforms and abolitionism cannot be sustained. There may be more or less effective reform strategies but there is no discernible connection between any particular reforms and the goal of abolition. Consequently, activists may have a personal or ideological commitment to abolition but in practice we are all reformers, while it is extremely questionable whether the abolition of prison could ever be achieved by a process of attrition and the gradual building up of reforms. While abolition may not be achieved through piecemeal reforms we are left with the pressing issue of deciding which elements of the prison system are most damaging or ineffective and need changing, as well as trying to develop constructive interventions.

4. Cracks in the Penal Edifice?

For many years criminology has been dominated by a pessimism and impossibilism. There has been an overwhelming tide of gloom in Anglo-American criminology which has become preoccupied with the growing number of people in prison to an extent that that the "cracks" in the penal edifice have often either been ignored or downplayed. However, over the last decade or so there are signs that the tide is turning and that significant efforts are being made, even in the US, to limit prison use and to improve the situation[29].

Significantly, there has been a growing politicisation of prison issues in recent years with a growing number of official and unofficial reports providing revealing insights into prison life. Even Barak Obama, while President of the United States commuted long prison sentences for some inmates, limited the use of solitary confinement, expanded mental health services and assisted those leaving prison. Moreover, the Obama administration announced that it would phase out the use of some private prisons[30]. David Cameron, while Prime Minister of Britain dutifully followed suit claiming that the prison system was "a scandalous failure" and that prisoners should not be seen as liabilities but potential assets. He expressed a commitment to improving rehabilitation and education in prisons, while reducing the prison population by extending the use of satellite tagging and community penalties[31]. These statements are a long way from traditional conservative "get tough" policies.

Shelley Listwan, and her colleagues noted a decade ago that there has been opposition to what she calls the "penal harm movement" in the US involving continued support for rehabilitation, the repeal of mandatory and determinate sentencing policies, developing diversion programmes for juveniles such as the RECLAIM initiative in Ohio, limiting the re-entry of to prison as a result of parole violations and the passing of The Second Chance Act (2007) which was designed to provide treatment programs for those re-entering the community[32]. In addition, we have seen in California the decarceration of thousands of prisoners who have been placed on parole since 2011. In the fifteen months after passing California's Realignment Act the size of the prison population was reduced by 27,527 inmates saving an estimated $453 million, with remarkably little impact on the overall safety of Californians[33].

Although this strategy was in many ways unique there are a number of examples over the past decade or

29 CLEAR, T.; FROST, N. *The Punishment Imperative*. New York: New York University Press, 2014; CULLEN, F.; JONSON, C.; STOR, M. *The American Prison*: Imagining a Different Future. California: Sage, 2014.

30 JAFFE, G. Obama Just Commuted the Sentences of a Record Number of Inmates. *The Washington Post*, 3 Aug. 2016.

31 WRIGHT, O. David Cameron on British Prisons: Treat Prisoners as Assets not Liabilities. *The Independent,* 7 Feb. 2016.

32 LISTWAN, S. et al. Cracks in the Penal Harm Movement: Evidence from the Field. *Criminology and Public Policy,* v. 7, n. 3, p. 423-465, 2008.

33 SUNDT, J.; SALISBURY, E.; HARMON, M. Is Downsizing Prisons Dangerous? The Effects of California's Realignment Act on Public Safety. *Criminology and Public Policy,* v. 15, n. 2, p. 315-336, 2016.

so of particular prisons in different States in the US being closed down in an attempt to limit prison capacity and reduce expenditure[34]. Most recently, there has been a commitment by the Mayor of New York to close the troubled Rikers Island prison. This involves a plan to reduce the inmate population by fifty per cent and this in turn and this requires reducing the number of people sent to prison in New York – even those charged with serious felonies[35]. This initiative has been proposed in a context in which the prison population in New York city has dropped markedly[36]. Significantly, there has been a decline in State and Federal prison populations in the US since 2013 (PEW 2015)[37]. There have also been notable reductions in prison populations in different States since the turn of the century. During 1999-2000, 12 State experienced such a reduction[38]. In 2002, 25 States reduced funding for prisons and in 2003 17 States either closed prisons or delayed prison construction[39]. In 2011, 26 States reduced their prison population – most notably California. There has also been a 40 per cent decrease in juvenile incarceration in the US between 1998-2013, with fewer young people behind bars than at any point since 1975[40].

North America is not the only country experiencing a decrease in prison numbers. In the Netherlands, some 13,500 prison cells are currently empty and five prisons are destined to close in the near future. This decrease has been attributed to a significant decrease in recorded crime. Similarly, Sweden has seen a decrease in its prison population in recent years and there were plans to close four prisons in 2014-15. This decrease in prison numbers has been attributed to a combination of an increased focus on rehabilitation and the passing of more lenient sentences for some offences[41].

