

PUNISHMENT OUTSIDE PRISON IN MODERN PENAL POLICY

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Abstract:

The punishment outside of prison is one of the most important issues in modern penal policy. This concept refers to the penalties applied to convicts without the need for imprisonment, aiming to strike a balance between achieving justice and protecting society from crime. It avoids resorting to prison, which may have negative effects on both the criminal and society. Its importance lies in reducing the cost of imprisonment, decreasing rates of recidivism, maintaining the goal of rehabilitating offenders. Examples include electronic monitoring, community service, and citizenship training. However, these alternatives face challenges, especially in ensuring their effectiveness, not violating the rights of the convicted, and gaining societal acceptance of these penalties. They remain open to development.

Keywords: Punishment; Penal Policy; Prison; Prison Alternatives.

INTRODUCTION

No topic has garnered as much attention from specialists in criminal policy in general, and penal policy in particular, over the past decades as the critique of the prison institution, encompassing its legal and scientific dimensions. Issues such as the critique of preventive detention, short-term imprisonment, the ineffectiveness of penal sanctions, the inefficiency of custodial sentences, and the policy of social rehabilitation—along with the violations occurring within prisons—have become focal points. Consequently, discussions have emerged within jurisprudence and legislation regarding alternative sanctions, consensual justice, and negotiated justice. In this context, it can be said that there has been a shift toward the idea of punishment outside prison, despite the challenges this poses to the principles of criminal legality. For instance, there has been recourse to concepts such as electronic tagging, electronic monitoring, open environments, and conditional release.

Study Problem:

This article aims to explore and establish the foundation for the idea of punishment outside prison by examining comparative and national jurisprudence and legislation, addressing the key question:

To what extent can the concept of punishment outside prison prove effective, gain acceptance, and succeed?

To answer this question, a descriptive and analytical methodology is necessary to highlight the failures of the prison institution and elucidate alternatives implemented outside the prison setting. Accordingly, this study is divided into two main sections: one focusing on the crisis of the prison institution and its manifestations, and the other addressing the applications of the idea of punishment outside prison.

1. The Crisis of the Prison Institution and Its Manifestations:

The crisis of the prison institution is multifaceted, requiring an initial dissection alongside an introduction to the efforts of Michel Foucault, one of the most influential figures in bringing this crisis to light. In particular, his establishment of the movement aimed at gathering information from within prisons will be discussed (firstly). Furthermore, the efforts of the School of Social Defense in evolving the function of prisons and reforming them must be highlighted, as well as the obstacles to implementing alternative sanctions, including those outside prison (secondly).

1.1 Preliminary Analysis of the Prison Crisis and Michel Foucault's Efforts to Critique the Prison Institution:

The prison crisis began much earlier with the emergence of the School of Social Defense. However, what became truly alarming was the overcrowding of prisons due to short-term custodial sentences, typically less than six months. Statistical observations reveal that crimes punishable by short-term imprisonment are adjudicated more frequently than others. This indicates that offenders tend to prefer committing these crimes, as though short-term imprisonment appeals to them. Consequently, it appears that such sentences act as a motivator for committing crimes rather than deterring them. There is a strong correlation between recidivism and short-term sentences (Mohammed, 2016, p. 82).

For legislators, the optimal solution in such cases is to replace these sentences with alternative sanctions carried out outside prison or in an open environment, such as community service. By adopting this approach, penal policy takes a significant step toward overcoming the disadvantages of short-term imprisonment. Legislators have also started developing various solutions. For instance, the French legislator introduced systems such as deferred sentencing, partial or complete suspension of sentences, sentence suspension, probation, electronic monitoring, civic engagement programs, and other alternatives to custodial sentences (Poncela, 2013, pp. 7-23).

The issue of short-term imprisonment serves as a final indication of the failure of closed systems of punishment. On one hand, short detention periods are insufficient for implementing rehabilitation programs (Al-Amrani, 2021, pp. 141-151). Additionally, there is the concept of stigma, where the experience of imprisonment becomes indelibly attached to a person for life, making it nearly impossible to escape its impact (Al-Malik, 2010, p. 47). Thus, the solution lies not only in alternatives within prison—such as workshops and open environments—but also in diverse forms of punishment carried out outside the prison setting.

The earliest literature criticizing prisons generally focused on various aspects, such as the critique of repressive imprisonment, wherein incarceration was a harsh and severe punishment. At the second International Criminology Conference held in Paris in 1950, repressive imprisonment was studied as a criminogenic factor—one that contributes to the emergence and development of crime. Materially, prison conditions related to housing, work, and food were found to foster tuberculosis, a disease closely associated with such prisons. Psychologically, repressive imprisonment is characterized by an environment of lies, latent conflicts, psychological trauma, and organized sexual activity. Socially, this leads to the deterioration of family relationships, social ostracism, and maladaptation, making reintegration into normal life extremely difficult. These factors collectively explain the failure of the prison experience (Pinatel, 1973, pp. 13-67).

