



Strategy for combat: prisoners' rights and abolitionism

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Source: *Justice, Power and Resistance* Volume 1, Number 1 (April 2017) pp. 64-79

Published by EG Press Limited on behalf of the European Group for the Study of Deviancy and Social Control electronically 16 October 2017

URL: <http://www.egpress.org/papers/massimo-pavarini-strategy-combat-prisoners%E2%80%99-rights-and-abolitionism>

Originally published in Pavarini, Massimo (2009) *Castigar al enemigo. Criminalidad, exclusión e inseguridad*. Quito: Flacso (pp. 127-143). Translated by Steven Kemp, University of Girona, Spain

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Strategy for combat: prisoners' rights and abolitionism¹

Massimo Pavarini ²

Abstract

There is a new centrality of the prison in the policies of social control. It is easy to conclude that the abolitionist strategy, which is manifestly failing, has unveiled that the revisionist penology which insisted upon the historical obsolescence of detention as punishment is scientifically erroneous. Personally, I think things are more complex. Maybe the time has come to critically review the abolitionist issue, above all today, faced with the dominance of a new 'mass incarceration'.

Some personal notes

It may seem strange to offer 'personal' considerations and so for this reason I ask for authorisation. On the basis of what I will argue, however, I think that we cannot do without some bio-bibliographical data.

In thirty-five years of reflections on prisons I have never been interested in the rights of the prisoner. I confess that as a penologist in the strict sense, yet always of criminal law training, this situation is surprising at the very least. However, this omission is certainly not attributable to inattention or to some 'aesthetic' whim, which always accompanies every research trajectory in which there are topics that you like and those that you do not. I have consciously avoided this exquisitely legal prison topic with much prudence. The underlying reason is that it has always seemed to me, much more than any other subject,

¹ Originally published in Pavarini, Massimo (2009) *Castigar al enemigo. Criminalidad, exclusión e inseguridad*. Quito: Flacso (pp. 127-143). Translated by Steven Kemp, University of Girona, Spain.

² Massimo Pavarini (1947-2015) was, along with Alessandro Baratta, Dario Melossi, Tamar Pitch and other authors, one of the most important representatives of the critical study of penal policy and deviance in Italy. His work has had a strong influence on critical thinking in Latin America, especially for works such as *Carcere e fabbrica. Alle origini del sistema penitenziario* (w/ Melossi, 1977 and translated into English by Barnes and Noble Books in 1981 as *The Prison and the Factory: Origins of the Penitentiary System 1977*) and *Control y dominación. Teorías criminológicas burguesas y proyecto hegemónico* (Spanish translation of *Introduzione a ...*, 1980 [Control and domination. Bourgeois criminological theories and hegemonic project]). He devoted most of his work at the University of Bologna to developing a critical sociological and legal analysis of criminal justice system.

marked by a strong theoretical deficit. A radical deficit capable of blocking any scientifically congruent communication between the discourse on prisoners' rights and the 'real' dimension of the punishment of incarceration.

I have been a long-serving member – as long as my professional life – of the abolitionist movement, not of the criminal justice system, but rather of prison as an institution. I was a convinced abolitionist of prison when it seemed relatively easy to do away with the necessity of this total institution, which finds itself deep in crisis.

Faced with the new golden age of prison – driven by the processes of reincarceration – I have spent a lot of time trying to scientifically understand what was happening and the reasons for it. Politically, I have been concerned with reducing the harms of a process that seems to want to push back the clock hands of history. I have not seriously questioned in this context whether the reasons for abolitionism remained valid.

I believe that the time has come to understand why I have been reluctant to deal with topic of the rights of imprisoned persons and why I have been wrong, politically, by not insisting on a strategy to transcend prison.

