

## NO PRISON

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The "manifesto" written by Livio Ferrari is full of abolitionist ideas which will be qualified by the majority of people as pure naivety. But for a number of actors in this field, it will be also an intellectual exercise for reconsidering penal law and in particular the meaning of prison as it functions now, because it is proving to be more and more costly, inefficient and unjust. The aim of my contribution is to supply elements, often in the form of statistics, which are readily available mainly on the Internet, in order to support some of the assertions of the "no prison" project (see [www.noprison.eu](http://www.noprison.eu)) in the chapters below:

- Some basic figures
- Retributive punishment - the basic idea of prison
- Re-offending - the result of successful or failed rehabilitation
- The USA - zero tolerance and bad example
- The prisoners - but who are they?
- Poverty and Prison - hand in hand
- The high cost of incarceration
- The "Prison Industry"
- Some contextual notes

### 1. Crime and incarceration

The news items reported in the papers (in particular the tabloids) and on TV, as well as the frequency of crime serials, suggest a rapid increase of delinquency which has as a consequence that 75 % of the British and French population feel ever less secure. With predilection the media get hold of re-offenders who have been granted conditional release (parole) or other sentencing reductions; just as if longer imprisonment would improve the attitude of the inmate and lower, thus, the rate of recidivism in general. Here are some basic figures:

- A - Between 1993 and 2006 the total number of offences reported to the Police fell by 7 % in Germany,
- crimes reported in the US between 1998 and 2008 have gone down from 12.486.000 to 11.150.000 = a reduction of 10,7 %,
  - the Eurostat statistics for 13 member states indicate 15,4 million offences in 1998, 16,2 million in 2002 and 14,8 million in 2008. The trend towards less reported delinquency has continued until now and this in spite of the fact that these days victims file a complaint more frequently (for example for sexual aggression) and that thanks to computers and special software, more sophisticated means of communication, DNA analysis and electronic surveillance the work of the Police has become much more efficient.

- B - Eurostat indicates the following data:

Crimes reported (in millions)		Detainees per 100.000 inhabitants		Police per 100.000 inhabitants	
<u>1998</u>	<u>2008</u>	<u>1998</u>	<u>2008</u>	<u>1998</u>	<u>2008</u>

EU - 27	28,60	28,51	114,2	124,1	-	-
Germany	6,46	6,11	85,2	89,0	289	301
France	3,57	3,56	92,1	103,0	383	367
Italy	2,43	2,71	86,4	97,5	465	411
Holland	1,24	1,22	80,5	98,8	205	216
England	5,17	4,70	127,4	153,3	245	258
Switzerland	0,38	0,32	79,6	76,1	201	215
Denmark	1,07	1,08	64,6	64,5	188	196
Spain	1,87	2,33	111,9	162,4	467	495
Poland	1,07	1,08	153,1	221,8	256	264
USA	12,49	11,15	628,0	753,3	270	242

The general trend of this sample of countries is therefore:

- Reduction in crimes reported within 10 years = down by 2,3 %
- Increase of detainees per 100.000 inhabitants = up 23,3 %
- variation of the number of policemen = + 0,02 % (insignificant).

C - Statistics published by the UK government covering the period 2005 through 2009 indicate the following development:

	<u>No. of crimes reported</u>	<u>Development of prison population</u>
England/Wales	- 22 %	+ 10 %
USA	- 10 %	+ 4 %
Holland	- 7 %	- 28 %
Finland	+ 2 %	- 10 %
Ireland	+ 12 %	- 22 %
Australia	- 15 %	+ 13 %

D - Eurostat established a report on "crimes against a penal code" which confirm the same tendency = on an average 13 % fewer crimes reported::

	<u>2003</u>	<u>2009</u>
Denmark	486.000	491.000
Germany	6.572.000.	6.054.000
Spain	2.144.000	2.335.000
France	3.974.000	3.521.000
Italy	2.456.000	2.629.000
Holland	1.369.000	1.232.000
Poland	1.466.000	1.129.000
Sweden	1.235.000	1.405.000
England/Wales	6.013.000	4.335.000
Switzerland	379.000	676.000

E - The "International Centre for Prison Studies", London (Prison Briefs) indicates the following tendencies:

	Detainees (in thousands)				per 100.000 <u>inhabitants</u>	of which <u>remand</u>	occupation <u>rate</u>
	<u>1992</u>	<u>2001</u>	<u>2010</u>	<u>2012</u>			
Germany	57	80	72	68	83	16,5 %	87 %
Denmark	3,6	3,2	4,0	4,0	74	34,0	99
France	48	44	61	67	102	25,4	117
Italy	47	55	68	66	108	38,8	145

Holland	7,4	15,0	15,0	14,4	87	40,6	85
Poland	81	79	81	84	220	8,8	97
Spain	41	47	74	70	150	15,4	99
Sweden	5,2	5,7	6,9	6,7	70	22,8	94
Switzerland	5,4	5,1	6,1	6,0	76	38,9	91
England	46	66	85	87	154	13,2	109
Turkey	31	56	121	127	168	42,6	100
Russia	722	925	864	722	505	5,2	91
USA	1300	1900	2300	2200	730	21,5	106

Behind the general tendency of more imprisonment in the last 20 years are the specific national policies of how to tackle delinquency which happened mostly by following the American example (although on a minor scale) of ever more incarceration and longer prison sentences.

## 2. "Retributive punishment" - the basic idea of prison

One of the most forceful statements of the "manifesto" is "prison violates the fundamental rights of human dignity ... the suffering caused is thought out, defined and inflicted intentionally". In Penology, this is taught to future lawyers and prison officers, but certainly not known to a wider public.

