

Prison costs and benefice – a sociological inquiry

Different intellectual epistemologies and technologies develop themselves in parallel as specialities of knowledge, incompatible with one another. Normative proposes of legal studies (what is right to say one will do, as a State?) developed differently and in an incompatible way with social studies (what common people are expected to do and to say?). Interdisciplinary work is desirable between practitioners of both sciences, even it is not common. To use two different disciplinary contributions to deal with a certain problem one has to develop both specialized intellectual procedures separately and, somehow, to try to apply both results to the same problem at the same time.

The idea of using normative analysis as sociological theory framework will turn sociological methods fail. Sociological work claims for sociological theory, as much as legal work claim for law theory.

The present paper presents an overview on social theories available to think about prison and crime. It concludes social theory has not yet a great deal of contribution to understand crime and human violence. That is why it ends presenting a personal proposition to the research group, in order to be discussed and evaluated by its applications results on available research data.

Eisenstad's development studies recall Axial Revolution concept as an explanation for the emergence of history in the human evolution. Three thousand years ago begins a social differentiation process with the support of writing technologies. A new symbolic production industry emerges and human imagination follows new paths, the precedent paths of what we call today the virtual world. The Other World produced by writing imagination and the writing personnel was been explored as moral reference in order to manipulate men kind potentialities. First civilizations have born. The Other World separate common people from people access to Other Lives, depending on judgment of superior entities. Aristocrat classes and honoured families control the accessibility to better worlds on earth and in even. Eventually the people, learned by founding scriptures, claim for formal criteria respect. At last, when French Revolution emerge, the Other World becomes requirable for immediate and everybody lives use, as an artificial construction exploring Nature, controlled by equitable law.

What is relevant for the purpose of this paper is that civilization split apart two major differentiated worlds: the doing world and the writing world. It separate the hard every day life world and the soft intellectual Other World games, practice and theory, engineering and art, sociology and legal sciences.

Of course, the world is only one. Everybody lives their different quotidian lives, and everybody use the virtual world in different intensity and different social economic return. That is why, sometimes, it becomes evident the impossibility of isolation of some kind of phenomena. That is the case of prison and crime. Both are total social phenomena.

Still many theories claim these are other world emergences on society benign lives. Social theory too, never proclaims the inexistence of such a thing as the world of crime or the prison world as separate kind of societies. One continues to think one is living in a three level world: the world that should be if one were in utopia, like in Even, modernity, free market, free socialism; the world as it is the capitalism and the real hard world; the world at its worse, the underground world and the world to be repressed and destroyed.

There are many uses of this three level other worlds representation. For the use of this paper realism is opposed to scientific approach. To put out of social analysis ideology as

utopian and the underworld as a bad thing one need to avoid, stress a clean realistic “better world possible” criticised long ago by Voltaire. The technique of total social phenomenon do claim for difficult and necessary join together as one the three moral levels designed by Christian civilization.

Prison

In United States of America, in the middle of the 20th century, Ervin Goffman studied prison and isolation institutions for human beings, such as mental ill hospitals, military, religious communities. He defines them, as an all, as totalitarian institutions, processing stigmatization, negative sanctioning. It contrast with family, school or free working institutions, where most of the time people expect positive sanctioning, by love, friendship, solidarity, democracy, participation, economic recognition of the value of his/her behaviour. Totalitarian institutions require living within a strict normalized kind of equal behaviour for everybody, as outsiders of free society.

Normal people live outside totalitarian institutions. There is no formal regulation for every day live. People act on their won, as if no effective sanctioning system exists. Everybody is supposed to have the sense of guilt (a kind of individual incorporate auto sanctioning system) and everybody knows that police can make an appearance when trouble or crime happens. Society, such as family, friends, bosses, and so on, have sanctioning powers too. Only the courts have the power to impose reclusion and, at the same time, stigma.

As Goffman stressed, normal people just do not mix with stigmatized people, as abnormal people repulsive to society. Society needs to develop “informed” professionals as bridges between these two separate human worlds. These informed people are like social workers: they are normal people and, at the same time, they can bridge with non normal world, they are available to connect with stigmatize people without becoming stigmatised.

Goffman’s theory stress freedom values for a good human living, condemning implicitly totalitarian societies for abusing from incarceration in totalitarian institutions, in prisons penitentiary, being them Fascist, Nazi or Communist ruled societies. He focuses too on the explanation of the legitimating social mechanism of no free societies: human social natural trend to stigmatize other people, without any communication system available, without any peace opportunity.

