

The Tenuous Link between Crime and Incarceration: Bosasa's Public-private Partnership

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Abstract

Bosasa's role in facilitating the fact that South Africa has one of the highest crime rates as well as one of the highest rates of recidivism in the world, is interrogated in this contribution. The article sets out—through the lens of a Marxist reading of crime in a capitalist society—to explain the phenomenon in terms of the existence of a Prison Industrial Complex (PIC). This was exposed in recent months by evidence at the Commission of Inquiry into State Capture, which revealed alarming levels of corruption at the Department of Correctional Services, as well as fraudulent collusion with its corporate partners. This strongly suggests the existence of a PIC; part of an avaricious “shadow state” referenced by recent literature on state capture in South Africa. It is contended that even though the Zondo Commission has not completed its hearings, sufficient evidence is available to argue the case that Bosasa, as part of a PIC, has aggravated our recidivism rates and distorted our understanding of crime. The article, drawing on comparative examples, suggests that the high recidivism rate in South Africa can at least partially be explained by a PIC which inclines the Department of Correctional Services—within the context of a stigmatising shaming culture based on incarceration as our dominant sentencing regime—to recycle prisoners for profit rather than to see them rehabilitated and reintegrated into society.

Keywords: Prison Industrial Complex (PIC); Bosasa; Department of Correctional Services; Agrizzi's testimony; corruption; fiscal diversion; dumping

Introduction

Angelo Agrizzi's shocking testimony before the Zondo Commission of Inquiry into State Capture (Styan and Vecchiato 2019, 33–70), is the clearest evidence to have



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emerged of the disturbing and insidious phenomenon known as the Prison Industrial Complex (PIC) at work in South Africa (Alexander 2012, 217–220; A.Y. Davis 2003, 16–17, 102–104; 2005, 37–38, 85). Eric Schlosser (1998) defined the “prison-industrial-complex” in *The Atlantic* as “a set of bureaucratic, political, and economic interests that encourage increased spending on imprisonment, regardless of the actual need.” The rider “regardless of the actual need” in Schlosser’s definition is imperative and I will endeavour to demonstrate its relevance.

Agrizzi is the former Bosasa COO (Chief Operating Officer) who has since, spectacularly, turned whistle-blower. At the heart of the PIC-project, wherever it reared its head, are the corruption efforts of Big Business who (in concert with government) divert public funds meant for legitimate, approved projects (such as education, housing and health) to dubious, unexamined and unapproved agendas without any actual need for such and at vastly inflated prices; an example being superfluous prison expansion projects. Whether this happens intra-departmentally (as with Bosasa and its affiliated companies) or inter-governmentally (a case in point being the disastrous, opaque private management of the Mangaung maximum security prison in Bloemfontein by G4S [Hopkins 2020]), is merely a question of the location of the stress or accent of the corruption involved. As a result of American hegemony and capital’s progressive ability to “roam the globe” (A.Y. Davis 2005, 73), the PIC has become a global phenomenon on the cusp of the twenty-first century (Bosworth 2010, 197; A.Y. Davis 2003, 100–103; Haney 2005, 86). An example is the import of American penal hardware, such as the (largely redundant) Ebongweni-supermax facility in Kokstad, discussed below.

Foucault (1991/1975, 7) contends that the transition, which occurred during the early nineteenth century, from punishment as spectacle (flogging, branding, etc.), to a more humane form of punishment, i.e. “painless and invisible” imprisonment, should not be accepted uncritically, since it was informed and continues to be informed by unstated, sinister ideological and economic considerations. Similarly, I suggest that the presence of a phenomenon such as the PIC in South Africa should be inquired into critically, as it demonstrates the ability of total capitalism in the twenty-first century to deform or even to conflate government’s legitimate agenda with that of business. In this context, the stigmatisation of ex-offenders reigns supreme within a criminal justice system utilising, at least in part, the recycling of ex-offenders in and out of prison(s) as the “grease” to lubricate the engine of the PIC. Resultantly, South Africa also has one of the highest rates of recidivism in the world (Murhula and Singh 2019, 34; Ngabonziza and Singh 2012, 87–102; Schoeman 2010, 80–94).¹

1 Although no official statistics for recidivism exist for the years 1994–2002, statistics which show that reoffending rates before the identification of the presence of the PIC in South Africa were lower than before its appearance, would arguably strengthen my argument. If we assume that the first documented evidence of the presence of PIC on South African soil appeared in May 2002 with the inauguration of the Ebongweni-supermax prison in Kokstad (A. Y. Davis 2003, 102), it has been suggested that South Africa endured rates of reoffending of at least 55% during these years (Muntingh 2001, 6; Prinsloo

As far back as May 2002, with the opening of the Ebongweni-supermax prison in Kokstad, Angela Davis warned against the PIC's presence on South African soil, but hardly anyone paid attention to her words. Davis (2003, 102) argues:

I am highlighting South Africa's embrace of the supermax because of the apparent ease with which this most repressive version of the U.S. prison system has established itself in a country that has just recently initiated the project of building a democratic, non-racist, and non-sexist society.

The *Sunday Times* (2015) reported that the underground super-maximum ("c-max") facility cost the taxpayer half a billion rand. If the salient features of Agrizzi's testimony prove to be true, and all the indicators seem to suggest this to be the case, it will have profound implications for the Department of Correctional Services (DCS's) "moral messaging" (Foucault 1991/1975, 250, 288) to both offenders/ex-offenders and the dominant sentencing regime structured around incarceration as its default "app" in South Africa. I refer to the application of imprisonment as our over-riding sentencing directive, which functions by default. In this regard, it is interesting to note Foucault's (1991/1975, 231–232) observation, in the context of the recent decolonisation craze which has overtaken South African politics and teaching (Olivier 2018), that during the European so-called transitional period of 1760–1840, the trend towards imprisonment gradually colonised penal practice in Europe. My point is that the prison, as a social and political phenomenon, is so well entrenched in the contemporary horizon of our landscape, that it is almost impossible to envision an alternative to it (A.Y. Davis 2003, 14–21, Foucault 1991/1975, 306–308). Foucault (1991/1975, 277) suggests:

So successful has the prison been that, after a century and a half of "failures," the prison still exists, producing the same results, and there is the greatest reluctance to dispense with it.