Christianity is full of examples which go back to the principle that redemption and reconciliation with God can be achieved only through suffering, atonement and conversion. Already Adam's original sin has placed mankind in a position of sinners from which they can escape only through penitence. Matthew 3.2. asserted to the early Christians: "Repent for the kingdom of heaven is near". Repeating Mathew 4.17, even Luther insisted in the first of the 95 theses that "for the faithful all their lives should be penitence" to avoid eternal damnation. Our Penal System with prison as its corrective extension, is largely based on this philosophy that "without penitence/suffering there will be no redemption".

In the Middle Ages, the royal and ecclesiastical authorities, naturally invested by divine authority, judged their subjects. Those who had the unfortunate idea of opposing the established order were quickly redirected on to the right path through torture and later delivered from agony through death by public hanging, drawing and quartering and with the guillotine later. At that time, as today, the authorities hoped that the effect of inflicted pain would convince opponents and potential delinquents not to overstep the established boundaries.

As early as 1764 Cesare Beccaria claimed in his book "Dei delitti e delle pene" that the State was not entitled to punish at will under the pretext of maintaining the public order; punishments which were limited at the time to the death penalty or prison. Beccaria also raised the problem of proportionality between the committed offence and the punishment and attempted to separate them from the omnipresent religious context. Already at that time Beccaria was opposed to torture and capital punishment which he qualified as "legal crime, neither useful nor necessary".

Kant, the philosopher of the Age of Enlightenment, was not really interested in the human aspect of delinquency. Following the principle of "an eye for an eye and a

tooth for a tooth", according to him, the divine order of society (which he thought impaired when a crime was committed) could only be re-established through punishment imposed by the authorities. Following the Christian example of purgatory, the guilty person could only be "purified" through punishment and the physical and psychological pain which result from it. Without suffering the person could not be pardoned and reintegrate into society. The "retributive theory" ("Vergeltungstheorie" in German could also be translated as "vengeance or reprisal") required that the inflicted punishment be proportionate to the perpetrated offence, but also sufficiently severe to have a deterrent effect.

Feuerbach, the lawyer, (1775-1823) wanted essentially the same, but he insisted that the sentences be encompassed by written laws and pronounced by Judges.

Jeremy Bentham (1748-1832) is best known for his philosophy of "Utilitarianism" which advocates the consideration of all human actions according to whether they produce pleasure or pain. His theory was aimed at obtaining individual happiness for the greatest number of people. He even developed a "method of calculating happiness and pain" according to intensity, duration, etc. Disciple of the enlightenment philosophy and very much involved in the French Revolution, Bentham fought for prison reforms, equal rights for women, the right to divorce, the humane treatment of animals, the abolition of slavery, torture and the death penalty, the separation of state and church, etc. Towards 1819 he designed a prison, the "Panopticon", in which a warden could see the inmates at all times from a tower, but they could not see him. The aim was, knowing that the detainees were being watched permanently, they would not only adhere automatically to the prison rules, but would also adopt with time the laws of society outside and a life without crime. His "model-prison" never materialised in England, but his concept was used in 1826 for the construction of a prison in Pennsylvania.

Franz von Liszt (1859-1919), a well-known professor of law, was totally opposed to the retributive theories of Kant and Hegel, because, according to him, the rehabilitation of the delinquent should be the main purpose of imprisonment. For it to succeed, the knowledge about the delinquent's past, his potential and will to reform himself and an individual approach to each person was required. Therefore, a first offence should normally have only a "warning" as a consequence, but not an imprisonment. On the other hand, hardened recidivists should be incarcerated and for a long time. Von Liszt is considered as the founder of the modern penal concept which has as its principal aim the reintegration of the delinquent into society thanks to re-educative and accompanying measures individually adapted to each person.

The protagonists of the contemporary Prison Abolition Movement are the Dutch Louk Hulsman, the American Angela Davies, the Norwegians Nils Christie and Thomas Matiesen, Catherine Baker and the philosopher Michel Foucault with his books written in the 1970s "La Société punitive" and "Surveiller et punir".

The principle of "retributive punishment", i.e. to make a delinquent pay for his act through the loss of freedom and the suffering which goes with it, is deep-rooted in society (and often also in the heads of the detainees). The authorities and the public are so convinced of the usefulness of making the delinquents suffer and of its deterrent effect on "bad people" that no questions are asked any more concerning

the functioning of prisons, the aims and methods by which to reintegrate offenders for as long as possible into society. Neither the efficiency of the system, nor its effect on re-offending, nor the high cost of imprisonment interest "the people". On the contrary, the longer the detainee remains incarcerated, the more he suffers and is humiliated, the more the ordinary public is convinced, that the reintegration will succeed later, by such means as

- locking up two inmates for 23 hours a day in a 3 x 3 meter cell in the heat of the summer and without heating in winter; with the television blaring and virtually no privacy for bodily functions,
- exposure to sexual harassment which in the USA, according to Human Rights Watch, affects 4 detainees out of 5, where 20 % are forced into unwanted sexual practices and 7 % have been raped outright. In 2003, about 30 % of all inmates had contracted infectious diseases such as hepatitis C or herpes.
- arbitrary prohibitions and administrative slowness to obtain an assigned lawyer for defence, work, further education, a visit from the family, incomprehensible legal procedures and administrative language; family, professional and financial problems outside prison from which the detainee is virtually cut off.

These conditions behind bars are imposed on people (see chapter "the prisoners - who are they?") who are often psychologically unstable, depressive, poor and without any future. In addition, for example, 53 % of all French prisoners in 2009 were incarcerated for violence (12 % for homicide, 25 % for intentional violence, 16 % for sexual violence). It is, therefore, no wonder that the prisons are sometimes compared to true "pressure cookers", so that in 2011, according to the official report by the French Prison Services, in 7 hostage takings, 667 unlawful gatherings, 4083 aggressions against prison staff, 8365 aggressions among detainees, 116 suicides and 1932 attempted suicides. It is difficult to understand why this punitive system is INTENTIONAL, that it tries in this way to re-establish justice in society's interest and to convert delinquents into law-abiding citizens. This outdated concept, which does little to conciliate and integrate detainees, obviously produces a high level of re-offending.

