

# Lock them up! Lock them up? A critique of the prison mosaic

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## **Abstract**

Incarceration has become the routine response to severe criminal offence and is presented as the most humane form of punishment. Yet, multiple biases combine to form a discriminatory criminal justice system targeting poor men of colour. Drawing on Michel Foucault, Loïc Wacquant, and Angela Davis the development of prisons to the hegemonic form of managing misconduct and ultimately poverty is analysed. These include analyses of the prison-industrial complex as a close connection between incarceration and industry, as well as the role of neoliberal ideology and agenda in transforming the state based on discipline and control as responses to social ills. Following Castoriadis' "decolonisation of the imaginary", these fundamental critiques are connected with alternatives to incarceration. Finally, exemplary alternatives to the neoliberal state complete the mosaic of social injustice and provide a broader picture on this important debate.

*Keywords:* Neoliberalism, alternatives to incarceration, transformative justice, restorative justice, decolonisation of the imaginary, degrowth

## **Highlights**

- A multi-dimensional critique of incarceration as routine response to crime
- Comparison of different cultural contexts and their incarceration practices
- Extending previous literature on prisons, industry, and neoliberalism
- Application of the concept "decolonisation of the imaginary"
- Connecting degrowth and decarceration movements

*Minor drug offenders fill your prisons, you don't even flinch*  
*All our taxes paying for your wars against the new non-rich [...]*  
*They're trying to build a prison*  
*For you and me to live in*  
– “Prison Song” (System of a Down, 2001, track 1)

## 1. Introduction

Contemporary, modern, “developed” societies share the narrative of prisons as necessary reformatories and corrective facilities. Accordingly, prisons depict useful institutions providing security, justice, and an adequate mechanism to turn misconduct into productive behaviour. Next to barbaric practices, torture, and cruel death penalties of the 18<sup>th</sup> century prisons appear as “humane” forms to discipline and punish (Foucault, 1991 [1975]).

However, this narrative consists of contestable and one-dimensional interpretations. Instead, the topic of punishment and prisons needs to be examined as a multi-faceted one. Philosophically and historically, the emergence, role, and institutionalisation of punishment can be analysed as done by Nietzsche (1968 [1887]) in his *Genealogy of Morality* or in its more concrete form of prisons by Foucault (1991 [1975]) in *Discipline and Punish*. Here, prisons represent one way to uphold order and discipline society at large. Socially, prisons can be seen as bastions to foster inequalities along class (Wacquant, 2001) and racial lines (Davis, 1998). Economically, prisons provide a cheap and constrained working force, and have in some instances become privatised generators of profit – a connection discovered by the term *prison-industrial complex* (Davis, 1998). From a moral perspective market mechanisms undermine the institution of punishment apparent in some U.S.-States where prisoners can move to well-furnished cells in exchange for money (Sandel, 2012). Lastly, the organisation of society determines the use of prisons – apparent in lower incarceration rates in welfare-oriented societies compared to neoliberal ones suggesting a trade-off between state-led control and care (Cavadino & Dignan, 2006). These and more perspectives need to be considered to arrive at an accurate description of prisons in contemporary societies.

In this article, I will sketch major points of critique towards incarceration and highlight its entanglement with growth-oriented, exploitative social structures. I will argue as follows. First, I establish incarceration as a central social justice concern entangled in multiple discriminatory practices. Second, I embed prisons in the mosaic that creates the growth-oriented economy intimately connected to neoliberal politics and population management. These critical analyses and deliberations provide grounds to introduce alternatives to incarceration including restorative and transformative justice, rehabilitation, and social

programmes. A short discussion with references to anti-neoliberal utopias concludes this paper and provides the “big picture”.

## **2. The Status Quo of Incarceration**

Currently, 10.35 million people are imprisoned worldwide with an average rate of 155 prisoners per 100,000 citizens and considerable variations between and within geographical regions (Walmsley, 2016). The U.S. has the largest prison population in absolute numbers with 2.2 million, followed by China with 1.65 million, and Russia with 0.64 million. Their incarceration rates are 698 (2<sup>nd</sup> rank), 119 (136<sup>th</sup>), and 445 (11<sup>th</sup>) prisoners per 100,000 citizens, respectively (Walmsley, 2016). Countries as politically, ideologically, and economically different as India, Nigeria, Burkina Faso, Oman, Iceland, and Japan, feature among the lowest rates of incarceration with less than 50 prisoners per 100,000 citizens.