This reluctance is of course a reference to Foucault's famous "carceral spread" to all levels of society and suggests a deeper, sinister rationale for incarceration as our dominant contemporary penal regime. As for the credibility of Agrizzi's testimony indicating the presence of the PIC in South Africa, such indicators include a dysfunctional DCS caught up in a business venture (Bosasa and its affiliate companies) aggressively aligning government's agenda with that of its own, amid the goings-on of a rent-seeking criminal-networking governance.

Although the objection might be raised to the timing of this presentation, namely that waiting for Judge Zondo's judgment would be the better option to publishing now, it is also true that the commission's work might drag on for years (without the guarantee of a definitive ruling as well as the likelihood of large redactions in the text). I am of the view that there is sufficient evidence in the public realm to justify the publication of this

1995, 4; Schoeman 2002, 3). This would seem to prove, statistically speaking, that the presence of the PIC in South Africa has indeed skewed the picture of crime and re-offending.

account at this stage. Moreover, South Africa's high and unsustainable rates of crime and recidivism demand timely and early intervention and it is suggested that this contribution could assist in such an effort.

In developing this outlook on Bosasa's involvement with DCS, I pursue a Marxist reading of crime in a capitalist society, such as that utilised by scholars Jeffrey Reiman (1990) and Richard Quinney (2008/1970; 1974; 1977). Although some of the sources on Marxist criminology may appear dated, I am of the view that these sources contain some of the best formulations of the ideas expressed and that not much published subsequently has greatly improved on these earlier constructions.

DCS and its "Preferred" Service-provider

Agrizzi testified that Bosasa, a well-known service provider of security fencing, access control, catering management and jail television to DCS, obtained tenders fraudulently through bribery, to the tune of many billions of rand, over the past decade and a half (Quintal 2019). Many aspects of Agrizzi's testimony have been confirmed by credible, independent sources, such as Dennis Bloem and the SIU-report dated November 2009. Although these allegations of high-level corruption and fiscal "dumping" (an idea explained below) in the procurement of contracts, are still untested (*News24* 2019a), these reports have been corroborated by other witnesses. Significantly, Agrizzi's testimony has been corroborated on all relevant aspects by the Special Investigation Unit's (SIU) report to Parliament's Oversight Committee on Correctional Services on 16 November 2009. The actual report has not yet been released for public consumption. The SIU (2009) concluded that:

... [t]he general findings of the SIU in relation to these four tenders were that the proper procurement processes were not followed by DCS. This was aggravated by the payments made to the CFO and accounting officer at the time that tenders were being awarded to this company and its affiliates. It was also aggravated by the fact that there was such a close working relationship between the CFO, the accounting officer and the service provider company and its affiliates. The SIU was satisfied that the procurement process was undermined, in the sense that this company and its affiliates had an unfair advantage over its competitors in respect of these tenders. This prejudiced the DCS. The SIU was also satisfied that this close relationship undermined the procurement process itself and that DCS was significantly exposed to civil claims by the companies that lost out in the tender process.

The argument developed in this paper is that the evidence of tender rigging, the fraudulent practice of advance tender specifications as well as fiscal dumping in favour of a single service provider (namely Bosasa), as outlined in the SIU's report, is part and parcel of the features which constitute the PIC. All these features, especially fiscal dumping, suggest precisely, as Styan and Vecchiatto (2019, 50) note, that "money was not being used by the department for the programmes it was intended for." Diverting funds from legitimate projects was the point of the exercise.

Foucault (1991/1975, 271–272, 277) suggests that it is a mistake to think of the prison as an institution which is meant to eradicate or manage crime, since that has never been its task. What Foucault has in mind in stating this, is the idea that incarceration was popularised because it served the new economic model of free market fundamentalism which came into its own in the second half of the eighteenth century and which had emerged after the collapse of feudalism. But Foucault’s perceptive observation could refer with equal force to the phenomenon of the PIC, had he been aware of it. At the time of the publication of the French-language edition of *Discipline and Punish* (Foucault 1991/1975), the PIC was barely in its incubation stage during the vast de-industrialisation of the rust-belt cities in the U.S. Midwest (and resultant mass unemployment). This process provided ample bodies for the phenomenon of mass incarceration with prisons (and subsequent enormous prison-expansion) tasked to mop up these bodies at a fee—even though Reagan’s pretext was the so-called “War on Drugs” (A.Y. Davis 2003, 16).

From a criminological point of view, the presence of the PIC on South African soil is an important phenomenon to consider, since it skews the picture of crime and recidivism rates. It is also bound to impact public policy formulation negatively. Our understanding of crime needs clarification and calls for demystifying.

The Phenomenon of the Prison Industrial Complex

The persecution of whistle blowers (R. Davis 2018), such as Agrizzi, makes perfect sense if crime is a pathology found in a dysfunctional society, such as present in South Africa, as opposed to a crime being a pathology in a healthy society (as Durkheim would have it). Crime is, therefore, a “normal” response to an abnormal situation, as Marxist criminologists would contend. Agrizzi, for one, has in fact stated that the purpose of the highly publicised arrests of a number of whistle-blowers by the Hawks was to undermine the work of the Zondo Commission. I argue that this happens in the service of the so-called “shadow state” (Bhorat et al. 2017; Johnson 2015; Olver 2017; Pauw 2017), a concept discussed below. This notion ties in well with a Marxist reading of crime as my theoretical perspective, explored under the next heading.

