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## Incarceration as Violence: Inflicting Pain in Portuguese Prisons

*O encarceramento como violência: a imposição da dor nas prisões portuguesas*

*L'incarcération en tant que violence: l'application de la douleur dans les prisons portugaises*

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## **Incarceration as Violence: Inflicting Pain in Portuguese Prisons\***

This article sets the groundwork for understanding prison violence as a broad and inter-related phenomenon which is bound by shifting notions of legitimacy. We argue that the concept of violence can help understand how the “pains of imprisonment” are inflicted and punishment is produced in different prison settings. Drawing upon fieldwork carried out in several Portuguese prisons, we describe how unequal sets of circumstances are imposed on groups of inmates, who become differently exposed to the deprivations of confinement. Our argument is that the various types of prison violence should be understood against this backdrop, as well as relationship to the diverse circumstances in which they are produced and the subjectivities of the individuals involved.

**Keywords:** Portugal; prison; punishment; violence.

### **Prison’s “Legitimate” Violence**

“The State is entitled to deprive freedom, but it has no right to deprive dignity”. This statement was uttered in February 2016 by Minister of Justice Francisca Van Dunem at her first hearing in the Portuguese Parliament’s Constitutional Affairs, Rights, Freedoms and Guarantees Committee.<sup>1</sup> Discussing the Government’s presentation of its reform plan of the judiciary, the Minister drew the audience’s attention to a long-standing and seemingly neglected issue, probably rendered so due to political, ideological or circumstantial reasons stemming from the country’s recent economic and

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<sup>1</sup> Accessed on 10.06.2019, at <http://www.canal.parlamento.pt/?cid=727&title=audicao-da-ministra-da-justica>.

financial situation. On this occasion, the Minister was specifically alluding to the poor conditions existing in most Portuguese prisons: to the phenomenon of prison overcrowding and the (apparent) discrepancy between the high number of convicted or remand prisoners and the low crime rates registered in Portugal.<sup>2</sup> The Minister's forceful comparison between "deprivation of liberty" and "deprivation of dignity" would later be supported by the Director General for Reinsertion and Prison Services<sup>3</sup> (also during a hearing in Parliament)<sup>4</sup> a few months after taking office.

Being deprived of liberty, whether in prison or when under house arrest, amounts to a legal measure that holds the offender accountable for crimes committed and for "damages caused to society" as stated in so many judicial rulings. It is a form of punitive justice which is intended to serve as a form of retribution and to enable a diverse set of actions, such as rehabilitation, deterrence and incapacitation. But the deprivation of dignity mentioned by the officials in charge of prison services is far more controversial (namely in terms of public opinion) as it explicitly refers to the rights of inmates, to the conditions endured during incarceration, and to an individual's status as a person and human being after being convicted of crime. In their Parliamentary appearances, both the Minister of Justice and the Director General for Reinsertion and Prison Services spoke of the urgent need to invest in the improvement of prison infrastructures, that is, the basic conditions to which prisoners are entitled, namely cells and common spaces which ensure hygiene, safety and health conditions.

While acknowledging the importance of advocating for lawful conditions of imprisonment, in this article we propose that it can have the effect of reproducing a narrow view of the negative impacts of incarceration. It is a noteworthy blind spot in the understanding of prison life when incarceration is not framed as a form of violence in itself. Abolitionist theory, for its part,

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<sup>2</sup> Frois (2017) has already pointed out that although Portugal enjoys the reputation of being a "mild-mannered" country, it has, in fact, been one of the European countries with highest incarceration rates since the 1980's – ranging from 135 to 147 per 100,000 inhabitants – while having low crime rates. Overcrowding has also been a pervasive problem although it affects institutions with different degrees of intensity. Oporto prison, for instance, regularly operates at almost double its capacity, while others, such as Carregueira or Odemira, are not overcrowded. According to official State statistics (<https://dgrsp.justica.gov.pt/Portals/16/Est%C3%A1tisticas/%C3%81rea%20Prisional/Anuais/2016/20170331120320Q03.pdf?ver=2018-12-13-150213-360>, accessed on 10.06.2019), the total prison population in Portugal in 2016 was 13,779, while the total number of vacancies in the system were 12,600. The current Minister of Justice, as well as the Director General of the Prison Services, have made overcrowding one of their priorities and implemented a series of measures designed to remove from prison those people convicted of minor sentences up to 3 years.

<sup>3</sup> In Portuguese: Direção-Geral de Reinserção e Serviços Prisionais.

