

AED-CONGRESSO, PISA 2/29 - 3/1/2008

IL CARCERE IN EUROPA

Fra Reinserimento ed Esclusione

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NEW ECONOMY IN THE PRISON SYSTEM

(La nuova economia del sistema carcerario)

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A. Introduction

Economy and the Prison System: Anything new?

“The criminal produces not only crimes but criminal law, and with it the professor who gives lectures on criminal law and in addition to this a compendium which this same professor throws onto the general market as ‘commodities’. This brings with it augmentation of national wealth, quite apart from the personal enjoyment ... the manuscript of the compendium brings to the originator himself. ... The criminal moreover produces the whole of the police and of the criminal justice, constables, judges, hangmen, juries, etc., and all these different categories of the social division of labour develop quite different capacities of the human spirit, create new needs, and new ways of satisfying them”

(Marx, in: Taylor 1999: 213).

What’s new about the economy in the prison system? Is there such a thing as a new prison economy? The general relation between the economic system and the prison system is well known, although rather controversial as well in general as in most details: But who would doubt, that criminal policy on the large scale and the prison complex in special cannot be analyzed without regards to the economic, social and political framework. “As Rusche & Kirchheimer pointed out long ago, the prison system is part of an institutional network for governing the poor.” (Garland 2001b: 180, cf. Wacquant 2007, Sudbury 2004: 22 and Humphries/Greenberg 1981: 230 ff.)

So if there is anything like a new economy, a new economic liberalism, we have to analyze its influences on the prison system and we will probably find traces of economistic thinking and acting on the large scale of prison administration as well as in dealing with prisoners. And then again: If the prison is a mirror of social and economic conditions (cf. Coyle 2003), developments in the prison system will indicate changes in society and in the political system.

There is a thing such as the prison economy complex – and as we will see there are several good reasons to take a good look at it on a European scale. But then again: Why should this be a topic for organized democratic lawyers, other than a general interest in political and social developments and in special developments in criminal policy? Because we are not only talking about modes of prison administration that might concern the employees – but rather because we should be concerned about their impact on prisoners.

B. New Economy

State, Society and Politics in Transition?

“The discourse of neoliberalism and the language of >deregulation< serve to erase the significant role of the state in the creation and maintenance of the new economy. Moreover, since the market is considered to be the most efficient mechanism for allocation and distribution, the state itself is required to resile from interfering with the market. The resultant reduction of the state through >privatisation< has witnessed not only the transfer of functions from the public to the private sphere, but the disappearance of many of the Keynesian state’s welfare and redistribution functions.”

(Fudge/Owens 2006, 6)

I don't know if any of you have gone through some – let me call it – ‘disadvantages’ when trying your luck on the “new stock market” in the beginning of this century. In the context of a rapidly growing ICT-business towards the end of the 1990s journalists, politicians and so called “global players” began to brag about a “new economy” on an “new market”. But even if there would be quite some interesting aspects concerning the growing ICT-business in crime control and prison systems (Brüchert 2001, Jones/Newburn 2006) this is not the “new economy” I am going to talk about.

On a tableau of key words, declarations and slogans there shouldn't be any doubt: Globalization, neoliberalism, flexibility, deregulation etc. are meant to characterize (or sometimes: scandalize) global changes in the economic system (cf. Sack 1998). Talking about a new economy suggests an old economy that was left behind ... we don't have to go that far: New economy does – in the politics and sciences of economics – stand for a period beginning vaguely in the 70s of the last century (Konopatzki 2006) and is often represented in the terms “globalization” and “neoliberalism”:

“Economically, globalisation is marked by increases in international trade and investment, the evolution of global production by transnational corporations, and unregulated flows of capital. Politically, globalisation theorists point to the erosion of nation states as the key unit in which political decisions are made; the leakage of sovereignty to supranational organisations on the one hand and to subnational units on the other; and sometimes, to the emergence of neoliberalism as a global ideology.” (Fudge/Owens 2006, 5)¹ Neoliberalism favours “limitations on the exercise of political power for egalitarian purposes and calls for deregulation, privatisation, supply-side rather than demand-side macro-economic measures, and a withering away of the welfare state.” (ibid; cf. Sack 198: 93 f.) At the heart of such agreements is a concern to preserve the market from political interference. “Since the 1980s, the economy has restructured on a global scale orchestrated primarily by major transnational corporations that have accumulated economic resources far more extensive than those of many nation states.” (Fudge/Owens 2006, 5, cf. Davis 2003: 90)

This goes along with a “new inequality” and leaves behind a “disintegrating society” (Lea 2002: 106 ff., cf. Stern 2006: 90 ff.) or “no such thing as society” at all, as Maggie Thatcher simply put it (cf. Sack 1998: 95); instead of societies and their citizens we have companies² and their consumers. “Citizens are reincarnated as market actors in the new economy” (Fudge/Owens 2006, 6), which does not mean, however, citizens in prison as we will see – those who cannot act in the new market are rather not considered citizens anymore at all.

