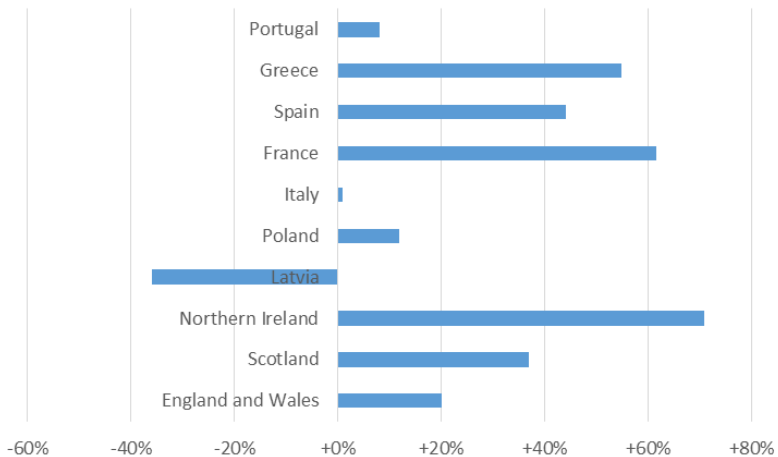


*MANIFESTO FOR A NEW
PENAL CULTURE*

NOTHING WORKS?

After over two centuries of penitentiaries as the principal instrument of criminal sentencing, and countless penal reform efforts, the same basic problems remain: the abuses; recidivism; the high social and financial costs. **Alternative sentences have shown the potential to minimize all of these problems.** However, the use of alternatives has not altered an increasing reliance on incarceration (10 million prisoners worldwide, of which one and a half million are in Europe), a practice which, in principle, should be ultima ratio, last resort.

Prison population variation in some EU countries 2000 - 2014



The primacy of prison sentences reflects the logic of how trials are organised. Centred on the evaluation of culpability, trials exclude the victims from meaningful participation and, in spite of the presumed-innocence principle, are charged with stigmas from the outset.

Concepts such as restorative justice criticize the insularity of the criminal justice system and its focus on punishment and prison. Restorative justice

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prioritizes what alternative sentences are meant to, crime prevention. It does so through a process of consensual responsabilisation and awareness raising, lowering the relevance of punishment to a level compatible with ensuring the collaboration of offenders.

The continued growth of prison populations reflects the resistance by criminal justice institutions and professionals to critique of the system. The recognition of the inefficiency of existing crime-fighting policies (“nothing works”) resulted in a culture of shirking responsibility as to the failed preventive aims of sentencing. The results of this attitude are now all too evident.

As recently noted by both President Barak Obama in relation to the 2.5 million prisoners in the USA and the European Court of Human Rights in *Torreggiani vs Italy*, **prisons are a problem**. The whole of the criminal justice system is contaminated by them. Even alternative sentences are used to extend, rather than reduce, confinement. Crime prevention, to what extent is achieved, is done by the rest of society, at its own expense, at the margins of what is the inefficiency of the criminal justice system.

IT IS TIME FOR A NEW PHILOSOPHY

Rather than insisting on retributive justice, an eye for an eye, tooth for a tooth, a chance must be given to preventive justice, the philosophy that is at the root of alternative sentences. The idea that a wide range of non-stigmatizing control systems, adaptable to each individual case, supporting an array of programmes of social integration centred on the prevention of crime through the social and individual responsabilisation of offenders, is **not only cheaper for the state but better for society**.

The retributive notion that after sentences are served offenders have paid their dues and are thus free to go back to the same life, is frightening for potential victims. Experience shows that, in most cases, offenders will

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voluntarily collaborate in the prevention of criminal behaviours. That must be the priority.

The first task is to learn what it takes to adequately seek to prevent of crime. To understand that the juvenile notion of cops chasing robbers is a sign of society's weakness in confronting criminality. As an approach, beyond it being very expensive, not only does this lend itself to all sorts of abuses and ill treatment, but the delinquents end up always being socially unaccountable as long as they escape the police. It is necessary to develop the idea that a legal condemnation means an obligation on the part of the offender to look for a new direction in life through whatever public and private services may be available to support that process. **The university of crime must be replaced by education for life.** Traumatizing idleness supplanted by responsible initiative. The ineffective generic punitive approach abandoned in favour of tailored solutions capable of producing results.