<sup>4</sup> Access on 10.06.2019, at <http://www.canal.parlamento.pt/?cid=905&title=audicao-do-diretor-geral-de-reinsercao-e-servicos-prisionais>.

has long concerned itself with the ways political and academic discourse has allowed for the nature of penal punishment to be conveyed in euphemistic terms (Christie, 1981; Ruggiero, 2010), and not as a method of “pain delivery”, as Nils Christie (1981: 19) famously said. In recent decades, and just as this same author feared and criticized, imprisonment has been increasingly justified by a supposed need for and efficacy of general prevention. In other words, as a means of providing security to those outside of prison.

Literature on prison violence is abundant. Most of it addresses the role that physical violence (or the threat of it) plays in the production of order within prison settings and within “inmate culture” (Sykes, 1958; Goffman, 1988; Crewe, 2007; Neuber, 2011; Michalski, 2015). Notwithstanding the valuable contributions of these works, we believe they tend to simplify the violence that inmates suffer by virtue of their incarceration. In this literature, the plurality of violence(s) carried out by prison institutions is typically thought of in structuralist terms: as a fixed number of instrumental and institutional pains which are invariably imposed on someone deprived of liberty.

Gresham Sykes (1958) put forth this view and created a widely used blueprint for the “pains of imprisonment”, which included the loss of liberty, absence of heterosexual relationships, loss of desirable goods and services, loss of autonomy, and an absence of physical security within the prison premises and inmate and officer relationships. Recent developments have paved the way to a more nuanced view of these “pains”, highlighting the importance of situational factors relating to differences between penal institutions, the impact of specific political moments and policies and the evolution of penal regimes (Crewe, 2007; Wacquant, 2009; Fassin, 2016; Kreager and Kruttschnitt, 2018). Nevertheless, we defend that greater attention should be directed toward how these “pains” are inflicted – namely those related with one’s sense of security – particularly its intentionality and the diversity of meanings they are ascribed to. In short, aspects that must be uncovered when thinking about violence, such as the situations which tend to produce it (Collins, 2008; Fassin, 2016), the subjectivity of the protagonists who participate in it (Wieviorka, 2003, 2009), as well as the way it is steeped in daily, mundane life (Das, 2008) and assumes various forms besides that of physical violence.

In a seminal anthology on violence, Scheper-Hughes and Bourgois (2004a) drew attention to the variety of manifestations, implications, and scales of violence through different historical, geographical, and cultural contexts. More importantly, they argued that “the most violent acts are part of a conduct which is socially tolerated, encouraged or even celebrated as a moral right or duty” (2004a: 5). In other words, the authors’ proposal seeks to

encourage a reflection on the legitimacy or legitimation of violence, not as a deviant act but as an integral part of socially, economically, and politically valued norms and practices in a given time period and context. Throughout the following pages we draw inspiration from yet another notion proposed by Scheper-Hughes and Bourgois (2004b): the idea of a “violence continuum”, which posits that different types and acts of violence are interrelated and foster other instances of violence. We will return to this idea in the conclusion in order to offer a more comprehensive and interrelated view of prison violence, while remaining aware and conscious to the criticisms already pointed out by Robben (2007, 2008), namely that violence must not become a tautological and undifferentiated term. We aim to uphold this premise by considering violence and victimhood within prison walls in a way that goes beyond the narrow view espoused by both the Minister and the Director General of Reinsertion and Prison Services. In fact, violence(s) involved in incarceration is far from being neutral, bureaucratic or instrumental; these “pains” are intentionally inflicted. This stance allows us to understand how imprisonment produces and legitimizes multiple expressions of violence, on the one hand, and the way inmates experience it in their daily lives finding strategies to adapt, resist or conform to it (Crewe, 2009; Ugelvik, 2012; Frois, 2016).

### **Methodology**

This article is based on research conducted from 2014 to 2017, including semi-structured interviews and fieldwork observations of daily life in nine Portuguese prisons, both male and female. Having obtained authorization for the study from the Directorate General of Reinsertion and Prison Services, we began with a methodology consisting of monthly visits lasting between one and two weeks, in which in-depth interviews were conducted with prison officers, inmates, and members of the correctional treatment staff. Given that audio recording was authorized, clarifications were provided for the purpose of this study, and all participants signed the informed consent document. In some cases, even though the estimated interview sample was set at 15 inmates in each prison facility, due to availability and interest more participants were included. The number of interviews thus largely surpassed our estimate and were able to focus on different themes and problematics (approximately 200 individuals, including inmates, prison officers, wardens and correctional treatment staff). The sample covered both national and foreign citizens (convicted or on remand) charged for a panoply of crimes: drug trafficking, homicide, domestic violence, fraud,

sexual offences, theft, and driving-related offences.<sup>5</sup> The selection of interviewees was made with the help of correctional treatment staff, taking into account the diversity we aimed to achieve with respect to criminal charges, length of sentence and recidivism. After this initial triage, other elements were in play such as age, education, and nationality. In this article we focus only on male inmates – the majority of participants in this study – given that fieldwork with female offenders presented other characteristics analysed in Frois (2017, 2018).