Although there has been “historic emphasis on private enterprise and a small state in American political culture, the Reagan and first Bush administrations, like the Thatcher government in the UK, were more vocal on the subject of privatization than any previous administration. This was supported by supply-side economic theorists who stressed the importance of commercial incentives in the efficient provision of service.” (Mehigan/Row 2007, 360)

As I said, I was not going to talk about the “new economy” in the new ICT-business, but let me quote Jean Gadrey, who presented the core literature on “New Economy, New Myth”. He collected six characteristics of this “new economy”, that may help to characterize just as well what we are facing:

1. The new Economy is a high-growth economy, that comes without inflation, except for the price inflation affecting financial assets.
2. The new economy stands for growth in production, innovation and diffusion.
3. The new Economy also stands for the expansion of service jobs.
4. The new economy requires a highly flexible labour force and labour market.
5. The new economy is a market economy, based on competitive, private capital markets that are free of the impediments of state regulations and will have to be globalised without restrictions, particularly in respect of those services that are still dragging their heels, such as culture, education, health, professional services and public utilities, that is all those services that developed historically out of the concerns with the public interest and with ethical principles that constitute so many obstacles to the new growth.
6. The new economy requires a new mode of corporate governance that gives the owners of capital, that is the shareholders, the power to influence performance, organisation and strategy, very closely linked to the characteristics of deregulated financial markets, which are themselves also new, namely the free movement of all financial transactions, untrammelled speculation and the withdrawal of the State.” (Gadrey 2003: 11)

The new logic of the ICT-economy with all its promises seemed “possible only under three (linked) conditions:

1. the extension of the competitive market into areas of economic activity and regions of the world that are still ignorant of its benefits
2. an new mode of corporate governance that gives (or returns) power to shareholders in order to sweep away the rigidities and costs of managerial bureaucracies
3. liberalised and globalised financial markets, which are the only institutions capable of rationally selecting the fittest types of firms and imposing the new mode of governance.” (Gadrey 2003: 12)

After the NASDAC-crashes and the “big bubble”-burst in the ICT-business, in the end the “new economy” may have been nothing but “a technician, neo-liberal mythology”, but “like most myths, there is a modicum of truth in it” (Gadrey 2003: 111). And that is why we should take in more seriously than we might the new brokers ... oh, by the way: In case you still try your luck on stocks and bonds, especially through the service of investment advisors – are you sure your money is not used to run a prison somewhere in the world? Investors are more likely to become “jailors” (Sudbury 2004: 12).

Talking of globalization: What has started as the prison-industrial complex in the United States (under special conditions and on the basis of a special history, including slavery traces), emerged to an international market (Nathan 2001: 189 ff., cf. Taylor 199: 219): Australia, Africa, Eastern Europe and other so called transition states (Sudbury 2004: 13 ff., Nathan 2003, Coyle 2003: 215, Davis 2003: 102 f., McMahon 1997: 33). “The globalization of capital is driving prison expansion in four ways. First it produces surplus populations ... that are immobilized and disenfranchised in penal warehouses in the global North. Second, it produces surplus land ... Third, the globalization of the private prison industry spreads the U.S. model of high-tech mass incarceration throughout the world and offers global South governments the mirage of modernity via mass incarceration. Finally, neoliberal economic restructuring under

the tutelage of the IMF and World Bank is undermining traditional surviving strategies, decimating government services, driving women and men in the global South into the criminalized drug industry, and fueling cross-border incarceration” (Sudbury 2004: 26).

C. The Prison System

Developments in Carceration and Control

“The expansion of the penal apparatus – and of prisons in particular – also ensures a market for private vendors of a wide array of goods and services. These companies range from financial firms competing for the opportunity to underwrite prison construction to private companies providing consulting, personnel management, architecture and building design, drug detection, medical, transportation, security, fine collection, bounty hunting, and food services.”
(Beckett 1997: 100)

After all that we have heard before (last April in Munich, as well as yesterday and today), there isn't really much more to say about the European prison system. We all have good ideas of what we are talking about when focussing on the prison system anyway. We have to realize – in spite of all the well argued debates (and even campaigns) on prison abolition (cf. Feest/Paul 2008) – that throughout the most of the world, and throughout 'old Europe' anyway, the prison still is, and will be for quite another while, the concrete symbol for at least the ultimate ratio of criminal policies, but rather is its “backbone” (Van Zyl Smit/Dünkel 2001: 796 ff., cf. Stern 2006: 12).

In societies where freedom is said to be the fundamental civil right, it is not a surprise that detention³ is the ultimate punishment – not in terms of quantities but rather in terms of qualities. However we observe an overall increase in the rate of prisoners/population and a decrease in the rate of expenses/prisoner – and at the same time growing expenses and shrinking budgets in consequence of the described trends to relative mass imprisonment (Van Zyl Smit/Dünkel 2001: 797 ff., cf. Downes 2001).