Despite the fact that Agrizzi’s testimony will almost certainly not be tested, it is suggested that it remains the clearest and best evidence to have emerged demonstrating confirmation of the presence of a corrupt PIC in South Africa. Even though it is well known that this money-making scheme originated in the United States, it is also argued that systemic failures—which include existing and deepening inequality; no political will to address historic economic injustices; a harsh stigmatising shaming culture which drives high rates of recidivism; and imprisonment as the dominant sentencing regime allowing for the effective recycling of ex-offenders in and out of prison—have made conditions ripe for the PIC to take root and flourish in South Africa. I argue that there is no essential difference between corruption and the PIC since the PIC is a genus of corruption and fraud. The PIC is an attempt to stealthily divert resources to unjustified,

unapproved and often frivolous projects, while these funds were earmarked for other justified and sanctioned projects, as Styan and Vecchiatto (2019, 50) contend.

By the same token, while the PIC has taken the role of vast prison expansion in the U.S., it is suggested that Bosasa's track record with DCS shows that in South Africa the PIC concentrated on diverting and focusing funds allocated to the department, to those services which Bosasa and its affiliated companies could offer—*whether or not there was a need for these and whether or not there were more pressing priorities*. I propose that this corrupted scheme (PIC) was at the heart of Bosasa and its affiliate companies' business agenda with DCS. Bosasa, however, also blurred this distinction by specifically rounding up illegal foreigners or undocumented migrants with the gratis assistance of state resources and police reservists—who work for free anyway (Styan and Vecchiatto 2019, 154–156). The aim was to detain these foreigners in the Lindela Repatriation Centre in Krugersdorp (which is run on behalf of the Department of Home Affairs) for no other reason than profit, as they were paid a fixed amount per detainee. This boils down to a numbers game. Put in a different way, more detainees made financial sense in terms of “increased bulk purchasing of food and other supplies” (Styan and Vecchiatto 2019, 154–156). The PIC, in its South African format, represents fraud and corruption by another name.

By analogy, Karl von Holdt (2019) describes the conditions which made the “politics of corruption” possible, in the following striking way:

I argue that this set of practices constitutes an informal political economic system. By a system I don't mean a structure which is centrally coordinated or planned. What I'm referring to is a pervasive and decentralised set of interlocking networks that reinforce and compete with one another in mutually understood ways, and include the use of violence as a strategic resource.

By way of comparison, it is suggested that the conditions which made the emergence of the PIC in South Africa possible, cross-fertilise and reinforce one another in the same way in which interlocking networks enable a politics of corruption, as Von Holdt (2019) points out. Under these conditions, the PIC, itself a phenomenon fraught with illegality and criminality, distorts our grasp of so-called “objective crime” as it fuels recidivism indirectly and profits in turn from the recycling of ex-offenders.

Since DCS is faced with countless challenges (Makou, Skosana, and Hopkins 2017; Thulani and Gear 2017), it is significant, for example, that a large portion of their budget remains unspent despite these demanding needs. The problems referred to include gangsterism, overcrowding, violence, under-staffing and poor maintenance. I suggest that the reasoning behind this otherwise inexplicable frugal behaviour is to justify fraudulent “fiscal dumping”—i.e. splurging money on bogus projects to benefit selected service providers (Seleka 2019). I suggest that the phenomenon of “fiscal dumping” is deliberate and calculated fraud to benefit a particular services provider, namely Bosasa and its affiliate companies (as well as designated officials in the DCS).

Another gainful angle to explore the relationship between the idea of DCS's practice of "fiscal dumping" and the PIC, is to consider the apt remark of Angela Davis that funds are unjustifiably diverted from socio-economic projects, such as housing, education and basic health care, for spurious incarceration projects (A.Y. Davis 2003, 102; Lötter 2018, 147–148). Angela Davis (2005, 37–38), the well-known U.S. prison abolitionist who, as a member of the militant group Black Panthers, at one point during the 1970s featured on the FBI's "most wanted" list on trumped-up charges, explains this idea well in arguing that while most people assume that incarceration is a direct consequence of having committed crime, a more nuanced understanding should be considered:

The link that is usually assumed in popular and scholarly discourse is that crime produces punishment. What I have tried to do—together with many other public intellectuals, activists, scholars—is to encourage people to think about the possibility that punishment may be the consequence of other forces and not the inevitable consequence of the commission of crime. Which is not to say that people in prisons have not committed what we call "crimes"—I am not making that argument at all. ... Those communities that are subject to police surveillance are much more likely to produce more bodies for the punishment industry. But even more important, imprisonment is the punitive solution to a whole range of social problems that are not being addressed by those social institutions that might help people lead better, more satisfying lives.

Another way to explain this concept, as Angela Davis has so admirably done, is to point to the fact that because the poor generally have far less privacy than the rich and the powerful, the crimes of the poor are far easier to police and detect than that of the latter (Reiman 1990, 8–9, 14, 48, 80–115). Filling prisons with the poor and powerless is a great way to make money and keep the prison in business. In the U.S., Michelle Alexander (2012) explored the issue of "racial profiling" in an analogous fashion so as to demystify that jurisdiction's so-called "War on Drugs" (as noted above). This has led to the overrepresentation of African American and Hispanic convicts in the criminal justice system of that country (Reiman 1990, 115). It has been demonstrated that in post-apartheid South Africa it is not race, but money and social status, which determine overrepresentation in our prisons (Lötter 2018, 143–148).

Marxist Perspective

These observations place a serious question mark over the issue of the so-called "objective" reality of crime (Quinney 2008/1970, 5–6), explored more fully below. Despite momentous historical incidents such as the fall of the Berlin Wall and the spectacular collapse of the Soviet Union having cast suspicion on the value of a Marxist perspective, it is and remains an invaluable aid for understanding the construction of social reality, which includes the incidence of crime in capitalist society (Eagleton 2012; Johnson 2015; Piketty 2014).