The prison crisis is not solely attributed to overcrowding but also to the failure of rehabilitation and social reintegration processes for inmates. This failure stems from a lack of qualified personnel responsible for these processes, as well as the shortcomings of the classification system adopted by the rehabilitation policy. Among the thinkers who launched significant critiques against prisons is Michel Foucault (born in 1926 in Poitiers), who argued that prisons do not reduce crime but instead foster recidivism due to the mingling of convicts with hardened offenders. According to Foucault, prisons create new deviants, cause economic harm to prisoners' families (Mary, 2012, pp. 5-47), and impose financial burdens on the state.

Throughout history, prisons have remained at the pinnacle of the penal system, earning the title "queen of punishment". However, in modern times, prisons are becoming increasingly significant institutions due to the reduction in their physical size, diversification of services, and evolution of systems. Today, prisons are viewed as indicators of a society's level of civilization, as they move away from brutality and harshness and advance in psychological and cultural roles.

One of the thinkers who made revolutionary contributions in this field is Michel Foucault, particularly with his book *Discipline and Punish*, published in 1975. In this work, Foucault critiques the problems of prisons. A few years later, in 1981, he founded a movement, during which he published *The Punitive Society*, where he exposed the reality of prisons, criticized their practices,

and rallied public opinion against the conditions within them. He called for their reform or, failing that, their complete closure (Zaki, 2023).

Foucault was supported by many intellectuals and activists, such as Gilles Deleuze. This period marked an important phase in the development of prison critiques, although earlier attempts at such critiques date back further. The first international prison conference, held in 1847, did not challenge the status of prisons but merely compared the effectiveness of existing institutions (Perrot, 2004, pp. 13-21).

Michel Foucault did not limit his activism to writing books; he also founded the GIP Movement (*Groupe d'Information sur les Prisons*). This movement was established in 1971 following the dissolution of the *Proletarian Left* (*Gauche Prolétarienne*, GP) by the French Minister of the Interior. This decision aligned with the enactment of an anti-thuggery law in 1970, which led to the imprisonment of several GP activists, some of whom initiated hunger strikes. Subsequently, significant mobilization occurred among political prisoners, including figures like Jean-Paul Sartre. Foucault spearheaded the creation of GIP, a group dedicated to collecting information about prisons. Its purpose was not merely to raise awareness among prisoners and their families about the conditions they faced, as they were already well aware of these issues. Instead, the goal was to turn individual knowledge into collective and political awareness by revisiting the past.

The group's initial meetings were held at Foucault's home, where questionnaires were distributed to prisoners to gather data. Over time, these meetings evolved into public assemblies, protests, and publications in the press. Reports and pamphlets were also created, later compiled into a booklet titled *Intolerable*. Despite its disbandment in 1972, the GIP Movement influenced significant amendments to the Penal Code and the Code of Criminal Procedure in its aftermath (Poncela, 2021, pp. 1-14).

1.2 Efforts of the Social Defense School and Obstacles to Punishment Outside Prison:

The concept of social defense predates the emergence of the Social Defense School, where it initially focused on protecting society from crime through harsh and deterrent punishments. This early understanding emphasized excessive severity as a means of achieving societal protection, often conflicting with individual freedoms and the rights of the convicted. The primary aim was to prioritize the protection of society and maintain public order as the central mission of criminal law. In contrast, the perspective introduced by thinkers like Ferri and Marc Ancel, as well as the Italian Positivist School, emphasized crime prevention over punishment. The core of this approach is the concept of *criminal dangerousness*, viewing the offender as a patient requiring preventive measures. Thus, the Social Defense School signified a shift in the philosophy of punishment—from revenge and retribution to rehabilitation, correction, and treatment.

For criminal law to fulfill this rehabilitative role, it must go beyond traditional rules of criminalization and be guided by auxiliary sciences. Modern penal codes have adopted the ideas of this school, and even the United Nations has established a Department of Social Defense under the title *Crime Prevention and Treatment of Offenders* (Ancel, 2002, p. 13 and onwards).

The evolution of the Social Defense School was greatly advanced by Marc Ancel, who focused on examining offenders' personalities to enable individualized sentencing. This approach, now prevalent in contemporary penal policy (Bouhantala, 2012, p. 30), emphasizes understanding the individual characteristics of the convicted, particularly in special cases such as dementia, old age, psychological or neurological disorders, and other conditions involving social danger.

This emphasis led to the development of the theory of *protective measures*, one of the most significant theories in penal policy arising from the New Social Defense Movement. This movement is characterized by a non-repressive or, more accurately, a humanitarian approach to criminal justice (Maíllo, 2010, pp. 597-611).

