

## 12 ‘Whose prisoners are these anyway?’

### Church, state and society partnerships and co-production of offender ‘resocialisation’ in Brazil

*Fiona Macaulay*

Brazil’s prisons frequently hit the headlines of the international press for all the wrong reasons. In the latest episode of systemic violence, in December 2013, an attempt by state police to regain control of the lawless Pedrinhas penitentiary in the northeastern state of Maranhão resulted in inmates unleashing violence outside and inside the prison.<sup>1</sup> In four buses burned out in the state capital by their criminal associates, a six-year-old girl died, and inside the jail three inmates from a rival gang were decapitated. Filmed on an inmate’s phone, leaked footage of the latter went around the world. But not all of Brazil’s prisons have fallen prey to gang control, or generate such violence, whether between prisoners, prisoners and staff, or prisoners and the local community. Indeed, some are almost the mirror images of such hellholes, are innovative in terms of their approach to administration and rehabilitation, and have even prompted international imitation.

This chapter complements Sacha Darke’s (Chapter 13) in exploring the particularities and lessons that can be learned from a small group of prisons – the so-called Resocialisation Centres (*Centros de Ressocialização* – CRs) in São Paulo state, a variant of the APAC prisons in Minas Gerais state that he analyses.<sup>2</sup> Both CRs and APACs are unusual, not just in the Brazilian or Latin American context, but also in terms of modern penal institutions overall. They are compliant with domestic and international human rights norms for the treatment of detainees, and have experienced no riots, little violence and very few escapes, despite operating with low security. They apparently

<sup>1</sup> In 2013 over 60 prisoners were murdered by their fellow inmates in this high security prison. Designed for 1,700 prisoners, it currently holds 2,200, but this represents an average level of overcrowding in Brazilian prisons.

<sup>2</sup> I first encountered prisons (in Pernambuco and Minas Gerais) run broadly according to the APAC ethos, or by the APAC organisation, in 1997 while researching prison conditions in Brazil for Amnesty International. A grant from the Socio-Legal Studies Association allowed me to spend several days in each of four CRs in October 2004, using semi-structured interviews and focus groups with the inmates, families, prison service and NGO staff, criminal justice system operators and opinion-formers in the local community. Access became difficult after 2006, so I began researching the APACs in Minas Gerais in 2007, and in July 2013 accompanied the prison authority team in Paraná state setting up new APACs.

achieve high levels of desistance, successfully reintegrate offenders back into their families and communities, and operate at around one-third to one-half the per capita cost of state-run prisons and commercially contracted-out facilities.

But there are two key differences between the CRs and APACs. The first is that the Catholic-run APACs make religious faith a central plank in their very explicit and prescriptive 'method'. The second is that the APACs are run entirely by volunteers and the prisoners themselves, without police or guards inside or outside the facility. The CRs, however, are run in a formal *partnership* between the state and local civil society, and the former provides both guards and key administrative posts in the units. These differences, apparently minor on the surface, reveal an underlying tussle over who can lay claim to the body and soul of the offender. The state, against whose laws they formally transgress? The community, which suffers fear of crime and disorder, and the family, which has to bear broken relationships? Or the Church, whose task is to save a sinner for God? In this regard the APAC franchise's insistence on a religiously saturated environment and the absence of the state is a challenge on two fronts, not just to the predominant prison culture of simultaneous state absence and violence (what Agamben refers to as 'bare life' and inmates call *o sistema* – 'the system'),<sup>3</sup> but also to the inherent capacity of the state prison authorities to enact and embody a more humane set of values, and to cede some control over the offender to civil society. This chapter examines the rise and fall from favour of the state-run CRs, whose operation both challenged the dominant prison system but also aimed at its perfectability, in order to explore these issues of contested 'ownership' and the potential of the state to improve the 'moral performance' of its penal institutions.<sup>4</sup>

### The Brazilian prison system

A diversity of prison cultures is only to be expected in a country of such continental dimensions as Brazil. As of December 2012, Brazil's prison population – now the fourth largest in the world – stood at 548,003, distributed between its 26 states and Federal District, and held in 470 penitentiaries, 74 farm/factory prisons attached to 64 open prisons, 16 half-way houses, 821 public jails (intended for remand prisoners but frequently holding convicted prisoners for their full term) and 33 secure psychiatric units. Some 34,290 detainees were held in custody in police stations and police-run lock-ups and remand facilities. Brazil's prison population doubled in a decade, and, like many other developing countries, authorities have been desperately looking for transnational models to cope with a constant influx of inmates generated

<sup>3</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998).

<sup>4</sup> Alison Liebling, *Prisons and their Moral Performance: A Study of Values, Quality and Prison Life* (Oxford: Oxford University Press, 2004).

by a combination of rising common and drug-related crime, and harsh laws and sentencing practices.<sup>5</sup> To this end, Brazilian prison authorities built more prisons overall, and constructed a new generation of ‘super-max’ facilities (both state-run and federal) to handle violent organised crime. It also turned to the private sector to partially run and, more recently, finance and build prisons, through public–private partnership agreements. The government also attempted to divert and decarcerate more minor offenders, through the use of non-custodial sentences and diversionary measures such as community service and attendance at drug courts. Whilst the penal code is federal law, however, the organisation and running of the prison system falls largely within the remit of the 27 sub-national administrations, with the federal government providing only matched funding for prison construction and guidelines for management, rehabilitation, staff training and so forth. The emergence of multiple and distinctive penal regimes and models, including the APACs and CRs which swim against the punitive tide, is a function both of the specificities of Brazil’s administrative structure (decentralisation) and historical political context (authoritarian rule and transition to democracy), and of the way in which these produced a certain configuration of civil society, and state–civil society relations.