A Marxist perspective adds value to the exploration of a range of divergent crimes, such as violent crime. In the South African context, for example, Anine Kriegler (2018) contends that growing inequality can be directly linked to an explosion of violent crime aimed at property theft driven by resentment at being excluded from affluence. By the same token, it is argued that the appearance and operation of the PIC could, for example, not be understood without a Marxist reading of crime (Lötter 2018, 46–47).

By way of illustration, Quinney (2008/1970) demonstrates (as noted above) that crime, far from being a pathology in a healthy society, is a direct function of inequality and oppression perpetuated by the state, in the service of the ruling classes. The reach of the criminal law aims to protect the interests of the wealthy and the powerful first and foremost (Foucault 1991/1975, 276). Foucault (1991/1975, 285–286) has added to this idea the nuanced argument that the criminal law is designed to divide the poorer classes against offenders as a class (for example, the use of thugs to break up strikes staged by workers for better conditions of employment) even though the vast majority of convicted offenders are drawn from the former. In Foucault's (1991/1975, 285–286) apt words, "a whole tactic of confusion [was employed] aimed at maintaining a permanent state of conflict." By demonising the poor against the poor in this way, it is the message which is the message, i.e. utilising ideology to legitimate the economic status *quo*, as Reiman (1990, 8–9, 14, 48) points out in another, but related, context.

Said in another way, the rich and the powerful are able to define particular behaviour as criminal and shape the discourse of the public understanding of, and reaction to crime. The undeniable show of the PIC in South Africa also points to the way in which capital, at the beginning of the twenty-first century, comes to collude completely with government, once again in the service of a shadow state, furthering the vested interests of the rich and the powerful.

“Total Capitalism” in the Twenty-first Century

This is a far cry from the virtues of minimalist government promoted during the heyday of the British Empire. The idea of “total capitalism” has caught on in governance and is a global phenomenon (Leys 2008a; 2008b).

Since the late twentieth century, scholars such as Colin Leys (2008a; 2008b) and Habermas (1973) have identified this new trend as “neo-liberal global capitalism.” There is no doubt that this is a throw-back to the nineteenth century economic *laissez-faire* liberal ideal of minimalist government and market fundamentalism, but with a curious twist, as observed by scholars of government and politics in the latter half of the twentieth century: the difference being that government's task has evolved to the point that its sole mandate is to convince the electorate by all and any means that the agenda of business coincides completely with that of government (Crouch 2004; Leys 2008b).

Colin Crouch (2004, 4) argues that the epithet “post-democracy” means that, “[b]ehind this spectacle of the electoral game, politics is really shaped in private by interaction between elected governments and elites that overwhelmingly represent business interests.”

Shadow State

The machinations of total capitalism in South Africa have not ended with the Zuptas and the Zatsons having been exposed. Karl von Holdt (2019) argues persuasively that the failure of interventions such as BBBEE (Broad Based Black Economic Empowerment) has resulted in wide-spread “corruption” to level the economic playing fields between historically disadvantaged non-white races vis-à-vis previously advantaged whites, and to foster the emergence of a strong black middle class.

Von Holdt’s idea is that whites, themselves sitting on a pot of stolen gold, are eager to point out that the emerging black middle class are drawn from the ranks of the rogues’ gallery. The value of his contribution is that it introduces complexity in an otherwise dichotomous narrative of the good versus the bad. The weakness of his argument, however, is that it clouds the fact that wealth accumulation is concentrated in a tiny minority while the vast majority of blacks remain mired in poverty, unemployment and despair. Consider too the looted billions spirited out of the country by Indian foreign nationals and effectively lost to everyone in South Africa (Styan and Vecchiatto 2019, 91–92, 97–98).

Curiously, Von Holdt’s (2019) interpretation of the roots of corruption in South Africa could be justified from a Marxist perspective. On the other hand, even if we are prepared to give Von Holdt the benefit of the doubt, it does nevertheless point to a very disturbing thought, perhaps first identified by the Oxford historian R. W. Johnson (2015), namely, the notion of a “shadow state” at work in this country.

In the South African context, the shadow state has been described as “nothing if not a criminal rent-seeking network” (Lötter 2018, 27). This notion has previously been confirmed by and elaborated upon by other (South African) scholars and commentators, notably Olver (2017), Pauw (2017), Bhorat et al. (2017) and Chipkin and Swilling (2018).

Although international investors, as is generally well known, are demanding that those government officials who have benefitted from state-capture are prosecuted and jailed to ensure transparency of public spending, this is, however, unlikely to happen. Marxist criminologists such as Jeffrey Reiman (1990) and Richard Quinney (2008/1970) explain the concepts of so-called crime and “crime detection” by reference to the theoretical constructs known as the “Pyrrhic defeat theory” and the “social reality of crime” respectively.

The “Pyrrhic defeat theory,” which has been very influential in the United States, explains why the rich and the powerful are able to escape justice, for the most part, in dysfunctional societies (Reiman 1990). Since the system was never designed to “beat” crime but specifically designed to “fail,” it serves as a Pyrrhic defeat, as it is a failure in name only (Reiman 1990, 5). Reiman argues that by projecting the poor as “criminogenic” and focusing prosecution efforts on their petty “crimes,” the rich and the powerful are left in relative peace to get on with becoming richer—even if this means committing monstrous crimes (as I argue below).

In this vein, Stanley Cohen (1973, 624) argues against the understanding of crime without context in his acknowledgement that crimes “carried out by the powerful are not only not punished, but are not called ‘crime.’” What Cohen is referring to is dubious activities of the wealthy and the powerful which can be distinguished from so-called “conventional crime.” These behaviours have disastrous consequences for mankind as a whole, climate crime being a case in point. Consider the immense damage done to the environment by industrialists such as the Koch brothers in the U.S., who have amassed great fortunes but have contributed significantly to climate change (Klein 2015; Lötter 2018, 114–115; *Merchants of Doubt* [film] 2014). Foucault (1991/1975, 282) has referred to these crimes perpetuated by the wealthy and powerful as “the illegality of the dominant class.”