Concerning prison staff, semi-structured interviews were also conducted with members of the correctional treatment staff of each prison and, when possible, with prison wardens (only a small number participated). The prison officers' degree of collaboration varied on their willingness to participate, and although a significant number did not consent to the recording of the interview, the overwhelming majority cooperated readily in answering questions and provided clarifications when requested.

It is important to emphasize that although it is commonplace to think of violence as a distinctive feature of prison environments, its manifestations are differentiated and have different implications in prisoners' daily lives, as evidenced by the abundant literature produced on penitentiary contexts (e.g. Drake *et al.*, 2015; Jewkes *et al.*, 2016; Jewkes and Wright, 2016). Put differently, the complexity inherent to the prison system – insofar as it requires the daily management and weighing of the needs of numerous agents – is contextual and must be accordingly observed *in situ*, in the interest of avoiding generalizations and stereotypes. Consequently, the experiences and manifestations of violence being analysed here must not be extrapolated or considered as illustrative of general features of all prisons or, ultimately, of other dominant issues underlying the day-to-day experiences of those who are deprived of liberty and those whose professional duties are performed within a specific facility. This site-specificity, though, does not preclude the fact that other observations, still within the scope of this article, would certainly be different if we were observing, for example, the Nordic prison environment, described in the literature as benefiting from exceptional material conditions (Pratt and Erikson, 2013) or, at the opposite extreme, the Brazilian system, controlled in several of its states by organized criminal gangs (Biondi, 2016). Thus, throughout this work we realized that the idiosyncratic dimensions that must necessarily be taken into account could not be dissociated from other elements:

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<sup>5</sup> It is important to note that under Portuguese law, it is forbidden to collect data on ethnic background or “race”. No such data is available in official databases or statistics.

incarceration rates; overcrowding (a constant feature of the Portuguese prison setting since the mid-1990s); the ratio of guards per inmate and the general shortage of human resources in prisons; the number of staff who daily monitor the administration of sentences; the existing labour-related and occupational activities which have a direct impact on the way inmates occupy their day-to-day lives (Cunha, 2008, 2015).

### **Inflicting Prison's Violence**

Prison staff and inmates are quick to point out that a prison's purpose is the reintegration of offenders. That objective was enshrined in Portuguese law following the 1974 Carnation Revolution, which ushered in a new left-leaning democratic state. Although it was later subject to revisions which introduced the goal of crime prevention, reintegration persists as the abstract ideal against which the failures of prison institutions are measured and through which a vast array of practices become legitimate. It is against this ideological background that one must understand the perspectives of officials, staff, and inmates concerning the structural problems of Portuguese prisons.

As noted earlier, the Portuguese prison system is afflicted by a set of chronic structural insufficiencies. The majority of facilities are unable to offer what penal law and its philosophy requires: 1) Inmates are not able to serve out their sentence in an individual cell; 2) There is a pervasive lack of human resources, whether it be prison guards or probation officers; 3) The separation of inmates by crime and judicial status is not possible; 4) Overcrowding is a feature of almost all facilities; 5) Finally, adequate physical conditions are also not guaranteed.

It was when faced with some of these conditions that the Minister of Justice felt the need to reaffirm a distinction between depriving a person of his/her liberty and depriving that individual of his/her dignity. But to focus on instances of extreme and unlawful deprivation can lead us to ignore the hardships that come about not because of the scarcity arising from overpopulation or negligence, but because they constitute a normalized and legitimized pattern of institutional violence. One of the most glaring examples relates to the way very different circumstances are imposed on inmates inside the same facility, in what actually constitutes an active and rationalized infliction of pain amongst inmates.

Some examples are in order. In a large high security prison in the north of Portugal (accommodating 1,200 men) there is a stark contrast between the four sectors used to house inmates. Sectors 1 and 2 are the "jungles"; a name used by prison staff and inmates to make reference to their unpredictable living conditions, where physical violence, theft and confrontation

are always imminent. By contrast, Sectors 3 and 4 are more peaceful, quiet, and orderly. In a heavily overpopulated environment, certain choices concerning the distribution of inmates are made and reinforced on a daily basis. Sectors 1 and 2 house younger, recently incarcerated inmates and those either charged or convicted for serious crimes, individuals who will not, in most cases, have access to any occupational activity. The other two sectors are populated by those who have already served part of their sentences, have occupations such as work or school, and were convicted for what is classified as minor offences. These individuals are characterized as orderly inmates with privileges, such as jobs or access to early release.