To reduce complexity the focus is turned to countries of the global north. According to the Council of Europe prison capacities in 47 European countries are almost exhausted with a median 92 inmates per 100 places and 30 % of prison administrations already experiencing overcrowding (Aebi, Tiago, & Burkhardt, 2017, p. 2). Among countries of the global north a clear correlation between welfare spending, punitive spending for prison and law enforcement infrastructure, and a corresponding rate of incarceration is observed (Lappi-Seppälä, 2010). Countries with low spending for welfare programs and education exhibit the largest incarceration rates (e.g., USA or UK), while countries with high spending for welfare program exhibit low rates of incarceration (e.g., Sweden or Iceland). Particularly the first approach of low welfare spending results in a rift along class lines with disproportionate incarceration of poor people (Wacquant, 2001). However, class is far from being the only relevant category in the explanation of incarceration. In the following I will discuss class, race, and gender as three variables of discrimination within the prison systems of the global north. An intersectional perspective linking these categories will conclude this chapter.

### **2.1 Class**

In most societies of the global north incarceration is closely related to poverty (Wacquant, 2001). A whole array of mechanisms takes effect to produce and foster inequality through incarceration. In many countries past prison sentences impede the search for jobs, housing, mobility, or political participation. Middle income inmates might be entering a spiral of social descent whilst poor inmates have to overcome even more hurdles and difficulties. The stigma of deviance glows ominously around them. Even though they have atoned for their misdemeanour and completed the legally obliged reparations many ex-inmates find it difficult to restore their role in society. As a result ex-inmates are prone to be incarcerated again and again, because the “outer world” denies them acceptance and

participation nudging them to deviant behaviour again. In Germany, the recurrence rate of all crimes over a six-year period is 44 % varying from homicides (29 %) to theft (50 %) and robbery (68 %) (Jehle, Albrecht, Hohmann-Fricke, & Tetel, 2013). However, there is a trend towards criminal biographies: 70 % of adults with more than five convictions become convicted again within a six-year period; for adolescents this number increases to 85 % (Jehle et al., 2013).

Across Europe, the main reasons for incarceration are drug offences (19 % of inmates) and theft (16 %) (Aebi et al., 2017). European-wide legalisation of drugs by itself would liberate more than 277,000 people and could relieve the corresponding prison administrations of €16.6 million *every day* (Aebi et al., 2017). Together, drug related crimes and those with the wider focus of being aimed against property amount to 55 % of all crimes committed in Germany where only 15 % of crimes committed were aimed against other people (Destatis, 2016a). These figures illustrate the function of prisons “to protect and enforce the inequalities produced by the market” (CrimethInc, 2011, p. 143) and to administer poverty.

In the U.S. crimes stereotypically committed by poor people, e.g. fare evasion or street crimes, are more heavily and abrasively persecuted than white-collar crimes committed by rich people, e.g. corporate safety misconduct or pollution, which often do not even appear as criminal behaviour (Reiman, 2001). In this context the Chilean economist Manfred Max-Neef (2014) proposes the category of “economic crimes against humanity” to account more seriously for the immense damage caused in the excuse of economic activity. A prominent example of punishing along the income divide in the U.S. is the disparity between prison sentences for possession and sale of crack versus powder cocaine. Despite their physiological and psychoactive similarities “average sentence for trafficking in crack is more than five years longer than the average powder sentence” (Angeli, 1996, p. 1212). Simultaneously, crack is more popular in poor inner cities and among people of colour whereas powder cocaine is prominent in suburbs and among whites (Reiman, 2001).

In the UK 42 % of prisoners have been expelled from schools, 51 % dispose of poor literacy skills, and 66 % have been unemployed prior to incarceration (Prison Reform Trust, 2016). The result is unincisive socioeconomic participation before prison which is intensified through their time of incarceration and the mechanisms described above.