The Italians also operate a relatively lenient system of juvenile justice. There is a tendency to "define down" juvenile offending and to exercise a policy of "benevolent tolerance". As David Nelken[42] has pointed out at any given time there are no more than around 500 young people in prison in Italy and only around 3000 young people are sentenced to prison each year and the numbers have been going down since the 1970s. This decrease has been attributed to the passing of the Juvenile Justice Reform Act (1989) which requires that prison be avoided in general and that care be taken in legal proceedings not to interrupt the normal process of growing up. As Nelken notes these variations in custody rates suggest that it is a mistake to assume that levels of punishment are necessarily culturally "embedded" in the country in which they are found. In fact, there are no shortage of examples of declining prison populations in Europe and Scandinavia in the past, particularly in relation to juvenile incarceration. In England and Wales the average population of young people in custody decreased by 56% between 2003/04 and 2013/14. This is a function of the number of young people sentenced to immediate custody over this period (Youth Justice Board 2015).

While on one hand there are number of examples of significant reductions in the number of people in custody in various advanced western countries in recent years, it is also the case that new forms of regulation and control are coming to the fore. As we move into an increasingly postfodist globalised world with its emphasis on labour flexibility and mobility it is not surprising to find that the regulatory structures that were dominant in the nineteenth and twentieth centuries are coming under increasing pressure. The transforma-

34 MATTHEWS, R. *Realist Criminology*. London: Palgrave Macmillan, 2014.

35 SCHWIRTZ, M. De Blasio to Unveil Plan for Rikers Island While Warning that It Will Not be Easy. *The New York Time,* 22 Jun. 2017.

36 AUSTIN, J.; JACOBSON, M. *How New York City Reduced Mass Incarceration:* A Model for Change? New York: Vera Institute for Justice, 2013.

37 PEW. *State, Federal Prison Populations Decline Simultaneously for the First Time in 36 Years*. Philadelphia: PEW Charitable Trust, 2015.

38 MEUER, M. State Sentencing Reforms: Is the "Get Tough" Era Coming to a Close? *Federal Sentencing Reporter*, v. 15, n. 1, p. 50-52, 2002; GORMESON, L. Prison Population Begins to Level. *Corrections Today*, Dec. 2007.

39 JACOBSON, M. Reversing the Punitive Turn: The Limits and Promise of Current Research. *Criminology and Public Policy,* v. 5, n. 2, p. 277-284, 2006.

40 PAULSON, A. Why Juvenile Incarceration Reached Its Lowest in 38 Years. *The Christian Science Monitor*, Feb. 2013; TONRY, M. *Penal Reform in Overcrowded Times*. Oxford: Oxford University Press, 2001.

41 ORANGE, R. Sweden Closes Four Prisons as Number of Inmates Plummets. *The Guardian*, 11 Nov. 2013.

42 NELKEN, D. When is a Society Non-Punitive: The Italian Case. In: PRATT, J. et al. (Ed.). *The New Punitiveness*. Cullompton: Willan, 2005.

tion of the Keynesian welfare state coupled with the advent of widespread privatisation and deregulation have e arguably generated a new regulatory landscape involving different forms of social control than those so vividly portrayed by Foucault.

5. Postfordism, Post-Discipline and Control

As Nancy Fraser has argued:

> In all these respects, postfordist globalisation is a far cry from Foucauldian discipline; multi-layered as opposed to nationally bounded, dispersed and marketised as opposed to socially concentrated, increasingly repressive as opposed to self-regulating. With such divergences, it is tempting to conclude that the disciplinary society is simply depasse"[43].

Fraser suggests along with other commentators that the disciplinary mechanisms and power relations on which Foucault claims that the modern prison rests are in a process of transformation as we enter the era of postfordism and globalisation. If this is the case then the modern prison rests on shifting sands, whether its scale is increasing or decreasing. These "post-disciplinary" mechanisms involve forms of network governance, elaborate forms of surveillance and monitoring, new forms of inclusion and exclusion as well forms of responsibilisation.

Adam Crawford has described the ways in which processes of networked governance are replacing the old style public bureaucratic welfare state with more decentralised forms of regulation[44]. This is not a process of deregulation *per se* but involves what John Braithwaite refers to as "regulatory capitalism" in which a myriad of newly formed agencies oversees and monitor different organisations and certain aspects of social and economic life[45]. This is not so much a retreat from the state but a reconfiguration of the systems of control:

Networked governance means a shift in both the private and public sector from Fordist control of systematically specialised, broken-down production systems that are partially contracted out and partly contracted in to shifting collaborative groups that compete for growth with outsiders and insiders"[46]. Braithwaite argues that those that think that they are in an era of neo-liberalism are mistaken. In the era of regulatory capitalism there is not a lack of governance but rather more governance that shapes the lives of citizens within and out of the state.