In the course of the 20th century the classical function of the prison (punishment and discipline through incarceration) was rationalized with ideas of correction and incapacitation, but on a larger scale that does not make a difference: The role of the prison in the system of criminal policies seems to be more secure than ever – not anymore, however, only in terms of quality but more and more in terms of quantity. David Garland summed up what he called “the originating causes of mass imprisonment” as a result of “the history of the closing decades of the 20th century. These causes include:

- anxieties about crime and violence,
- the demand for public protection
- the notion that concern for victims excludes concern for offenders
- political populism married to a distrust of the criminal justice system
- the discrediting of social solutions to the problem of order
- a stern disregard for the plight of the undeserving poor.” (Garland 2001b: 179)

However, the “perpetuating causes of mass imprisonment may be quite different”, he continues – and in reference to Max Weber’s work on “The protestant ethic and the spirit of capitalism” (from 1930) as well as his ideas on the “self-reproduction of institutions” Garland identifies the outlines of a “new iron cage: It is quite possible that, given time, and the absence of concerted opposition, mass imprisonment will become an new ‘iron cage’ in Weber’s sense of the term. ... The most striking example of this is the emergence of a penal-industrial complex, with newly vested interests in commercial prison contracts, and the jobs and profits they bring. ... As the market in private security expands, the delivery of penal legislation speeds up, and the crime control culture reproduces itself, we face the real possibility of being locked into this state of affairs. After all, the new arrangements spawn institutional investments and produce definite benefits, particularly for the social groups who are at the greatest distance from them. They entail a way of allocating the costs of crime – unjust, unequal, but feasible nonetheless.” (Garland 2001b: 180, cf. Downes 2001: 63, Sudbury 2004: 19 f., McMaho 1997: 33)

But these arrangements – a “novus ordo saeculorum” (Greenberg 2001) – also involve serious social costs that will become increasingly apparent. These costs include, following Garland (2001b, 180):

- the allocation of state spending to imprisonment rather than education or social policy budgets,
- the reinforcement of criminogenic processes and the destruction of social capital, not just for inmates but for their families and neighbourhoods (cf. Mahmood 2004),
- the transfer of prison culture out into the community,
- the discrediting of law and legal authority among the groups most affected,
- the hardening of social and racial divisions.” (cf. Konopatzki 2006: 163)

These are indeed at least five good reasons to argue against the perpetuating of the prison system in general and mass-imprisonment in specific, even if the arguments are not really new, the abolitionists would claim (cf. Davis 2003: 105 ff.). But how to achieve such goals seems to be more uncertain than ever ... Whatsoever: The discourse on the emergence of a “security industrial complex” in general and a “penal” (Beckett 1997: 97 ff.) or rather “prison industrial complex” in particular has become a main topic at least in anglo-American criminology (Davis 2003: 84 ff., Sudbury 2000 and 2004, Mehigan/Rowe 2007: 372 f.), although there are indeed some points in questioning the “demonic myth of the >prison industrial complex<”, because “it suffers from major lacunae that undercut its analytical import and ruin its practical pertinence” (Wacquant 2007). And still: “As the criminal justice system grows, the size, resources, and authority of the interest groups that benefit from its expansion are also augmented. Theses beneficiaries – including law enforcement, correctional workers, and a growing number of private firms – constitute what has become to be known as the >penal-industrial complex< and are now mobilizing to ensure that the wars on crime and drugs continue” (Beckett 1997: 98, cf. Stern 2006: 132 ff. and Sudbury 2004: 17 ff).

D. New Economies in the Prison System

Privatization, Commercialization, Exploitation, Commodification ...

“Budgetary constraints and the political fashion for ‘less government’ have converged to push towards the commodification of welfare no less than of incarceration. ... This is a way of making poor people and prisoners (the vast majority of whom were poor on the outside and will be poor again when they get out) ‘profitable’, on the ideological if not on the economic level. What we are witnessing here is the genesis ... of a truly novel organizational figure, a partially commercialized, carceral-assistential continuum which is the spearhead of the nascent liberal-paternalist state.”
(Wacquant 2007)

I. A new economy of the prison system?

For the United States it seems obvious that there is such a thing as the economy of the prison system: Locking up 1 % of the population has created more than a million jobs – not counting prisoner exploitation – in the prison industrial complex (cf. Downes 2001: 62). But it is not only a growing labour market:

“For-profit imprisonment schemes seek to capitalize on this >market< of disfranchised persons who are more likely to end up in prison, less likely to have adequate education, and unlikely to be well represented politically. For-profit imprisonment is big business once again in the United States and is fast becoming a multinational industry of inter- and intrastate commerce in human beings not seen since the era of transportation” ... says Michael Hallett in his analysis of “Private Prisons in America in a Critical Race Perspective” (2006, 146). The “renewed appearance of private prisons, at this point in US-history” could not be explained however, Hallett adds (2006: 151), by

- charges of exploding crime rates (which are down dramatically over the past fifteen years, cf. Van Zyl Smit/Dünkel 2001: 808, Downes 2001: 55 ff., Stern 2006: 99; diff. Davis 2003: 92)
- or the proven effectiveness of incarceration as a response to crime (long-term incarceration is both destructive to offenders and expensive to society)
- or the compelling cost-effectiveness of private-sector prisons (privatisation of prisons does not save large amounts of money – if any at all, which depends on what you take into calculation).⁴

In any way, cost savings has not been the primary reason for jurisdictions to adopt privatization to begin with: “Demand for bed space to house offenders caught up in the war on drugs has been the primary engine for for-profit imprisonment over the past twenty years” (Hallett 2006: 151), not to forget the intensified “war on illegals”.⁵ The “war on crime”-metapher finds its correspondence in the “cold war on the streets” – there are similar parallels in the relations between the military- and the criminal-industrial complex (Davis 2003: 88 ff.).