### 3. Re-offending - the result of a successful or failed rehabilitation policy

The manifesto then talks of those non-recidivists who have succeed "in spite of" rather than "thanks to" some time spent in prison, that the re-offending rate is around 70 % and ample scientific literature exists which proves that re-socialisation through punishment does generally not succeed.

Whereas the administrative systems for collecting complaints to the police and the movements of the prison population are quite well established, the evaluation of re-offending is far more complex, because every file of an ex-prisoner must be retraced and analysed retrospectively. Comparative figures among countries can only be approximate too, because not only do the times, counted until the next re-offence or reintegration into prison occurs, diverge (1 to 2 years in England, 3 years in the USA, 5 years in France, Germany, Finland etc), but also the categorisation of offences and crimes is different. Even within the same country the evolution expressed in figures

and percentages can become meaningless through policy changes, such as the liberation of 26.000 prisoners in 2006 in Italy (indulto), the reform of the penal law in France in 2009 or the de-penalisation of "soft drugs" in the states of Washington and Colorado in 2012.

The "Canadian Correctional Services" published a study on the complexity of re-offending reports under the ironic title "So you want to know the recidivism rate?" Taking into account these reservations, here are nevertheless a few basic figures:

- USA: in 2009 the recidivism rate within 3 years was between 68 und 74 % for property offences, 50 to 66 % for drugs, 55 to 62 % for public order offences, 70 % for the illegal possession of fire arms, 77 % for stealing vehicles, 2,5 % for sexual aggressions and 1,2 % for homicide.
- In Scandinavia the general rate over 2 years is between 24 and 31 %.
- In France in 2011 for a 5 year period, the general rate was 63 % for those who left prison and 39% for those people who had benefited from a conditional release (parole). In the case of drugs, 80 % re-offended and so did 90 % of young delinquents. On the other hand, according to Prof. Tournier, the probability of repeating a homicide is equivalent to 2 per thousand for a man aged above 30 who has a stable job.
- In Ireland the general rate within 5 years is approx. 50 %.
- Italy: within 5 years the rate is 19 % for people who benefited from a probation period and 68 % for those who came straight out of prison.
- Germany: after 5 years the rate was 45 % for those who had benefited from a probation sentence and 56 % for ex prisoners. 78 % of young delinquents re-offended,
- England/Wales: the general recidivism rate was 60 % over 2 years, 58 % for those with a suspended sentence and 42 % for the people who had done communal work. The rate within 12 months was 47 % for men, 51 % for women, 58 % for young people above 18 and 69 % for adolescents below that age. In 2011, 90 % of the sentenced people had previous condemnations. Whereas delinquents with at least 15 condemnations was 29 % in 2001, this percentage had increased to 44 % in 2011.
- Switzerland: according to a study of the Arxhof prison for young offenders, the general rate was 62 %, 52 % who had finished an apprenticeship and only 16 % for those who had a previous record of violence.

In this context, the result of the 2006 pardon (indulto) is interesting. At the time the Italian prisons were vastly overpopulated (146 %) which the European Council had severely criticised. The incoming government under Romano Prodi liberated (except for a few crimes) 26.000 prisoners within a few months (or 42 % of the whole prison population) whose residual sentences were inferior to 3 years. Not only the right-wing opposition, much of the population was worried. 5 years later (2011) only 33,95 % of

the released prisoners (instead of the usual 68 %) had re-offended. And, for whatever reason, foreigners had re-offended 13 % less than Italians. In 2013 another "indulto" of similar proportions will take place.

A multitude of studies can be found on the Internet published by universities, criminologists, research centres, associations, ministries, etc., such as

- "32 National Studies on Recidivism", WODS, The Hague,
- Prison Reform Trust (UK), "the Bromley Briefing, Prison Factfile 2012"
- "Evaluation de la récidive" by Prof. Tournier, France,
- "Selektion und Rückfälligkeit von Karrieretätern nach Entlassung aus unterschiedlichen Formen des Strafvollzugs" by Prof. Frieder Dünkel,
- as well as comparative studies co-ordinated by the Council of Europe.

The overwhelming majority of these studies arrive at the conclusion that the running of prisons and probation services in Western countries should be reviewed, because the results, expressed through a high rate of recidivism, are mediocre. The main reason for requesting reforms is (of course) not humanitarian, but simply its inefficiency in relation to the exorbitant cost, which, for example, in England amounts per year to Euro 45.000 per detainee, up to (including all related fees) Euro 1.000.000 for a multi-recidivist and Euro 135.000 for the creation of every new prison place. In the last 10 years the overall cost for the English/Welsh Criminal Justice System absorbed between 2,0 and 2.5 % of GDP. In 2010, the "Guardian" qualified prison as "a colossal failure", because the authorities were concerned more with security and the good running of the day-to-day administration and less with the other principal aim of incarceration: the re-socialisation of the detainees for as long as possible.

The press gets all excited about an escape from prison (of which in 2005 there were 8 in Germany, 25 in Italy and 4 in France in 2010), without taking any particular interest in the 60 % re-offenders who go back to prison year after year.

But how could the re-offending rate be reduced? The public, conservatives and certain people with a self interest in prisons still believe in "deterrents", such as harsher sentences, longer incarceration times, minimum sentences for certain crimes and re-offenders. Already in 1993 Song/Lieb pointed out in the study "the effect of incarceration and length of time" that longer times in prison had no real impact, other than improving statistics, because incarcerated people at risk could obviously not re-offend.

