

NO PRISON

(by Livio Ferrari, prison volunteer at Rovigo, Italy)

1. It is intolerable that the penal Justice System practically functions only as a kind of "dispenser of suffering". To inflict pain, even to the author of a massacre, is useless because it does not contribute in any way to the improvement of society. To the blood of the victims would be added only more pain, that of the multiple assassin. To what extent it could be right, therefore, to react to evil with evil seems to us today a senseless question in view of the fact that retributive justice, (the reestablishment of justice through the hardship caused by a prison sentence) leads back to the idea of a "worthwhile punishment", i.e. repaying committed evil with evil, a principle unacceptable in a secular State.
2. In spite of the sanguinary culture which has been ours for thousands of years, out of fear of becoming victims ourselves, collectively we invoke pain as a punishment for all those whom we consider as dangerous, because they have transgressed the law. The belief that evil could only be combated by evil, culminated in the fact that this view was not even discussed anymore, just as if it were a foregone conclusion; whereas we should really ask ourselves with an open mind what we could do to diminish delinquency, because this is the root of all sufferance, pain and misery.
3. In our modern society, the reaction to crime is politically legitimate only if this is useful, if it can counteract delinquency, limit re-offending, if the response can actually contribute to preventing future offences.
4. With the coming of the modern age, Western society realised that the deprivation of liberty (i.e. imprisonment) had the virtue of both mitigating the suffering from the penal response, deterring through intimidation potential criminals from breaking the law and, through education, preventing detainees from re-offending. Prison was hailed as a brilliant invention of progress at the time, a somewhat democratic punishment, because it concerned for all people an equally precious gift: personal freedom. A prison sentence was measurable with precision from one second to eternity, a punishment which was economically virtuous too, because it aimed at the eventual social reintegration of the detainee.
5. The aims of prevention were never in doubt. Even after two centuries, they were and are still valid and worth while being pursued with tenacity. However what has caused unsolvable problems is the punitive execution of the sentence mainly in the prison itself. Let us be frank: the failure of the prison system is a fact recognised unanimously and universally for a long time. Initially the imprisonment had convinced through its apparently deterrent efficiency. As time went on, however, it became evident without a shadow of doubt, that, honestly, we were wrong, because prison had clearly failed all intended preventive aims.

6. The facts of this failure are before the eyes of all those who are willing to see the truth without ideological preconception. Prison has not only betrayed its preventive mission, i.e. it has been unable to procure security against criminality for the citizens, but it also systematically violates in its day-to-day administration the detainees' fundamental rights and human dignity and those of their families.
7. The steady increase of the prison population shows clearly that the fear of a prison punishment is not an effective way of reducing delinquency. The threat of prison can never work as an inhibitor for deviant behaviour, as, for many reasons, the barbaric sentences of the past did not succeed either, because men's actions are not always governed by rationality and because punishment which should follow a crime, is only a possible outcome, never a certainty.
8. The detainees brought back into legality are everywhere few and they succeed rather "in spite" of the imprisonment than "thanks" to it. The re-offending rate almost everywhere is above 70%. Most of the detainees are not incarcerated for the first time and will not be for the last. There is no country in the world which would be an exception to this rule. To sustain this view there is ample international scientific literature which not only describes the phenomenon, but explains also why prison, though it be the best in the world, will never succeed in educating delinquents back to legality through the suffering caused by the deprivation of personal freedom. On the contrary, the now 200 years of experience tell us that imprisonment stimulates people to more delinquency and violence.
9. Prison, wherever it may be, violates fundamental rights and gravely compromises the human dignity of the convicted detainees. Naturally, not all prisons act in the same way with regard to respecting the prisoners' rights and it is only fair to recognise that there are better and worse penitentiary systems, but there is not one example of a prison which would have been capable of limiting the suffering of the inmates only to the punishment resulting from the deprivation of personal freedom. The public claim for inflicting punishment through incarceration entails logically that other fundamental rights are infringed also, from the personal sphere to physical integrity in a custodial environment, from satisfying emotional needs to health care, from work to further education, and so on. Prison appears to be ever more clearly a "pre-modern" punishment which causes more physical harm than psychological suffering.
10. Present-day penal reformism can only be justified through a strategy of damage containment. One could, if one wanted, limit the number of prison sentences. One could also, if one wanted, lessen the suffering in prisons. But this could have been done too, let us face it, a long time ago with regard to physical punishment and torture. But by acting in this way, the failure of the prison will not be converted into success. Even the best-run prison is by its very nature unacceptable. The answer to crime must be respectful towards human dignity with the aim of social reintegration, as this is defined in most modern democratic Constitutions, including the Italian one of 1947. However, prison, even if reformed, can never be an effective response to delinquency,

because it cannot work effectively in favour of social reinsertion of the detainees, as it cannot be unreservedly respectful of a convicted person's human dignity.

11. For a long time and in progressive circles there was hope that a reformed prison could change into an opportunity for pedagogical support and help for the majority of the people in conflict with the law and who predominantly belong to the category of weak and marginalised individuals. This was an understandable hope which identified also the true nature of the prison sentence, the fact that it hits mainly the lower social classes. Ever since its origin, Prison has been, of course, the place for a forced immobilisation, a kind of "shutting away" of the poor; as it is true that people end up in prison predominantly because they are poor.