In the context of an economy that “was driven by an unprecedented pursuit of profit, no matter what the human cost, and the concomitant dismantling of the welfare state, poor people’s abilities to survive became increasingly constrained by the looming presence of the prison. The massive prison-building project that began in the 1980s created the means of concentrating and managing what the capitalist system had implicitly declared to be a human surplus” (Davis 2003: 91). The prison industrial complex is fueled by privatization patterns that have “also drastically transformed health care, education, and other areas of our lives. Moreover, the prison privatiza-

tion trends – both the increasing presence of corporations in the prison economy and the establishment of private prisons – are reminiscent of the historical efforts to create a profitable punishment industry based on the new supply of >free< black male laborers in the aftermath of the Civil War” (ibid. p. 93). Along with a shift “from welfare policies to punishment policies, in many countries market forces have secured a large-scale entry into the business of crime control” (Stern 2006: 7, cf. Sack 1998, Konopatzki 2006).

“Although the nature of prisoners’ commodity value has changed somewhat in modern times – prisoners are no longer profitable solely for their labor, but almost exclusively now for their bodily ability to generate per diem payments to their private keepers – imprisonment for private profits is once again a viable economic industry in the United States” (Hallett 2006: 151, cf. Davis 2003: 88 f., 95, Brüchert 2001: 57).

Hallett regards this development to become a “new colonialism in criminal justice” especially because of its racial impact: “According to the most recent data, 66 percent of inmates currently held in private prisons are racial minorities, with African Americans constituting the single largest group” (2006: 154). For-profit prisons operate based on an understanding of prisoners as private commodities – an understanding that is unalterably tied in the United States to the tradition of indenture and slavery. “The racial characteristics of modern private prisons, therefore, should not and cannot be ignored for what they still represent: a racialized for-profit imprisonment practice, still disproportionately utilizing young black men for its coercive system of economic production” (Hallett 2006: 156, cf. Davis 2003: 102 and Bair 2008 on prison slavery).⁶

For several reasons we cannot simply apply this analysis – or the paradigm “Capitalist Punishment” (Coyle et al. 2003) – when talking about the European prison situation and its developments (cf. Newburn/Sparks 2004, Downes 2001, Sudbury 2000; diff. Sack in: Konopatzki 2006: 12 f.). And though it is true, that many US-American models had been imported with a delay, it is also true, that they were usually not executed to the same radical extent, which is often referred to as the so called “American Exceptionalism” (Stern 2006: 44 f., Best 2006: 6 ff., Downes 2001; somewhat diff. Greenberg 2001: 74). There is indeed “no necessary or direct relationship between the unfolding of market society and the entrée of private industry into the management of the prison system” (Taylor 1999: 220).

II. New economies in the prison system:

So for the European scale it seems to be the rather adequate perspective to talk about new economies in the prison system: There are indeed developments and even changes in the European prison system (or at least in the prison systems of several European countries) that can be and should be described and analyzed in terms of new economies. This is not really a very original attempt, because most of these changes were officially introduced – if not to say: advertised and sold – as economic necessities, as having to go conform with economic constraints.

“Prison means money. Big money. Big in building, big in providing equipment. And big in running” says Nils Christie in “Crime Control as Industry”, that first appeared in 1993 with the subtitle “Towards Gulags, Western Style?” – in the third edition in 2000

the question mark was gone⁷ ... And he added a note from 'USA Today' on June 5th 1996: "Investors who own stock in Wackenhut Corrections have learned that their mothers were wrong: Crime pays." (Christie 2000, 123)

This leads us directly to the main topic focussing New Economies in the Prison System, that is Privatization (1.) – or: contracting out, if you prefer a term that is considered rather objective, at least by those, who don't accept to "scandalize" this strategy as part of a "coercion industry" (Abu-Jamal 2000, diff. Lindenberg 1996: 91 ff.). But merely talking about Privatization would ignore other phenomena in a broader understanding of new economies in the penal and prison system (cf. Jones/Newburn 2006: 4, Garland 2007: 240) – I have marked them with the key-words "micro-economisation" and new management (2.), new "exploitation" (3.) and "commercialisation/commodification" (4.). Private prisons are direct sources of profit for the companies that run them (Coyle 2003: 213), but "public prisons have become so thoroughly saturated with the profit-producing products and services of private corporations that the distinction is not as meaningful as one might suspect" (Davis 2003: 99 f.).

1. Privatization

"The private provision of penal services is just one aspect of a wider movement to roll back the state's involvement in the criminal justice system. In the prison system, privatization – or contracting out – is manifested in several ways, including prison escort services, prison work programmes, electronic monitoring of offenders released from prison and the financing of prison construction. The most contentious form of contracting out, however, has proved to be management and operation of prisons by private investors."
(Mehigan/Row 2007, 356)

On the European scale the United Kingdom seems (again) to follow the US-American example the far most (Mehigan/Rowe 2007: 360 ff., Best 2006: 10,), leaving France in second place (cf. Stern 2006: 102). But even in Germany a first facility with a semi-private concept has been taken into service in 2006 (Best 2006: 14 ff.), and to add another field of interest and concern: Already nearly 30 % of the patients held in forensic psychiatry institutions find themselves in private settings. This is not the place to argue special legal problems in Germany, but there are many doubtful questions as to whether these models go along with constitutional rights and principles and it won't take long before these questions are taken to the courts (Pollähne 2008).⁸