In Canada, Paul Gendreau analysed some 50 studies dealing with recidivism and arrived at the conclusion that the deterrent effect of incarceration could not be proven in any of them. On the contrary, prolonged periods in prison increased recidivism by some 3 % probably because of frustration, de-connection from family and real life outside or plain hatred. In 2007, Wolfgang Heinz of the University of Constance stated also in a long report (Rückfall- und Wirkungsforschung) that there is no evidence that more punishment improved recidivism.

In 2006, the University of Lausanne published a 73-page study with the title "the effect of custodial vs non-custodial sentences on recidivism" with the conclusion that

non-custodial delinquents re-offended less (only 2 out of 27 studies favoured incarceration).

Finally, in 2010 Friedrich Lösel, Professor at the Institute of Criminology at Cambridge, summed up the situation in a presentation "What works in reducing re-offending - a global perspective". What works is: basic and professional education, cognitive and behavioural programs such as reasoning, anger management, improving inter-human relationships, programs which bring young delinquents back into their families, mediation (restorative justice), information on narcotics and treatment of dependency, a job, a home, management of debts, contacts with the family and friends, etc. What does not or rarely work in the long run: punishment with prolonged periods in prison, deterrent measures and a disciplinary environment (boot camps), purely psychodynamic methods of treatment, etc.

Several studies carried out by the Canadian Corrective Administration also prove the inefficiency of punitive strategies to reduce recidivism.

According to Dutch, Canadian and Swedish reports "probation convictions" which are non-custodial sentences but during which the sentenced person is followed closely by probation officers, seem to reduce recidivism between 30 to 50 % for the same categories of offences. However, to introduce this concept on a larger scale, its economic efficiency would have to be clearly demonstrated.

Prison is often qualified as a "school of crime", in which minor delinquents develop into seasoned criminals, so that it is rather more "criminogenic" than contributing to efficient re-socialisation of the detainees. Pierre Botton is a French business man who spent almost two years in prison. Afterwards he wrote books on his experience, founded the association "Prison du Coeur" and promoted the model prison Saint-Julien-sur-Suran. He summed up his experience as follows : "Before I would not have known where to buy drugs and arms. After my time in prison I do".

#### 4. The USA - zero tolerance and bad example

Instead of following the penal policies of the Scandinavian countries or Canada (mainly before Steven Harper became Prime Minister in 2006), which aimed more at the individualisation of the sentences and the appropriate means for the re-integration of the delinquent into society, many European countries followed the USA and its punitive policies from 1980 onwards. Several elements have contributed to the dramatic increase of Americans in prison and under judicial supervision:

- a) The massive arrival of narcotics in the 1970s and 80s followed a virtual "war on drugs" with the increase of detainees condemned for drug-related offences in Federal and State prisons from 24.000 in 1980 to 325.000 in 2000 and 388.000 in 2010. In that very year 51 % of the federal prisoners and 20 % of the State prisoners were incarcerated for drug offences. In 2012 the authorities admitted openly that in spite of maximum repression, they were unable to contain the plague. Two States (Washington, Colorado) decided to soften their legislation. The Obama administration recognised that drugs were no longer only a criminal matter, but that they touched Public Health in general.



b) After crime had peaked in 1990 Mr. Bratton (Chief of the New York Police) introduced the principle of the "broken window" around 1993 which consisted in going after all offences, even the least malign, in order to prevent later more severe criminality through deterrent punishment. The "zero tolerance" policy contributed to the prison population multiplying 5-fold in 30 years.

	<u>1980</u>	<u>2010</u>
- State and Federal Prisons	319.598	1.518.104
- Jails (local prisons)	182.288	748.728
- Youth prisons	-	90.000
- Conditional discharge (Parole)	220.438	840.875
- Probation	1.118.098	4.055.514
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	1.840.421	7.253.022
- Rate of detainees per 100.000 inhabitants	139	750

c) The US population has increased from 180 million in 1960 to 249 million in 1990 and 314 million in 2012. Below are indicated the ACTUAL figures between 1960 and 2012 and then in parenthesis ( ) the rates per 100.000 inhabitants which puts better in perspective the REAL evolution of delinquency in the USA:

	<u>1960</u>	<u>1990</u>	<u>2012</u>
Violent crime	288.460 (161)	1.820.100 (732)	1.214.500 (387)
Property crime	3.095.700 (1726)	12.655.500 (5088)	8.975.400 (2859)
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Total crime	3.384.160 (1887)	14.475.600 (5820)	10.189.900 (3246)

#### Conclusions:

- The increase of criminality between 1960 and 1990 was spectacular both in numbers and proportionately per 100.000 inhabitants - and so was the decline afterwards until 2012.
  - In spite of the reduction of the total crime figures by 30 % between 1990 and 2012 , the prison population went up at the same time from 1.148.000 (or 460 per 100.000 inhabitants) to 2,200.000 (or 730).
- d) The establishment of "mandatory sentences" for certain categories of crime increased the prison population considerably,
- e) and so did tough sentences for re-offenders according to the baseball rule "strike three and you are out" which meant that after the third crime, the effective time spent in prison became very long.
- f) The principle of the "incapacitated offender" meant that the effective time spent in prison for all those with a potential for re-offending was prolonged, because, logically, they could not commit a crime whilst behind bars. The result was that that the lengths of prison condemnations increased between 1980 and 2008 by 250 %. According to the "US sentencing guide lines" the average sentences pronounced by the courts in 2009 were 54,7 months in case of admittance of guilt and 153,7 months in ordinary trials.

According to the "Pew Center" the times effectively spent in prison increased between 1990 and 2009 by 39 % for violent crime to 5.0 years, by 24 % for theft to 2,3 years and by 36 % for drug-related offences to 2,2 years. On an average, in Michigan people remain effectively incarcerated for 4,9 years, in New York 3,6 years, in Virginia 3,3 years and in North Dakota 2.0 years. Comparative incarceration times in Europe would be 5,5 months (!) in Sweden, 6 months in Switzerland, 7,4 months in the Netherlands and 9,9 months in France.