### From APACs to CRs

In 1972 Brazil was in the eighth year of a military dictatorship. The repressive forces of the state were far more interested in arresting ‘subversives’ than in the control of common crime. Civil society was cowed by draconian legislation, and the Catholic Church as an institution, along with its international human rights allies, focused on the regime’s political torture and abuse. Nobody cared about prison conditions for ordinary detainees.<sup>6</sup> So, as Darke notes, when Catholic laymen, led by Dr Ottoboni, attempted to improve conditions in their town’s decrepit and overcrowded police lockup, the state justice authorities were indifferent, and the local police ambivalent. The NGO they set up with the acronym APAC (which initially stood for *Amando ao Próximo, Amarás a Cristo – By Loving Your Neighbour You Will Love Christ*)<sup>7</sup> first took over

<sup>5</sup> Fiona Macaulay, ‘Modes of Prison Administration, Control and Governmentality in Latin America: Adoption, Adaptation and Hybridity’, *Conflict, Security and Development* 13, no. 4 (2013), 361–92.

<sup>6</sup> Honourable exceptions are two pioneering ethnographic studies of individual prisons: José Ricardo Ramalho, *Mundo do crime: a ordem pelo avesso* [The World of Crime: Order Turned Upside Down] (Rio de Janeiro: Graal, 1979) is a study of the São Paulo House of Detention, Brazil’s – and Latin America’s – largest prison; and Julita Lemgruber, *Cemitério dos vivos: análise sociológica de uma prisão de mulheres* [Cemetery of the Living: A Sociological Analysis of a Women’s Prison] (Rio de Janeiro: Achiamé, 1983), a study of the Talavera Bruce women’s prison in Rio de Janeiro.

<sup>7</sup> Over the years the acronym has stood for a number of very slightly different names. Some confusion is caused by some of the NGOs working in the CRs in São Paulo state having adopted the APAC acronym, whereas the Minas Gerais group see themselves as the ‘true’,

from the police the provision of services to the prisoners, and then built and ran a new wing for 75 prisoners on day-release schemes. Closed down for five years due to police brutality and hostility, the prison reopened in 1984, this time under the APAC group's sole control. Another APAC group also established itself in Itaúna in Minas Gerais state in the mid-1980s, formalised its running of the local jail in 1991, and began to attract attention in the mid-1990s. As the prison population soared and riots and breakouts became weekly occurrences in the police lock-ups and jails, the National Congress conducted a parliamentary inquiry and the Brazilian Catholic Church launched a campaign on prison conditions.

The APAC model was also replicated, but in significantly modified form, in another jail (Bragança Paulista) in São Paulo state when Dr Nagashi Furukawa, then the local judge, helped a group of local volunteers to sign a partnership agreement with the state in 1996.<sup>8</sup> Once appointed head of the state's prison system in 1999, in large part on the basis of his advocacy of this model, he established a total of 22 such prisons, mostly purpose-built, which he called CRs, each holding around 210 prisoners and jointly run by the state and a local NGO. Meanwhile the original, religiously-based APAC group moved its headquarters to Minas Gerais state.<sup>9</sup> Thus, by the early 2000s, the CRs constituted numerically the largest group of prisons run in formal partnership between the state and civil society.

In 2006, however, Furukawa was forced to resign from his post following an extraordinary show of force by the *Primeiro Comando da Capital* ('First Capital Command', PCC), an organisation that functions both as an inmates' union and organised crime network. The PCC has managed to penetrate most of the state's prisons following its foundation in the early 1990s.<sup>10</sup> In response

faith-based APAC. Many of the facilities run by the 'true' APAC group are also referred to as Resocialisation Centres, adding to further muddling of the two strands.

<sup>8</sup> An NGO with the name *Associação de Proteção e Assistência ao Condenado* (Association for the Protection and Assistance of the Convicted Prisoner), set up in 1978 by concerned citizens in Bragança Paulista, was blocked by the local judge but revived in 1993 by individuals linked to the justice system, including the prosecution service, Bar Association, Civil Police and the Community Council (a civil society oversight body linked to the court).

<sup>9</sup> This move occurred in part because the original APAC, in São José dos Campos, was closed down in 1999, and later reopened as a CR, that is, in partnership with the state rather than being under the full control of the APAC group.

