

The stigma of jail: all too often, there is a failure to re-socialize prisoners, which is supposedly the primary goal of the penal system.

ILLUSTRATION: ALESSANDRO GOTTARDO

LIFE SENTENCE

TEXT:
MARTIN TSCHECHNE

What objectives should a modern, enlightened penal system pursue? And how compatible is the idea of reintegration with the option of handing down a life sentence? Federica Coppola, a jurist at the Max Planck Institute for the Study of Crime, Security and Law poses questions that lead her to the conceptual limits of legal practice. And she provides some surprising answers.

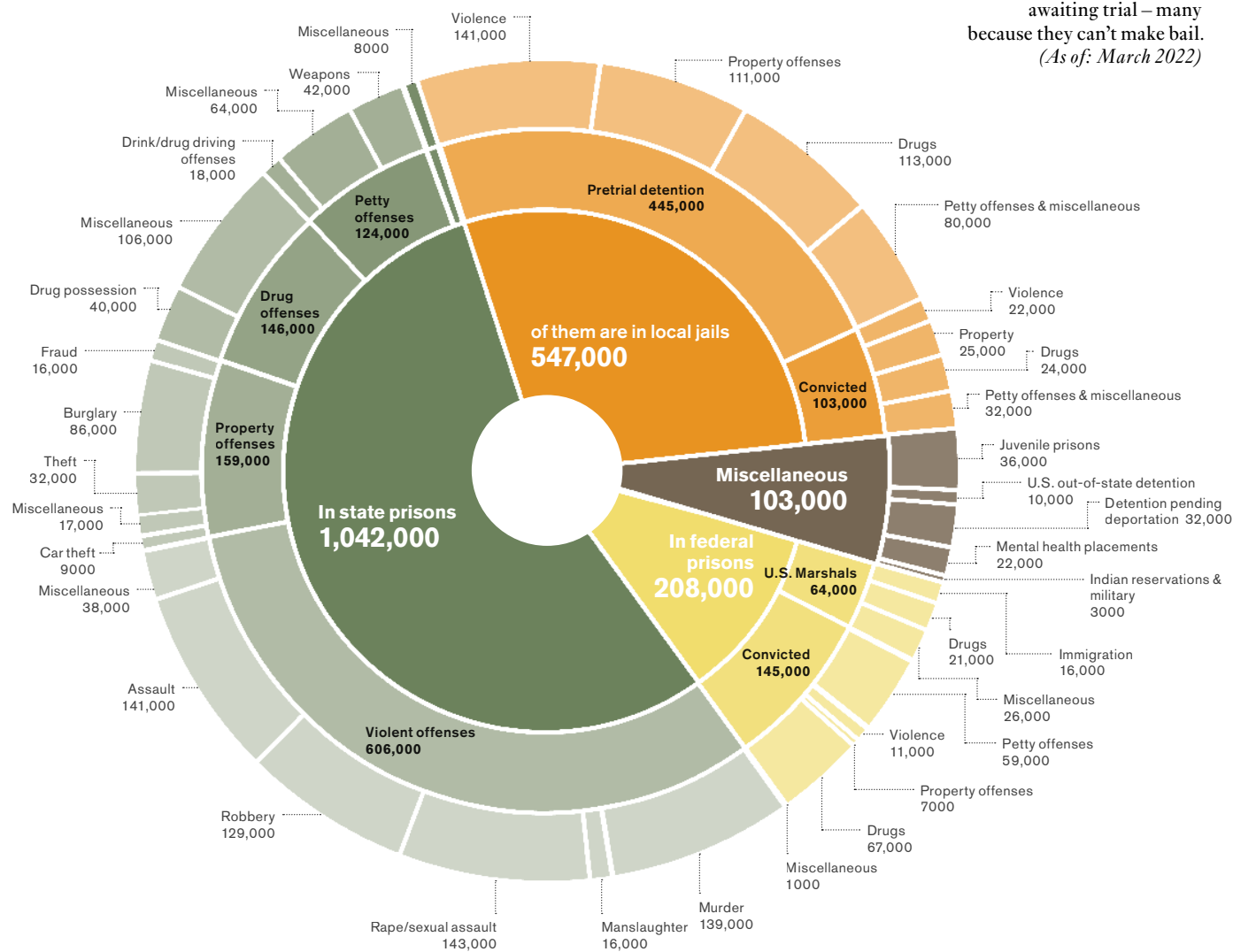
What the minister saw on her screen was an orgy of violence. Surveillance cameras in the Santa Maria Capua Vetere prison had recorded masked and armored forces storming the prison wings, throwing inmates to the ground, and beating them with clubs. The goal was to humiliate and degrade: they forced their victims to kneel; they shaved some of their heads. They even battered a prisoner in a wheelchair. Fifteen men disappeared into solitary confinement, arbitrarily and without trial.