Degrading punishment and the 'reification' of the prisoner

In its philosophical foundation in the origins of the penitentiary, the punishment of deprivation of liberty by imprisonment is located in the domain of 'no law'. On the other hand, as the sociology of punishment teaches us, prison in its material dimension constitutes the aggregate and artificial production of *handicap*, in other words, it is the production of suffering as deprivation and limitation of rights and expectations (Mari 1993). And only romantic metaphysics, as Brombert (1975) enlightens us, has been able to imagine a punishment that self-censors itself as the punishment of the soul suffering by deprivation of liberty. The prison sentence was and still is, indistinct from any other punishment, intentionally-caused suffering for purposes of degradation. And the degrading effect of punishment translates into the 'reification' of the convicted-imprisoned person, in their reduction to slavery, in the subjection of the Other to power. Prison is, therefore, the administrative apparatus invented by modernity for the material production of criminal servitude, even if it has been inherited from the premodern legal tradition of bonds and the status of domination / constraint imposed by the relationship of *corvée* (unpaid labour). In this sense the prison, like other disciplinary devices, is placed in the conical umbra of no-law, as the symbolic and functional opposite of the 'luminous'

principle of habeas corpus. Or at least so it was in the origins of modernity and the legal thinking which continued until the year eight hundred.

A territory free from law

Later followed the administrative doctrine of ‘special supremacy’ (Offidani, 1953) at the beginning of the last century and in particular within German thinking (Mayer, 1924, Schmitthenner, 1845/1967). This emerged to account for the existence of many ‘spaces that are empty from and because of law’, which were still present and not solved by the process of nationalisation of society. This theory should not be considered as being founded on prejudice, as Ruotolo (2002) and Pennisi (2002) have argued in two optimal and exhaustive monographs on the rights of the prisoner. On the contrary, I would be tempted to describe this theory as sociological, that is, descriptive of the ‘is’, capable of telling the truth, the reality, of the punishment, as well as other ‘social facts’, to say it in the style of Durkheim. If this descriptive reading assumed any ‘prescriptive’ dimension, of ‘ought to be’, then it would simply become a technocratic ideology. But at the level of ‘sociological’ theory it is scientifically founded: despite the growing dominance of the legal system, there are still irreducible spaces of social relations of subjection unilaterally dominated by powers that avoid, totally or partially, any legal predetermination. They are spaces that Foucault (1975) will define as places of discipline, far from the theorising born in Bismarkian Germany. Prisons, like the asylum and the army, but also – if not more so because of their social relevance – the family, the school and the factory resist as spaces not fully hegemonised by the law, where domination, which tends to be ‘free’ and therefore ‘discretionary’, of some beings over others extends to the point that some of them endure, although to varying degrees, liberties that are ‘hollowed’ and / or ‘devalued’ and / or ‘limited’. This theorising does not actually articulate the limits that the law can or could place on relations of domination. It only lets you understand that this domination cannot ever be absorbed, hegemonised by the ‘law’. There will always remain a minimal yet strong, resistant and refractory nucleus of freedom from ‘law’.

The 'new' right of the prisoner to re-education

With regard to the subject of prison and the theoretical foundations of the rights of the prisoner, a new stage was entered into in the second half of the last century with the acceptance of the correctional model of criminal justice (Garland, 1985; 1990). As has been witnessed, this model orientates disciplinary power teleologically towards – and therefore limits – the purpose of social inclusion. Thus, the punitive pretension of the State is linked to the achievement of a specific purpose: the resocialisation of the prisoner. I believe that it is precisely the emergence of the correctionalist culture, on the one hand, and the affirmation of positive special prevention³ aims of punishment, on the other, that favoured, if not determined, the serious situation of confusion and error that is at the foundation of the theoretical deficit denounced above.

As we want to understand the golden age of penal correctionalism, we must recognise how this special-preventive legal culture eventually brought about a radical suspension of the terms on which the topic of prisoners' rights were being developed until then. The conflict between freedom 'of' and freedom 'from' law is hidden and progressively obscured by the emergence of the new right / duty to re-education. But in this way, some incurable antinomies are produced.