To offer different arrangements to inmates on the basis of their (good) behaviour is an international penal trend seen as one of the major elements that tends to diminish inmates solidarity (O'Donnell, 2016). It is part of what Ben Crewe (2009, 2011) described as the “tightness” of new penal regimes: inmates are granted a degree of autonomy which, in turn, produces a highly uncertain and anxious experience since it can be stripped away at any time. It is a fact that Portuguese law foresees specific opportunities for those at different stages of their sentence, which is supposed to gradually prepare inmates for release. This provides a foundation for the belief that an initial painful prison experience in a dangerous and intimidating environment is positive and instrumental to “reintegration”. In other words, a regular trope among prison staff is that prison needs to be “felt”. Inmates need to “feel” the harshness of their new environment and then gradually prove they are deserving and can transition to a more stable environment. A prison officer explained this rationale in a clear way:

We try to place whoever comes from the outside in Sectors 1 and 2. Why? Because many of them are remand inmates. Life outside is a different story. They come to jail, which has rules, and it's hard for them. So they go to 1 or 2. [...] They are moved to other sectors only when they get a job. When in Sector 3 [...] they know they need to work to get their sentence reduced, they behave differently, their behavior has already changed.

In a large prison near Lisbon, a very similar distribution occurs, this time without the pressure caused by overpopulation. A large central building is divided into two wings that provide distinct experiences of imprisonment. As in the case presented above, the red wing houses inmates in the initial phase of their sentences, without providing access to employment nor offering, for the most part, any kind of occupation. The blue wing, on the other hand, houses inmates who have served a part of their sentences,



are presently working, and have access to a range of activities. Life in the red wing is described by inmates as being extremely harsh and unequal in comparison with the blue wing. An inmate went so far as to call it a “hell” and considered his move to the blue wing as a new found “freedom”. In question are the unavoidable boredom, the lack of purpose, and disfranchisement. In addition to being denied access to employment and many other activities, inmates in the red wing are only free to enjoy courtyard privileges for half the time given to their counterparts in the neighbouring blue wing. Coexistence in the red wing is said to be tense, and inmates noticed more aggressive and severe handling from prison officers, as well as a more lax attitude by authorities regarding medical emergencies. The rationale for this disparity is quite similar to the one previously mentioned. One member of the correctional treatment staff, a probation officer, offered the following reasons:

Prison Officer: The goal of a prison sentence isn’t only to reintegrate. We have to understand that one of the objectives of prison time – although not explicitly stated – is to have such an impact on an individual that he doesn’t commit further crimes.

Afonso Bento: A deterrent effect?

Prison Officer: To have a deterrent effect, exactly. That is very important.

Catarina Frois: And a punishing effect as well.

Prison Officer: Yes, punishing... But I prefer to say deterrent effect. If we go down that path we are taking a few steps back regarding the laws presiding over the administration of prison sentences.

These violence(s) become part of institutional social orders through the decisions of correctional treatment staff and officers, who ascribe particular meanings and usefulness to them. The justifications are diverse, and they vary according to professional groups; they can be complementary, contradictory, and disputed, at times pointing to the needs of security while on other occasions identifying the moral imperative of punishment and, in most circumstances, the purposes of reintegration. Furthermore, the ethnographic data allow us to imagine how violence(s) – nowadays described as “indignities” – can become normalized over time. The more resources become scarce due to overcrowding, the more salient and intense are the range of circumstances experienced by those at different stages of their prison sentences.

Institutional violence(s) cannot be explained away as simply as “pains of imprisonment”; they must be placed within the context of specific orders

which normalize and legitimate them. In the following sections, we delve deeper into two types of violence occurring within prison walls: discriminatory violence affecting individuals convicted of sexual offences; physical violence amongst inmates.

### **Discriminatory Violence**

During our fieldwork in a high security prison, inmates convicted of sexual offences revealed that once they entered prison they were frequently instructed by the chief of guards not to divulge the reason for their incarceration to other inmates. Prison officers confirmed this practice by explaining that the measure was intended to minimize any potential physical and verbal confrontation. Advised to conceal the truth, the inmates would offer what would be a less censurable reality in the eyes of their peers, one of criminal theft or drug trafficking. Among the several dozen inmates we contacted, we verified that crimes of a sexual nature were unanimously judged to be the most serious and least tolerable by the prison population, meaning that they would be unlikely to find any justification for such acts, as opposed to other crimes punishable with heavy sentences, such as homicide (Lancaster, 2011; Crewe and Ievins, 2015).