Prison penitentiary result from an essay of a utilitarian political program for ordering society, wrote Michel Foucault by the seventies, in France. Panopticon is the technological device proposed for the purpose. A very expensive device never accomplished as a complete system, given its complexity. Its idealization in paper has not been human friendly enough.

The disciplinary policy for modern world proposed by Bentham, an illuminist philosopher, accepts and represents, in a technical way, the authority of the State as God. In the middle of the represented society (and as a tower in the middle of the prison yard) people in charge can look directly to everybody without being seen, as God is supposed to do. People, in their cells with no wall facing the round prison yard, never know when they are being assessed by any kind of superior attention. So, as good Christians, everybody should behave well, even if God is a sleep and unable to testify and to prevent bad actions.

For normal people, the philosophical image is enough to behave. For other kinds of people the inside representation of God is not enough. Penitentiary surveillance system

plays the role of God: the security system in first place and the so called educational system behind, force incorporation of social norms into the inmate bodies by silence, by routine work, by compliance with the regulation, meaning obedience to practical power in charge. If social life means, in metaphorical religious terms, the purgatory, penitentiary is the God like punishment consisting in pushing people a level down in the same direction of Even and in the opposite sense.

The success of this sociological presentation of the penitentiary prison as the penal milestone, proposed by a philosopher, develops an enthusiasm, felt even today. Sociologists ask them selves if the pos-modern society we live in, the globalization society, still is a disciplinary society induced by a utilitarian political program and by Panopticon technologies. The question is: did society ever been a Panopticon society?

Sometimes the success is perverse. Karl Marx argues once, "I'm not Marxist!"

Foucault calls our attention for a version of the utilitarian contribution and views facing the Illuminist task of building other society, a bourgeois society. Subverting aristocrat society needs to know what to do afterwards in order to ordering free people and social relations, without violent control of the honoured people and theirs armed technologies. The philosopher begins his world famous *Surveiller et Punir* contrasting the traditional violent sanctions with the modern soft sanctions. As one will refer later, it is not unanimous this view. One can claim that modern sanctions are more violent than traditional sanctions. Any way, modern societies and modern culture refers to it self as less violent than ever, even the counting of violent human deaths in the hands of other human beings has never been so high before.

What one should enhance from what Foucault wrote is not that prison is not violent or that psychological violent is better than physical violence. The best reading of Foucault enhance that modern society, contrasting traditional society, feels the need to present it self as a non violent society, hiding the violence inside (prison, military, hospital) walls instead of showing it in public places. Modern society's trend is to show as transparent as possible the way justice is done in the courts, instead of hiding them as traditional authorities used to do.

Unlike revolutionary points of view of violent transforming society, utilitarian philosophy proposes an immediate utopian arrival to the better world possible, as Voltaire wrote. No more need for much violent political action. The idea is to substitute aristocrat God legitimacy mode by a technical role playing of God mode by security State institutions. Its symbol would be the Panopticon system as metaphor and as Penitentiary system. No more violent and ignorant aristocracy: long live functional scientific technological clever social apparatus.

Some critics say the system is very expensive. For propose of working as God, prison penitentiary is not as expensive as one can think. Look what is happening in the United States of America. As Loïc Wacquant brilliantly reported, the biggest employer of salaried professionals in the country is today the prison system. Two million people are in jail, being the biggest rate ever recorded in modern societies. Four million people have some kind of judicial effective established control, out of those who do not know they are being under surveillance. Big amount of money is invested in prison system in order to warranty no violence will cross the nation. Is it a coincidence it happens at the same historical epoch when creationism is successfully battling against evolutionism at North American schools?

Back to Foucault's work, he stressed in his writings that what he has done was not a presentation of what is the present society. He has mentioned what should be modern society if only Bentham version of utilitarian philosophy was considered and if it has

been possible to built successful technological apparatus strictly according to this kind of reasoning. That is why he has been a philosopher.

Sociologists concerned about what actually is modern society read him and complete his thinking, reporting about what has been put in practice, from utilitarian proposals, and what has been the result of the intervention of other modern political trends. Of course, modern society is not and never has been a Panopticon society, even if some wardens or politicians able to control prison systems for their own private proposes or perverted guards and other social service professionals guarding inmates, parolee people and poor people in general, could feel like Gods or, at least, like Saints. Some revolutionary thinkers would describe prison staff as bourgeois servants at a class struggle for socialist change. And it is true penitentiary workers are often uncomfortable about revealing and reflecting about their jobs and social prestige.

Real modern societies, such as penitentiaries, are the result of the merging of several philosophical, social, political and moral trends (better than economic trends) as Manuel Castels mention when comparing the evolution of knowledge society model. Finland, which arrived in the last decade of last century from the influence of Soviet Union to the brotherhood of northern European countries, has become the more advanced knowledge society on hearth, as much as the United States of America, and, at the same time, has become one of the countries in the world which uses less incarceration penalty, the reverse of what happened in USA.