If the objective of education is an end and a limit to/on the punitive pretension, re-education (in other words the promise of the State to deal with the social inclusion of the prisoner) rises to the rank of legal pretension, that is to say a fundamental right of the prisoner, a right that absorbs and cancels out any other. Any other rights of the prisoner lie no longer and not as much in the punitive pretension of the State, but rather in the right to resocialisation of the same convict. In other words, it is not possible to resist re-education, since the State's objective of punishing coincides with that of the prisoner to be educated. The issue of the conflict on which the domain of rights is physiologically built is therefore annulled, eliminating one of the subjects of the relationship.

Otherwise one could argue – but doing so would determine another aporia – that the re-educational penitentiary treatment is substantiated in education in legality through legality, that is to say through the full (or better, fuller) exercise of the rights of the prisoner. But with this procedure the State should simply and radically renounce punishment, in other words, intentionally

³ In Spanish, positive special prevention (*prevención especial positiva*) refers to punishment which aims to re-educate the individual in order to bring about the internalisation of criminal acts as 'wrong' [Translator's note]

inflicted suffering. But prison, in the same way as any punishment alternative to imprisonment – as evidenced by the experience of the processes of prison release – always entails significant limitations on the freedoms and rights of the prisoner, as per the golden law of less eligibility, according to which the needs of social degradation impose the ‘aggregate’ production of social differentiation. Thus, the State should renounce punishment, dedicating itself to ‘rewarding’ the convict, guaranteeing or striving to guarantee him some form of social promotion. This is an apparently paradoxical situation that can sometimes come about. But the paradox is only apparent. I start from my experience as a frequenter of the penitentiary hells of the third world. I have visited penitentiaries in the third world in which the detained population, who are deprived of their liberty in conditions unimaginable for the first world, receive a meal at least once a day and if they find themselves seriously ill, receive some sort of medical help. This penitentiary universe is composed mainly of marginal populations that live in the metropolitan ghettos where counting on something to take away hunger or to cure oneself is not guaranteed. But I repeat, the paradox is only apparent: the prison in these realities has already moved away from any punitive dimension (if it ever had one), to become the only presidio of a minimalist welfare for the ‘wretches of the Earth’. The punishments in these extreme situations are in fact the informal and/or illegal ones: the death penalty, torture without due process by the police or lynching by a mob, in other words, premodern forms of punishment.

Anyway, the important thing is to state this point: if prison or other modalities of punishment are estranged from the material and symbolic function of production and reproduction of social differentiation, they betray the mission of the punishment. They are no longer legal punishments.

The path of re-socialisation and correctional treatment, regardless of the critical assessment of the degree of contingent effectiveness which has been historically achieved, does not lead to a different and more convincing assertion of the rights of the person that suffers the punishment. On the contrary, it leads in a direction where basis for the concurrence of interests between the State and the convict cannot be found, or rather this no longer exists because the State has renounced all punitive pretensions with respect to the prisoner.

On the other hand, it can be argued – as did Margara (1997) – that in the era of re-socialisation the quality of life in ‘our’ prisons has risen. And in this process prisoners have enjoyed greater freedoms than in the past. It is true. But all this, it must be understood, has little to do with the right / duty to resocialisation and is more linked to the process of the civilisation of customs – to say it in

accordance with Elias – and to the tendency to humanise punishments⁴. I want to say that this 'progress' would also have occurred in the absence of a special preventive culture.

In short, beyond a conflictual legal paradigm, it is not possible to provide basis for the subject of the rights of the incarcerated / convicted person.

The question at this point is the following: is it possible today, at the height of the crisis of the correctional model, to establish a distinct legal theory for the rights of the incarcerated / convicted person, adhering to a conflictual paradigm of punishment?

Criminals as 'enemies' and prisoners' rights

The idea and the practices of a punishment aimed solely at the objective of neutralisation raise – and with good reason – more political fears than scientific perplexities. I want to remain silent about the fears, which I share. Concerning the scientific perplexities, I agree with Baratta (1984, 1985a) in that: 'the purpose of negative special prevention⁵ is not ideological, in the sense that it does not prescribe an *ideal* objective that cannot be realised as a *material* function'.