Privatization is of course a broader concept even in the criminal and policing system (Shishor/Gilbert 2001, Brüchert 2001, Jones/Newburn 2006, Konopatzki 2006: 95 ff., Mehigan/Rowe 2007: 356), and not really new at all – under certain aspects there always existed private actors on the criminal justice and policy scene. We observe the steady growth of a private security complex including the police, ambulant reactions (so called 'diversion' for example), therapy units, elements of the parole system etc., which is – although only in details – part of a strategy to return conflicts back to society, once called for by critics of the mighty state (cf. Lea 2002: 180 f.). But this is certainly not true when contracting out parts of the prison system, and it is certainly not a strategy back to more democracy or municipality (diff. Benson 1998: 299 ff.). Running prisons through private companies or with their help, is rather another modus in modern bourgeoisie governance of capitalism.

That demands to talk about winners and losers. “Macho economy produces a macho society. ... The machismo of the powerless is a symmetrical parody of that of the powerful in a winner/loser culture” (Downes 2001: 63 f.). “Once we recognize that prisons promote order and security for a few at the cost of generating violence, inequality, and social disruption for the many, we have taken the first step in developing an abolitionist vision” (Sudbury 2004: 16, cf. Stern 2006: 90 ff.).

Talking of winners: “A stock-broker upgraded his advice regarding Wackenhut from >buy< to >strong buy< and explained: >The beauty of the prison-management business ... is that incarceration rates are increasing faster than the prison budgets of municipalities. Though the savings are difficult to measure, analysts contend that Wackenhut typically can slash 15% from the \$ 50 it takes government to clothe, feed and guard an inmate each day. ‘It’s a win-win situation’, says Mr. R., explaining that both taxpayers and prison companies benefit.< (Wall Street Journal, 10. April 1996) He says nothing about where the loss can be found” Nils Christie added (2000, 118, cf. McMahon 1997: 32).

The “challenge of doing more with less” (Van Zyl Smit/Dünkel 2001: 812, cf. Coyle 2003: 215) is deceptive, or again in the words of Michael Hallett: “Of course, a detail not pointed out by privatization proponents ... is the fact that the traditional free market formula for fair competition is one in which those taking the most risk stand to gain the most profit. – In the case of the private prison industry, we find that economic benefits of privatization are retained by private contractors while the risks of privatization are socialized and transferred to taxpayers who take on the lion’s share of risk (e.g., legal liability/cost of increasing incarceration/need for more prisons). In all the discussion of efficiency, it is worth remembering that the most efficient prison operation would not include a >profit margin< – just a >cost margin<. Public hatred of criminals provides the best possible basis for converting public money into private hands, without getting the public to question the transfer.” (Hallett/Lee 2001, 242, cf. Sudbury 2004: 12, Coyle 2003) This hatred is rather enforced by criminologists who “encourage” privatization with the argument that “the primary costs of crime are borne by victims who are not compensated for their losses. Noncriminal taxpayers pay for all prisons as well as such indirect costs as the maintenance of the families of many criminals with welfare programs. The enormous prison population ... remains an untapped resource that could be employed to reduce substantially the costs to taxpayers” (Wolfgang, in: Benson 1998: xvii).

John Ferguson, President of the world’s most powerful penal company, the “Corrections Corporation of America (CCA)” puts it this way: “We believe that existing prison overcrowding, combined with budget difficulties facing many of our customers, should lead to greater demand for our services over the coming years.”⁹ The “industry of fear” (Abu-Jamal 2000, cf. Lindenberg 1996, McMahon 1997) is expanding, leaving behind “supermax”-prisons and “superjails” throughout the global village (Davis 2003: 101, Sudbury 2004: 19).

I can’t help thinking of a pun on words: for-profit entrepreneurs as >privateers< in the seas of >privation< ... Of course – not to be misunderstood – prisoner privation stays a severe topic in state prisons throughout the world (cf. Stern 2006: 106 f.) and is certainly not only a function of how prisons are run or who is treating the prisoners. But privatisation is not likely to improve the situation (cf. Davis 2003: 95 ff., Nathan

2006, diff. Benson 1998) – or in the words of Sir Nigel Rodley, former United Nations Special Rapporteur on Torture:

“I visited prisons around the world and all too often I was disappointed and discouraged by what I saw ... prison conditions which in no way live up to internationally recognized minimum standards. In many nations, torture and abuse of prisoners are endemic. The situation is one which should concern all advocates of human rights. Clearly something needs to be done to reform a significant proportion of the world's prisons. However privatization is not the answer. ... The profit motive of privately operated prisons in the United States and elsewhere has fostered a situation in which the rights and needs of those they deprive of freedom are diminished in the name of greater efficiency.”¹⁰

2. Micro-Economization (New Prison Management)

The “spreading ethos of business management, monetary measurement and value-for-money government was inescapable” and produced a “managerialist, business-like ethos that emphasized economy, efficiency and effectiveness in the use of resources.”