Introspective auto-discipline, reflexivity, is an important development of the character for modern people. The surveillance of the parents or the adult tutor defines what sociologists call first socialization. It is the first raw of imprinting and recording of good and bad social and personal dispositions. In modern society, as in Greek Sparta, institutional mass education completes family socialization work, as a second raw of imprinting social e cognitive rules. Is it a utilitarian perspective alone what rules the educational social arrangement? What would think about it humanists, or partners of science culture democratic diffusion, or activists for civic participation, or sociologists able to produce class analysis of scholar success? Bologna process to change European education systems has been accused of being a utilitarian bias from classic modern educative philosophy, because utilitarian philosophy has not been the main influence when people think on education system. Goffman or Foucault ever compare prison to school, even there are asylum for children.

Auto-discipline is a modern need, eventually supported by all modern philosophies, utilitarian, or humanistic, or scientific, or democratic. The institutional and social results are historical, instable, depending on the specific social formation and depending on historical moment. Different parties push technologies and institutional processes, hoping that way to produce coherent and better outputs, according to each own convictions. The real results are many times surprising and unexpected. The political promises and goals are very difficult to achieve the way they have been planned, as Soviet Union experience shows. Anyway, philosophical discussion will continue to be influential. For instance, about penitentiary system management one can say that there are two systems struggling each other from within (philanthropic and securitarian), runned by different professional (psycho-educative staff and security staff), mutually influencing each other and wining one of the time. In USA wins the securitarian perspective and the guards influence on the system. In Finland is the reverse: wins the philanthropic perspective and the psycho-educative staff influence.

Prison system, as Baumont and Tocqueville reported in theirs famous report on American Penitentiary System of 1830's, is the result of a political agreement between

different social and political currents of thought, namely the philanthropy activists. These people supported penitentiary treatment programs believing that psychological punishment is acceptable and indispensable in order to produce social auto-discipline in the inmates who have not the chance to develop it before and other way. Incarceration is last ratio. Silence, hard work, isolations, frugal eating, some pain in the body, all are humanistic techniques in order to develop auto-discipline the body.

Every inmates feel personal changes experiencing incarceration. That is for sure. Some of them give testimony about the changing process as an inside process. They are told to expect learning socializing results from it. Eventually inmates hope for it. Many times it does not work. Recidivism rates, argue many researchers, shows the system does not work as it has been expected. Ex-inmate frustration and social care personal frustration is very common. As if human social nature does not respond to penitentiary utilitarian receipt or penitentiary humanitarian philanthropic receipt for struggling the crime and the refuse of modern personal auto-discipline.

Tocqueville, himself, was not a partisan of philanthropy. He stated in his report that incarceration was tougher than expulsion penalty or death penalty, the more common penal sanctions before prison penitentiary become the main and almost single penal reference. He observed the penitentiary regime as they worked in USA (working on silence regime and isolation regime, Pennsylvania regime and Auburn regime) and concluded that any human being will suffer much in the process than the normal way of punishment used in France at the time. Till today, the prison has two different social functions, recognized by law: the retributive function of pain as a counterpart for social pain produce by crime caused by individual inmate and the (third or fourth) socialization process, as if the failure of the previous socializations processes were to blame and could not be accused, at the same time.

Penitentiary system is, at the same time, crueller and more human than previous forms of punishment. Historical time and technological progress sophisticate cruelty merged with humanitarian processing. Torturing devices still are produced and sold legally in Europe and claims against political use of torture are discussed in the European parliaments. Committee for the Prevention of Torture (CPT) of the European Council continue working and still United Nations feel the need for more preventive work, as is mentioned in the Additional Protocol of the Convention against Torture. Even if European penitentiary compare well with third world penitentiary, because philanthropic work is done in Europe and in developed countries and is not developed in other countries, still, cruelty is present in every penitentiary system. And it is developing, changing their patterns, adapting claims against these kinds of practices, as well as other forms of crime.

The ambivalence of penitentiary system is denied by common sense and even by specialists, who insist, as philanthropists, that prison treatment mean well for the inmate. Against them rose the “nothing works” theory, to conclude that prison only serves cruelty and it is morally well being so: to provoke intimidation and incapacitation is the only proposes institutions can do in order to split apart society from its enemies.

Human solidarity and human sense of urgent security are feelings radicalized by penal system of representing social conflicts, opposing representations of the isolated other as equal and social order as a pretext of discriminatory social criteria. Both sides have their own victims to present.