<sup>10</sup> Within the PCC there are various foundational myths about when (between 1989 and 1993) and in which prison it was founded. (Karina Biondi, *Junto e misturado: Uma etnografia do PCC* [Mixed Together: An ethnography of the PCC] (São Paulo: Editora Terceiro Nome, 2010), 69–70). What seems clear, however, is that it quickly garnered support among the prison population due to the brutality of the prison system, such as the extrajudicial execution by military police of 111 prisoners who had surrendered after a riot in the House of Detention in 1992, the harsh super-maximum security conditions in Taubaté prison (a unit for disruptive inmates), and the violent anarchy permitted to reign in the prisons. The PCC set out a statute governing prisoners' relations with one another, and with the authorities. Inmates opt to join the PCC and to take on leadership and bargaining/conflict resolution roles, but all those in 'PCC prisons' are expected to adhere to their rules. Camila Caldeira Nunes Dias, *PCC: Hegemonia nas*

to the authorities' intention to isolate gang leaders, it unleashed a wave of violence in the city, killing dozens of police and prison guards, attacking criminal justice and economic targets, and paralysing the city, and coordinated riots across 82 prisons in São Paulo state alone. His successor in the post, Antônio Ferreira Pinto, was a former military police officer and criminal prosecutor. A hardliner, he expressed a visceral dislike of the CR experiment, both for its perceived 'soft' approach to prisoners and the involvement of non-state actors,<sup>11</sup> and leaked to the press 'evidence' of 'irregularities' committed by the NGOs, aimed at discrediting them and their champion.<sup>12</sup>

It was not politically possible to close the CRs down, however, given that they had received the strong backing of the previous state governor, whose successor was from the same party. As a result, the new director of the prison service opted simply not to renew the contracts of the partner NGOs, with the result that as of early 2014 nine CRs had reverted to state control with no local community involvement. In the meantime, as Darke indicates, the 'original' faith-based APAC model has expanded in Minas Gerais, backed by senior justices, and in states further afield. The CR experience is now largely forgotten and unknown in a state in which most prisons are controlled on a day-to-day basis by the PCC.<sup>13</sup>

### **Religious civil society and the state**

The core disagreement between Ottoboni and Furukawa, the originators of the APAC and CR approaches, concerns the role of religion and of the state in the rehabilitation of the offender, an old debate in historical, comparative terms. The monopolisation of the punishment function by the state, wrested from the sovereign and from private individuals, is a feature of modern penal systems. However, as the modern carceral institutions emerged in the United States, Europe and Latin America from the late eighteenth century, in certain locations religious organisations were involved in shaping and running some penal institutions, both complementing and substituting for the state, and then, eventually, competing with the secular authorities both to control the ethos and running of these facilities and to determine the fate of inmates. Quakers designed and ran the first penitentiaries in the United States – Newgate in New York and the Walnut Street jail in Philadelphia – whilst in Latin America separate women's penitentiaries were often run by orders of

*prisões e monopólio da violência* [PCC: Hegemony in the Prisons and Monopoly of Violence] (São Paulo: Editora Saraiva, 2013).

<sup>11</sup> Interview with Antônio Ferreira Pinto, July 2007.

<sup>12</sup> Dr Furukawa claimed these allegations as either untrue, or the facts had been twisted to smear him and his administration. Interview July 2007 and 'Furukawa diz que apurou irregularidades em presídios de SP', 7 December 2006, <http://g1.globo.com/Noticias/Brasil/0,,AA1378554-5598,00.html>.

<sup>13</sup> The CRs are specifically intended for those who want to avoid gang involvement. A few other prisons, for example those for sex offenders, host rivals to the PCC.

nuns in the nineteenth century.<sup>14</sup> But in all cases tensions around disciplinary power over offenders were resolved in favour of the consolidation of state penal authority.

Civil society was slower to develop in Brazil than in North America and Europe, although intellectuals from the legal field were concerned with the proper modernisation of the prison system. São Paulo's state penitentiary, built in the 1920s, was hailed as a model institution, attracting visitors from far afield.<sup>15</sup> However, after decades of political upheaval and gradual decline of this ideal of modernity, it was not until the democratic transition of the 1980s that prisoners again attracted attention, first from religious civil society. Throughout the dictatorship, a liberal Catholic Church had provided a space for the defence of diverse vulnerable groups, and in 1986 the Brazilian Conference of Bishops set up the prison pastoral service (*Pastoral Carcerário*), which was legally constituted in 1988. The Pastoral, however, saw its main role, alongside other civil society groups, as one of advocacy and defence of prisoners' *human rights*, for which the guarantor had to be a perfectible, democratic state. As such, the Pastoral refrained from proselytising and has been very ambivalent about taking over the running of prisons, seeing this as the function of the state within the rule-of-law. Indeed, at times it has regarded Ottoboni's APAC group with some suspicion.<sup>16</sup> That said, Brazil's size and the decentralised operation of the Pastoral have allowed for variation. In 1996 the coordinator of the Pastoral in Pernambuco state, a doctor, stepped in as director of the then relatively small Juiz Plácido de Souza prison in Caruaru, taking over from a string of military police directors. Notably, the Pastoral group there was composed of individuals with a background of liberal/left *political* militancy and mixed, or no, religious belief or affiliation. The way that this director, and his successor, a former prison guard, ran the prison was much more akin to the secular, partnership-based ethos of the CRs than that of Ottoboni's APACs.