Richard Quinney (2008/1970, 5–6), considered to be one of the 10 most quoted criminologists of all time, has popularised the idea that the so-called “objective” reality of crime is pure hyperbole since the behaviour which is targeted as “crime” and the public understanding of that process, are constructed and shaped by vested interests, typically that of the rich and powerful. Crime, to paraphrase Quinney, is a socially and politically constructed “reality” (Quinney 2008/1970, 5–6).

Both Reiman and Quinney are able to shed light on why a phenomenon such as the PIC is, at least partially, fanning incarceration rates and managing to generate top dollar from the endless recycling of (ex-)offenders, in South Africa and the U.S. as well as in other stigmatising, shaming cultures. Taylor and his group of co-researchers have highlighted the fact that unless criminologists face the key question of “whose law and whose order is being protected?” the labelling perspective (considered below), to which Foucault (1991/1975, 267) also alludes, will remain myopic, i.e. devoid of context (Taylor, Walton, and Young 1973). Foucault’s (1991/1975, 297) work on the prison can arguably be seen as building on these insights in his brilliant suggestion that “a whole series of institutions which, well beyond the frontiers of the criminal law, constituted what one might call the carceral archipelago.” This carceral network, centred on the prison like a spider’s web, is mandated to dispense discipline on all levels of society (church, school, hospital, army barracks, etc.) and to encourage the project of normalisation of both punishment and behaviour (Foucault 1991/1975, 303, 305, 308). More recent research has centred around the PIC and the ways in which it feeds off the misery of marginalised groups (the poor, the unemployed, the homeless) by cycling

people in and out of prison for reasons of profit (Lötter 2018, 145–148). Michelle Alexander (2012, 95–96) explores this idea in the following terms:

The disturbing phenomenon of people cycling in and out of prison, trapped by their second-class status, has been described by Loic Wacquant as a “closed circuit of perpetual marginality.” Hundreds of thousands of people are released from prison every year, only to find themselves locked out of the mainstream society and economy. Most ultimately return to prison, sometimes for the rest of their lives. Others are released again, only to find themselves in precisely the same circumstances they occupied before, unable to cope with the stigma of the prison label and their permanent pariah status.

I argue that the stigmatisation of ex-offenders (directly) and the profit-motive, as it has come to be embedded in the PIC (indirectly), are important, though certainly not exclusive drivers of South Africa’s unsustainable rates of incarceration and re-offending. South Africa has one of the highest rates of incarceration in Africa (World Prison Brief) and one of the highest rates of recidivism in the world (Ngabonziza and Singh 2012, 87). China, by comparison, has one of the lowest rates of recidivism anywhere on the globe, as noted below. With 60 million inhabitants, South Africa has a total of approximately 162 000 inmates (World Prison Brief). Compare these figures with that of India, with a population of 1.364 billion and possibly soon to be the most populated country in the world, with a mere 433 000 individuals incarcerated, of which around 160 000 have been sentenced (World Prison Brief). Said in another way, India has as many sentenced prisoners as there are in South Africa’s entire prison population (both sentenced and awaiting trial).

Since the stigmatisation of ex-offenders is central to incarceration and re-offending (the two pillars of our criminal justice system, and it features as the engine propelling the PIC in this country) a large part of this paper is devoted to exploring the idea of the stigmatisation of this highly marginalised group (Jones-Young and Powell 2015; Nagel 2008, 68).

Although stigma maybe thought of as a “natural” consequence of crime, this is not the case. The unenviable situation of ex-offenders in a stigmatising, shaming culture (a term defined below) has been described elsewhere in the following harrowing terms:

With most professions closed to returning ex-prisoners, as well as a wide range of social discriminatory measures (curtailed choice of housing, inability to travel internationally, social exclusion extending to members of the family, amongst others), ex-prisoners are ostracized and entrenched in a sub-culture of “untouchables.” (Lötter 2018, 14)

The unheeded perpetuation of stigma has very serious and permanent costs for both society-at-large and ex-offenders.

Integrative and Stigmatising Shaming Cultures

From the perspective of the community, the Australian criminologist John Braithwaite (1995, 277–305) proposes the seminal distinction between integrative and stigmatising shaming cultures, in which both utilise shame as a way of managing crime and deviance. The difference between these two cultures has been explained in the following terms:

In the case of the former [an integrative shaming culture], it [shame] is used to integrate ex-offenders after their having atoned, while the latter uses shame to stigmatize and exclude its wayward flock from mainstream society. (Lötter 2018, 30)

Examples of integrative shaming cultures are found in Japan and the Peoples' Republic of China (PRC), where interpersonal relationships are highly intermeshed and informal sanctions are, generally speaking, effective. Examples of stigmatising shaming cultures are found in South Africa and the United States, where highly individualistic and formal sanctions (such as court orders and judgements) are preferred over that of informal sanctions (for example, gossip). Because of the importance of “face” in Chinese society, integrative shaming alone may “correct” in Far Asian cultures, but not necessarily elsewhere.

Braithwaite (1989, 100) criticises stigma, as opposed to integrative shaming, as being “criminogenic” and counter-productive, as it is unable to integrate ex-offenders sustainably and curb re-offending effectively. Even though Foucault was almost certainly not aware of Braithwaite’s seminal distinction between stigmatising shaming and integrative shaming cultures (Braithwaite’s important book on the subject appeared in 1989 whereas Foucault passed away in 1984), he was nonetheless alive to the vagaries of the former environment—as is evident from his remark that “[t]he conditions to which free inmates [namely, ex-offenders] are subjected necessarily condemn them to recidivism” (Foucault 1991/1975, 267). One cannot but agree with their reasoning. By way of example, the PRC, which has an integrative shaming culture, boasted an admirable rate of recidivism of around 6–8% at the turn of the century while South Africa, with a stigmatising shaming culture, presents rates of re-offending of between 86–94% (Dutton and Xu 1998, 322; Ngabonziza and Singh 2012, 87, respectively).