Persons convicted of sexual crimes, perpetrators of acts deemed unforgivable by inmates with whom they share spaces and routines, belong to a prison population that is doubly marginalized, penalized, and subjected to frequent physical maltreatment and psychological abuse. A prisoner may well attempt to conceal the nature of the crime that has led to imprisonment, but this is often made impossible due to the media attention that these cases have been generating in Portugal in recent years. There is only one prison in the country where the majority of sex offenders are sent; thus, in every other facility the responsibility to manage accommodation and minimize the exposure of sex offenders falls upon each prison warden. To this end, wings are created to allow them to be separated from the rest of the prison population, even if in some cases this implies being deprived of the routines standardized for all inmates.

This was precisely the situation we observed in 2016 in one of the largest prisons in the north of Portugal. Here, men convicted of sexual crimes were housed in what had once been the cafeteria facilities for one of the wings, now converted into an improvised dormitory. Lacking proper infrastructure and presently housing 30 men, the place had neither a patio where inmates could safely enjoy outdoor recreation nor any bathroom or shower facilities. The toilets and showers these men used in a nearby hall were marked differently from the rest and had predefined hours to avoid

the possibility of any contact with the pre-release inmates who shared the facilities. Separated from the remaining prison population, these men were prevented from frequenting spaces such as the school or gymnasium and from participating in occupational activities. Only a minority (6 out of 34) were employed in any kind of work activity, and incidentally, even this took place in an area mostly used by guards. These limitations and segregation of space also made it impossible for them to take their meals in one of the common dining rooms. The dorm they inhabited thus ended up serving as bedroom, living room, dining room, and leisure area.

In this prison facility, sexual offenders were instructed to move in pairs or in groups of three so that they could more easily defend themselves against potential attacks by other inmates and seek help if necessary. But while this latent threat somehow became customary, the inmates did not attribute it only to the public visibility they gained during their trial, but also to the conduct of the prison officers, whom they found to be the first to discriminate them and to disclose the reason for their detention to other prisoners. These men were nicknamed “viola” – a shortened version of the Portuguese word for rapist, *violador* – regardless of the sex offense involved. They were what the literature and the United Nations Human Rights designates as “particularly vulnerable population” (along with older inmates, people with disabilities, drug abusers, youth, women). Being constantly reminded of and confronted with their crime caused them to feel outrage. They acknowledged having committed a crime – even though disagreeing with the victim’s versions, which were accepted by the authorities – but claimed that they had already been tried in court and that this environment constituted an additional “trial” to pass judgment. They asked themselves (and they asked us): What was the use of the prison in these circumstances? To “live in hell”, to “be in hell”?

Let us look at the case of a 32-year-old man, sentenced to six years in prison for the sexual assault of a 16-year-old girl. Conceding that a sexual act had indeed occurred between the two, the man was nevertheless reluctant to describe the encounter as a sexual assault. He explained that the young woman, who was 15 years old at the time, was a regular visitor at his home. In his version of the events on the day in question, a “hug” led to sexual intercourse, which he considered consensual, but which the victim presented to the authorities as a forced and violent act. He admitted to being “partly guilty” for having sex with a minor, and as the adult, he should have refrained from advancing with the encounter, meaning, in his mind, he was expecting leniency. However, he only understood that he was being sentenced to actual prison time when the judge pronounced

the verdict. To underscore the surprising nature of the sentence – which he considered evidence of its unreasonableness – he further explained that he was nevertheless receiving the support of his wife after the incident, as well as family and co-workers. Maintaining that he had been wrongly convicted, he now just wanted to “do the time, get out of here and never hear about it again”. He detailed the anger he felt for being discriminated and feeling the force of this stigma on a daily basis:

This crime is very badly received in a jail. One who kills, who steals, who gives drugs to children is well accepted, but this crime... one has a hard time here. There was a time when we had to be accompanied by an officer all the time; we could never be by ourselves. The officers say: “Put a plastic bag over their heads and throw them in the river” or “Put a rope around their necks”, and so on.

In this excerpt, the inmate emphasized several aspects that in his view justified the anger he felt about the treatment received in prison. One of the elements he underlined was related to the apparent status of perpetrators of crimes that he considered more serious, such as homicide, robbery, and drug trafficking. He thus referred to a double judgment which, in his view, was absolutely unfair. The inmate’s words point to prison guards as agents of censorship and stigmatization. This man also spoke about the daily organization of the wing and the segregation system in force:

We only have an hour to shower, and we cannot go whenever we want or else we risk a beating from other inmates. Sometimes we go to the bathroom, where there are three toilets, and we can only use two because the third is marked for common population inmates, so we cannot use it.