## **2.2 Race and Minorities**

Racial discrimination within the broader law enforcement framework is most obvious and discussed in USA. Multiple incidents of white police officers killing mostly unarmed black men have sparked debates over structural racist policing and the disconnect between police

and the communities they are obliged to protect – culminating in the *Black Lives Matter* protests (Lowery, 2017). However, the structural component of racist policing goes beyond the – oftentimes inconsequential – killing of unarmed men of colour. Through mechanism installed in the so-called *War on Drugs*, men and women of colour have been subjected to ever-intensifying policing (Chin, 2002). “[W]hile African Americans are not more likely to commit drug crimes than members of other races, they are much more likely to be arrested, prosecuted, convicted, and sentenced to prison” (Chin, 2002, p. 256). People of colour are also more routinely stopped and frisked in New York City than white counterparts (Gelman, Fagan, & Kiss, 2007), more likely to have their vehicle searched in traffic stops (Gross & Barnes, 2002), and get stricter sentencing particularly in drug offences (Mitchell, 2005). Some authors have pointed to the history of U.S. drug policies being racially motivated passing from anti-Chinese opium persecution in the late 19<sup>th</sup> century through black cocaine users and the combined opium-coca-criminalisation with the Harrison Narcotics Tax Act in 1914 to Mexican marijuana users in the 1920’s and 1930’s (Provine, 2007). In 2009, white people accounted for 33 % of the U.S. prison population despite representing 64 % of the general population, whereas black people accounted for 40 % of the prison population while representing 13 % of the general population (U.S. Census Bureau, 2017; West, 2010). According to Wildeman (2009), 25 % of black children born in 1990 had a parent imprisoned compared to 4 % of white children concentrating childhood disadvantages.

Racial, ethnical, and cultural discrimination can also be observed outside the U.S. through similar mechanism. In Germany, 28 % of convicts are foreigners despite representing 12 % of the general population (Destatis, 2016b, 2017a). In the UK, 26 % of the prison population belong to ethnic minorities representing 14 % of the general population (Prison Reform Trust, 2016). As an additional trend the number of Muslim inmates has doubled in the past 13 years now accounting for 15 % of the UK prison population. Muslims also account for an estimated 40-50 %<sup>1</sup> of French inmates whilst representing 8-10 % of the general population launching debates about (failed) immigration and religious radicalisation (The Economist, 2016). In each case minorities are overrepresented in prisons and among convicts suggesting structural inequities.

### **2.3 Gender**

In all countries of the global north men are massively overrepresented as prisoners. The median proportion of male inmates among 47 European countries is 94.8 % with small variations except for the outliers of Andorra (79 %) and Liechtenstein (87 %) (Aebi et al., 2017). In Germany, men account for 75 % of suspects (BMI, 2016), 80 % of convicts

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<sup>1</sup> The French government does not provide official data on the Muslim population in general and their percentage in prisons. These numbers are therefore unofficial estimates.

(Destatis, 2017b), and 94 % of prisoners (Destatis, 2016c). This continued increase is attributable to the amount and type of crimes committed. Men are more likely to be suspected of more than one crime and to commit violent crimes both of which increase the probability of prison sentencing (BMI, 2016). Thus, interpreting men as perpetrators seems obvious. However, men also account for 60 % of victims averaged over all crimes with strong variations, e.g. between attempted homicide (75 %) and sexual offences (7 %) (BMI, 2016). Despite these figures a widespread imaginary of male victims is missing as much as that of female perpetrators.

## **2.4 Intersectionality**

All categories described above amount to a stereotype of perpetrators which positions poor men of colour at the centre of law enforcement. Racial profiling in poor suburbs becomes a regular practice of policing which in “successful” cases, i.e. arrests, reinforces the stereotype and rectifies policing practices further (Welch, 2007). The result is a self-fulfilling prophecy of gendered, racial, and classist discrimination, oftentimes accompanied by ageist aspects as well. This stereotype is open to include other minority features as the anti-Muslim and anti-refugee rhetoric shared across countries of the global north illustrates (Sides & Gross, 2013). Such discriminatory, aggressive policing is interpreted to intimidate minorities and preserve the hierarchical status quo along these intersections (Romero, 2006).

## **3. The Prison Economy**

The preservation and permeation of power through the social sphere to create a widespread culture to discipline has been well analysed by Michel Foucault. In *Discipline and Punish* Foucault (1991 [1975]) famously re-narrates the genealogy of the prison economy in France and the hiding of power in this process. The overt spectacle of torture and public executions of the 18<sup>th</sup> century is transformed to the contemporary, clandestine world of prisons. Instead of baronial rights, privileges, and subjectivity it is the all-encompassing book of law guiding citizens objectively through their lives. This way power permeates throughout society instead of being above or outside it, hovering dangerously in an unfathomable place. The Foucauldian recipe reads as follows:

Shift the object and change the scale. Define new tactics in order to reach a target that is now more subtle but also more widely spread in the social body. Find new techniques for adjusting punishment to it and for adapting its effects. Lay down new principles for regularizing, refining, universalizing the art of punishing. Homogenize its application. Reduce its economic and political cost by increasing its effectiveness and by multiplying its circuits. In short, constitute a new economy and a new technology of

the power to punish: these are no doubt the essential *raisons d'être* of penal reform in the eighteenth century. (Foucault, 1991 [1975], p. 89, italics in original).