Needless to say, the Chinese ability to successfully reintegrate ex-offenders and their tendency to execute repeat offenders, unlike the situation in South Africa, also impact their rates of recidivism. For the Chinese, “face” (*ganhua*) as well as their intolerance of recidivism, go hand in hand. Even though China and India are admittedly cultures very different from our own, the point I am driving at is that another reality is possible. In a globalised world, our learning from other “cultures” (bearing in mind that no culture is homogeneous), is indeed the whole point of comparative criminology (Lötter 2018, 38–39).

Stigmatisation of Ex-offenders Central to Maintaining PIC

The question of what stigma is, relates to its relevance in the life prospects of the released offender. Goffman (1990/1963, 19) contends that stigma is “the central feature of the stigmatised individual’s situation in life. ... It is a question of ... ‘acceptance’.” Chui and Cheng (2013, 671–684, 672) consider it to be “a label placed on an individual or group that results in devaluation and association with undesirable characteristics.” The debate on the justifiability of post-release stigma is not new. In the 1970s, Preben Wolf (1978, 102) argued that the consensus at that stage indicated that “stigma is perhaps the most important deterrent element in punishment.”

Compare Wolf’s view with that of Michel Foucault (1991/1975, 107), perhaps our most articulate philosopher of punishment, that there is simply no point to indeterminate sentencing (essentially a sentence without end, as is the case with the stigma attached to ex-offenders) since it does not allow for the ex-offender’s improved behaviour to redeem him or her. Such punishment without end merely amounts to pointless torture (Foucault 1991/1975, 107). In summarising the state of the debate on rationalisation and justification for stigmatising ex-offenders since the 1970s (noted above), Chui and Cheng (2013, 673) contend that scholars remain divided on the argument that either stigma serves as a valuable deterrent, or that stigma is unjustifiable and feeds into re-offending ways because of its labelling effect.

Uggen, Manza, and Behrens (2004, 285) suggest that (Western) society’s management of stigma reveals “[a]n important remaining question for research and policy.” Chui and Cheng (2013, 673) concur with this view and argue that “[e]xamining the stigma of returning prisoners is therefore vital for both researchers and policymakers.”

The vast majority of ex-offenders reject their stigmatising status or label as “a scarlet letter, leaving them permanently marked or ‘branded’” (Uggen et al. 2004, 280) or as “invisible punishment” considered unfair and unjustified as it exceeds their court-levied prison sentence (Henderson 2005, 1237–1271, 1240). Indeed, if the proportionality of sentencing has any purpose, sentencing must have clearly identifiable limits (Geiger 2006, 1191–1242, 1192; Lötter 2018, 265–266). The irony of this is that the whole point of incarceration is the individualisation of sentencing as opposed to punishment as spectacle in the form of torture, which preceded the contemporary paradigm.

By wielding stigma as a blunt instrument of post-incarceration punishment, society forecloses these valuable avenues of desistance-building and societal integration. John Muncie (2010, 142) is adamant that “the stereotyping of them [ex-offenders] as ‘spoiled’ precludes their ability to return to the mainstream.” Indeed, Becker (1963, 1407) argues that the formation of “outsider” status is the result of “moral entrepreneurs” driving labelling crusades. Wilkins (1964) has built on Becker’s insights and produced the term “deviation amplification” as a way of explaining how societal management of stigma feeds recidivism (as argued above).

In the South African context, prison researchers such as Lukas Muntingh (2002, 20–29, 22), are alive to the ways in which stigma hurts both ex-offenders' life prospects and closes off the community's opportunity for re-integration. Recent research has concluded that stigma is an important driver of recidivism, as noted above, because it effectively prohibits societal reintegration of ex-offenders and casts them as permanent outsiders (Lötter 2018, 265, 267).

This labelling perspective, considered side-by-side with the vested interests embedded in the phenomenon of the PIC, prompts a powerful awareness of De Haan's (1991, 208) insight that "what we need is not a better theory of crime, but a more powerful critique of crime." Likewise, Foucault (1991/1975, 280) argues in his inimitable style that "[d]elinquency, solidified by a penal system centred upon the prison, ... represents a diversion of illegality for the illicit circuits of profit and power of the dominant class." From the perspective of a Marxist reading of crime, scholars are more interested in capitalist incentives, such as the PIC, which benefits from and perpetuates "crime" (in order to profit, no less, from it), than in the questions arising from a concern with the "causes" of crime (Braithwaite 1995, 89; McLaughlin 2010, 153, 155).

An enquiry into the causes of crime is a concern of traditional, mainstream criminology (Braithwaite, 1995, 89). Accusations are justified that this practice, in dismissing its political situatedness and bias, legitimates the *status quo* (McLaughlin 2010; Reiman 1990, 8–9, 14, 48). I noted this observation above in my exploration of Reiman and Quinney's understandings of crime in capitalist societies.