The very presence of the grassroots Catholic APAC model in prisons, however, seems to have suggested to the established Church that this was a sphere in which it *should* intervene. In Minas Gerais the first ever purpose-built APAC prison opened in Santa Luzia in 2006, sponsored by the Pontifical Catholic University, the Archdiocese and the Pastoral in Belo Horizonte.<sup>17</sup>

<sup>14</sup> Carlos Aguirre, 'Prisons and Prisoners in Modernising Latin America (1800–1940)', in *Cultures of Confinement: A History of the Prison in Africa, Asia and Latin America*, ed. Frank Dikötter and Ian Brown (Ithaca: Cornell University Press, 2007), 27.

<sup>15</sup> Fernando Salla, *As prisões em São Paulo 1822–1940* [Prisons in São Paulo 1822–1940] (São Paulo: Anna Blume/FAPESP, 1999), 196.

<sup>16</sup> This was certainly the view expressed to me in the late 1990s by Padre Francisco 'Chico' Reardon, late coordinator of the Pastoral, and by his successors.

<sup>17</sup> Possibly the APAC venture has attracted both Church and government support in Minas Gerais because of the higher level of expressed Catholicism there (73 per cent, compared to 66 per cent in São Paulo, according to the 2010 Brazilian Institute of Geography and Statistics survey). The most Catholic states are in the under-developed northeast, with the exception of Pernambuco whose level of Catholic adherence is similar to São Paulo's. Minas Gerais was the

This involvement should be read within a dynamic context in which Christian groups, both orthodox Catholic and evangelical Protestant, have become more influential in political life and social welfare administration, both cooperating and competing with each other.<sup>18</sup> Pentecostalism has also been displacing Catholicism in Brazil in recent decades, with data suggesting that a quarter of the Brazilian population now identifies itself as ‘born again’ Christians, rising to over 50 per cent in some urban areas. Pentecostal churches recruit successfully in prisons, not least because they offer adherents exemption from the rules, rites and violence of the wider prison system.<sup>19</sup> However, Pentecostal groups have restricted themselves thus far to providing welfare and material support to inmates, and have not attempted to collaborate formally with, or substitute for, the state.

This tension between the officially secular character of the Brazilian state and the reality of variable and diverse forms of religiosity in society at large, and among decision-makers, will probably, as Darke notes, affect the spread of APACs, with some local actors embracing or rejecting it precisely on these grounds. Ottoboni’s criticism of Furukawa’s CRs for lacking ‘methodology’ (the 12 components listed by Darke) is actually an attack on its secularism.<sup>20</sup> Indeed, despite the CRs’ consistency of practice, achieved through the training of new staff and NGO personnel, there was no manual, written methodology or explicit analytical framework. All the CRs had some autonomy to interpret and implement the core elements, for example by adopting slightly differing internal routines and disciplinary rules, allowing the staff, NGO personnel and, importantly, the prisoners themselves some creativity and latitude in responding to the socio-economic characteristics of the locality and the offenders they took in.<sup>21</sup> The failure of the CRs to articulate explicitly their

only state where, in colonial times, Portugal prohibited convents and monasteries, leaving the running of everyday religious practice in the hands of brotherhoods of lay people. See Caio César Boschi, *Os leigos e o poder: irmandades leigas e política colonizadora em Minas Gerais* [Laypeople and Power: Lay Brotherhoods and Colonising Policy in Minas Gerais] (São Paulo: Editora Ática, 1986). It is, of course, hard to prove whether this has left a cultural trace that made key actors in that state more receptive to the APAC model of lay engagement.

<sup>18</sup> The parliamentary cross-bench evangelical group has grown considerably in the last decade, now standing at 70 out of 513 federal deputies and three out of 81 senators.

<sup>19</sup> Camila Caldeira Nunes Dias, *A igreja como refúgio e a bíblia como esconderijo: Religião e violência na prisão* [The Church as Refuge and the Bible as Bolt-hole] (São Paulo: Editora Humanitas, 2008). Some prisons may see the presence of a single Pentecostal, or fundamentalist church, whilst others may have several. Pastors may visit frequently to conduct religious services, whilst followers inside often self-segregate in their own cells or wings.

<sup>20</sup> This methodology is contained in the writings of its ideologue Dr Mário Ottoboni, *Vamos matar o criminoso? Método APAC* [Are We Going to Kill the Criminal? The APAC Method] (São Paulo: Paulinas, 2001); *Ninguém é irrecuperável* [No One is Irredeemable] (São Paulo: Cidade Nova, 2001); *Seja solução, não vítima! Justiça restaurativa, uma abordagem inovadora* [Be the Solution, not a Victim! Restorative Justice, an Innovative Approach] (São Paulo: Cidade Nova, 2004).

<sup>21</sup> For example, the internal standing orders in the Sumaré CR were drafted by prisoners and staff together, and could be modified after consultation with both.

own, non-religious *modus operandi*, however, has meant that this alternative path for state–society collaboration has undermined the wider resonance of this model.