Social science has an ambiguous positioning. Epistemologically isolated from violence knowledge questioning (taken as morally bad, as a all) and from normative practical discussions (the judicial decisions are never questioned by social science: they are

commonly accepted as formal and proved social norms), social theory conceive as different the micro social world, the quotidian world, the world that accept to develop itself as a consequence of individual will and behaviour, and the macro social world, the world of the institutions which build social structures and impose itself to constraint individual will and behaviour. The purpose of this paper is not to discuss sociological epistemology. It is enough to state that sociologist, as social workers, feel they are working side by side with security professionals and, never the less, somehow, at a different level, at a level closer to the philanthropic views than to the social ordering by force views.

From a theoretical point of view, it seems like social theory expect modernity to abolish violence, both internal and external, remaining crime and criminology as much external problems to society as war and strategy are.

Authors, such as Loïc Wacquant, Jock Young or David Garland, deal with the limits of social theory in order to understand what is happening with penal policy and politics as well how modern society merge with penitentiary violence.

After Gulag denunciation and the Soviet Union collapse, liberal modern societies still use stigma and totalitarian institutions? Wacquant discovered that after de last decade of the 20th century USA number of penitentiary inmates grow very fast till over the Russia's numbers, concluding it turn out a new kind of society regulation: "penal state". Does modern society improve social pacification of human relationships? What has been the contribution of Panopticon philosophy and technology to the combat against crime? Young explains that human societies live different epochs, such as inclusive epochs (as the one lived since 1945 till 1975 in Europe) and exclusive epochs (till 1975 till today). Assimilation violence becomes stronger sometimes. Other times pull violence becomes stronger. From exclusive societies, representations of inclusive societies wrongly seem like Eden. History studying will show the reverse: there were tough times, the Cold War times, nuclear menace always present, political persecutions. As much as before, crime and imprisonment are not correlated. Anyway, supports Jock Young, to trace both phenomena at the same time at each conjuncture for each society will represent, somehow, the character of each society. It will be different when criminality grows if incarceration goes down or if it goes up. The empirical observations about what is going on in each society ask to be explained as total social phenomena.

"One would have to go (...) further [in social theory] (...) and construct a model of the interacting forces with precise pattern of their interaction, identified regular causal sequences, and revealed principles of determination and structuration which are reasonably constant over time" David Garland (1990) *Punishment and Modern Society*, Oxford, Clarendon Press:284.

No such social theory exists, even if it is necessary in order access penitentiary situation in Europe. Should we risk building on fixed theoretical hypothesis? How to fix those hypotheses?

One has to choose: to be clear about imprisonment and to develop a total social phenomena approach, even it is virgin field, or to be confused about it, fearing to fall on radical moral views.

Science as to oppose common sense, recommended Durkheim. When it comes to imprisonment, emotions came to our human minds: revenge merge with sympathy, instinct hide itself behind speech formulas used by parliaments, courts, lawyers and policemen. Secrets of State are involved, given the immediate political impact of crime and imprisonment issues. Even penal or penitentiary abolitionism is not a practical

perspective (it has been by the middle of the seventies), social scientist studying imprisonment suffer and feel the intellectual and political tension for choosing the moral field they want to join. Some think penitentiary as a good modern power technique which should be perfected. Others join this side given the lack of alternatives perspectives and the political risks of focusing on tough criticism against penitentiary system and political system over it. Others, like myself, choose never forget the virtual point of view of the human being imprisoned, excluded, stigmatized, sometimes tortured, helpless, comparing it with the promises of modernization and humanization of social relationships.

As Jock Young remember us, we are living an exclusive social cultural cycle worldwide. Like a tsunami, one is helpless. Anyway, as Manuel Castels wrote use Finland as an example, people can resist and even reverse the expected results of the main trend. In Europe, for instance, some countries are growing their prison populations strongly, such as Spain or England. Others are decreasing, such as Portugal. Others, such as newcomers of Eastern Europe or candidates to enter European Union, are changing in a liberal perspective the former way of using justice as political weapons. The cultural explanation for those contrasting changing fails because many of these changes are politically induced.