The subject of the "incapacitated offender" has been discussed in the US in numerous studies, such as

- "When more is less", Justice Policy Institute, Nastasia Walch,
- "The dangers of detention", Holman/Ziedenberg,
- "More time, less time", Cornell University, Emily Owen.

g) The increase of 'life time sentences' illustrates also the stepping up of the intimidation policy:

	<u>No. of life prisoners</u>	<u>for whom no reduction is possible</u>
1992	34.000	12.453
2005	132.000	33.633
2008	140.000	41.000

At present, some 3300 people sentenced to death are waiting to learn their fate.

As in Europe, the disproportion of incarcerated ethnic minorities compared with the general population is blatant and visible through the 2009/2010 statistics:

	<u>Number</u>	<u>of the total prison popul.</u>	<u>per 100.000 of the same ethnic group</u>	<u>% of the total population</u>
Whites	787.900	34,3 %	678	63,4 %
Afro-Americ.	905.800	39,4	4347	13,1
Hispanics	474.300	20,6	1755	16,7
Totals	2.297.500	94,3 %		93,2 %

- The "Afro-Americans" count for 13,1 % of the total US population, but for 39,4 % of the prison population.
- 1 in 3 life prisoners is black, 1 in 6 is Hispanic, 1 in 17 White.
- In 2004, of the 18 to 29 year old males 1,9 % of the Whites, 3,5 % of the Hispanics, but 10,1 % of the Afro-Americans were in prison.
- In 2004, of the young Afro-Americans between 7 and 12 years of age, 35 % were suspended or expelled from school, compared with 20 % of the Hispanics and 15 % of the white pupils,
- It appears that there are 14 million white consumers of drugs and 2,6 million blacks, but in prison the rate of drug-related Afro-American offenders is 10 times higher,
- 1 in 48 men of working age is incarcerated.
- In the US approx. 0,75 % of the total population is in prison and 2,3 % under judicial supervision which is about 7 to 9 times higher than in Western Europe.

In spite of the massive prison population, the judiciary machinery and the important cost involved, few Americans disagree with this tough punitive policy. No President could ever be elected, if he proposed a more conciliatory approach to penal legislation. The relative decline of criminality since the 1990s is seen as a consequence of the tough "broken window" measures. Strangely enough, the same reduction of crime happened in neighbouring Canada and in most Western European countries, all of which had a far less repressive prison policy. "Understanding why crime fell in the 1990s" written by Steven D. Levitt in 2004 tries to explain the phenomenon.

However, the US penal policy which aims at deterring people from committing crimes through consequent punitive measures is a failure, because it contributes to rising bi-polarisation of the whole of society which is noticeable, for example, through the radicalisation of the "tea party movement", the intransigence of the Republican Party on the occasion of the "fiscal cliff" bargaining and the ongoing controversy over the "gun laws". 53 % of the US population does not want to change anything in the present gun legislation and basically agrees with the NRA slogan "only with a gun can a good guy defend himself against a bad guy with a gun". And this in spite of the statistics accessible to any American which indicate the fire-arms-related deaths per 100.000 inhabitants as follows: Brazil 11,1, USA, 10,2, Switzerland 3,84, France 3,0, Canada 2,13, Norway 1,78, Italy 1,28, Germany 1,10, Spain 0,63, Great Britain 0,25, Japan 0,07.

#### 5. The people in prison - but who are they?

" ... those who end up in prison are less well considered by the penal system, because they are economically, socially and educationally the weakest." Here are some of the characteristics of incarcerated people:

A - A French parliamentary enquiry (rapport Léonard) of 2004 indicates the following figures:

- 60 % have an educational level equivalent to elementary schooling,
- 30 % have reading problems,
- 15 % are illiterate (3 times higher than the general public),
- 65 % have no profession,
- 20 % have no permanent home or are homeless,
- 16 % are "indigent" which means that they have less than 45 Euros per month for their general expenses,
- 20 % of the detainees had less than 8 Euros remaining from their earnings when they left prison (enquiry 1997),
- 40 % of the incoming detainees had had no medical help 12 months prior to detention,
- 33 % of the newcomers had an excessive consumption of alcohol, tobacco, drugs or followed an antipsychotic treatment,
- 27 % of the minors took drugs regularly prior to incarceration,
- 50 % of the detainees suffered from a mental handicap,
- 10 % said that they had had regular psychological treatment 12 months before detention.

B - MIND (Great Britain) analysed mainly the "Official National Statistics" 2008/2009

and arrived at the following conclusions:

- 39 % of the sentenced males and 75 % of the women on remand show distinct signs of anxiety, depression and phobias which is far above the 12 and 18 % of the general public.
- 25 % of the men and 40 % of the women on remand tried to commit suicide before entering prison. The risk of suicide for detainees is 10 times greater than for people outside prison (91 vs 8,5 per 100.000 people of the general public),
- 55 % of the men and 31 % of the women show an "antisocial personality disorder",
- 25 % of the men and 20 % of the women on remand had a paranoid/ borderline personality disorder which means that they were impulsive, changed minds quickly and had great problems in maintaining personal relationships,
- 25 % of the men and 20 % of the incarcerated women had consumed lots of alcohol and at least one illegal drug regularly. In 2003, 13400 detainees had participated in detoxification programs,
- 51 % of the men and women admitted that they were dependent on illegal drugs, of which 26 % on heroin and 43 % on methadone.
- 6 % of the men and 10 % of the incarcerated women had auto-mutilated themselves in 2008.