(Garland 2001a: 116)

Developments in the social sector have – inevitably – reached the penal and prison system (suggesting they were part of the social system, which is both true and untrue in terms of exclusion and inclusion, but that is certainly another debate, cf. Klimke 2008). This is talking about “new steering models” and methods of “new conduct” (cf. Van Zyl Smit/Dünkel 2001: 812,), about the quality of prison management or even quality management in prison (Riveland 1999, Flügge et al. 2001, Best 2006: 11) and “bench marking” (as if there was a market or competition in economic terms).¹¹ In the end they talk of prisoners as customers (cf. Brüchert 2001: 58): “Welcome in your local jail – what can we do for you?”

Don't get me wrong: Not only in times of lower public budgets for a higher number of prisoners the officials have to be institutionally and personally capable of managing the complex financial and organisational problems involved in running a state prison. To treat prisoners adequately is not merely a function of law enforcement and judicial bureaucracy. But that was already true and well known before the emergence of the new steering, quality and management discourse (cf. Jones/Newburn 2006: 4, Ryan/Sim 2007: 705, McMahon 1997: 34), which is – by the way – often moderated by private consultants and accompanied by a “depoliticization” of prison management (Mehigan/Rowe 2007: 361). Is it a surprise that these concepts (including a restricted budget freedom, cf. Ryan/Sim 2007: 705) emerge in times of cutting down expenses in personal and service? “What can we do for you – in case we have some time left over ...”

3. New exploitation?

“Citizens who lack resources, fall upon hard times, do not forgo these rights, they actualise them through claims on the appropriate authorities. But customers only get what they pay for and if they can't pay then they cease to be customers.”

(Lea 2002: 126)

As we have already taken into account one of the main impulses for change in the economic framework is the saving restraint. This is part of the explanation for privatization and the bottom line of new management models. But there seem to be effects far more direct: Cutting down expenses within the prison, as for personnel etc. (see above, cf. Miller 2003, Arnold et al. 2007: 480 ff.) and even for energy, food, medical care etc. Reducing the basic supply and care is going along with letting prisoners pay more and more for what the prison administration considers surplus. Not being able to pay means to resign (cf. Lea 2002: 126) and leads to resignation, so called prison-sub-culture (shadow economy) or even corruption (Stern 2006: 22 ff., cf. Coyle 2003: 215).

Contracting out the telephone- and TV-service for example (cf. Davis 2003: 8 f., Sudbury 2004: 13) also serves as a strategy of 'contracting out' conflicts (cf. Downes 2001: 63). Maybe it's a mere adjustment to social conditions beyond the prison walls, especially the precarious circumstances most of the prisoners came from anyway: Outside the new economy has reduced citizens to customers (Lea 2002: 126) – the inmates, however, are downgraded to compulsory customers. Although officially conjuring the good ghosts of the free market prisoners are usually tied up to expensive monopolists and complain profiteering – it is indeed one modus of a new exploitation.

This is not at all to say that the 'old' modi of prisoner exploitation (cf. Benson 1998: 300 f.) are not a topic anymore (cf. Evans/Goldberg 1997, in: Davis 2003, 84). But there is a shift from the exploitation of prisoners to the exploitation of prisons and their – in particular human – resources (Scheerer 1997: 22).

4. Commercialization / Commodification

“Whereas the public system has always tended to view crime and the prevalence of offenders as a costly liability, for-profit entrepreneurs view crime as an economic opportunity and individual criminals as commodities.”
(Hallet 2006, 145)

To pick up this figure from macro-economics: Commodification certainly is a leading category in for-profit enterprise – but it can and should also be applied to certain developments in the state prison system.

To give you but one example: Would you have a problem with a product line called “Santa Fu”? Is it a cynical commodification of “jailware”, or is it just hip and a smart idea of exotic judicial grocery? There seems to be a market for jailhouse tradeware, not only in Hamburg: The prison-shop as criminal wholesale and penal retail ... One of the big German newspapers titled “A prison on its way to a trademark” (Die Welt, 9/29/2006). Responsible politicians claim to make money, but even if it would amount to a relevant budget position (Benson 1998: 301 ff.), it seems rather difficult to regard this as an act of economic normalization. Prisoners have to produce goods that they either wouldn't want to use or wear outside the prison walls or could not afford. They will find it neither hip nor smart – and by the way: Wasn't it a standard attempt in reintegration to break up the criminal and penal identity? So what is the deeper sense in

creating a corporate identity with jailware? In the end prison commercialisation results in another modus of prisoner commodification.

E. AED-Perspectives

Human Rights, Monitoring, Advocacy

To come to an end: Confronted with a growing “economisation” in concepts and practices within the penal and prison system – what could be the perspectives for European Democratic Advocates? Let me just call on four aspects that may lead us into further discussions:

I. Human rights (standards)

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.”
(Art. 1 ECHR)

After all that we have already heard about the Articles 3, 5, 6, 8 ... ECHR, let us not forget Art. 1 that is of no minor importance when taking human rights into account (in general cf. De Feyter/Gómez Isa 2005; Robbins 2005 and Aman 2005). In the case >Storck ./. Germany< the ECtHR had to consider an unlawful detention in a private clinic for psychiatry in the late 1970s.¹² The Court held the state authorities responsible for the lack of legal protection, control, supervision and monitoring (Pollähne 2007b: 149 f.; cf. Coyle 2003: 217 about the responsibility of the “nation”).