It was April 6, 2020, and Italy was in the midst of a Covid lockdown. In the north of the country, medical care was collapsing under the enormous number of infec-

tions, and Bergamo was running out of coffins. There had been cases of Covid at the detention center near Naples, too, but the facility was overcrowded with more than 150 additional inmates over the permitted limit of 800. This overcrowding made it impossible to keep the virus at bay. Prison regulations, however, did not allow for noisy protests. The correctional authorities reacted harshly, wanting to make examples of inmates and break the resistance with all their might. Similar punitive actions were reported in prisons in Melfi, Pavia, and Milan. Marta Cartabia, in charge of the justice portfolio in Mario Draghi's cabinet since the start of 2021, saw the records, heard the reports, and acted decisively. Fifty-two guards had already

1.9 MILLION PEOPLE ARE IN PRISON IN THE U.S.

U.S. state or federal prisons are where those who are already convicted serve their sentences. In local jails, most inmates are still awaiting trial – many because they can't make bail. (As of: March 2022)



been suspended, and some were being held in pre-trial detention. But the minister did not let up: she continued investigating and collecting material. When the trial began last November, 105 prison guards were facing charges ranging from abuse of office, false testimony, and concealment of criminal offenses to assault – in one case resulting in death.

Federica Coppola followed every detail of the investigation and trial from Freiburg. For the jurist, born in southern Italy, now working at the Max Planck Institute for the Study of Crime, Security and Law, the minister's move was a bold start, and at least an attempt to open up the justice system to alternative aims including restoration, reintegration, and respect for human dignity. Penal policy is still determined by superficial political calculations, as Coppola sees it. Those who dole out and threaten people at risk of being impacted by the justice system with severe punishments make a show of strength and determination, perhaps even creating a feeling of greater security, albeit a fleeting one. Coppola, meanwhile, felt vindicated by the quelled protests. No reform proposal had yet really addressed the premises underpinning the penal system: the understanding of what it means to be human and the function of justice.

The European Commission intervened and demanded an “in-depth and independent investigation of the incidents,” Cartabia, a minister with no party affiliation and former president of the Italian Constitutional Court, recognized a “betrayal of the constitution.” But Matteo Salvini, leader of the conservative Lega Nord, seized the opportunity to show solidarity with the violent guards. Dealing with criminals has always been a good way to bolster a populist image. He later backtracked when it became clear that public outrage over the excessive violence had turned against him. Giorgia Meloni, head of the post-fascist Fratelli d'Italia party, also demonstratively backed the prison staff. This did her no harm: today she is the Prime Minister of Italy.

The evidence Coppola collects is scientific. And from the very beginning, she knew that she was entering a vacuum with the interdisciplinary approach of her work. Everyday criminal law and penal practice are based on an old, very insular conception of guilt and atonement – ritual banishment and the belief in purification through pain. The word “punishment” derives from the Latin “poena” for pain, the jurist explains. Reconciliation and reparation, including insight and active

remorse on the part of the perpetrator and healing for the victims and survivors, remain the projects of a form of restorative justice that has to prove itself against a punitive system – and not just in Italy.