C - The "Prison Reform Trust - Bromley Briefing 2011" published the following comparison:

	<u>General Population</u>	<u>Prison Population</u>
- run away from home as a child	11 %	47 % men 50 % women
- taken into care as a child	2 %	27 %
- excluded from school	3 %	30 %
- without professional qualification	15 %	49 % men 33 % women
- unemployed before incarceration	5 %	67 %
- homeless	0,9 %	32 %
- numeracy, level A, 11-year old	23 %	65 %
- suffer at least 2 mental disorders	5 % men 2 % women	72 % men 70 % women
- Drug use 1 year before prison	13 % men 8 % women	65 % men 55 % women
- Hazardous drinking	38 % men 15 % women	63 % men 39 % women

And all these in some respects very fragile people are forced to cohabit in prison with experienced criminals, detainees on remand (theoretically innocent), first-time wrongdoers and multi-recidivists, petty thieves and well-to-do robbers, religious zealots, urban youngsters full of hate, road hogs, foreigners whose only crime was to work illegally in another country and get caught, etc.

Instead of asking the detainees what they need in order not to re-offend again and to find their way back into normal life (as the "Howard League" did in 2006 and an Austrian university researcher in 2007) the public, the media and consequently the politicians, the Judiciary and the Prison Administration prefer to stick to the good old retributive method which, in appearance only, is democratic and egalitarian: "Prison". On the websites of (ex)detainees one can find what they consider favourable and detrimental to re-socialisation of those who would want to live normal lives outside.

Rendering rehabilitation more efficient and, therefore, reducing recidivism would logically entail

a) separating the "sick", i.e. all drug-dependants and mentally handicapped of all kinds, from "normal" detainees, because prisons in their present form are not equipped to treat the former adequately and even less to heal them,

b) Judges involved in mitigation and the prison administration should favour the re-socialisation of all detainees at low risk of re-offending and who request it specifically. For reintegration to succeed, the means put at the disposal of the Social Services ought to correspond proportionally to those available for the detention facilities. The Prison Administration AND the detainees should see detention as a chance to rehabilitate their lives instead of confronting them constantly with the impossibility of escaping from the social conditions in which they have often lived since childhood.

What most of the detainees need to succeed in a lasting reintegration into life in freedom is well known: appropriate health care, professional education (sometimes started in prison and to be completed outside), a job by which they can live decently, lodgings or an acceptable home in order not to be alone to face every day's problems (debts, drugs, loneliness etc), a family or a community such as they have been founded in Canada and elsewhere.

c) "Restorative Justice", conciliatory and introspective, instead of a Judiciary handing down coldly punitive sentences, could favourably complete a new approach to the penal system, because it would attempt to heal wounds instead of engulfing the delinquent in his culpability and the victim in his hate and solitude forever. According to the "Pew Research Center" 100 lawyers of victims signed a declaration in which they demanded, in the names of their clients, neither longer prison sentences nor vengeance, but effective treatments and follow-up of the perpetrators in order to re-socialise them better and, thus, reduce re-offending.

## 6. Prison and poverty - hand in hand

The manifesto states that "right from the beginning, prison was a place of forced containment of the poor, that one finished in prison, because one was poor". One could add the well-known title of the book by Jeffrey Reiman "the rich get richer and the poor get prison".

In addition to several international studies on that subject, a number of French sociologists and criminologists, as well as the "Observatoire International des Prisons", have demonstrated the vicious circle of poverty, delinquency and prison. It seems to be proven that future delinquents adopt a general attitude contrary to the

norms of life at an early stage. A split-up family, a father without work and violent, a persistent lack of means in a world of consumerism, pulling out of school at an early age, racial humiliations suffered from childhood, idleness considered as acceptable, etc. lead often straight to stealing, violence and criminality which enable them to live in the same way as the rest of society and purchase tempting objects.

In the USA 15 % of the population were classified as "poor" in 2012 (= 46,2 million people) compared with only 11,3 % in 2000. 20 million live in "extreme poverty" which means that the yearly income of a family of 4 is less than \$ 11,510. On an average 21 % of the children are "poor", of which 37,4 % are Blacks, 34,1 % Hispanics and 12,5 % Whites. In France 1/3 of the people one can find in the "Centres d'hébergement et de la réadaptation sociale" have spent some time in prison. They enter prison poor and they leave it poor, disillusioned, without hope and perspective. It seems logical that 75 % of them will become delinquent again during their life time. Having been in prison casts a nasty stigma on them which makes it difficult to find a job which allows them to live decently and feed a family. They start stealing again. The infernal circle recommences.

Poverty is very much present in affluent Germany too, as the Government "Armutserbericht 2013" specifies. 10 % of the households possess 53 % of the nation's riches which have increased by 53 % in the last 10 years. On the other hand, the 10 % of the poorest possess only 1,2 % and their income declined by 10,3 % between 2000 and 2010. The number of "poor" old people has doubled during that time span. One child out of 6 is "poor" which means that, if it belongs to a family of 3, the monthly net income is max Euro 1548 (= 60 % of the national average income).

The authorities pride themselves in insisting that "in front of the law everybody is equal", but 3 stolen apples by no means have the same significance for the poor and the rich. The wealthy thief will never enter prison for such a bagatelle, because the Judge knows that the man will not need to do it again. But the Judge will condemn the poor person, because he knows that the man might begin stealing again out of necessity.

When Soros and his cronies provoked a 16 % devaluation of the British Pound in 1992 he cashed in one billion Pounds in one night; when American banks tricked millions of low-earners into apparently favourable housing credits (subprimes - which entailed more than 2 million foreclosures only in 2008) and when the banks worldwide fabricated fraudulent financial products which led to the last economic crisis, few of these white-collar cheats (apart from Madoff) were prosecuted by a judge. The "haves" prevent clear legislation, the legal loopholes are numerous and specialised lawyers and lobbyists find always ways round even existing laws.