Let us be clear: we all can agree that the poor must be helped, as we can admit a policy for the social inclusion of the people living at the margin of society. But that does not mean that the will to help and bring about social re-integration should satisfy itself with the dispensation of suffering as the only way of buying the prisoners freedom. As long as we remain attached to the notion of punishment, we can only remain committed to the sanguinary culture of intentionally inflicting pain and suffering as the only means for the delinquent to pay for his faults. Here lies the inextricable paradox of any future penal reform.

12. To believe in and militate nowadays in favour of the abolition of prisons is as unrealistic as was once the abolition of torture and the death penalty. But nothing is really so very different: to the few who united at the time against barbaric sentences, a large majority opposed scepticism, even accusing abolitionists of unforgivable naivety. But history has proven these simpletons right. A society without the death penalty is more secure than one with gallows everywhere. A penal justice system without torture chambers encourages discovery of the truth better than the habit of extorting confessions under torture.
13. Liberating us from the necessity of prison, because useless and cruel, does not at all entail the renunciation of safeguarding society from criminality. On the contrary. Abolishing prisons will result in more security from criminal danger as a consequence, because they are a criminogenic factor in themselves. A society without prisons is more secure, as is a society without the death penalty.

But abolishing prisons comprises also something even more important than our insecurity fears. It means also the liberation from the habit of making the poor the scapegoats of a society which is based on inequality. Think: how could it be possible that 90 % of the worldwide prison population is poor? While saying that we do not want to insinuate that those whose lives are a constant struggle, the poor, commit crimes more frequently. The most advanced scientific studies suggest quite a different picture: dangerous criminality is evenly distributed among all social strata, but punished, and ending up in prison, are those less protected by the penal system, those who

are economically, intellectually and socially the weakest. Let us be sincere, it is this unquestioned practice of "social verticality", the inequality in the penalty assessment within the social structure (which has as its aim a maximum of differentiation), it is this injustice which is becoming ever more intolerable.

14. To educate detainees towards legality and the respect of the rules in force, it is necessary too that the rules are respectful of these people. This pedagogical obviousness should be reason enough to topple the whole penal system. Why would we be so short sighted and presumptuous as to assume, that we could make a delinquent obey the rules of society by inflicting and showing suffering? And yet, it is like that: all aspects of the penal system and punishment are well thought out, defined, put in place and justified to cause and show pain. Once again: a prison sentence means intentionally inflicted suffering. It is not an error or a side effect, which are not always avoidable, of an otherwise positive action.

To put forward legitimate legal self defence in order to justify the system of custodial condemnations, is a great fallacy. To evoke self defence it is necessary that the menace towards me or others takes place on the spot. By the time the State punishes a law-breaker, however, the menace has been over for a long time. Therefore, punishment is not handed out to counter a looming danger (for that it would be too late), but mainly to inflict pain to others. But why this lasting sadism? It goes back to the persisting bias expressed in an Italian play of words according to which "always and everywhere an offence should be followed by a condemnation, a punishment", because pain constitutes a kind of "cleansing, saving medicine", not so much and not only for the delinquent, but as well, or primarily, for all of us. This is the sanguinary culture from which we must free ourselves.

15. For that, it is necessary to rethink completely how we could confront the "problem of criminality" by imagining a policy of public safety and against delinquency which would, because it is reminiscent only of pain and sufferance, not even mention the word "punishment". Instead, terms should be preferred which we use for rights and obligations in our every-day language. 90 % of all present inmates could be taught responsibility far better and be supervised differently in non-confined institutions with accompanying pedagogical and other supportive measures, thanks to work and further education, economic incentives and compensation for any damage caused.
16. Even if this put out of business numerous employers and personnel, all part of a self-centered prison culture, it is now evident that the prisons must be closed down to make space for something else which can effectively be respectful of the rights even of those people who are responsible for the most horrible crimes. It would be realistic to assume that we will still need in some cases to take delinquents into custody, but we think that they would be few, very few, if we take into account that the present prison administration considers only 1 % of all detainees as dangerous.
17. The response to criminality can only be through education which aims at learning conscious freedom through practising it in freedom. At least this

should be the rule. Again: in the few cases in which this would not be possible immediately, one could exceptionally provide custodial internment to cope with the most dangerous individuals, but this only as a last resort and according to precise procedures:

a) The loss of freedom must occur within boundaries which protect at all times the human dignity and rights of the individuals concerned. The sites foreseen for such a confinement cannot be the prisons we know today. They have been conceived for punishment and suffering and not for the social reintegration of people. We imagine something quite different with regard to the physicality of the buildings, the lay-out of the spaces and the professionalism of those who would be chosen for the supervision, the dialogue and help.

b) The time spent in such custodial institutions must, however, be limited to a minimum and cease whenever the detainee shows a serious interest in programs of social reintegration which would take place outside custody.

18. To overcome the culture of penalty and prison and lead the people who have infringed the law, back to legality and the observance of the rules, it would be imperative also that the rules be respectful of the people. Of these individuals we cannot demand things, even if they are justified, in a disrespectful manner.
19. Whenever possible, the "Institute for Mediation" must become a permanent part of the penal justice system allowing it to be involved in the different phases of the judiciary and re-integrative follow-up.
20. The response to criminality through reinsertion measures taking place in freedom must involve all socially-minded people of the country and cannot be left solely to the experts.

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