From this viewpoint, it is unassailable from critical reason. Certainly, you may not like it. I personally do not like it, but for ethical-political reasons, not for scientific reasons.

However, one thing is certain: a policy of criminal repression that adheres to the paradigm of war liberates or strongly alleviates itself from all commitment of both the vindictive urgency retributive type and the solidary vocation re-educational type. In war, they become enemies and prisoners but not to educate them with aims of social integration. They become enemies and prisoners for the sole necessity of defence.

Both abstractly and ideally, this 'new' culture of the *Feindstrafrecht* (criminal law of the enemy) would seem more open to serious consideration of the protection of the rights of 'captured' enemies: once disarmed and placed in a material condition where they are incapable of attack, all other suffering inflicted – that is, each new reduction and compression of their rights – would be useless and above all unjustified and unjustifiable. If we reflect well, this logic was already present in the experience of exile and deportation as criminal

⁴ See the interesting re-reading of Elias by Garland (1990).

⁵ Incapacitation of the individual in order to protect society without any pretension of rehabilitating the individual. In Spanish: 'prevención especial negativa' [translator's note]

sanctions. And it is also present today, in the widespread practice of administrative detention for the purpose of expelling foreigners who immigrate irregularly to the First World.

Sadly, in a *unique and global world* there is no new Australia where the 'internal' enemies can be deported. Only the futuristic fantasy of the movie *Escape from New York* suggests other possible deportations.

But precisely this 'dream' of an administrative device, with the sole purpose of social exclusion and not the production of suffering, converts the facts into a denial of all rights for those who are forced to suffer it.

Indeed, the thematisation of exclusion leads, sooner or later, to the material determination of an 'absolute space of no-law'. The logic of neutralisation, in fact, knows only one coherent result: the weakening of the enemy. Indeed, history teaches us that the recurring temptation in the concentration camp is to transform it into an extermination camp.

Therefore, neither the rhetoric and the practice of treating those convicted as 'belligerents', as 'hostages', succeeds in creating a credible 'theoretical' space for the rights of those who are punished.

Theoretical deficit and political consequences

After this journey in search of foundations for the affirmation of 'freedoms of law' – which? And guaranteed in what way? – even in the spaces of 'freedom from law', I am finally convinced of the presence of a substantial, ultimately paralysing, theoretical deficit.

It is true – how could one not realise? – that at least fifty years ago, first at supranational and then at national level, the period, not only doctrinaire but also legislative and jurisprudential, began for the affirmation of some – and later a growing number of – spaces of freedom for those who have theirs limited or are deprived of it through penal sanctions.

A warning should be given at this stage has not displaced the basic theoretical question even a millimetre: any convicted person's right (and even more so that of the prisoner), is affirmed by the denial of the right which is 'conditionally' recognised. Recurring subordinate clauses such as 'provided that it does not contradict the requirements of detention', 'provided it is not an impediment to the needs of discipline', etc., confirm the existence of spaces of 'freedom' only possible and always granted by those who, at their discretion, may also deny them. To put it more clearly, these formulations are still legitimate offspring of the administrative theory of 'special supremacy'.

Even when the formal recognition of a right is complete, it is in fact subordinate: not so much because of the discretionary power of authority as because of the nature of the penalty itself. Consider the right to life and physical integrity of the convicted person in the face of the inconceivable and unbearable harmfulness of the prison. Even in the best jail in the world, average detention means a significant, empirically quantifiable and quantified reduction in the prisoner's life expectancy (Gonin, 1991). Thus, the right of the prisoner to life and health is – even in the most virtuous, and for that reason only virtual, prison situation – the life and health that it is 'possible' to protect in a reality that threatens, and naturally reduces these interests. But this can also be said of the punishment of flogging; in fact, where it is applied, as for example in Islamic countries, we know that it is under close medical supervision and after being performed the victim is adequately assisted in hospital structures. Therefore, in the punishment of flogging as in jail, the right to health is reduced to what is possible, in other words, it is 'residual' to the execution of the punitive pretension of the State and only functionally 'compatible' with it. I do not see a single right – from the many also 'abstractly' granted to the person sentenced to privation or legal limitation of personal freedom, which to a large degree should be, and in part they are, *in the books* – distinct from that which contingently 'can survive', always residually, the material and functional necessities that substantiate the execution of the punishment itself. And then, I honestly do not believe we can talk about 'rights' in the proper sense. My position is different.