The same culture of the same people, such as the Portuguese people, enables the Portuguese State to become, by 1997, the European champion of prisoner's rate by the population and of death rate inside prisons. This has been a consequence of the changing of penitentiary policy. Portuguese State, after a political polemic about amnesty policy on a terrorist case of the eighties, the President and the Parliament decided to stop with regular amnesties to relieve overcrowding in penitentiary system. The more recent legislative wave to downsize the use of imprisonment in Portugal has different causes – the more important of them will be the political war between politicians, as a social class or cast, and the judiciary system, as corporations, struggling for impunity for themselves and for better work conditions, respectively. The historical background of Portuguese penitentiary system and the top comparative statistical numbers shown by international regulators on the field (United Nations and European Council), as well as budgetary need to downsize public expenses, are good arguments to help to make the mind of decision people, against the world wide securitarian wave which continues working in Portugal: it has one of the highest rate of police people in Europe, comparing with one of the lowest crime rate. Still, pressed by media to react to crime waves, the government calls for new massive entering in police forces.

The Portuguese culture, as any other culture, supports both securitarian waves and freedom loving waves. A) Depending on the situation, both waves can come together or not (at the end of the dictatorial regime, for instance, the number of prisoners decline at the same time people ask for freedom). B) The non participatory Portuguese political culture had been expressed in a very different way during the seventies revolution of carnation: everybody seems to be – we all were, in fact – radicals. C) American culture has been the more advanced on philanthropic and abolitionist trends, by the seventies. By the nineties it was already clear the change of the main social mood, if one will. Is it the experience of suffering a strong crime wave that makes people change their minds? Maybe yes. Maybe not. For sure, even when a crime emergence causes an emergence of penitentiary uses, it will not be the single nor the more important cause of the changing patterns of institutional reaction to crime. Most of the time broader political attitudes changes are at stake.

Crime

Crime, as sociological phenomena, has not been a privileged subject for social theory. Sociologists do conform to legal definitions of crime and do conform to court interpretations and decisions about what is crime, to avoid decisions of their own on these delicate matters. Criminology essay to conquer the gap, since crime as become a major policy and politics topic.

The problem is not easy to solve. Or one decide to take for oneself the ability to distinguish what is a crime – for instance, a husband beating a woman or an exchange between a citizen and a functionary in order to develop administrative proceedings one way or another – even if there are not legal proceedings and a legal condemnation, or else one limit one's views about crime to the cases when the criminal prosecution wins. The last option put outside crime phenomena all crimes that occur and police cannot or do not want to present evidence that can be approved by a court, plus all crimes that courts cannot or do not want to condemn, plus all crimes police do not know about. It is a lot of crimes outside our sociological vision of the phenomena. Yet, many sociological studies on crime use prisons as social field of inquiry and police data as background, as if all inmates did actually do crime.

If one chose not to accept these hard limits to sociological inquire on crime, what should one take as empirical subject? How can a sociologist decide where are the criminals? Who are criminal?

The answer is known, easy, controversial and badly understood: for social theory there are no criminals as social subject; there is only crime and criminal socially classified actions. As Michel Foucault put it, criminals are generated by penal and penitentiary proceedings. This is what is unthinkable for common sense.

Many people, including social scientists, fell this approach is irresponsible, asocial, and morally unacceptable. Many crime opinion makers support the incompatibility between giving judicial individual responsibility for single crimes and the social building of modern crime. For them, society sound as an excuse for criminals, sociologically designed as male, poor, no education, living in degraded neighborhoods. As if guilt on lack of efficient social solidarity or organization was transference from individual single and unique guilt.

Everyone needs to be assured that no one will take him/her self for a criminal. Being a criminal is not only offensive, it is stigmatizing: it changes people lives and their ability to exist as person. Human condition is, still in modern societies, something people have to conquer. A public condemnation can destroy anyone's live. Sociologists do not have the right to manipulate such a power. It is forbidden by law. It will be crime.

That is why crime is so tricky, as sociological subject. Reporting on social causes of crime, sociology gives the impression of social determinism behind the individual crime and undermines dissuasion power of judicial decisions. Reporting on institutional mechanisms sociology shows relativism of law – in different times and epochs, in different countries, in different courts – and the influence of power struggles on decision making about what is and what is not crime. What kind of social recommendation would emerge from this kind of inquiry?

As René Girard showed, traditional human societies, as well as modern societies, needs to use scapegoats in order to hide primordial violence which gives social identity to a joined people: the original genocide, as he calls it. Modern crime is a technical way to take this complex human natural feature in order to pacify large societies and to control them from the top of the political and judiciary institutions.

As once a British high rank civil servant said: “Penal system is a very expensive system to bring bad people worse”. If that is so, why do finance ministries all over the world

support so high expenses for so rare (good) results? For power, Foucault's fans will answer. What kind of power: for pleasure? For control? For hate? For superiority? For personal power or for social power?