In conjunction with development of systems of networked governance we have also seen the spread of different surveillance mechanisms. Some commentators have seen this development as an expression of the "dispersal of discipline" and the transmission of Foucault's model of the panopticon to contemporary society. Mathieson takes up the issue of the panopticon and argues that Foucault fails to acknowledge the rise of the spectacle in mass mediated societies where the many watch the few, which he refers to as "synopticism"[47]. However, while Zygmunt Bauman[48] references Mathieson's contribution he argues that contemporary systems of surveillance do not involve the same forms of training and subjectification that characterised the panoptic design that was adopted in some prisons[49]. Instead, contemporary surveillance is

43 FRASER, N. From Discipline to Flexibilization? Rereading Foucault in the Shadow of Globalization. *Constellations,* v. 10, n. 2, p. 160-171, 2003.

44 CRAWFORD, A. Networked Governance and the Post-Regulatory State? *Theoretical Criminology,* v. 10, n. 4, p. 449-480, 2006.

45 BRAITHWAITE, J. *Regulatory Capitalism*. Massachusetts: Edward Elgar, 2008.

46 BRAITHWAITE, J. *Regulatory Capitalism*. Massachusetts: Edward Elgar, 2008. p. 3.

47 MATHIESON, T. The Viewer Society: Michel Foucault's Panopticon Revisited. *Theoretical Criminology,* v. 1, n. 2, p. 215-234, 1997.

48 BAUMAN, Z. *Globalization*. Cambridge: Polity Press, 1998.

49 CALUYA, G. The Post-Panoptic Society? Reassessing Foucault in Surveillance Studies. *Social Identities*, v. 16, n. 5, p. 621-633, 2010; YAR, M. Panoptic Power and the Pathologisation of Vision: Critical Reflections on the Foucauldian Thesis. *Surveillance and Society,* v. 1, n. 3, p. 254-271, 2003.

based upon the manipulation of coded information designed to monitor and channel human behaviour. For Bauman "liquid surveillance" describes those systems of data-flows, mutating surveillance agencies and the targeting and sorting of populations. Unlike the panopticon with its enclosed and fixed gaze contemporary forms of surveillance are not just for specific moments but are diffuse and mobile. The aim is not to keep subjects in place but rather it is a "vehicle of mobility"[50]. Thus as David Lyon points out:

> The panoptic task was to eliminate ambivalence, to classify clearly. Its early power derived from uncertainty; was the inspector watching? Self-discipline was needed, just in case. Today, transparency is still sought by surveillant means, but the categories themselves create the uncertainty. They are either unknown, whether for national security or trade secret reasons, or they themselves have succumbed to liquidity. By this I mean they are permitted to multiply and morph so that the filers miss no possible category, just in case. They are also inscrutable just because they come wrapped in technical codes[51].

Lyon argues that surveillance morphs and mutates. It is mobile, suspicious and seductive, fragmenting, data-flowing and responsibilised. Together, these processes make everyone vulnerable, while eroding trust and privacy. Bauman also suggests that one effect of this data gathering process is the disaggregation of the body into data particles producing "technologically induced fragmentarity" involving the disassembly of the moral self while fostering the growth of the "risk society". The quest for efficiency produces a myopia and a focus on calculable risks and the search for technical solutions.

Risk frameworks form the basis of modern systems of security according to Pat O'Malley[52]. Risk based predictions, however, identify insecurities rather than securities and tell us only what we cannot do, not what we can do. Belief in truth and progress gives way to a fundamental doubt which can paralyse us into a state of inactivity. The adoption of risk as a framework of government reshapes relationships. It destabilises the taken-for-granted. Whereas in the Keynesian welfare state health and disease was commonly governed through such techniques as social insurance, current political rationalities tend to suggest that these issues are best governed by individuals or markets. Individuals are encouraged to become more independent and responsible for their own future and well-being. Unlike the era of disciplinary power the State's new strategy is not to command and control but rather to organise and to persuade individual citizens that they have responsibility in this regard[53].

In Feeley and Simon's account of the shift from the "old penology" to the "new penology" they suggest that actors are not so much subject to a process of normalisation but rather the application of specific risk categories based on a project of exclusion and that prison personnel are increasingly becoming risk managers. Similarly, in the probation service decisions are made in terms of risk assessment schedules rather than in terms of professional or clinical assessments[54].