The situation in which these men find themselves illustrates the permeability between legitimate and illegitimate prison violence. On the one hand, these inmates are segregated to protect them from the intolerance of their fellow inmates. It is assumed that the price to be paid by these inmates in many institutions – namely, the limited access to prison resources – is a legitimate trade-off given the particular vulnerability of these men. On the other hand, it is also clear that prison staff and officials tend to consider sexual offenders an especially difficult population to work with, either because they are disgusted by the nature of the crimes or because the inmates are described as manipulative and untrustworthy (Waldram 2007, 2010, 2012).

### Physical Violence

The idea that situations of physical violence in the form of direct confrontation are a common occurrence in prison is one of the widest held perceptions about daily life for the incarcerated. Outbursts of aggression, improvised handmade weapons later found in prison raids, conflicts between members of different ethnic groups or neighborhoods – these all seem to be part of the popular imagination when it comes to prison. While this perception has to a large extent become a stereotype, it does not mean that it bears no resemblance to actual prison life, which indeed often translates into serious offenses against the physical integrity of prisoners, thus turned into victims. Here too, there are differences between prison facilities, or even in separate wings inside a given prison. How do inmates explain the recurrence of aggression as a common means of resolving conflicts? The first response we usually obtained for this question offered the self-explanatory approach: “This place is filled with thugs – what else did you expect?”. In other words, the use of violence was attributed to the violent nature of the individuals. As convicted criminals (or *bandidos*, as the inmates put it) they would be expected to respond with that type of reaction.

For many inmates, crimes committed in free society such as robbery, trespassing, assault, invasion of one’s personal and physical space, and petty theft (with varying levels of violence and confrontation) constitute a reality that exists within prison walls. The difference for those incarcerated lies precisely in the fact that since prison is a confined space with no opportunity to escape or avoid retaliation, the question becomes more clearly one of a manifestation of power, status, conquest and maintenance of respect (Crewe, 2007; Michalski, 2015).

The motivations for the behavior that materializes in physical and verbal confrontation may seem unreasonable or even inconceivable to an outsider, but we cannot forget that being “inside” prison means being unable to escape from its conflicts. Everyone is vulnerable and has to constantly camouflage or conceal any noticeable fragility. There is an assumed principle that reactions to provocation must be immediate, with no place for hesitation or weakness – or, we might say, for thought or deliberation. That principle may decide how someone will be treated by the remaining inmates from then on. Either someone is found to have the power of reaction, or one is found to lack it and thus implicitly to open the door to abuse.

Certain moments in everyday prison life are particularly propitious for such assessments. Queuing at mealtime, for instance, is one such moment, since inmates are under the additional pressure of limited time, and everyone is in a hurry. Every minute spent there is a minute less in the courtyard,

to enjoy being outdoors, in the open. On the other hand, relinquishing one's place in the canteen queue reduces the possibility of buying products which are difficult to access otherwise (at least legally): cigarettes, hygiene products, groceries. Meanwhile, in the patio, the football game also presents more than a sporting challenge. Besides being a moment of leisure, it provides an opportunity for physical exercise and interaction, which becomes a delicate affair, since a tackle, push, or protest can provoke a violent response, such as a stabbing. There is no referee, there is no cheerleading. The majority of inmates choose not to play, as they don't want the stress.

When we questioned this prison's officers about physical violence amongst inmates and how they dealt with it, their answer was ambiguous. On the one hand, they recognized that there was a shortage of guards for the total number of prisoners, in a proportion of five or six guards per 200 inmates. As a result, when cells are opened, the prison officers avoid circulating among inmates or engaging in direct contact. If a conflict arises in the patio, for example, they wait to see if things calm down on their own. Only if the situation eventually gets out of hand do they ask for support from other officers and then intervene. Regarding this procedure, a prison officer described an episode when an inexperienced colleague detected an inmate using a mobile phone in the courtyard. Since possession of mobile phones is strictly prohibited, he approached the inmate to confiscate the item. The ensuing reaction was aggressive. The inmate "jumped on his back and started biting his neck!". In the aftermath of this incident, the head of the prison officers rounded up the newly arrived officers to explain that in such a situation, they should limit themselves to making a record of the inmate's number. Only after they were all in their cells could this man be approached and the situation clarified.