The typical delinquent is poor and will have problems raising bail money which in the US could be anywhere between \$ 2000 to 60.000 and more. The basic hourly rate for a lawyer in 2007 was between 250 and 450 \$ (Laffey Matrix) and up to 1000 \$ in certain cases. For the poor person normally a "court-appointed council" acts at an hourly rate of 300 \$ and a limit of 1000 \$ per court case which allows little more than a "legal assistance", but not a proper "defence" for which he could ask 10 times that amount in a free arrangement with the defendant.

In Germany the hourly rate for a lawyer is between 165 and 365 Euros of which the "Pflichtverteidiger" receives 80 %. It appears that the average cost per court case for a lawyer is between 1000 and 1500 Euros. If the accused loses, he pays for the cost of the entire trial up to Euro 15.000,-. If, in addition, he is condemned to a compensation for the victim which can be anywhere up to 100.000 Euros. This may be peanuts for the rich, but a poor guy will be in debt forever.

Poverty in prison creates dependencies in relation to well-to-do criminals, racketeering and revolt against the imposed prison discipline. The OIP reports that in 2004 10 % of French detainees had less than 45,- Euros at their disposal, whereas they would have needed at least 200 Euros per month for current expenses, rent of a TV set, personal hygiene and extras for food.

In 2012, the UK Government identified 120.000 "troubled families" which keep causing problems to the community. Usually nobody works in these families which often consist of several children. The parents have normally no professional qualification, have been redundant for some time and are sometimes handicapped. The earnings/social benefits often correspond to less than 60 % of average salaries which does not allow the children to feed and dress properly. It appears that such families cost the State on an average £ 75.000 (Euro 90.000) a year. When the father is or has been in prison, the sons have a 50 % chance of spending some time in jail also. To put these families on the right track, the Government has allocated 3.750 £ per year and family to enable a social worker to become more easily available to help in taking the right decisions, make certain that the children attend school, evaluate job offers properly, act as mediators in conflicts, encourage further education, teach them to organise a family properly, encourage them to adopt a healthier life style, etc.

Slate (USA) published a study on the situation of young Afro-Americans, prison and poverty. In 1980 only 10 % of the young blacks who had abandoned school prematurely, ended up in prison. In 2008 that rate had increased to 37 %. If the present trend persisted, of all "drop-outs" born between 1975 and 1979, 68 % would be incarcerated during their life time. The study shows how even tens of years after imprisonment, the ex detainees are unable to find their way back into society. Only 30 % have regular work. The others have to content themselves with occasional, low-paid jobs or are permanently out of work. They work illegally, become delinquent, go in and out of prison. Even a generation later their children suffer from the parents' imprisonments, because, according to the study, their behaviour is more aggressive, they lack material and educational means and depend 30 % more than the average on public assistance.

Loïc Wacquant, professor at Berkely, published in 1999 "Les prisons de la misère" and in 2009 "Punishing the poor" in which he describes how the American prisons function in a neo-liberal environment and the vicious circle the poor are exposed to in and out of prison.

## 7. The high cost of incarceration

The general daily rate in Western Europe is at least Euro 100,- per detainee. On Internet one can find annual average costs per prisoner without knowing what they contain in detail:

-	Canada	Euro	89.000
-	England		46.000
-	Belgium		48.000
-	France		45.000
-	Germany		46.000
-	Italy		42.000

Another study shows that the creation of each new prison place costs between Euro 119.000 and 140.000 in England and, it appears, 112.000 in France. The budgets for the Justice Ministry increased in Canada between 2006 and 2011 by 86 % and by 27 % in Spain between 2006 and 2008.

The intensification of the "war on crime" has caused a cost explosion of the US penal system which differs according to the accounting methods used. The report "State expenditures on corrections" states the following development: 1985 6,7 billion \$, 1995 26,1 billion, 2005 42,3 billion, 2010 51,1 billion. It appears that the total cost for the State and Federal Prisons was in 2007 74 billion \$ or 3,4 % of the federal Government's expenditure. 800.000 staff worked in these prisons.

California spent 604 million \$ for "Corrections" in 1980, but 7,9 billion \$ in 2010. For University education the State budget foresaw in 2010 only 5,7 billion \$ which is equivalent to \$ 8867 per student against \$ 47.000 for each detainee. 23 new prisons have been built in the last 30 years, but only one university campus. The prison population increased 5-fold during that time and the "rate of occupation" reached at times 200 %. Not only for budgetary reasons, the authorities and the public started questioning the necessity for such a massive prison population. In 2011 the Supreme Court ordered 30.000 of the 120.000 detainees in California to be freed, because "the detention conditions caused suffering which was no longer in accordance with the corrective aims of imprisonment".

Even ultra-conservatives such as Newt Gingrich and Gover Norquist now consider the expense of "Corrections" as too high, in particular in view of the fact that the federal budget has been negative in the last 10 years and the Public Debt reached \$ 1.330.000.000.000 in 2012 which results in a 30.000 \$ for every American. They too start questioning the logic of the penal policies followed in the last 30 years.

## 8. The "Prison Industry"

The manifesto states "Even if such change caused problems to companies and prison staff, all part of a self-centred prison culture ..."

"Prison Industry" is a pejorative term used frequently in the USA to designate private companies which intervene for different purposes in Prison matters at the request of the State, as, for example:

- In Great-Britain where 11 of the 124 prisons have been built and are run by private companies (= 11 % of all detained prisoners),



- in France where 51 of the 194 prisons function in a "gestion mixte" mode, or "gestion délégué", which means that a private company, such as Sodexo, organises the general services, food, maintenance etc. and the Correctional Administration uses its own civil servants for a proper penal enforcement of the sentences. 49 % of all detainees are housed in these 51 prisons. For these services the State paid the private companies 295 millions Euros in 2012 or 13,5 % of the Prison Services' total budget. 3 new prisons are operating according to the PPP-principle (partenariat public-privé) and 4 more will be inaugurated in 2015. These PPP prisons are totally private with an operational licence for 27 years,

- in Austria where the State has handed over all probation work to "Neustart", a non-profit organisation which employed in 2012 569 professionals and 968 volunteers. According to Neustart 60 % of the prisoners did not re-offend within 2 ½ years. The "company" has been active in Wurttemberg-Baden (Germany) since 2005 too.