On the one hand, it is critical of a theorising that I consider to be ideological in negative terms, which would make us believe in the 'real' possibility of a punishment privative and / or limiting of personal freedom yet respectful of all other rights. As I have tried to show, this position not only does not describe the 'is' of the punishment, but prescriptively indicates an 'impossible' goal, since the very nature of legal punishment is the artificial production of social differentiation due to degradation of legal status.

Thus, this position can be sustained, but only on condition that there is awareness of its deceptive nature and therefore it is only used in a politically instrumental manner. What I wish to say is that this is politically acceptable, in as much as it contemplates the impossible.

The processes of multiplication and specification of rights are effectively in the foundations of the struggle for rights. The political struggle for rights, which are no more than a 'social construction', is assumed when any illusion of their

iusnaturalist foundation⁶ has disappeared. And the spaces of freedom ‘from’ law necessarily determine a conflict which tends to limit their perimeter, in the conquest of new territories ‘for the’ law. It has been, is and will always be like this even with various vicissitudes. A ‘mobile’ border between law and no-law – where setbacks and progress are physiological – contingently marks the confrontation between the forces of the field. And this applies to any struggle for the conquest of rights, once it is assumed that the rights are taken ‘seriously’. But, unlike what is possible abstractly in other spaces included within law and no-law, in the system of enforcement of punishments, there is the content and the meaning of legal punishment which are constructed as a denial of rights. Overcoming this position means renouncing punishment. So, until we free ourselves from the need to punish, we must be aware that the freedom ‘of’ law will never be able to prevail over the freedom ‘from’ law. It will certainly be able to advance, but never beyond the threshold that would allow us to state that, finally, the convicted also have rights.

To be able to imagine a society without prisons

There was a time when it was seriously thought that prison could be dispensed with. I say seriously because ‘getting rid of the need for prison’ was not a goal that was seen as utopian but rather as politically realistic, even though it was ambitious, as it seemed to some and not just a few that it was within reach.

That time, in fact, is just yesterday: the decades of the seventies and eighties of the last century. I was already professionally occupied with the prison in the sense that I reflected scientifically on this mode of punishment. And I was a convinced abolitionist. Not only and not even primarily because of a generous heart (or, by the good intentions that ennoble the spirit of the young), but because scientifically I was persuaded the theses that were in favour of a historical suppression of deprivation of liberty and I thought that the historical conditions for abolishing prison were already present or were, at least, imminent.

With the nineties, the story has taken that turn that we all know and that seems to also include, among many other consequences, a new centrality of the prison in the policies of social control. It is easy to conclude then that the abolitionist strategy, which is manifestly failing, has unveiled revisionist penology which insisted on the historical obsolescence of detention as

⁶ As rights based in nature, pre-existing the legal system. [translator’s note]

scientifically erroneous. Personally, I think things are more complex. Maybe the time has come to critically review the abolitionist issue, above all today, under the dominance of a new 'mass incarceration'.

Prison abolitionism – at least in the revisionist penological literature of the seventies and eighties of the 20th century – supports the historical suppression of the punishment of deprivation of liberty for reasons, if not opposed to, certainly very different from those given by critics who had denounced the failure of the penitentiary invention for at least two centuries.

The prevention – of crime and / or recidivism – through prison sentences has been bastardised as impossible for at least two centuries⁷. The fact that prison has always been a holocaust is a truth known since long ago. But it is not enough to take this failure into account in order to advance a scientifically-founded abolitionist hypothesis.