With the utilization of these subtle mechanisms punishment changes its addressor. Now, "the guilty person is only one of the targets of punishment. For punishment is directed above all at others, at all the potentially guilty" (Foucault, 1991 [1975], p. 108). This is combined with a new version of punishment in the name of the public good. "[E]veryone must see punishment not only as natural, but in his own interest; everyone must be able to read in it his own advantage" (Foucault, 1991 [1975], p. 109). Romanticised tales of outcasts are replaced by frightful realities and the inescapable persistence of power. Discipline and punishment become increasingly professionalised, mechanised, and de-humanised.

A similarly daunting analysis is provided by Jacques Ellul from a different starting point. In *The Technological Society* he describes the permeation of technique as the "*totality of methods rationally arrived at and having absolute efficiency* (for a given stage of development) in *every* field of human activity" (Ellul, 1964, p. xxv, italics in original). This processual view on technique also encompasses policing and surveillance.

To be sure of apprehending criminals, it is necessary that everyone be supervised. It is necessary to know exactly what every citizen is up to, to know his relations, his amusements, etc. And the state is increasingly in a position to know these things. This does not imply a reign of terror or of arbitrary arrests. The best technique is one which makes itself felt the least and which represents the least burden. But every citizen must be thoroughly known to the police and must live under conditions of discreet surveillance. All this results from the perfection of technical methods. The police cannot attain technical perfection unless they have total control. [...] Subjectively, control satisfies the desire for power and certain sadistic tendencies. But the subjective aspect is not the dominant one. It is not the major aspect, the expression of what is to come. In reality, the objective aspect of control – more and more, that is to say, the pure technique which creates a milieu, an atmosphere, an environment, and even a model of behavior in social relations – dominates more and more. (Ellul, 1964, p. 100)

In both analyses mechanisms to discipline and punish have infiltrated daily experiences of people, their most proximate social surroundings, and their psyche without being directly manageable or controllable. Power and technique have become decentralised and autonomous actresses in society supported by particular interpretations of development, progress, and justice. This has allowed prisons to expand massively and become commodified to efficiently manage and administer poverty (Wacquant, 2009).



### 3.1 Prison-Industrial Complex

The term *prison-industrial complex* refers to the “military-industrial complex” coined by Dwight D. Eisenhower in his farewell address as U.S.-President in 1961. Eisenhower (1987 [1961], p. 150) had warned about the “conjunction of an immense military establishment and a large arms industry.” Correspondingly, the prison-industrial complex describes the entanglement of a profit-seeking rationale from private businesses with government incentives and programmes to incarcerate (Davis, 1998). Social problems like poverty and drug use have increasingly been penalised and answered not by social or welfare programmes but by law enforcement to expand the prison industry. Next to privatised prisons itself this includes public contracts in construction, telecommunications, or military equipment (Davis, 1998). Spelman (2009) has identified state spending, sentencing policy, prison crowding, and crime as best predictors for the prison boom between 1977 and 2005. Sentencing policy has changed from being rehabilitation-oriented and intermediate to more constraint and harsher sentences coinciding with the “war on drugs” and the shift in public perception of crime – referred to as the “punitive turn”. As a result of the punitive turn prison population in the U.S. has increased from 420,000 inmates in 1985 to 1.4 million in 2015 and expenditures multiplied from \$6.7 billion to \$56.9 billion during the same 30-year period (The Sentencing Project, 2016). The privatisation of prisons has created a monopoly manipulating the “prison market” and demanding an ever-increasing supply of prisoners to operate at optimum capacities (Fulcher, 2012). From this perspective, particularly people of colour are increasingly commodified and prevented from future social and economic participation. Combined with business-typical cost-cutting initiatives this has resulted in human rights violations and strikes in prisons (Kelkar, 2017).