Assessments of the prohibitionist approach to drugs have led the UN to consider reversing policies in place since the seventies. The example informing proposals for decriminalization (without depenalization) is the Portuguese experience in this area. Its low cost, high performance, discretion, and high degree of satisfaction among both service users and providers, have surprised international assessors. When asked, the architect of this exemplary approach, João Goulão, attributes its merit to a pre-existing culture of care for such cases among the health professionals to whom this national project was entrusted.

The classic work by David Garland, *The Culture of Control*, demonstrates how the rise in the number of prisoners was framed by a punitive professional culture. The (bad) results of this are evident today, especially in the general inability of penitentiary systems to abide by the international rules agreed upon by their respective nations.

The professional culture is part of a more general socio-political culture, shaped by feelings of insecurity, laws that expediently feedback on those feelings, and institutions pressured to ensure a level of social stability that

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they cannot possibly provide. **The Portuguese experience with the decriminalization of drug use demonstrates that it is possible and useful to adopt perspectives on dealing with crime very different from what is the norm today.** Because the (positive) results are evident to most of those in the field, the cultures favourable to affording offenders the opportunity to truly change their lives already exist among professionals. What is necessary is to validate and reinforce them through broad spectrum opportunities to put them to work.

Alternative sentences must be freed from the necessity to simulate a retributive loss of freedom. It must be understood and affirmed that crimes, when they happen, must be used to avoid new crimes, not to replicate and multiply themselves.

DRUG USE IN PORTUGAL

In Portugal, drug possession was not depenalised. It is subject to a civil sanctions, to be decided by the competent authorities, the Commissions for Deterrence of Addictions (or CDTs for the Portuguese Comissões para a Dissuasão das Toxicodependências), the core of a broad set of services established by SICAD (Serviço de Intervenção nos Comportamentos Aditivos e nas Dependências or Service of Intervention in Addictive Behaviours and Dependencies). These Commissions receive alleged offenders directed to them by the police or the courts. They have the authority to exonerate or to sanction. The adjudication is based upon a psycho-socio-economic diagnostic and interview process which, if the individual is deemed to in fact have engaged in illicit behaviour, is used to prescribe, or otherwise impose the most efficient order: the requirement of interactive contact with any of the case-appropriate entities which are part of the SICAD network and/or with which each CDT has established protocols at the local level. **The objective is to compel the individual to follow a course of contact with institutions and services that**

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may be useful to reorienting her/his life through personal growth, empowerment and integration. The CDTs have a success rate of about 90%.

The services offered by this alternative system are sought out by judges who want to redirect criminal cases, individuals who are looking for help, and by institutions which want access to its target population. The success that makes this system so appealing to individuals and institutions at the national level is now also recognized globally, making it the object of intense worldwide scrutiny and interest on the part of strategists interested in addressing the problems caused by prohibition.

Unlike prisons, which cause repugnance and force staff to chase after uncooperative subjects, the alternative to prison embodied in SICAD makes its professionals welcome, does not stigmatize users, attracts institutions to collaborative networks, has very low associated costs, has enviable performance indicators, and attracts users not identified by the authorities.

A PENAL PARADIGM CHANGE HAPPENING

Rather than build a world apart, this approach establishes the collaborative social and professional networks needed to stimulate the self-responsibilisation of the individuals involved in undesirable behaviours, validating positive life choices.

Retributive justice has been pursued through a culture of lack of responsibility which permits the offender to think that once the prison sentence is served the debt to society is paid in full. Wittingly or not this belief sets the individual up to reoffend. The fact is **that change cannot be imposed, it can only happen from within the person. Sentencing must empower the individual to do this, not momentarily, but for life.**

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With the associated stigmas removed, social reintegration services must be made accessible to those who need them, regardless of their judicial situation. The success of this new culture will be measured by the reduction in the number of convicted citizens incarcerated or in retributive programmes, which generally manage only to obstruct the process of reintegration and deliver offenders to the world of crime, as trained labour.

There is penal paradigm change happening. Europe will surely play a role in it. **The European Prison Observatory wants to be a part of that civilizational structural transformation.**

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