On the one hand, the shortage of human resources to deal with the problems that can arise in real time when 200 inmates are together makes prison officers aware that their first concern must be for their own safety. On the other hand, they are the first to admit that this limitation has implications for their ability to protect inmates themselves. Bound by a self-imposed code of silence, inmates rarely on their own initiative seek out a guard's help. When prison officers detect that an inmate is vulnerable or being physically and psychologically assaulted, he is already in a post-aggression situation.

The levels of violence present in these descriptions are proportionately contrasting with the attitude witnessed in conversations with inmates concerning their crimes. Some inmates seemed almost amused when they had to explain in more detail activities that were obvious to them.

The following excerpt is taken from a conversation with a 24-year-old inmate, imprisoned since the age of 17. His prison trajectory had taken him through five different prisons, which he invariably handled by adopting aggressive behavior with both guards and other inmates, thus motivating his repeated transfer out of the institution. He immediately disclosed that ever since he had entered prison he had continued with his *business*, meaning that drug trafficking was a means to maintaining the economic status he had secured while outside of prison. He proudly pointed to his Nike tennis shoes, “worth 150 euros”, which he actually compared with the 20 euros sneakers worn by one of the authors – in his view, footwear unbecoming of a university professor.

For over an hour, he detailed several episodes of his life before prison. He spoke of his personal and family life from the age of 12, when his parents divorced and he began to commit crimes, either by himself or with a group of friends. The escalation of violence that accompanied this trajectory was notorious, characterized both as inevitable and as evidence of his perfecting criminal proficiency. As he got older, his crimes became more sophisticated:

I was arrested for drug trafficking, kidnapping, burglary and theft. Sometimes I used a gun to threaten; some people feel more threatened with a gun. Imagine a kid of 12 or 13 saying “This is a robbery”, you must have a gun! I stole to get my things, my clothes – anything I wanted I took. Later I abandoned robberies and started to deal drugs. The money was more regular and there was less risk involved. But one day, there was a raid in the neighborhood and they [the police] destroyed everything they found in their way. My mother didn’t know what I was up to, and I realized that if my house was ever raided like that and my mother found out about me, it would be a great humiliation. That’s when I decided to move into kidnapping and into... what’s that word? Extortion. Extorting. I extorted.

At this point in our conversation he became amused with our doubts and naïve questions. He described how these robberies and extortions were planned and went on to explain how the kidnapping and subsequent extortion process worked:

You can tell by the looks. Imagine, there was me and two people. We were in the car and we passed a nice “set of wheels”. We would follow, pick it up and take the person, the car, take everything. Then we would put the person some place, tie him up and tell him what he had to do. He had to give us money, otherwise he would be tortured.

Catarina Frois: Torture? What do you mean by torture?

[Laughs] Torture! Torture is torture, in so many ways: beating, burning, beating some more, until the man gave us what we wanted. The man does not want to give up his things but he has to. Then when the man gave it up, we would leave him on the street. There was this guy who was left in a coma; had to spend a lot of time in the hospital. I heard he's not been good in the head ever since.

These two examples of violence – discriminatory and physical – can only be understood when we take into account the institutional violence which creates distinct circumstances for different sets of inmates. Inmates placed in conditions which are intentionally difficult may find more reasons for committing violence, whether it is because they find more opportunities to do so or because frustration and anger are intensified.

But it is also vital to attempt to understand this violence in a broader biographical context (Neuber, 2011), or as part on an ongoing continuum of violence, where inmates are simultaneously agents and targets of violence, both before and during imprisonment. Many of these individuals commit crimes as a direct or indirect consequence of the failure of other state institutions (Frois, 2017); they may have previous associations with violence, which is itself informed by the degradation of the “urban margins” which they inhabit as described by Kilanski and Auyero (2015: 3): “A plethora of economic and political factors – from insulting levels of inequality, to the informalization of social relations and ensuing precarity, to a punitive and/or delinquent state – produce the urban margins and foster the violence that pervades them”. The conditions for violence, therefore, are not to be found exclusively in prison; instead, they must be placed on a larger continuum which stretches before and beyond that institution’s walls.

## **Conclusion: Incarceration as Violence**

The state’s monopoly over what Weber called “legitimate” violence  
does not end violence – it redistributes it  
DAS (2008: 286)

In this article, we offer the groundwork for analyzing prison violence in a comprehensive fashion, taking into account its different manifestations, levels and articulations, as well as the context in which it gains or loses legitimacy. We began by arguing that the notion of “pains of imprisonment” carries with it a structuralist bias which can limit our understanding of punishment. We believe violence is a concept which can help grasp how punishment is far from being simply neutral or bureaucratic, but a diverse



action which becomes meaningful and part of institutional orders through the action of prison staff and officials.