Modern states want to do it as economic, as instrumental, as effective, as rational as possible. That is why penitentiary system is, at the same time, so attractive and a failure. Is a fine technological tool and it is not able to end with crime. Precisely because this is not its tacit goal: ending crime is only the explicit goal, as social science as shown yet. Latent social claim for punishment is not only against crime. Modern punishment is against every supposed cause of human difficulties. That is why punishment creates crime, as scapegoat for human difficulties, in order to substitute political leaders, traditionally used to this proposes. Pacification of political life, and democracy, is built on penal system. This explains why, even penal court decisions are so few comparing other kind of judicial decision on labor, industry, commerce topics, they move so much with politics and with public emotions.

Modern people prefer to accept the idea that modernization, in the long run, will end with social violence. One can confirm that is true, if only look at higher, civilized, social classes. The under classes live very violent every day lives, hoping to get enough in order to join peaceful social class status. That is the way modern people understand the need to accept state protection, without thinking too much about the force states use to take taxes and to take a significant part of our common belongings, such as land, water, air, and so on. One does not think (is not able to believe) that the modern invention of crime uses "dangers" neighborhoods and "poor bad people" as scapegoats, whenever it is politically needed in order to save political mass.

Whenever people came to such a conclusion, the institutional legitimating system broke. That is why whenever a revolution happen, one can find the people near prison establishments taking their relatives and friends out of jail, as the Parisian Bastille.

Administration has special status in court, including prison staff. Their credibility facing other people, specially prisoners or ex-prisoners, is higher than usual. Even if legal doctrine imposes equality when any one faces legal procedures, sociologically speaking one cannot accept this statement as a true statement. The same way, even legal doctrine imposes the conceptual differentiation between people and their condemn acts, in order to resume people socialization through penitentiary treatment, and condemn strongly the actions alone, people stigmatization flows from sentence discourse through society, by inmate auto-criminalization, by the time cut on the curriculum vitae, by the criminal records, by parole procedures.

Sociologists, facing crime, can adopt either a realistic approach or a scientific approach. Realistic approach is to avoid criticism of common sense in such a way that any common sense would agree with sociology. The main strategy to achieve that is to glue to normative judicial decisions, as if they were the sociological true. As a tautology, the criminals are the condemn people. And the water (the people) becomes wine (the criminals) as judicial power wishes. The scientific approach has to tear apart ideology and look what is beyond official morality and deeper on human social nature.

Ideology is not only political ideology. It is institutional power ideology which refuses to admit every violent action it promotes and victimize itself from many disturbances, arguing against violence from strangers such as nomads or migrants, poor people or farmers, foreigners or aliens. The differentiation social mechanism is intuitive, primary, and very efficient and goes deep down on any human being. If one does represent oneself as part of a collective identity socially sheared with other people, the outsiders are the enemy; even they have the same nationality. It is like a strategic game. It is like

politics. It is like doing society, as Durkheim followed at the Australians aborigines in his book called *Elementary Forms of Religious Life*.

The boundaries of society are design in violence, Max Weber dixit; of course, good violence for those inside. Or else, who do not agree risk to go to jail, to join the army, to enter a mental hospital, to pray in a convent for a better future, to do science or to suffer a penitentiary treatment, as it is recognize by western culture has happened in the concentration camps, in the soviet gulags, one can accept it is happening today in poor or bad countries. One is blind to what is happening inside our own social group.

An academic conference on crime (or penitentiary systems) does seem many times a contest of auto-flagellation. No one wants to be accused of complacency facing the common use of such a negative institutions. The reverse happens if the people meeting represents officially his/her own State and country. That is why discussion on data is not enough to conciliate those two approaches, the scientific and the realistic. Any way one can state this: social everyday violence is still present in modern societies. No signs of ending use of violence, in the near future. The states use violence in order to sustain their powers, even democratic powers. The states, how powerful they are, cannot assume most social violence, which must be suffered by the people, specially the people who has less means of defense. The discriminatory action of security institutions, both public and private, saving the big properties and values, according to political leaders or paying clients, and neglecting or attacking other people, becomes regularly a cause of violence: people's defensive violence merge with criminal violence and political violence against the state.

Seems it out of our goal? Crime is bad violence, not good violence? Should we merge good and bad in the same sociological subject? The point is if social theory do not discuss what violence is, how can sociologist decide what is good and what is bad? If one refuses to accept crime as a total social phenomenon, how can we solve the mystery of its definition? If sociology supports modern society political program and its main goal is to show social discrimination and inequality, why, when coming to crime, one should support acritically the institutions, when people argue that penal incarceration does work, do not achieve its declared proposes?

Anomie is a difficult sociological concept. Often sociologists understand it as a lack of personal ability to conform to society juridical norms, as a similar concept for delinquent or criminal. This interpretation has no support on Durkheim's writings.