A Marxist reading of crime ties in well with Naomi Klein's (2014) notion of "disaster capitalism" and the growing consensus among comparative criminologists that globally, penal policy has become increasingly harsh and punitive since the late twentieth century, as I observe below. Klein's well-known idea describes how capitalism latches on to human catastrophe without any thought of compassion for the victims of such calamities, but simply takes advantage of the opportunity to make money from such disasters—the recycling of (ex-)offenders being a case in point. I concur with the view of Michelle Alexander, explored above, that the endless and pointless (unless considered from the point of view of the profit motive inherent in the PIC) recycling of ex-offenders in stigmatising shaming cultures, such as found in South Africa and the United States, qualifies as one such disaster. In this context, Richards and Jones (2004, 202) have aptly observed that ex-offenders are "never allowed the opportunity to return home and start a new life. Instead [they] are processed through correctional stages where they are structured to fail, return to prison and over time become institutionalised." The phenomenon of the PIC allows us to explore the reasons for this lamentable state of affairs making perfect sense from a business point of view, i.e. from the perspective of the profit-incentive. Robert Weiss (1998, 428–429) notes a growing trend in which disaster capitalism is recognisable in his charting of prisons around the globe. He argues that:

... declining liberality and growing intolerance is [sic] unmistakably the most outstanding feature of world penal systems and this repressive policy derives from a common overarching reality: Prisons throughout the world are expected to manage a rapidly increasing “surplus population.”

“Surplus population” is, of course, a reference to the unemployed, unemployable and underemployed who are increasingly crowding the ghettos of our cities (Bosworth 2010, 94, 126–144, 149–150). Angela Davis (2003, 16) has identified the role of the prison as “a black hole into which the detritus of contemporary capitalism is deposited.” Surplus populations such as ex-offenders, who are for all practical purposes unemployable, can be profitably recycled through the prison system. Tragically, incarceration also represents an opportunity to dissolve a range of social problems, as Angela Davis (2003, 14–21), observes.

The words “regardless of the actual need,” noted above in the definition of the PIC, are vital. Consider the testimony of former African National Congress or ANC MP, Dennis Bloem, collaborating the salient features of Agrizzi’s testimony, which is that if Bosasa’s catering management contracts at Correctional Services’ various centres were discontinued today, it would make no difference to the supply of foodstuffs and the preparation of food! (Bezuidenhout 2019). Bloem has since joined the Congress of the People, or COPE.

As is generally well known, offenders have been preparing food without Bosasa for decades and DCS has its own production and supply farms. According to Bloem’s testimony, Bosasa’s catering management contracts are, therefore, non-sensical and amount to nothing less than “a money-laundering scheme” (Bezuidenhout, 2019).

In the U.S., the issue of the PIC has been properly canvassed and ventilated by prison abolitionists and activists. Angela Davis (2005, 35–36) remarks that the profit-motive drives imprisonment, since these facilities can be monopolised as markets for a range of products and have also been identified as a source of cheap labour.

Foucault (1991/1975, 232) argues, as noted above, that the underlying rationale for the transition of punishment from spectacle to “invisible” imprisonment was first and foremost a way to meet the needs of the new emerging economic system of free markets and, significantly, judicial “parcelling out” of measured incarceration terms correlate with the demand for an hourly or daily wage. However, potential consumers and cheap labour are not the only ways in which business has generated enormous profits from the phenomenon of incarceration in post-apartheid South Africa. It would appear from the available evidence that very little of Bosasa’s expertise benefitted DCS in any tangible way. What is clear, however, is that with tender rigging worth several billions of rand, Bosasa’s alleged collaboration with DCS enriched their coffers almost beyond belief. Business has latched on to the privatisation drive and it is contended that financial incentive is a persistent and important primary driver of imprisonment (A.Y. Davis 2005, 109).

The importation of penal technology and hardware, notably the Ebongweni-supermax prison in Kokstad, is indisputable proof that the phenomenon of the PIC had acquired a serious foothold in South Africa (Lötter 2018, 117) many years prior to Bosasa's alleged corrupt involvement with DCS or Zuma's time in office as executive president. Bosasa received its first contract from DCS in July 2004 (Styan and Vecchiatto 2019, 49), well before the onset of Zuma's so-called "nine wasted years." Mbeki was executive president of South Africa from June 1999 to September 2008 when he was prematurely ousted by Zuma.

The suggestion that the supermax is an importation, deserves comment. The United States is recognised today as the foremost producer and exporter of penal ideas and hardware (secret prisons, torture equipment, the supermax concept, to mention but a few). That, combined with capital's admirable capabilities of "roam[ing] the globe" (A.Y. Davis 2005, 73) in search of new markets and raw materials, has ensured that these forms of repressive penal technology have been acquired by the vast majority of governments globally (Bosworth 2010, 197; A.Y. Davis 2003, 100–103).

It is telling that money from an already overstretched budget intended for other more pressing socio-economic projects, such as education, road maintenance and medical care, was side-tracked to fund the immense and unnecessary waste of an underground supermax prison (Lötter 2018, 117). Gavin Bradshaw's (2009, 7) observation that despite its potential, the privatisation of correctional services (the much-vaunted public-private partnership) leading to a conceivable conflict of interest (notably the temerity of "fiscal dumping" in the corrections environment), has proven prophetic. The possible argument that Bosasa performed in terms of delivery of these "services," is neither here nor there, as both Bloem and our new fairly minted Minister of Justice and Correctional Services, Ronald Lamola, have convincingly pointed out that Bosasa's presence in South African correctional facilities was superfluous. Bloem refers to this façade of delivery as a "money-laundering scheme" and Lamola (*News24* 2019b) is of the view that offenders are preparing their own food post-Bosasa as if there never was a Bosasa "facilitating" this service. Bosasa's involvement was just a show. Basson (2019, 48–49) adds the rider that Bosasa's services were provided at vastly inflated prices.

In an age of total capitalism, vested interests drive the PIC fed by the recycling of ex-offenders in a stigmatising shaming culture structured around imprisonment as our dominant sentencing regime. As a number of countries on the African continent are moving away from incarceration towards embracing integrative sentencing options, such as community service and restorative justice measures, it is suggested that presiding officers in South African courts should be encouraged to consider integrative, African sentencing formulae rather than incarceration by default. Mechthild Nagel (2008, 70) states the decolonised case for de-incarceration convincingly by suggesting:

Today, the legitimating of prisons is greatly challenged in African countries and many rural and urban communities (even in the face of grave offenses, such as rape and

murder) would rather bypass the (neo) colonial justice system and go back to the pre-colonial ways of rendering restitution to victims harmed.