The CPT-Standards do not explicitly expound the problems of economisation or even privatisation in the prison system¹³, but state several relevant minima (Pollähne 2008) and refer to the law enforcement personnel mostly as “officials”, whose “disciplinary culpability” for example should be “systematically examined” (CPT-Standards – Rev. 2006 – p. 86 No. 37).

The European Prison Rules (EPR), updated in 2006¹⁴, still holds that “professional prison staff shall normally be appointed on a permanent basis and have public service status with security of employment, subject only to good conduct, efficiency, good physical and mental health and an adequate standard of education” (Rule 78). Although it was – at the instigation of England and France – opened for semi-privatised prison management models in 1987 by simply inserting the term “normally” (cf. Doleisch 1989), the chapter still is titled “Prison work as a public service” (cf. Best 2006: 20 f.). It also deserves attention, that staff should “operate to high professional and personal standards” (Rule 72.4) and be “carefully selected, properly trained, both at the outset and on a continuing basis, paid as professional workers and have a status that civil society can respect” (Rule 76). Public service staff members and especially their unions have been regarded as “a barrier to necessary prison reforms”, which may have been true at times and at several places (cf. Stern 2006: 106): To weaken the unions by privatization however did not intend a prison reform for the benefits of the society and its prisoners but for the benefits of political and economic shareholders (Jones/Newburne 2005, cf. Mehigan/Rowe 2007: 361, 366).

Concerning the prisoner working conditions the EPR rule out that prison work “shall never be used as a punishment” (Rule 26.1) and “provided by the prison authorities, either on their own or in co-operation with private contractors, inside or outside the prison” (Rule 26.9). Although “the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be subordinated to that purpose” (Rule 26.8). Not to forget, that other forms of exploitation are prohibited by the ILO-Convention No. 29 (of 6/28/1930, cf. Kruis 2000: 5) aimed to suppress “the use of forced or compulsory labour” (Art. 1).¹⁵ Work or service “exacted from any person as a consequence of a conviction in a court of law” is only allowed “provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations” (Art. 2 pf. 2 lit. c). The so called “work-shop-expansion-scheme” (fewer costs, higher profits) has of course reached the state prison sector as well (Best 2006: 11).

An early Cuban task to get the UN-Commission on Human Rights to set up an inquiry into prison privatization was foiled by the US-delegate supported by the Netherlands (Nathan 2003: 194). Within the juvenile justice system state authorities should be reminded thoroughly at their special “international responsibilities” (Hecht/Habsha 2003, cf. Pollähne 2007): “The reality is that children implicated and involved in crime are not much better protected today than they were fifty years ago. Due to a variety of factors – public pressure, media campaigns, budgetary constraints – more governments are choosing to privatize their juvenile institutions. The result is fewer safeguards coupled with an increased risk of violations of the human rights of children placed in the care of those corporations. Unless this trend is reversed, the government promises taking place in public fora will not protect the youth involved in criminal activity from the intensions of the private sector” (ibid. p. 85).

II. Monitoring and Advocacy

In times of growing private enterprise in the fields of prison business (and not to forget: psychiatric institutions, homes, asylums etc.) and in times of decentralising legal and executive responsibilities (this is at least a fairly new problem in Germany, cf. Pollähne 2007c) monitoring becomes the more urgent (cf. Hecht/Habsha 2003: 79).

As I have tried to point out, we cannot rely on the official supervision and inspection by state authorities (cf. Harding 2007: 558 ff., Owers 2007: 13 ff.), because in contracting out they rather gain power than give it away (cf. Hibou 2004, Aman 2005): The loss of control will more likely be observed on the level of legislation and jurisdiction (cf. Lea 2002: 121, 180 ff., Shearing 2005, Lindenberg 1996) while models of multilateral “nodal governance” (Shearing 2005) are spreading. What we need beyond a higher efficiency of judicial control (and lawyers that make it work) is a network of independent monitoring mechanisms as instruments of public and democratic control, such as the CPT on the European level or the so called “national preventive mechanisms” (NPM) in consequence of the “Optional Protocol to the UN-Convention against Torture” (OPCAT) on one hand:

- The CPT, it seems to me, has rendered more attention to private institutions of detention in the last years (Pollähne 2007b: 125). The committee is happy to receive

reliable information not only on general prison conditions but rather on details concerning specific facilities – lawyers shouldn't hesitate to contact the CPT!

- The legal and administrative process of implementing OPCAT-NPMs in our countries (cf. APT 2006) might turn out quite disappointing. Germany for example is up to a downright human rights scandal in creating an NPM that would not only be a "slim" but rather an "anorexic" construction.¹⁶ The political process definitely needs more public attention and pressure.

But on the other hand: Advocates should be Monitors too, as individuals and on their jobs of course, but furthermore important as an NGO of democratic law enforcement monitoring. That is because advocacy is far more than 'simply' acting as a lawyer for the benefits of clients (which is of course anything else but 'simple'). But you wouldn't be here if I had to tell you: Advocacy is also another word for "monitoring", as I understand it, monitoring that knows who's side it's on – and still is independent!