Durkheim's anomie refers what is left for real societies to become perfect cohesive societies. Anomie is not a visible social phenomenon, as much as social cohesion. It is a sociological concept to refer to the existing characteristic levels of social conflict of each given society. Anomie, wrote Durkheim, including rate levels as a sociological statistics indicator, is a two ways problem. It is a political challenge to social cohesion and it is an input needed for social creativity and adaptation to history. Anomie is neither good or bad. The moral assessment depends on the way anomie is lived in real society and the social positioning of the observation. Economics need innovation and State power is responsible for social cohesion, for instance.

Robert Merton uses this concept to show the radical cause of crime was social inequality. In his famous essay, always mentioned about sociology of crime, the American sociologist confronts the cultural dimension of modern societies and its economic dimension. He stated that a disfunctioning relation between to two social dimensions push people to desire the same kind of fashionable life style and, at the same time, do not have the same opportunities on the markets to buy the symbolic or practical assets needed. Like that he explains why criminals are most of the time poor

people. And why police look at poor neighbourhoods for criminals. Where the social functioning does not work in a proper way, social cohesion is more difficult to emerge and anomie has more chance to develop it self as negative phenomena, such as crime.

Social analysis shows that prison and stigmatized populations are biased comparing total population: nomads, black people, foreigners, young men, poor people, have disproportionate big representations. The sociological interpretation of the statistics is credible if the subject is social discrimination. Crime, a total social phenomena, criminalization, affects differently different social sectors. The interpretation the other around is wrong: poor people do not have a special criminological bias in their minds or lives. At least it cannot be proved with the numbers of criminalization.

In fact, discrimination means that the other sectors of society are not so much controlled by crime persecution than poor people, as Loïc Wacquant enhance in his book about USA managing poverty by penal system. Then, one has to estimate the level of social discrimination in criminal business in order to correct criminalization numbers to obtain an index of crime social propention. Such an index has never been produced. Jock Young propose other social index: to show, at the same graph, criminalization trends and crime record trends, as empirical data to be interpreted as a special characteristic of each State situation.

The realities

What are the main types of crime? Murder and robbery use to be the main crime references to the public. For criminologist guns, drugs and people traffics are the biggest problems to address. Considering single crimes or all ranks of criminal business, social discrimination is a rule that can be observed. For instance: the opportunities to contract for a professional beating or murder is socially very different and the chance of finding the criminal cause is much higher when it is done by non professionals. The opportunity of robbing a bank is very different is one is high rank manager or a local manager or an outsider. Most of professional criminals merge legal business and political influence with illegal protected corrupt business.

Social theory should adapt it self to realities, instead of creating structured scenarios that often hide the main questions and the main social problems. It is not the case, concerning crime, as stated before. For instance, social theory as never comes to terms about the cause of strong sex discrimination on criminalization phenomena. About drug abuse social phenomena social theory does have any known contribution to face the global problem of prohibitionist politics or to understand the emergence of drug uses in humans. Domestic and gender violence emerge as social problem and social theory hardly mention it. Migrations, on reverse, are a traditional social theory topic where anthropologist, geographers and other scientists cooperate.

Salvatore Pallida, (2001) *Migranti, devianti e vittime*, Milano, Franco Angeli, propose three master conclusions from his sociological inquiry: a) the main causes for the existing social relations between deviance, crime and criminalization and auto-criminalization are two: the social, economical and political degradation of the situations at migrant origin communities, in Africa, Yugoslavia or other Asiatic and Eastern European pos-sovietic countries; b) the prohibitionist immigrant policies open strong underground markets for traditional criminal exploitation of personnel mobility and protection; c) the actual discrimination against immigrants becomes stable when social economic integration opportunities are closed to ethnicized parallel economic sectors – such as building sector or personal services sector – criminalizing and auto-criminalizing social relations around immigrants.

Gunther Jackobs claim, in favour of his well known legal doctrine theory he called the *Right of the Enemy*, that juridical discrimination is already in social, political and juridical practice. He only describes it and proposes legal doctrine to assume these realities in the Law. If one takes seriously his text as a sociological description of what is going on at the philosophical level, comparing what Bentham represented to the views of Michel Foucault, one could easily propose an explanation for the fact that many States use outlaw legal procedures to deal with some kind of people they politically decide to deny regular legal warranties. Guantanamo is worldwide known as a case like that. *FIES* in Spain and *Alta Segurança* in Portugal are the same in other scale. Other countries eventually use other known State prison regimes out of law. As if the State has already been privatized, and the liberal norm applied to private identities – *what is not forbidden is admitted* – was applied to public services, too.