Inmates also constitute a cheap and exploitable workforce unable to unionise. With wages below \$0.32 per hour inmates outcompete the “free workforce” leading to an intimate connection between the growing prison industry and the stagnating U.S.-economy (Thompson, 2012). This arrangement “guarantee[s] the perpetual profits from the forced labor of inmates, now justifying their slavery as punishment for crime” (Brewer & Heitzeg, 2008, p. 633). The link to slavery is particularly ominous given the overwhelming “racialisation” of incarceration masked by a race-blind but coded rhetoric about street crime, gangs, neighbourhoods, or drugs – all synonymous with *coloured*. However, an economic rationale is positioned at the centre of mass incarceration most obvious in the anti-capitalist analysis of the anarchist ex-workers’ collective CrimethInc arguing that

“[p]risons are necessary not to preserve order so much as to protect and enforce the inequalities produced by the market. The coercion and control they represent isn’t an aberration in an otherwise free society, but the essential precondition for capitalism.

Prisons are simply a more extreme manifestation of the same logic inherent in property rights and national borders.” (CrimethInc, 2011, p. 143)

Accordingly, prisons serve as a division between *honest* and *criminal workers* aimed to de-collectivise the exploited ones of capitalism just like the divides worker/slave or citizen/immigrant. The link of capitalist order and prisons enables a different perspective: “There is one kind of prison where the man is behind bars, and everything that he desires is outside; and there is another kind where the things are behind the bars, and the man is outside” (Sinclair, 1906, cited from CrimethInc, 2011, p. 153).

The close entanglement of private industry and state incarceration in the U.S. has indeed not been as prominent elsewhere. Even though Sudbury (2002, p. 57) attempts to upscale the topic arguing with the “US-led global war on drugs [...] to ensure the super-exploitation of black women within the global prison industrial complex,” the arrangements and trends towards mass incarceration remain rather U.S.-specific. To the best of my knowledge, no accounts have yet been given about non-U.S. prison-industrial complexes despite globalised criminalisation and persecution of drugs, which will be the topic of an accompanying article. However, some aspects like prison labour can be transferred to other contexts. In Western Europe, prisoners are incentivised to work and produce goods sold to the insouciant general public as a measure of rehabilitation and maintaining discipline (Shea, 2005). Prison walls are thus comparable to the semi-permeable “iron curtain” membrane in retaining cheap labour but unsealing for cheap goods manufactured under “mindnumbing” conditions and with “[u]nacceptably low pay levels” (Shea, 2005, p. 11). The 195 German prisons generate annual turnover of €200 million and employ more people than DAX companies Henkel and Deutsche Bank combined resembling a “prison corporation” with 195 subsidiaries (Losse, 2007, p. 2). Linkages between incarceration and business can be observed across state lines.

### **3.2 Neoliberalism and the Punitive Turn**

An oppositional discourse<sup>2</sup> focuses on the punitive turn as functional element in crafting the neoliberal state, uphold order against potentially rebellious groups, and manage poverty and social insecurity. Following the “peculiar institutions” of slavery, the Jim Crow regime, and the ghetto, prisons represent the most updated form of legitimised minority suppression (Wacquant, 2000). Accordingly, prisons resemble black ghettos as confined spaces of exclusion, stigmatization, vilification, and the redefinition of citizenship preserving ethno-racial order (Mendieta, 2007; Wacquant, 2000). Confronted with social insecurity and

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<sup>2</sup> See Wacquant (2009, pp. 84-87) for an elaborate critique of the “demonic myth” of the prison-industrial complex.

deregulated labour markets the neoliberal state utilises punitive methods to regain control and suppress unsettling potentials (Wacquant, 2001).

The regulation of the working classes by [...] “the left hand” of the state, symbolised by education, public health care, social security, social assistance and social housing, is being *superseded* – in the United States – or *supplemented* – in Western Europe – by regulation through its ‘right hand’, that is, the police, courts and prison system, which are becoming increasingly active and intrusive in the lower regions of social space. (Wacquant, 2001, p. 402)

Indeed, welfare-oriented societies with overwhelming state-funded social programmes (e.g., Sweden) tend to imprison less than neoliberal ones with larger punitive expenses (e.g., USA or UK) suggesting a trade-off between state-led control and care (Cavadino & Dignan, 2006). However, the trend towards neoliberalisation and the concurrent punitive turn can also be observed for traditionally welfare-oriented states. Wacquant (2010, p. 198) even suggests that “restrictive *workfare* and expansive *prisonfare*,” i.e. conditional work-related welfare and punitive responses to social ills, are inextricably linked “to discipline the precarious fractions of the postindustrial working class” and instrumental in crafting a neoliberal state. Both mechanisms “push its clientele onto the peripheral segments of the job market,” prettify unemployment statistics, and create an easily exploitable workforce (Wacquant, 2009, p. 80). However, providing cheap labour for industrial production presents only one piece of the mosaic that creates the social reality of prisons. Much more prominent than the economic logic is the “*political logic and project*, namely, the construction of a post-Keynesian, “liberal-paternalistic” state suited to institute desocialized wage labor and propagate the renewed ethic of work and “individual responsibility” that buttress it” (Wacquant, 2009, p. 85, accentuations in original). This broadens the perspective on state spending on prisons (The Sentencing Project, 2016) and includes phenomena such as ghettoization and widespread population management into the analysis.