### **State and society: invited participation, co-production, substitution**

The CR partnership approach is in fact consistent with, and extends, the forms of collaboration between state and civil society on social policy issues that were made possible, even mandated, by the 1988 Constitution. The latter created spaces of 'invited participation' in the form of Management Councils jointly composed of civil society and state representatives.<sup>22</sup> Some, often those dealing with specific social groups (disabled, elderly, women, blacks), have a largely watchdog role that involves monitoring the state and its protection of rights, whilst others in the areas of health, welfare, housing and youth police have a more deliberative role aimed at modifying bills in the relevant legislature, shaping state policy, and ensuring it is implemented. They do not actually 'co-produce' the public good they monitor, however, as the CR partnerships do, in the sense of signing a formal partnership with the state and actually delivering the service (in this case, offender rehabilitation) inside the state institutions. Criminal justice has also traditionally been the social policy area most closed to civil society input due to its association with the 'security' concerns of the state. The only civil society groups akin to these Management Councils with a legal remit for involvement in prison matters are the so-called Community Councils (*Conselhos da Comunidade*), which emerged from the Brazilian state's attempts to bring the country's penal systems into line with international human rights norms. The 1984 national Sentence Serving Law (*Lei de Execução Penal*) provides for such bodies in any jurisdiction with a prison. However, many areas still have no such prison community councils as they can be set up only by the local judge, and receive little institutional support. There is also an increasing tendency to downgrade their rather unclear watchdog role (some had been very active in inspecting, then publicly decrying human rights abuses in, local prisons), a role now played in civil society by the Pastoral and the Brazilian Bar Association. Increasingly criminal justice actors seems to be emphasising their 'gap-filling' role, that is, providing material and human welfare assistance to prisons where the state cannot meet needs, which is only one of their four legal functions.<sup>23</sup>

<sup>22</sup> Andrea Cornwall, 'New Democratic Spaces: The Politics and Dynamics of Institutionalised Participation', *IDS Bulletin* 35, no. 2 (2004), 1–10.

<sup>23</sup> They are required to visit prisons monthly, interview inmates and report to the state-level Prison Council (also of mixed state–civil society composition, which handles issues such as parole applications) and the local judge. However, it is not specified to what end they should do this. Maria Palma Wolff, 'Participação social e sistema penitenciário: uma parceria viável?' [Social Participation and the Prison System: A Viable Partnership?] Unpublished paper available on Ministry of Justice website: <http://tinyurl.com/qyq5kuw>.



The CR partnership with the state in offender rehabilitation highlights the philosophical difference between the Ottoboni and Furukawa models regarding the nature and ‘redeemability’ of the state, and whether such collaboration constitutes a radical challenge to the state monopoly on force and disciplinary power, or simply co-opts civil society into a hegemonic, essentially neoliberal, project of mass incarceration. The literature on co-production of public services suggests such a divergence of views, with one strand stressing ‘equal and reciprocal’ relations between professionals, service users, family and community,<sup>24</sup> whilst another sees it as a means for the public sector and citizens to make best use of one another’s resources in the pursuit of efficiency (lowered costs) and effectiveness (better outcomes).

In this instance, co-production has certainly reduced the cost of incarceration to the state. The APACs and CRs are much cheaper than prisons run entirely by the state because the NGOs are free from certain constraints such as the tendering arrangements that tie the state authorities to ‘preferred suppliers’ and in turn inflate costs and encourage backhanders. They buy cheaper and better goods and services from local businesses, thus contributing to the local economy, and can switch suppliers when necessary. Their staff members are also not state employees, whose protections under Brazilian labour law makes them very hard to dismiss, even when they fail to fulfil their contracts, as is the case with many hourly-contracted professionals in prisons, such as doctors. These same advantages are, of course, also held by commercial companies that have entered into partnerships with the prison authorities. However, greater flexibility in purchasing and contracting is offset in the private sector by the need to generate profit, so there is very mixed evidence in Brazil as to whether operating costs in semi-privatised prisons are actually lower than in the state sector.<sup>25</sup> By contrast the NGOs are driven by non-economic, moral factors. They take pride in their careful guardianship of resources, reinvesting any surplus in improved services to prisoners. Cost reductions are also possible because as community-based organisations they are more persuasive in seeking free donations of food or material. The relationship between the two partners of *gestão compartilhada* or *co-gestão* [shared administration or co-administration] thus provides not just a division of labour but also a value-added element through the synergy that can be achieved through the distinctive contributions of both.

The CRs, at least, were also subject to strict systems of accountability on the part of the state authorities. In their heyday Dr Furukawa considered having the NGOs take on the administration – not the rehabilitative services – of nearby large penitentiaries simply to reduce costs. This proposal, however, prompted the APAC groups to criticise the CR partnerships as constituting privatisation by another name. Indeed, the division of labour in the

<sup>24</sup> New Economic Foundation, *Co-Production: A Manifesto for Growing the Core Economy* (London: New Economics Foundation, 2008).