Prison, economy and advocacy certainly raise other topics of concern such as the monetary benefits in legally representing prisoners on one hand and – not to be concealed – the loss-making business of prisoner defence on the other hand. This can only be mentioned, however, and is not really a new problem; growing economic and private 'actors' on the scene might of course generate new problems in the defence and attorney business.

III. Struggles for change in policies

"Urban communities have been devastated by this imprisonment binge. Meanwhile, mass imprisonment is good for many business and the growing >crime-control industry<. Clearly, something is amiss in this country. ... We lock people up not to reduce crime and protect victims, but to help control a growing surplus population, while simultaneously supporting private interests, such as profits for capitalists and votes for >law and order< politicians."

(Randall Shelden, in: Hallett 2006: ix)

This angry statement is of course and again pointed at the US-situation. But should we lean back, convinced that it won't hit us all that hard in good ol' Europe (Greenberg 2001: 74)? Maybe David Garland is right in recognizing, that "mass imprisonment is beginning to be viewed as part of the problem, and not part of the solution" (2001, 181). But then again, mass imprisonment is indeed only part of the problem ... I've tried to present some other problematic key issues in the context of new prison economies (cf. Davis 2003: 100; Stern 2006: 190 ff.). Let me end with the „Policy Recommendations“ presented by Michael Hallett (2006, 156 ff.) – und let us discuss their relevance for the AED:

1. Abandon the drug war.
2. Require strict monitoring and oversight of all existing private prison contracts.
3. Require basic criminal justice racial education.
4. Share information and get active.
5. Learn to question punishment.
6. Abolish for-profit imprisonment.

“The invasion of the laws of the market could, if it goes unchecked, end up by proving Knight wrong [who assumed, that ‘no specifically human motive is economic’], since it will gradually reduce the motives for human action to economic and financial considerations that will have become ends in themselves.” (Gadrey 2003: 111) The new “Economical Correctness”, the “primate of economy” (Sack 1998: 92 ff., cf. Brüchert 2001) or even “Economic Imperialism” (Sack, in: Konopatzki 2006: 10) is politically and socially devastating.

Confronted with strong and – so far – depressingly successful lobby campaigns, we have to face the question of who might win the struggles: “Will private, for-profit companies, lobby for more onerous sentencing laws simply to continue the growth in their >customer base<?” (Riveland 1999: 198). Most observers of the development would probably confirm (cf. Beckett 1997: 98 ff., Scheerer 1997, Taylor 1999: 220, Brüchert 2001: 56 f., Nathan 2006, Stern 2006: 117 ff.). “For many, however, the question of whether privately managed prisons are or are not desirable or acceptable is answered less on the evidence of how well they serve inmates or the taxpayers, but on the more instinctive level of a belief in a small state, or a sense that the singular nature of punishment and its place in society render the legitimate private management of penal institutions impossible” (Mehigan/Rowe 2007: 374).

“In short, we must organize.
Writing a book will not do it.
Writing a paper will not do it.”
(Abu-Jamal 2000)

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¹ McBride 2001, in: Fudge/Owens 2006: 5, cf. Lea 2002: 118.

² It may be mere coincidence, but in German language for 'society' and 'company' the same term „Gesellschaft“ is in use.

³ And we are - of course - happy that we do not have to talk about the New Economy of Capital Punishment.

⁴ Mehigan/Rowe 2007: 363, cf. Shishor/Gilbert 2001, Nathan 2006, Stern 2006: 107 ff., Blakely 2007 ch. 4, Lindenberg 1996: 96 ff.

⁵ See the German "tageszeitung", 7/25/2006.

⁶ Cf. Davis 2003: 93 ff., Abu-Jamal 2000, Beckett/Western 2001, Wacquant 2007; diff. Downes 2001, see also Sudbury 2004, George 2003 and van Wormer 2003 about the role of women in this development as well as Hofinger/Pilgram 2008 about the conservation of "strangers" through the Austrian Prison System (cf. Scheerer 1997: 23).

⁷ Cf. Scheerer 1997, 22; to the carceral "gulag archipelago" refers Abu-Jamal 2000, diff. Greenberg 2001: 77 f.

⁸ Cf. Van Zyl Smit/Dünkel 2001: 812 and to the US-American situation Robbins 2005.

⁹ CCA-president John Ferguson, Reuter newswire, March 2003.

¹⁰ Sir Nigel Rodley, Foreword in Coyle et al. 2003.

¹¹ That „competition“ with private corporations may have had a positive impact on the state prisons (Van Zyl Smit/Dünkel 2001: 812, cf. Best 2006: 11, 20, Mehigan/Rowe 2007: 366) seems at least highly speculative.

¹² ECtHR 6/16/2005 – Storck/Germany – No. 61603/00.

¹³ See also Hecht/Habsha 2003 about some human rights aspects in regard to privatisation models in the juvenile justice and prison system (cf. Pollähne 2007c).

¹⁴ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European prison Rules (adopted on 11 January 2006, cf. Pollähne 2007c: 555 f.).

¹⁵ Also see Hecht/Habsha 2003: 79 about OECD-principles and other sources.

¹⁶ Pollähne 2007c: 558, cf. the statement of the German „Komitee für Grundrechte und Demokratie“ from 3/22/2007, www.grundrechtekomitee.de/ub_showarticle.php?articleID=229.