These aspects are exemplified also by the European Union’s (EU) response to a pike in refuge and asylum seekers who “have fled conflict and poverty in Syria, Iraq, Afghanistan, Africa, South Asia, and elsewhere” starting in 2015 (Archick, 2016, p. 9). A welfare and human rights-oriented approach would arguably have provided safe passages to Europe, a solidary mechanism to scatter refugees among EU member states, and unified, needs-oriented integrations programmes (Guild, Costello, Garlick, & Moreno-Lax, 2015). Instead, the EU member states, starting with Sweden on 4<sup>th</sup> January 2016, have seriatim installed border controls suspended since the Schengen Agreement in 1995 to reduce immigration. Refugees and asylum seekers were penned up in camps whose resemblance with ghettos needs no eloquent Wacquantic analysis (Latza Nadeau, 2015). “Smugglers” and “human

traffickers” have been identified as contributors to increased, unwanted migration and vilified in a “war on smuggling” (Carrera, Blockmans, Gros, & Guild, 2015, p. 9). Based on the “Joint Way Forward on migration issues between Afghanistan and the EU” (European Commission, 2016) Afghan citizens were deported from several EU member states despite continuous warfare and military engagement in these regions (Engel Rasmussen, 2016). In short – the EU responded to social ills and humanitarian challenges with punitive measures against the most vulnerable groups of society.

#### **4. Alternatives to Incarceration**

The analyses above present critical deliberation on incarceration. However, they do not remain in the realm of simple querulousness and negativity. Following Foucault (1997 [1978], p. 29) critique, defined splendidly as “the art of not being governed like that and at that cost”, is in itself constructive. By formulating how not to be governed, “not wanting to accept these laws because they are unjust because [...] they hide a fundamental illegitimacy”, critique indicates a more desirable world and opens spaces for deliberation (Foucault, 1997 [1978], p. 30). Understood thusly, critique empowers. Similarly, Cornelius Castoriadis has advocated autonomy and self-empowerment against encroaching conditions (Castoriadis, 1987). His philosophy has fed into the concept of decolonising the imaginary (Latouche, 2015). The imaginary depicts a belief structure that creates social reality. Incentives and prescriptions towards unlimited expansion together with the centralisation of spectacular consumption have colonised this belief structure resulting in uniform understandings of progress, freedom, or development. Celebrating multitudes, Latouche (2015) calls for the decolonisation of the imaginary, a liberation from uniformity that would lead to diversity in opinions and pluralism. Arguably, the imaginary of justice and treatment of social ills has also been colonised following the punitive turn. Applying the decolonisation of the imaginary, prisons are not without alternative and – more importantly – they are neither appropriate nor helpful answers to social ills.

These perspectives of constructive critique enable deliberation about alternatives to incarceration (ATI) with promising impacts, some of which have been created and implemented in many communities. These range from different philosophical and theoretical approaches to crime and justice to practical alternatives to incarceration (ATI). I provide examples for each category below without any claim of comprehensiveness. They are joined by introducing more radical critiques of the neoliberal agenda, namely degrowth and eco-socialism, which I briefly portray. Together with the ATI they present starting points for further research agendas.

##### **4.1 Restorative Justice**

In his typology Milovanovic (2011) contrasts 12 justice-rendering approaches on ten dimensions. Accordingly, restorative justice is legitimised by solidarity and peace-making, and mediates with high transparency between the agents involved whom is conceded an active role in the process. In contrast, traditional punitive models of justice interpret crime as an act against the state, a collective, or a greater ideal of justice (Foucault, 1991 [1975]). Correspondingly, the state (as intermediary) is responsible to arrest, prosecute, and convict offenders. Therefor techniques of surveillance are installed to manage populations using designated experts and responsible authorities.