In order to contribute for the public understanding of crime and incarceration, social theory has a long way to run. Durkheim has given many strong hypotheses which must be developed in a scientific way. Realism constraints have been closing the opportunities of doing so, misinterpreting his legacy and stopping whenever an ideological problem arises and reinforcing social stigma and directing social feelings about scapegoats to the underclass.

One should use Durkheim's methodological claim and to go against common sense in order to develop scientific knowledge and the theoretical view of crime and prison as social total phenomena. Crime is not a single accused person problem, neither a joint problem of victim and aggressor. Crime is a very complex problem involving all society.

To claim an abstract kind of behaviour and a certain concrete behaviour is a crime is a social struggle that interprets, reveals and changes societies and people. The credible and known nomination of accused or guilt directed to a person or a kind of people has profound consequences, as a curse. Who does ignore it? People uses the nomination power in every day life, as well as politicians do the same at high institutional levels. Should not social theory enable us to understand how it happens and develops? Who are vulnerable to this social (eventually legal or mass media) nomination? Who are less vulnerable and why?

What social theory should not do is to reinforce actual social inequalities and stigma because this is not the aim of science. Sociological knowledge is not the confirmation of status quo. It is the understanding of human social life.

Deep social secrets can be discovered by social science, as they are. The human ability of using violence with good conscience, forgetting it and glorifying it, is clear enough for everybody who reads and learns stories from History. Good violence, of course, is our side violence, the winner's side. The alternative stories of History are not on record. The same kind of social secrecy conform sexual taboos, reproduction regulation of the species. Children and women sexual abuse is hiding by victims, mother and father of victims, friends and institutions, in a regular basis. Patriarchal ideology and social organization under very different forms organize social life all over the world. Each state power organizes its own secrecy system under law and police regulation, times enough hiding hard brook of morals.

To produce knowledge about the social mechanisms of social secrecy will help us to understand another social phenomenon: the social instability. Why, all of a sudden, prisoners rate goes down or up or crime rates change patterns? Common explanations are the fear of crime people feels or solidarity feelings arising or rage growing or other kind

of psychological causes. In fact, the studies show these emergences are multi-causal, meaning they are total social phenomenon and should be analysed as such.

Final notes

Discussing penal paradigms for new Europe in the future is not a realistic exercise. It is a scientific exercise. The difference is that: to show what is happening today in different countries means to be out of date whenever one is published. The scientific approach enables European Commission to develop scientific interdisciplinary discussions about what should be the European prison systems in a much broader perspective.

The main question is: what is the use of penitentiary system in modern societies? The answer to prevent crime hides a social secret: everybody knows that “nothing works”. What, then, is the use of prisons?

At task 1 and 2 one heard about legal point of views of neo-cons and new-liberals. For task 3 this paper suggests one use as theoretical framework, instead of a legal-political approach, a sociological approach, avoiding the criticisms that have been done before.

There is no consensus about how to do it. That is why one proposes a practical approach that has been tested with success these last years.

The claim is prison impose to inmates a special state-of-spirit that impose it self to anyone in jail; lets call it the submission spirit. More precisely, it is a variant of the submission spirit. If anyone is out of control damaging social relations stability, police and penal system should prevent more damages, closing the people causing problems.

Prison is good if it promote spirit of submission in society. Prison is bad if the submission spirit transform it self in non cooperative ways of life, such as subversive spirit or desperate spirit. That is why the best prison systems follow ex-inmate. To be sure the right submission spirit is dominant ruling the single life of each ex-inmate person.

Of course, the same aim is pursued by other institutions for other proposes, such as military training, factory training, religious training, sport training, mental training, and so on. The penitentiary system is the last ratio, after the failure of all other systems of incorporation of submission spirit.

Why the level of penitentiary failure is so much evident? Well, maybe the level of failure of penitentiary is only a utilitarian way of accessing it. Other though currents will say that an overall evaluation will discover the preventive inhibition of crime rational plans. No one can prove if this is true or not, else one compares a society without penitentiary system to the actual societies. From the utilitarian point of, one can say that other social systems, such as education or health care, for instance, as a lot of wrong doing and perverse results.

The real penitentiary problem is moral. Is it moral to submit anyone to a very tough experience of stop living still living, making time as one says, for doubtful results? Should social institutions satisfy emotional needs of revenge against a bad person? Is it acceptable to organize impossible totalitarian organizations, which becomes ungovernable and manipulated by corruption and crime? Should citizens trust penitentiary administration? Should citizens accept political uses of penitentiary or mental health systems?

A more general question should be stated: what the need for modern societies to produce submission spirit and what are the best ways to achieve this goal?