The second half of the nineteenth century is full of intransigent repudiation of the prison scandal and of genuine will to find something better than the punishment of deprivation of liberty. But it is an abolitionist faith that is too naive. This, in effect, originates in a state of moral indignation regarding the ascertainment that the stated aims of prison are not achieved. The penitentiary not only entails a suffering of the spirit, but also and above all, of the flesh, as in the hated corporal punishments of premodernity. Prison does not 'cure' the offender, but perverts him further, and it does not dissuade from crime, as the crime statistics of the late nineteenth century easily demonstrated.

So, why does the criminal justice system insist on prison?

Until a reasonable answer is given to this question, a society without prisons cannot even be imagined. Revisionist penology offers a response that to me seems very convincing even today. Let's quickly revisit the paths already taken.

⁷ See the abundant bibliography cited by Padovani (1981).

Abolitionism and revisionist penology

As we have seen, the radical criminological literature of the 1970s shares, though with different emphasis, methods and qualities, a common element: the fact that it is a critical reading of social and penal control in the democracies of the mature Social State. More specifically, as far as the penological topic is concerned, the revisionist movement sees prison as a necessity of modernity.

Although critical of the penitentiary institution and of the correctionalist ideology and practices, revisionist penological literature thinks of the historical forms of contemporary punishment as aimed at an inclusive type of social control. This is the nodal point: the abolitionist question is born within the progressive culture of the Social State, the only one that allowed us to understand how the original reasons for prison were progressively declining.

In this, as I have had occasion to clarify, the abolitionist hypothesis is not in any way subversive: since the middle of the last century penal reform in the western world has been oriented towards the horizon of decarceration, like an obligatory destiny.

The idea of *decarceration*⁸ is simple in itself, as the idea which inspired the invention of the prison seems simple. The objective of the social integration of the convicted person no longer needs correctional practices in prison, but rather to take responsibility for the offender in the community, in the social; an orderly social space with abundant social networks offered and organised by the welfare state (Cohen, 1977). Decarceration as a political objective to be achieved in the short and medium term enjoyed its golden age at that time.

Abolitionist thinking does nothing more than capture the consequences of disciplinary change and take advantage of the historical contingency of observing the prison and its history at the time when the reasons for its original foundation evaporate. A conviction that these needs for social discipline had definitively disappeared, prefigures, and often fears, new needs for non-custodial social control, in other words, those no longer founded on the institutional kidnap of the bearers of social unrest and conflict (Bakal, 1973; Janowitz, 1976). In the paradigmatic scientific reflection of that period, at least in the Italian context, was the dense essay by Melossi published in Italy in 1980, but meditated and written in the United States and developed especially for the United States: upon the ashes of panoptic institutions, new social discipline needs favour and increasingly identify with the urban dimension and its

⁸ See, for all, Scull (1977).

organisation of spaces. Therefore, the prison appears to be an old relic of the first phase of capitalism that badly tries to survive a destiny that has already been decided.

Misunderstandings and naivety

The limits between reductionism and abolitionism of the prison have never been clearly drawn. In fact, to distinguish the two positions frequently only involves assessments of strategic opportunity and not of principles, as has taken place between penal abolitionism and reductionism (Ferrajoli, 1985; Hulsman; 1983; Pavarini, 1985). Invoking the criterion of the custodial sentence as *extrema ratio* succeeds in gaining agreement from the majority, if not to all. And from the middle of last century the goal of progressive decarceration was accepted at both supranational and national levels. I, for example, do not know of any advocate of prison from that period. Incredible but true: regarding prison, the majority said only the worst possible things, except for a few who disconsolately admitted that the political conditions to reduce its use had not yet been fully established. Clearly, it was only a matter of time. Concerning the future death of prison, all were willing to 'stick necks out'.

In short: prison abolitionism quickly settled on a moderate, minimalist and naïve political perspective that ended up associating abolitionism with decarceration and decarceration with more alternative routes to custodial punishment. Ergo: those who declared themselves to be in favour of the latter ended up appearing in favour of the abolition of punishments which deprive liberty. It goes without saying that this is a beautiful confusion! But that in the end it is not unforgivable. You can claim some mitigating circumstances for the misunderstanding.