- in the USA where private companies, such as CCA, run 66 prisons with 91.000 beds or GEO with 65 prisons and 66.000 beds. 8,7 % of the 2.300.000 detainees are placed in private prisons. In addition, these companies own and run 50 % of the provisional Detention Centres for illegal immigrants (23.000 beds). They also organise work in these "Centres" for which they paid in 2008 50 to 90 cents per hour whereas the rate in the federal prisons was \$ 1,25 to 1,50. CCA employs a staff of 17.000 and its shares are quoted on Wall Street. The net profit margin was 9,5 % in 2012. The electoral contributions to politicians favourable to their cause, are generous.

The "Prison Industry" also comprises suppliers, contractors of services and companies which provide work to the detainees. The chronic lack of such work in prisons is a major problem for the "poor" detainees, because from their already very low salaries they are then unable to pay for the victim, transfer some money to their families and purchase extra food. This all the more as, according to a recent French enquiry, prices in prisons are considerably higher than those in neighbouring supermarkets. Examples: mineral water + 102 %, chocolate + 129 %, cereals + 38 %, the + 62 %, Nivea +17 %, sugar +80%.

Ever since the introduction in 1982 of private companies in prison affairs in the USA, the debate about their usefulness has not ceased. The argument of greater efficiency in the private sector, and consequently less cost for the whole nation, has always been contested by the public sector, their civil servants and their way of administration. The latest study on the subject of "private prisons" was published in January 2013 by the "Brussels Think Tank".

In a wider sense, the term "Prison Industry" could apply also to all people who work in this field and for whom prison is an "economic factor", such as

- the entire Prison Services, including the guards and social workers who are paid by the State and who defend their interests through Unions,
- Prosecutors, Judges and their administrations who run the Judiciary and who, of course, defend their rights,

- lawyers who are appointed by the courts and those who ask exorbitant amounts from detainees who have nothing, except debts,
- and finally experts and large NGOs who intervene in prisons and who are paid for their services.

#### 9. Some contextual remarks -

a) If the "no prison" project wanted to transform the present system as per the "manifesto", one precondition would be that the transformation would not cost visibly more to society, not only in the long run, but as a financial concept right from the start. In addition to invoking ethical and humanitarian arguments, independent business advisors such as Deloitte or KPMG ought to work out "business models" which would show the financial gain resulting from at least a partial reform of the present prison policy. The economies made could then be reinvested in a more efficient rehabilitation policy thanks to less re-offending in the end. The proposed changes and their organisational and financial consequences should then be projected against the real situation of a country, for example Italy, in order to illustrate the financial implications in a more realistic way.

b) The biggest resistance to the "no prison" project would probably come, apart from the general public and its fears, from the "prison industry" and its interests, because, if an important penal reform developed from the present more security-orientated functioning with an ever increasing number of detainees towards a policy centred on rehabilitation, such new orientation would cause them considerable changes and financial losses.

c) Here are some figures for France which illustrate certain tendencies: In spite of a stagnant level of criminality, prison population has increased by 52 % in 10 years and prison admissions by 63 % (47.837 vs. 78262). In spite of this rather "security-minded" policy, recidivism remains on a high level, because the deterrent effect of it apparently has not produced the intended result. The number of detainees seems to be kept intentionally at a level of permanent over-population. Consequently, the State feels obliged to build more prisons for an ever increasing prison population. But as the State is already heavily indebted (see Euro crisis), it cannot afford to pay for the construction of new prisons and, therefore, rents outside services including prison buildings. According to "Le Monde", the rent for the 3 PPP-prisons cost Euro 95.000.000 in 2010 and 114.000.000 in 2012. For renting the 7 PPP-prisons, the State will pay Euro 567.000.000 in 2017 and probably more for many years to come. The goal apparently is to arrive at 64.000 prison places in 2017 enabling the Prison Administration to cope with up to 80.000 prisoners. As a reminder: one prisoner costs more than 100 Euro per day. In 2012, 67.373 people were in prison for only 57.900 places available which results in an over-population of 117 %.

The effective time spent in prison has increased in the last 12 years from 8,1 to 9,8 months and prison sentences of more than 20 years went up from 1252 to 2291. For securing custody 26094 guards supervised 67373 detainees which results in a ratio of 1 guard for 2,6 detainees. At the same time, according to the SPIP report of 2011 (Service Pénitencier d'Insertion et de Probation), only 2930 Probation officers dealt

with 173.000 people in open custody and 930 "Conseillers" with the 67.373 detainees in closed correctional facilities which results theoretically in 1 social worker for 61 people. In reality, however, 1 social worker is dealing usually with 100 to 150 people. Again according to "Le Monde", the part for "Probation and Rehabilitation (SPIP)" represents only 5 % of the total budget of 2,39 billion Euros which the State pays for the Correctional Services. The disproportion of the means allocated to "Security" vs. "Rehabilitation" seems blatant, but it is intentional.

The new Minister of Justice, Mme Taubira wants to improve parts of the system in order to reduce re-offending. She wishes to promote the new concept of "peines de probation" which are non-custodial sentences with a close probation follow-up. To make this re-orientation successful, the social services will need to be increased considerably. The opposition to her intentions will be strong.

d) "Civil Society" could play a considerable role in the transformation of prison both in open custody and closed correctional facilities provided it could be considered as a valid partner. Consult website <http://visiteurs.prison.free.fr> with contributions concerning "Prison Volunteers" in Europe, Germany and Canada.