Social defense is no longer confined to certain categories requiring specific punitive measures; rather, it must be generalized to encompass all offenders, whether they are criminally responsible, partially responsible, or not responsible at all. The primary goal is to prevent future crimes by addressing the root causes that led to the initial offense. While Marc Ancel, who passed away in 1990, was content with the realization of his objectives, advocates of harsher punishments re-

emerged in 1993 under the banner of "the right to security as a fundamental right (Sorour, 2015, p. 55)." This resurgence led some in France to question what remained of the legacy of the New Social Defense movement (Sizaire, 2017, pp. 261-272).

Although alternative penalties to imprisonment offer advantages in reducing prison overcrowding, they place a significant burden on judges to determine the most appropriate measure for dealing with the convicted individual. This process requires reliable information about the background of the offender. Judges face several challenges, including time constraints that hinder a comprehensive understanding of the defendant's character, particularly with the advent of immediate appearance systems and expedited trial procedures.

Moreover, empirical studies on these alternative penalties reveal the illusion upon which they are based. Firstly, they do not replace imprisonment but rather supplement it. They have not succeeded in alleviating the burden on prisons. Additionally, the lack of resources allocated to these penalties, coupled with the evolution of prison policies, means that the content of these measures does not constitute an alternative to the prison model as much as it extends its influence into the outdoors (Larminat, 2017, pp. 149-158).

2. Models of Punishment Outside Prison:

The applications of punishment outside prison are steadily increasing, with some enjoying broader legislative consensus than others. This legislative alignment makes them more viable for further development in terms of procedures, safeguards, and resources. The focus is therefore placed on these models. Some alternatives, however, do not constitute punishment outside prison, such as conditional release, which is not a form of punishment at all. In contrast, measures such as electronic tagging, civic engagement programs, and community service are among the most prominent examples of these applications (*First*). Additionally, there are other alternatives that vary in their relationship to punishment outside prison, including the significant role of reading as an essential solution, even within prisons—a proposal put forth in this paper (*Second*).

2.1 Electronic Tagging, Civic Engagement Programs, and Community Service as Leading Models:

Regarding electronic tagging, it is noteworthy that electronic monitoring of defendants has developed significantly in Europe over the past two decades (Arshouch, 2017, pp. 435-463).¹ The most well-known model involves placing an electronic tag on the wrist or ankle. This device emits a signal picked up by a receiver installed at the individual's home, which is connected to a central computer via a telephone network.

This system allows authorities to verify the presence or absence of the individual at home, detect tampering with the device, or identify violations of authorized schedules for leaving the house, all in real-time through alerts. Other monitoring models are under experimentation, including the use of GPS technology, mobile phones, and even voice recognition technology without relying on a physical tag (Khater & Al-Nawaisa, 2003, pp. 1-30).

These modern methods of controlling and monitoring offenders have sparked considerable debate among legal professionals and human rights advocates. In practice, this system is often viewed as a cost-effective alternative to incarceration. Some critics, however, regard it as a form of digital judicial surveillance over personal freedoms (Kaminski, 2013, pp. 105-132).

In essence, while electronic tagging and similar systems offer practical solutions to reduce the reliance on incarceration, they continue to raise questions about their ethical implications and their alignment with the principles of human rights.

¹ Electronic monitoring is not limited to the punitive enforcement phase, specifically as an alternative to incarceration within a penal institution. Rather, it is applied in various contexts under comparative legislation. It may be used during the investigation phase as a substitute for pretrial detention, as an alternative to judicial supervision, in cases of conditional release, or for enforcing restrictions such as residence bans or residency limitations. However, the initial applications of electronic monitoring were primarily employed as a form of house arrest or as a means of serving a custodial sentence at home.

The use of electronic tagging technology began to emerge in France in 1997 but was not implemented until 2000. Over the following decade, it underwent more than six reforms. Some studies suggest that this technology faces numerous challenges that limit its effectiveness. For instance, the category of individuals eligible to benefit from it under the law is typically small. Additionally, the period during which the individual is subject to it—often the remaining duration of their prison sentence—is relatively short. As a result, the primary outcome of this measure is often limited to freeing up space in prisons.

Unfortunately, as many researchers have observed, electronic tagging has no significant impact on reducing recidivism rates. For this reason, electronic tagging cannot be deemed more effective than other measures, such as conditional release. In this regard, it is worth quoting a notable statement by lawyer Thierry Lévy, former president of the International Observatory of Prisons: "This measure, which is expected to serve as an external punishment, still fails to qualify as punishment, that is, as a painful and punitive sanction (Kensey, Lévy, & Benaouda, 2010, pp. 153-178)."