The argument pursued in this paper is that the idea of the PIC is anathema to integrative punishment options, since the former thrives on the principle of imprisonment (a rebuke central to a stigmatising shaming culture) as the nation's dominant sentencing regime. By the same token, Ovens and Prinsloo (2010, 19–21) propose the view that criminology in South Africa demands the infusion of an African paradigm of inclusivity (I derive my identity from my community) based on indigenous epistemology (knowledge handed down by the ancestors rather than acquired through individual labour) and philosophy (circularity rather than linear causality). No wonder, then, that Angela Davis has warned that South Africa's "participation in the PIC constitutes a major impediment to the creation of a democratic society" (A.Y. Davis 2003, 102). To state that public policy formulation went awry, is to put it mildly. The PIC has certainly distorted our understanding of "objectively" constructed crime, which, as I argue, is itself a fiction. In the apt words of Mary Bosworth (2010, 169), "while prisons have always been used to control the poor and the disorderly, the extent to which incarceration in the 1990s became divorced from any of its historical justifications for justice, crime reduction, or rehabilitation is remarkable."

Similarly, Foucault (1991/1975, 272–273) argues that considering incarceration's consistent failure as a penal regime to reduce crime, "what is served by the failure of the prison" needs to be interrogated. One answer to this question is that the penitentiary was repurposed to suit the needs of a fairly new business venture, the PIC. This astute remark ties in well with Quinney and Reiman's neo-Marxist reading of crime in dysfunctional societies, such as South Africa.

Concluding Remarks

A persuasive case for the presence of the PIC on South African soil has been presented. Both Agrizzi and Bloem, whistle-blowers with seemingly nothing to gain on the one hand, and the SIU, on the other hand, have independently exposed the insidious presence of the PIC. I suggest it is best known by the name given to its American cousin by prison abolition activists, such as Angela Davis and Michelle Alexander. Davis herself, as indicated above, has warned against its first showing with the inauguration or opening of the Ebongweni-supermax Correctional Facility in Kokstad in 2002, since it is a quintessential American penal importation. Significantly, the construction of this facility occurred well before the generally considered corrupt administration of Jacob Zuma, who only came to power in 2008. Bosasa's tenderpreneurial scandal also kicked off during Thabo Mbeki's time in office.

Scholars should unambiguously come out against such abuse and distortion of the criminal justice system. Moreover, the government's mandate can clearly not, and should not, fuse with that of business. The neglect of socio-economic projects noted

above, testifies to that. There are many services which government needs to provide, from which no tangible profit can be derived. Despite Von Holdt's valuable idea that the politics of corruption in South Africa, which includes the incidence of the PIC, is driven by a powerful social and political need to correct past injustices, the PIC remains a disturbing phenomenon, for the reasons suggested in this article.

If feeding the prison is motivated by factors other than the incidence of so-called objective "crime," then it is absolutely pivotal to identify and quantify those features. This is vital from the perspective of public policy formulation. This phenomenon's active presence would serve as a very serious constitutional indictment against the ruling party of this country (Lötter 2018, 273). The misery caused by the stigmatisation of ex-offenders and the resulting recidivism which it feeds, is driven partly by the profit motive embedded in the phenomenon of the PIC. It is also curious, as both Angela Davis (2003, 42–43) and Foucault (1991/1975, 23, 244) suggest, that the penitentiary, an institution which hardly originated 250 years ago, was primed to focus on the individualisation of punishment and yet the stigmatisation, marginalisation and discrimination against ex-offenders upon their release amount to nothing if not indeterminate sentencing/punishment irrespective of their crime or court-imposed sentence; contemporary penal policy is incorporating features which hark back to an age of punishment as spectacle. This points to the fact that the prison, as our contemporary penal regime, might be on the cusp of a paradigm shift.

It is worth emphasising, as argued above, that these issues (recidivism, the stigmatisation of ex-offenders, and the presence of a PIC) are not independent of each other, but are in fact inter-dependent and inter-linked. Together they perpetuate the continued existence and persistence of the PIC, i.e. these serve as its enabling features.

This racket significantly skews the picture of crime patterns and statistics from the perspective of so-called "objective" crime, in that it has been demonstrated that the confluence of a number of divergent forces other than the commission of crime *per se* (such as the presence of a PIC) arguably propels people into incarceration. These place a completely different accent on the link between crime and incarceration, as Angela Davis so elegantly points out.

To this end, it is vital for the public to start questioning the weak and shady link between crime and incarceration. Focusing attention on the tenuous nature of the connection between prison and crime is important in order to highlight the vested interests which perpetuate the "need" for prison as the dominant sentencing regime in South Africa. Presiding officers should consider and prioritise (African) integrative sentencing options, such as community service, instead of deciding on or leaning towards incarceration by default.

During sentencing proceedings, defence attorneys and counsel should draw the attention of presiding officers to the fact that our stigmatising shaming culture drives recidivism

rates to such an extent that South Africa has one of the highest rates of re-offending in the world.

At the same time, it is hoped that this contribution will spur on the debate on the presence and workings of the PIC in this country—a phenomenon which has received recognition in the U.S. for some time. In the South African context, however, it has received scant, if any, attention (save for that of Angela Davis) and it is suggested, therefore, that this paper constitutes a valuable contribution to the discourse on crime and crime prevention in post-apartheid South Africa. Such exploration of the PIC in contemporary South Africa, as noted at the outset of this paper, will help to demystify our understanding of “crime” in this country, and certainly confirms the impact of Schlosser’s rider that the PIC represents prison expansion without any actual need.

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