<sup>25</sup> Macaulay, ‘Modes of Prison Administration’, 374–5.

partnership arrangement does resemble the European form of semi-privatisation in which the state provides the prison guards and authorities, but not the rehabilitative and 'hotel' services. Yet, it does not go as far as the 'hybrid' form of contracted-out prisons in Brazil whereby guards are also supplied by the private company but the state maintains a supervisory presence inside the prison, appointing state employees to the post of warden, deputy warden and head of discipline, as a minimum.<sup>26</sup>

Further, the Ottoboni-ite APACs also make an especial virtue of voluntarism, whereby the key rehabilitative services – education, healthcare, psychological support, social work, legal aid – should be provided by volunteers from the community, with the directors of the facility as the only paid staff. In addition, they prefer to receive donations from local businesses to meet their running costs. On two occasions, however, this arrangement jeopardised the sustainability of their flagship facilities and so they were forced, reluctantly, to accept financial support from the state prison authorities. This dependency on the state goes against their autonomist inclinations, but in a country such as Brazil, where there are still considerable gaps in welfare coverage and which has a limited history of philanthropy, demands on local civil society are multiple and draining and often make collaboration with the state and its resources inevitable.<sup>27</sup>

### Competition with the criminal justice system

The lower running costs and greater effectiveness and efficiency of the CRs was insufficient in itself, however, to sell the model to sceptical state criminal justice operators whose cooperation with this project of rehumanising and resocialising the offender is also required. Conventional criminal justice systems are state-centric. The State determines the nature of 'crime' through legislation, and offenders are deemed to have wronged the state. Whilst the CRs allow the local community to assert its interest in the fate of its 'own' offenders, it also brings the NGOs into conflict with the state, which retains legal responsibility for the custody of the offender. Moreover, the different branches of the state also compete for disciplinary power over the prisoner. Although the executive branch is responsible for the arrest of offenders, it is the judiciary that prosecutes, in most cases passes sentences, and then oversees the serving of that sentence in Brazil. Indeed the 1984 Sentence Serving

<sup>26</sup> Sandro Cabral, Sergio G. Lazzarini and Paulo Furquim de Azevedo, 'Private Entrepreneurs in Public Services: A Longitudinal Examination of Outsourcing and Statization of Prisons', *Strategic Entrepreneurship Journal* 7, no. 1 (2013), 6–25. Brazil's is the sixth largest economy in the world but is ranked eighty-fifth on the Human Giving Index and eighty-third on the World Giving Index.

<sup>27</sup> Alex Segura Ubiergo, in *The Political Economy of the Welfare State in Latin America* (Cambridge: Cambridge University Press, 2007) characterises Brazil's welfare as ambitious and egalitarian in intent, but with 'limited efficiency and high regressivity' in practice (29, footnote 17).

Law (LEP) specifically ‘judicialised’ prison sentences, with the intention that judicial oversight would guarantee fair treatment of detainees. But Dr Furukawa’s term in office saw a ‘dejudicialisation’ process, as he argued that certain rights to which prisoners were entitled, such as progression from a closed to a semi-open prison regime, parole or final release were not being granted on the basis of objective criteria, such as time served, but rather at the discretion of the local judges responsible for the correct serving of the sentence. In particular, Furukawa abolished the legal requirement for these local judges to base their decisions in these matters on a formal assessment conducted by a psychologist or social worker who had never met the offender before. This was replaced by a similar assessment carried out by prison and NGO staff in the CR, who then sent their recommendation to the judge.<sup>28</sup> But this created a problem. The principle in the LEP of ‘individualised sentences’ requires subjective assessments of the prisoner’s progress. However, the judge, NGO technical staff and CR prison administration (Director and the Head of Discipline) all believed that *their* judgement was the one that should prevail, and this led to frequent differences of opinion. Divisions arose because the judge continued to hold *legal* responsibility for the prisoner, the state prison authorities had *security* concerns with regard to offenders, whilst the NGOs believed they had been handed the *moral* responsibility for offenders under the terms of the contract with the authorities. Thus the presence of state agents and civil society actors on an apparently equal footing within the CR prisons generated contests that are absent within the APACs run without state agents. As Darke notes, the APACs have managed to establish a penal space within which the volunteers and the prisoners themselves determine the progress made by an offender, and have pushed state criminal justice system operators to the margins.

Criminal justice system operators seemed to divide into two groups in relation to the CRs. Some local judges were very enthusiastic and were instrumental in bringing the community into the local jails, first through the APAC groups and then through the establishment of a CR. Others, however, were indifferent or even hostile, especially in São Paulo state. Each new CR had a purpose-built room where judges could come and conduct pre-trial hearings or deal with business related to sentencing, such as approving sentence remission, exerts, parole or regime progression. This was intended to cut out the need for police escorts to take prisoners to court, freeing police for other duties, and allowing judges to be more efficient. In a number of cases the judges refused to set foot in the CR, however, preferring to stay in their own territory and maintaining their social distance from the inmates. Similarly, many local judges and prosecutors failed to carry out the monthly visits to penal facilities under their jurisdiction that are required by the LEP and were entirely ignorant of the work of the CRs. This is partly due to a technical-

<sup>28</sup> Interview with Dr Furukawa, October 2004.