'More alternatives to prison equal fewer prison sentences', seemed strikingly obvious to the majority. I do not think, at that moment, I could have convinced even one single person that that relationship was possible but not inevitable. A wasted effort.

On the other hand, the period of 'alternatives' (through procedural derivation, substitutive punishments and alternative measures) was not yet understood as a forced effect of the flexibilisation of the punishment – and therefore the production of criminal law that was increasingly unequal in the sentencing phase (Pavarini 1996) – but rather as an opportunity to reduce the recourse to custodial sentences. And for that reason, attention was paid to those national contexts that had tended, in the main, to favour alternative

routes. To put it more clearly, in these contexts, the dimension of ‘the other prison’, in other words that punishment that was partly or fully non-custodial, was – even many times – greater than the punishment of deprivation of liberty. This simple fact was enough to make people believe that invoking this strategy was tackling the problem from an abolitionist perspective and in a reasonable period of time. However, the critical penology of those countries already warned that the extension of the alternative circuits was not compensated by a correlative restriction of the prison punishment (Cohen 1985b; Christie 1993). On the other hand, at that time the United States appeared to assist its own paradox: the more persons sentenced to punishments that restrict freedom, the more persons sentenced to punishments that deprive freedom. And, for some, all this began to bolden the penological optimism that had allowed even the most cautious doctrine to support the relative stability of custodial sentences in the medium term and a trend towards reducing them in the long term (AA.VV., 2001; Beck and Blumstein, 1999; Blumstein, 1984; Blumstein and Cohen, 1973).

We had entered the third phase of the evolution of the prison and no one had been capable of understanding this evolution with the necessary foresight. Time was needed to understand it (Beyens, Snacken and Tubex, 1995). How was it possible that even for a long period the dissemination of the new strategies of *soft control* persisted, when it was already clear from the 1980s that a strong return to the policies of *hard control* was becoming increasingly characteristic, predominantly the new hegemonic role of the practices of institutional kidnapping? I do not intend to absolve anyone, much less those endorsers that were not the exception to the widespread inattention (Pavarini 1986). But certainly, the advancing *novum* was difficult to understand for those who were still persuaded by the scientific categories developed in the culture of the Social State.

Abolitionism without nostalgia

It is time to get off our high horse.

I have clarified how the abolitionist culture and practices of prison arise and prevail within the inclusive policies of the advanced Social States, which are based on explanatory models capable of accounting for historical reasons (in the economic, social and political sense) for the unresolvable inadequacy of the custodial model with the objectives of the new social control policies. Even though it is marked by a shameful delay in the understanding of the regression of criminal control policies towards explicit purposes of social exclusion, the

abolitionist paradigm is still convincing today when denying any continuation of the practices of institutional kidnapping within a policy of social inclusion. With this, it radically denounces as illusory any hope of being able to oppose policies of selective neutralisation, convinced of a return to a penitentiary punishment based on treatment and inclusion. If prison is increasingly similar to a concentration camp, this does not justify nostalgic behaviour regarding segregatory practices of explicit pedagogical vocation, simply because they can no longer be proposed.

Prison, remodelled in the state of war as an instrument for neutralisation of enemies, can be combated only by attacking the culture and practices of a criminal justice system aimed at individuals. This means – at the level of criminal execution – advancing the logic that underlies the differentiation of treatment for reasons of danger. A difficult battle, whose final results are very uncertain as they depend on the determination of economic, political and social conditions – long before the legal-criminal – favourable to a return of inclusive criminal policies.

But if the latter should return at some point as dominant, a criminal justice system of the citizen and only of the citizen would no longer know what to do with the punishment of incarceration. Prison that is not a concentration camp – and you could perfectly say that where it is such, it is no more than nominally a prison, because in the facts it is no more than a concentration camp – simply has no future.

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