The civic engagement program (*stage de citoyenneté*) was introduced in France under Law No. 2004-204 dated March 9, 2004, which includes the adaptation of justice to developments in crime, as amended and supplemented (Law No. 2004-204, 2009). This is pursuant to Article 131-5-1, which states as follows:

"If the misdemeanor is punishable by imprisonment, the court may, instead of imposing a prison sentence, order the convicted individual to undergo a civic engagement program, the modalities, duration, and content of which are determined by a decree issued by the Council of State. The program is intended to remind the individual of the values of the Republic, including tolerance and respect for human dignity, which underpin society. The court may also determine whether the program's costs, which cannot exceed the amount of a third-degree infraction fine, are to be borne by the individual."

This alternative sanction requires the presence of the convicted person at the hearing and their acceptance of the measure. It cannot be imposed if the individual refuses or is absent, as stipulated in the second paragraph of the article. Therefore, it is a consensual penalty. Judges may impose this measure for certain offenses, such as those involving discrimination, hate speech, or other crimes warranting such civic engagement training (Maghchich, 2023).

One of the most prominent models of punishment outside prison is community service, which has been considered a supplementary penalty for certain misdemeanors and infractions and a primary penalty for misdemeanors under French law, for instance. In German law, it accompanies the suspension of a sentence, while in Italian law, it serves as an alternative to physical coercion for fines. In Algeria, community service has been introduced as an alternative to short-term imprisonment and is often optional (Laidi, 2020, pp. 24-45).

Community service offers numerous advantages. It spares the convicted individual the disadvantages of prison and the influence of recidivists, provides them with a trade or skill that can shield them from unemployment, and, in some cases, offers financial benefits, though it is often unpaid. It can also help them pay fines or compensation. This alternative penalty is particularly suited for non-dangerous offenders or accidental criminals (Saad, 2013, p. 110).

2.2 Other Alternative Models of Punishment Outside Prison:

A distinction must always be made between alternatives to imprisonment and general alternatives that may not carry the meaning of punishment. These general alternatives might involve substituting imprisonment with entirely different measures, such as suspended sentences, probation, or even financial penalties like fines. Punishment outside prison involves methods that entail a sense of pain, hardship, or cost.

In addition to the three examples mentioned earlier, several innovative alternatives exist in some countries, though they have not yet achieved widespread adoption. These include police supervision and the deprivation of certain rights, which is sometimes a supplementary penalty but can also serve as an alternative to imprisonment. For instance, under French law, deprivation of

rights is used as an alternative punishment through Law No. 2020-936, dated July 30, 2020 (Krouch, 2022, p. 107).

Another alternative is the system of semi-open institutions, which serve as substitutes for traditional prisons. Offenders can be transferred from closed prisons to semi-open institutions, allowing them to gradually adapt rather than abruptly reintegrate into ordinary life. A related model is that of open institutions, one of the most significant penal alternatives advocated by international conferences. The Algerian legislator has adopted all types of penal institutions, including open-environment institutions, semi-liberty systems, and external workshops (Khoury, 2008, p. 153 and onwards).

All these systems involve a degree of judicial and administrative supervision to ensure proper implementation. They play a vital role in modern penal policy, which encourages punishment outside prison due to the significant shortcomings of imprisonment in rehabilitating offenders and reintegrating them into society.

Finally, we emphasize reading within prisons as an essential and necessary alternative. The subject of reading in prison or prison libraries is not extensively addressed in Arab penal studies, despite its critical importance. In a study conducted by Jean-Lucien Sanchez, it is noted that the history of this practice dates back to 1841. Since 1911, the French Ministry of Justice has prioritized reading within prisons. Reading may first require teaching literacy, as inmates often exhibit high rates of illiteracy. Reading, religion, and labor are considered three key pillars of rehabilitation within prisons (Sanchez, 2017).

While there are no empirical studies on the importance of reading and its role in Algerian prisons, recent years have shown the effectiveness of encouraging inmates to continue their education and take exams and competitions during their incarceration. These efforts have yielded remarkable results, inspiring optimism about the future of reading and education within closed institutions, despite the numerous shortcomings evident in these environments.

CONCLUSION

The evaluation of punishment outside prison can only be conducted within the framework of statistical studies that assess its implementation and its effectiveness in reducing custodial sentences. Based on some comparative studies, the discussion of alternatives to imprisonment or punishment outside prison often appears to be an illusion in many respects. Therefore, significant changes to criminal policies are necessary, alongside increasing the justice budget and limiting pretrial detention to the most serious cases.

In this context, three key solutions can be proposed:

- The necessity of decriminalizing numerous offenses by employing the technique of decriminalization.
- Prohibiting the imposition of imprisonment for certain crimes.
- Reducing the duration of imprisonment for specific crimes, based on well-studied data.

The primary proposal of this paper is to institutionalize reading in prison—or even outside prison—as an alternative punishment. This measure has undeniably positive effects in reducing crime, making it a viable tool for criminal policy.

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