We began by demonstrating how prison institutions inflict pains in a differentiated manner, one that may be related with structural factors (such as overcrowding) or subjective considerations (such as the crime committed). This distribution of pain becomes legitimate since it is understood as serving a variety of functions, be it security, punishment, or reintegration. Some inmates may be said to suffer imprisonment within the prison itself, that is, doubly isolated as they are removed from the outside world and separated from their would-be peers.

We also argued that the infliction of pain should be understood as part of a “continuum” of prison violence – to borrow from Scheper-Hughes and Bourgois (2004b) –, informing in significant ways other types of aggression taking place in everyday prison life. That is the case when addressing physical violence, which may be potentiated by deprived environments within prison itself, but also when thinking about the discriminatory violence suffered by inmates convicted for sex offenses, who are deprived of prison resources and opportunities for the sake of their own safety but also due to their attributed lack of moral worth.

Even though different prison stakeholders are critical regarding prison’s capacity or effectiveness to rehabilitate, we believe it is urgent to observe how violence is perpetuated within prison walls in spite of these shortcomings. For there is no seclusion without violence, and incarceration in and of itself is unquestionably an aggression committed against the individual. Closing, separating, cloistering, and depriving are synonymous with coercion and violence inflicted on a third party. But it is a legitimated violence, insofar as it is based on the legal and penal apparatus that regulates life in society (Martin *et al.*, 2014; Bennet, 2016). To speak of prison confinement is to refer to offenders and to victims, and in this domain, we are not considering punishment as a purely objective measure, but to enter the sphere of emotions and of the discretionary. This, in turn, refers to a notion of justice that lends itself to a host of ambivalent attitudes, whether on the part of those who experience it, or those who see it being applied.

This is particularly relevant when we consider its manifold implications on inmate behavior, past and present. Inmates might be said to pass from one type of code to another – from the Penal Code, legitimized by society, to what is commonly described as the “Inmate Code”, shared and reified within prison – with the contribution and passive acceptance of the system that oversees both. The Penal Code defines, imposes, and applies a set of socially accepted and legitimized values, practices and behaviors, where

rights and responsibilities are equated with benefits and penalties. Within prison there is another code that is also made of rules as well – do not snitch, pay one’s debts, respect one’s neighbor. Prison officers, whose primary responsibility on a daily basis is to maintain the safety of the premises as well as fellow colleagues, prisoners and administrative staff, are in some cases agents of discrimination and stigmatization, either actively or passively. Confronted with an application of the prison sentence, they are also the producers of judgments in relation to crimes committed by others – before or during imprisonment. The omissions incurred by the prison as an institution begin as soon as we realize that a prison sentence implies a double condemnation: first, by the justice system as it deprives of freedom, and second, by the prison system as it demands complicity.

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***O encarceramento como violência:  
a imposição da dor nas prisões  
portuguesas***

Este artigo fornece as bases para entendermos a violência na prisão enquanto fenómeno abrangente e inter-relacionado que tem por base noções de legitimidade voláteis. Defendemos que o conceito de violência permite compreender de que forma são infligidas as “dores do encarceramento” e como é produzida a punição em diferentes contextos prisionais. Tendo por base trabalho de campo conduzido em várias prisões portuguesas, o artigo descreve a forma como grupos de reclusos se encontram em condições de encarceramento distintas, sendo por isso expostos de forma diferenciada às suas privações. Argumentamos que as várias formas de violência prisional devem ser entendidas à luz deste contexto, tal como estando diretamente relacionadas com as circunstâncias da sua produção e as subjetividades dos indivíduos envolvidos.

**Palavras-chave:** Portugal; prisão; punição; violência.

***L'incarcération en tant que violence:  
l'application de la douleur dans  
les prisons portugaises***

Cet article nous fournit les bases nous permettant de comprendre la violence en prison en tant que phénomène vaste et interrelationnel ayant pour base des notions de légitimité volatiles. Nous y soutenons que le concept de violence permet de comprendre comment sont infligées les “douleurs de l’incarcération” et comment est appliquée la punition dans différents contextes carcéraux. Reposant sur des travaux *in loco* réalisés dans diverses prisons portugaises, l’article décrit la façon dont des groupes de détenus se trouvent dans des conditions d’incarcération différentes et se trouvent, dès lors, soumis différemment à leurs privations. Nous soutenons que les diverses formes de violence carcérale doivent être vues à la lumière de ce contexte, tout autant qu’elles se trouvent en rapport direct avec les circonstances de leur application et les subjectivités des personnes engagées.

**Mots-clés:** Portugal; prison; punition; violence.