In restorative justice crime is interpreted as “an act against people and a violation of relationships” next to the violation of law (Umbreit, Coates, & Vos, 2002, p. 1). This paves the way for compensatory processes between offenders and victims to the exclusion of the state in the form of informal peace-making circles, victim-offender mediation, or group conferencing. One example is given by the “circles of support and accountability” programme targeted at high-risk sex offenders which successfully transitions participants “from incarceration to living within a community, helping to meet their basic physical, emotional, and social needs, providing role modeling of healthy, prosocial behaviors, and ultimately building social capital” (Chouinard & Riddick, 2014, p. 61). In their overview of 63 empirical studies and 3 meta-analyses Umbreit et al. (2002) find that restorative justice processes reduce recidivism rates, lead to higher satisfaction and perceived justice for both victims and offenders, and result in similar restitution compared to traditional forms of justice. Costs of restorative justice processes and their diversion to less formalised and severe forms of punishment are difficult to assess and remain unclear.

These promises of restorative justice are contrasted with limitations and dangers by Johnstone (2002). Accordingly, restorative justice might first trivialise intentional and momentous crimes by exerting compensation currently employed in accidental damages, and second be too optimistic that re-integrative community shaming reforms offenders to refrain from committing further crimes. Both limitations are difficult to dispel given the current public imaginary of punishment and righting wrongs. More heavily loom the dangers of restorative justice: (1) community members vary in status and influence suggesting unequal responses to crime perpetuating hierarchies which outsiders might balance; (2) the acclaimed bypassing of formal processes also includes protective procedures such as the independence of judges, entitlement to legal representation, or the assumption of innocence potentially endangering the defendant to enter unfair trials; (3) *proportionate* and *consistent* punishment as currently applied might fall prey to “democratic creativity” when looking for alternative remedies; and (4) the well-intended ATI might actually expand the criminal justice system beyond its current boundaries, colonising social spheres and widening the net of

prosecution (Johnstone, 2002, pp. 29-33). Despite these dangers and after lengthy and critical assessment Johnstone (2002), however, estimates the establishment of restorative justice as routine response to crime as highly unlikely – given the status quo with its colonised moral and philosophical underpinnings – but nonetheless desirable.

## **4.2 Transformative Justice**

Transformative justice ranks similarly to restorative justice regarding the centrality of solidarity and the informal state-exclusionary mechanisms involved (Milovanovic, 2011). However, transformative justice focuses dominantly on overcoming hierarchies, unshackling *multitudes* repressed by uniform approaches, and the permanent revolution. As such, it is based on post-structural discourses led by Lyotard, Guattari, Deleuze, or Freire (Milovanovic, 2011, Figure 1b).

Transformative justice is defined as transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level. [...] Transformative justice entails a shift in focus from the legal to the social and political, and from the state and institutions to communities and everyday concerns. (Gready & Robins, 2014, p. 340)

Particular attention is paid to transformational justice in reconciliation of large-scale societal change. The transition from oligarchy to democracy should be accompanied by a deepened transformation of the legal system with appropriate responses to predecessor injustices, as in the case of critically acclaimed Truth and Reconciliation Committees of post-apartheid South Africa (Daly, 2001). Healing, mediation, and peace-making are as essential to transformative as to restorative justice expanded by a critical focus on (the equalization of) dominion.

## **4.3 Rehabilitation and Social Programs**

Several authors provide customised ATI for particular groups of society. Overwhelming evidence suggests treatment as a valid and helpful ATI for addiction-related offences (Chandler, Fletcher, & Volkow, 2009). Family-related interventions are proposed by Luckey and Potts (2011) and Osler (2009). The former analyse a programme for low-income non-custodial fathers including skills training and relationship building with their children. The latter proposes intensive, monitored parenting as ATI for offenders in otherwise functioning families. Addressing the topic of sex offences Soothill (2010) concludes that punitiveness and incarceration should be superseded by compassion and social programmes.

The underlying rationale of these ATI is the dominance of Bourdieu's left hand of the state. Providing support instead of inflicting punishment presupposes a different mentality than the one currently ostensibly and frenetically employed in neoliberal societies. As Demleitner (2009, p. 5) concludes "[s]ystemic change would require a total reorientation, with greater focus on rehabilitation and public safety, with the latter centered on ultimate release rather than incapacitation".

It is noteworthy that research on these programmes predominantly addresses social and medical issues. Family conflicts and addictions are arguably easier translated into social interventions than murder or rape.