The case for the shift towards post-disciplinary power is made forcibly by Gilles Deleuze in his depiction of the "control societies" that no longer operate by confining people for a fixed period, but through continuous control[55]. Thus, whereas disciplinary practices operated in closed sites – the prison, factory, school – post-disciplinary forms of control operate in open sites. In Deleuze words "confinements are *moulds*, while controls are *modulation"*. For Deleuze, the emergence of control societies is linked to changes in production relations together with the development of new technologies and modes of communication. In line with Bauman he suggests that capitalism has shifted the emphasis from production to consumption and from manufacture to a service economy. This change requires a system of open circuits and a movement away from confinement and enclosure. He maintains, however, that is not a shift to a more benign system of

50 BAUMAN, Z. *Globalization*. Cambridge: Polity Press, 1998.

51 LYON, D. Liquid Surveillance: The Contribution of Zygmunt Bauman to Surveillance Studies. *International Political Sociology,* v. 4, p. 329, 2010.

52 O'MALLEY, P. Risk. *Uncertainty and Government*. London: Glasshouse Press, 2004.

53 GARLAND, D. *The Culture of Control*. Oxford: Oxford University Press, 2001.

54 KEMSHALL, H. *Risk and the Probation Service*. Aldershot: Dartmouth, 1998.

55 DELEUZE, G. *Negotiations*. New York: Columbia University Press, 1995.

control but rather a change in the *form* of control which is ceaseless and he warns that we may come to see a control system based on confinement "as part of a wonderful happy past".

Thus, it is clear that there are a number of dimensions of regulation and control emerging which are at odds with the disciplinary practices and related forms of power that Foucault identified as the foundation of the modern prison. These emerging forms of control have been established with little or no endorsement from reformers or academics and no one predicted the development and scale of these mechanisms. Their introduction may have been uneven and may vary in different locations but it is clear that there are a number of dimensions of regulation and control emerging which are at odds with the disciplinary practices and related forms of power that Foucault identified as the foundation of the modern prison.

6. Summary and Conclusion

In this paper, it is suggested that there are two lines of force that are impacting on the future of imprisonment – one is internal and the other external. The internal dynamic involves the growing tensions and contradictions within the penal system and the deepening crisis or *crises*[56]. Although the prison has been in a crisis for most of the twentieth century the contradictions have been averted by the development of series of management strategies. However, as the problems and tensions associated with imprisonment mount up, the task of management will become increasingly difficult.

The external dynamic involves the development of subtle but powerful forms of regulation that are post-disciplinary and post-panoptic. Forms of surveillance, security and governance are creating a complex network of mechanisms that do not so much rely on the strategies of enclosure but operate in open sites. They are not fixed and time limited but flow and mutate. At the same time, the triangle of forces that gave the prison its apparent normality – labour, time and space are being reconfigured. As the "fit" between imprisonment and postfordism becomes more strained social support for abolition, which at present is limited and sporadic, may well grow. In the meantime, there are a considerable number of pressing issues in the penal system that need to be addressed.

This scenario suggests that the future of the prison is uncertain while the need for more radical reforms has become more urgent. However, the abolition of imprisonment will not be achieved through the greater use of "alternatives" or through a process of attrition, while the promotion of informalism particularly in the form of restorative justice is a flawed option. However, Mathieson is correct when he argues that we need to focus on the contradictions and tensions within the prison system. However, his classic distinction between positive and negative reforms does not stand up in practice. Nor does his attempt to link short term demands with the objective of abolition. Thus, there is no formal contradiction between abolitionism and reformism. Therefore, in reality the distinction between the abolitionists and reformers is ideological and although self-proclaimed abolitionists and reformers may have different priorities in terms of intervention there is a pressing need to engage in prison reform.

In relation to prisons and punishment it is suggested that emerging structures are closely tied to changing relations of production and in the present period this involves the shift from Fordism to Postfordism and to an increasingly marketised service economy involving new forms of communication. This approach is in contrast the preponderance of studies on punishment that are based on forms of political reductionism - most notably based on claims of a surge in "populist punitiveness" or a product "neo-liberalism"[57].

56 FITZGERALD, M.; SIM, J. *British Prisons*. Oxford: Blackwell, 1979.

57 MATTHEWS, R. 'False Starts, Wrong Turns and Dead Ends' Critical Criminology Vol 25 (4), 2017, p. 577-591; LACEY, N. 'Punishment, (Neo) Liberalism and Social Democracy'. In: J. SIMON and R. SPARKS (eds.) The Sage Handbook of Punishment and Society. London: Sage, 2013.

At present, it is very difficult to find many people of any political persuasion in the western world arguing in support of incarceration. The signs are that the prison boom in like US and elsewhere is coming to the end and the emphasis now is increasingly on downsizing. In this climate, the prediction is that prison numbers in various advanced western countries will decrease over the next decade or so as the crisis of imprisonment deepens and the growing contradictions become more difficult to manage. In the longer term Deleuze is probably correct that the days of the prison as the dominant form of punishment may well be numbered.

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