bureaucratic understanding of their responsibilities in relation to prisoners, which ignores the substantive element of ensuring that offenders are rehabilitated, as the LEP demands.<sup>29</sup> It may also be a characteristic of the post of the judge responsible for overseeing sentence serving, which some appeared to view as an undemanding sinecure.<sup>30</sup> In the APAC prisons in Minas Gerais, however, the upper echelons of the state judiciary formally support the initiative, making it more difficult for local judges to boycott them.<sup>31</sup>

Police, on the other hand, seemed to maintain an almost uniformly hostile attitude to the CRs, which they regarded as 'soft' on offenders. My fieldwork in 2004, the heyday of the CRs, suggested that officers were the most anxious to maintain the stigmatisation of offenders on which, in large part, their own professional identities depended and allegedly wasted no opportunity to give inmates a reminder of their proper status. I heard accounts from prisoners and staff of prisoners being beaten in the police vans on the way to court for hearings. Police frequently tried to reproduce what Garfinkel calls the 'status degradation ceremonies' prevalent in the mainstream criminal justice system by handcuffing non-violent prisoners, and insisting that prisoners kept their eyes downcast, and refrained from interacting with the officials. Moreover, they also deliberately 'invaded' the CR space with police dogs, and attempted, through sexual innuendo and other means, to undermine the authority of the mainly female prison governors. This notable gender dimension was the result of Dr Furukawa appointing social workers or psychologists, professions with high proportions of women in Brazil, which reflected both his emphasis on rehabilitation and the creation of an explicitly domestic environment that rejected the hyper-masculinity and violence of the mainstream prison system.<sup>32</sup>

Judges, prosecutors and police are criminal justice agents largely external to the day-to-day running of the prison. However, the governors of the CRs also had the task of managing several relationships within the facilities, between guards and prisoners, and between the state employees and the NGO staff. Volunteers also claimed that they had to resocialise not only the prisoners but also the guards, who took about a year to adjust themselves to the CR culture. The guards were challenged especially by the much reduced social distance between themselves and prisoners, and by an understanding of security

<sup>29</sup> In one CR, I witnessed an inspection by two representatives of the state prosecution service's internal affairs department. They evinced little interest in the rehabilitative regime and effectiveness of the CR, being most exercised by the fact that on their monthly visits local prosecutors were failing to sign a separate log from the judge, as required by the LEP.

<sup>30</sup> In some jurisdictions criminal judges also fulfil this function, whereas in larger ones judges are specifically appointed to this role.

<sup>31</sup> Jane Ribeiro Silva, *A execução penal à luz do método APAC* [Sentence Serving in the Light of the APAC Method] (Belo Horizonte: Tribunal de Justiça do Estado de Minas Gerais, 2012).

<sup>32</sup> This feminisation is less evident in the APACs, whose core leadership group is still mainly men. However, as the model diffuses to other locations in Brazil it is often being advocated by women in the justice system.

that relies on human interaction rather than physical barriers and the threat of force. Some never adapted and went back to working in the mainstream prison system. The rest – some of whom chose to work in the CRs; others who were simply transferred – generally accommodated themselves to a trade-off. They earned less money than in a large penitentiary (salaries are linked to staff/prisoner ratio and degree of risk), but benefited from the far less stressful environment and access to good food, free health services and better working conditions. Again, this problem was circumvented in the APACs, which have regarded state prison guards and their mentality as an obstacle to their method. Rather than retrain the guards they have simply replaced them with volunteers and trustee prisoners. This is an understandable circumvention of the problem. When I asked the governor of Bragança Paulista CR in the early days whether he attributed success to good staff, he laughed, and explained he had six guards on a rotating shift, ‘two are drunkards, two are incompetent, and the other two have to keep an eye on them’.<sup>33</sup>

The other issue evident in the CR model related to the NGOs and their relationship to the prison staff. Both the APAC and CR models are hostage to the variable density and character of civil society. Sometimes existing NGOs offered to take on the CR partnership, as was the case of a group active around HIV/AIDS, which was already working with prisoners as a high risk group. In other cases, NGOs formed out of professional and social networks, such as the Rotary or Lions Club and the Bar Association. In Bragança Paulista, many of the volunteers and staff had been work colleagues at the local branch of Itaú Bank. APAC groups have a similarly heterogeneous composition, but increasingly include members of the criminal justice service, such as local prosecutors and judges. NGO members are also not immune from more ignoble motivations, such as personal advantage and status enhancement. Therefore, in all but the longest established CRs, it took time to iron out the tensions between the key figures in the prison administration, and the NGO as they negotiated a number of boundaries concerning discipline, security, ‘expertise’ in regard to the prisoners, mutual accountability and oversight, and status. In my interviews with CR prison governors and the head of the NGOs, I heard frequent complaints about their counterparts.<sup>34</sup> The limited supply of interested and competent civil society groups skewed the balance in the early days, so that when conflicts arose between the NGO and the prison service staff, the head of the prison service found it easier to replace a prison governor, rather than look for a new NGO. This is not unconnected with the constraints of voluntarism in a country with uneven density of civil society highlighted earlier, though doubtless the APAC group would argue that the quality control exercised over the franchise by the central APAC greatly reduced their instability as a partner NGO.

<sup>33</sup> Field visit with Amnesty International, June 1998.

<sup>34</sup> Field notes, October 2004.