#### **4.4 Effects of Prison Alternatives**

The effect of incarceration on re-offending is best summarised and analysed by the overview of 55 studies provided by Nagin, Cullen, and Jonson (2009). They thoroughly revise studies with designs varying between experiments (6), matching (11), regression analyses (31), and miscellaneous (7), and demonstrate mild criminogenic effects of incarceration in all categories. This suggests incarceration itself presents a risk factor for recidivism. However, their study sample does not include comparisons to ATI.

Based on 483 offenders sentenced by Barcelona Courts in 1998 Cid (2009) finds higher reconviction rates among those sentenced to prison compared to those with suspended prison sentences even after controlling for risk factors predicting recidivism. Bales and Piquero (2012) demonstrate the same criminogenic effect of incarceration when comparing 79,022 prisoners to 65,394 convicts participating in a prison diversion programme in Florida. Those participating in the ATI show significantly lower recidivism rates after one, two, and three years and across multiple statistical methods of analysis. Using a post-matching case-control design Sung (2011) identifies social isolation, weak treatment engagement, and certain health conditions as factors affecting re-offending after completion of a drug treatment ATI in New York. He suggests that particularly the re-entry phase after completion be supported by social attachment and integration to non-offenders. For Weissman (2009) ATI will have the most promising effects if they provide advocacy to people who would be incarcerated, tackle racial disparities in the criminal justice system, and connect more closely to communities most affected by mass incarceration.

A more systematic and thorough analysis of the effects of incarceration compared to its alternatives on re-offending is needed to arrive at definitive conclusions. However, this short overview of studies on the subject suggests promising performance of ATI.

## **5. Discussion**

Incarceration presents a routine response of managing certain misconduct, particularly in neoliberal societies. In this paper, I have connected several international streams of analysis and critique to present the nuanced status quo of prisons in countries of the global north. The result is rather grim since (social) injustices are widespread in justice systems. I have contextualised the “new desire to punish” with neoliberal, growth-oriented, and land-grabbing agendas that disenfranchise poor men of colour and other minorities. This multi-dimensional analysis of incarceration in contemporary societies does not remain in the realm of simple querulousness. Instead, critique as “the art of not being governed quite so much” (Foucault, 1997 [1978], p. 29) and the call to decolonise the imaginary (Castoriadis, 1987; Latouche, 2015) contain in their formulation a path toward constructive alternatives to incarceration. Positive effects of ATI have been demonstrated empirically and found their way into mainstream arts (e.g., System of a Down, 2001, track 1). However, bandages do not prevent wounds. Reforms targeting systemic injustices of neoliberal and industrialised punishment must necessarily address the system’s core – just as a critique of incarceration must be woven into criticism towards neoliberalism with its commodification, exclusion, and punitive turn. One example of a “concrete utopia” (Bloch, 1967) in fundamental opposition against neoliberalism is degrowth. It presents itself as an emancipatory project towards egalitarian values and environmental justice (Martínez-Alier, 2012; Muraca, 2012).

Degrowth signifies a society with a smaller metabolism, but more importantly, a society with a metabolism which has a different structure and serves new functions. Degrowth does not call for doing less of the same. The objective is not to make an elephant leaner, but to turn an elephant into a snail. In a degrowth society everything will be different: different activities, different forms and uses of energies, different relations, different gender roles, different allocations of time between paid and non-paid work, different relations with the non-human world.” (D’Alisa, Demaria, & Kallis, 2015, p. 4)

Having emerged from critical ecological and culturalist traditions (Schneider, Kallis, & Martínez-Alier, 2010) degrowth is spreading in more and more areas and practices including topics like work and politics (D’Alisa et al., 2015), technology (*Author*, 2017), or democracy (Romano, 2012). Next to degrowth, multiple other utopias present themselves as feasible and desirable alternatives to neoliberalism, including eco-socialism (Wall, 2010), the economy for the common good (Felber, 2015), and the Latin American philosophy of *buen vivir* (D’Alisa et al., 2015). In many cases, their perceived feasibility and desirability depend on ideology – just as neoliberalism. Nonetheless, I shall name them in this context as concepts reaching beyond the current hegemony and providing systemic alternatives. To my knowledge, however, none of these utopias provides guidance for or even features debates



about managing misconduct more sophisticated than “let local communities decide”. This is no more elaborate than the existing legal system as the decisive institution or even the market, for that matter. Addressing the topic of incarceration and – more generally – managing society’s ills are central questions for any utopia to become concrete and feasible. Until this is achieved ATI and their research seems to be the best antidote to the toxin that incarceration has become.

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