### Community, family and the offender

As ideas about a 'modern' penal regime consolidated in the early and mid-nineteenth century in the United States and Europe, institutions quite deliberately turned their backs on the surrounding communities. The chaos of the jails of the eighteenth century would be replaced by order, discipline, isolation, penitence and work. The prison was to be a place of rehabilitation of the prisoner's soul, achieved precisely by *desocialising* him and dramatically restricting his contact with other prisoners, his family, the community from which he came, even from the guards, for fear of contamination in both directions. Post-colonial Latin American states, influenced by European penal debates, articulated a similar aspiration to such practices and values, even if their capacity to implement them was much weaker.<sup>35</sup> Localised practices created penal institutions that were far from being closed or total institutions, exposing local communities in recent years to violence (through riots, breakouts and crime, prisoners bribing guards to let them out at night), and infectious disease such as tuberculosis and HIV, spread to families and community on visitors' day and on release.<sup>36</sup> The CRs and APACs are thus an attempt to turn this porosity to good ends, and resocialise the offender; that is, reconnect the offender and his or her community, as well as resocialise within the community of fellow offenders, analysed by Darke. The CRs and APACs donate to local nurseries, schools and hospitals the surpluses of the fruit and vegetables produced in their kitchen gardens, and food cooked on site. Some inmates are visible outside the prison, working in local businesses and on community projects, and some CRs, in their work with the families of offenders (the key criterion for transfer to a CR or APAC is that a family member lives nearby and is willing to engage positively), offer their health, education and occupational training services to the family as well. The level of contact between the local community and CR population varies, of course, and often reflects the character of the NGO that has taken on the co-administration. Some are closely linked to narrow professional groups (such as lawyers linked to the Brazilian Bar Association), whilst others have a broader social base. The former tend to be more 'professionalised' whereas the latter tend to make more use of volunteer labour and donations from the community, forming a broader bridge. 'The community' is not always initially well disposed towards penal institutions of any type. In one town I visited, the local media had whipped up a mild moral panic when a CR was proposed, and the municipal authorities refused to offer any land. However, once the old jail was closed down and the new CR operating following compulsory purchase of land, the mayor who had so strenuously opposed it boasted

<sup>35</sup> Aguirre, 'Prisons and Prisoners in Modernising Latin America', 18.

<sup>36</sup> Visitors' day in a Brazilian prison is a whole day affair, with families mingling freely inside the prison, often eating food their relative has prepared for them or they have brought in. Conjugal contact is routine.

in his campaign literature for re-election that he had been responsible for bringing it to the town. Attitudes towards the CRs tend to change when the population sees that offenders from elsewhere will not be ‘imported’ into their community, bringing with them an influx of poor families visiting or moving to be close to their incarcerated relatives, as would be the case with a normal penitentiary. An attitudinal survey demonstrated a high level of ‘ownership’ of offenders by people in towns with a CR, who were far less likely to agree with propositions such as ‘prisoners should be treated badly because they have done wrong’ and more likely to agree that ‘prisoners should be treated with humanity’, and ‘the rehabilitation of prisoners is the responsibility of everyone, not just of police, judges and the prison authorities’.<sup>37</sup>

## Conclusion

This analysis of the CRs, in contradistinction to both the mainstream prison system and its close relative, the APACs, raised questions about how ‘the community’, via organised civil society, in *partnership* with the state, can reassert some ownership of the criminal justice system, from which it is largely excluded. Restorative justice, developed in other parts of the world, represents one way of rebalancing relationships between offender, state and community. Indeed the CRs (implicitly) and the APACs (explicitly) see restoration as a key aspect of resocialisation.<sup>38</sup> The reclamation of the offender for the community has been attempted in other ways, specifically through the complete, or partial, occupation of the penitentiary space. The CR experiment, in particular, is a liberal one that places its faith not in God’s redemption, but in the potential for a democratic state to deliver on justice, fairness, safety, order, humanity, trust and opportunities for personal development (Liebling’s measures of ‘moral performance’), even as the Brazilian prison authorities maintain contradictory, but interpenetrating, penal universes where the state either enacts, or permits others to enact, multiple forms of violence and exclusion. For example, just four months before Pedrinhas prison exploded, a new APAC unit was set up in a wing of that prison to take prisoners eligible for a semi-open regime. The prison system, like the police, craves society’s legitimation and requires its collaboration, but resists ceding power to it. However, whilst the dimensions of Brazil’s prison crisis may overcome the resistance of state agents to working with civil society, issues of partnership, power, ownership and ethos will remain very much a contested and negotiated terrain.

<sup>37</sup> Secretaria de Administração Penitenciária, ‘Centros de Ressocialização: A questão penitenciária e a opinião pública’ [Resocialisation Centres: The Prison Issue and Public Opinion] (São Paulo: Governo do Estado de São Paulo, 2002).

<sup>38</sup> Restorative justice, as a concept, was barely known in Brazil until the late 1990s, when a number of conferences were held with international experts. It is still not much referenced with the criminal justice system as a whole, even when restorative practices are used – for example in the small claims courts when offenders have to pay fines, do community service or undertake therapy.