Restriction and isolation breed hostility

One Enlightenment thinker, Cesare Beccaria, is still considered the most important reformer of legal practice. His magnum opus *On Crimes and Punishments* was published in 1764. In it, the Milan-born representative of a utilitarian philosophy condemned public executions and torture out of revenge and religiously inflamed popular outrage. Instead, he called for limiting punishment to a level that ensures humanity and public order. In practice, that meant prison, which in Beccaria's time represented a progressive development. His book challenged an age-old culture of retribution, helping to abolish its most extreme forms in many countries and saving lives in the process. Federica Coppola praises him as a revolutionary. But the object that jurisprudence sought to protect remained solely life outside of prison.

Coppola, a 35-year-old legal scholar, is entering new territory by combining social psychology, behavioral research, cultural sociology, and, above all, the findings of modern neurological research. She uses such empirical knowledge to advocate against solitary confinement, against the institutional violence in prisons, against the rituals of exclusion and stigmatization toward incarcerated people practiced around the world, and against the archaic practice of capital punishment in countries such as the United States. She points out that a society that permits, demands, and perhaps even hails inhuman cruelty as justified punishment

is exposing itself to a concrete danger: the danger of losing sight of any prospect of social development, human rights, and morals, and of regressing into brutality and violence.

Coppola refers to a strategic paradox. With its focus on retribution, deterrence, and exclusion, she argues, the practice of criminal law creates, or at least fosters, the very problems it purports to remedy. Isolation does not give rise to a sense of humanity and responsibility; humiliation does not give rise to the need to join a community, to help others, to be useful, and to seek help for oneself. The threat of punishment does not lead to an understanding of the morality of togetherness. And

SUMMARY

Criminal law and the penal system are based on an archaic conception of guilt and of atonement through pain.

Findings from neuroscience, psychology, and sociology confirm that conventional prison sentences have a negative impact on prisoners.

The supposed goal of reintegrating incarcerated people into society is not served by daily life in most prisons. There is a need for fundamental reform of the criminal justice system.

anger cannot be broken by prison guards' truncheons. Findings from the laboratories of neurological physiologists and experimental psychologists confirm this time and again. Mice behave peacefully and normally when they have enough space, contact with other mice, and a few objects to play with. In confinement and isolation, they become hostile and aggressive, their emotions are blunted, and their cognitive abilities regress. Coppola rejoices, saying she couldn't think of a more fitting starting point for her argument: "The brain is a social organ," she says, summarizing the research scholars have spent decades developing and presenting. "Humans are created to engage with each other. The nervous system can only function in an exchange with a social environment. If that exchange is blocked, the nervous system regresses. To put it plainly: the brain shrinks."

Reconciliation as a benchmark

36 Researchers have studied children in orphanages, inmates of closed institutions, and people who have been subjected to abuse, violence, and continuous rejection. Their observations confirm, expand upon, and differentiate the finding that the human brain remains malleable throughout a person's life. Most importantly, they provide evidence of a basic need for stimulation, contact, and dynamic change that is as vital as the need for physical integrity. The brain is plastic and extremely hungry for movement, Coppola says – but it can be resentful, too. Every experience and every new impulse are inscribed on the brain, often permanently and at all levels of the system, from affect control in the hippocampus and amygdala, to the processing of the stress hormone cortisol, to action control in the prefrontal cortex. Solitary confinement, the legal scholar cautions, constitutes torture.

Research in the natural and social sciences provides the concept of punishment with a new, functional basis. It explains what makes for a healthy sense of participation and responsibility, and it warns against what can cause that sense to atrophy. Self-worth stands at one end of the spectrum in opposition to restlessness and fear; openness and empathy are likewise plausible alternatives to hostility and moral blunting. What this means is that the success of reintegration and reconciliation with society could be used to assess the quality of penal system measures. It's quite simple, really. And yet, the jurist with honors and teaching experience at Columbia University in New York complains that the findings of neuroscientists, psychologists, and sociologists, together with the knowledge and expertise of (formerly) incarcerated people, do not play the role they deserve to. Penal law, she contends, is stuck firmly in a conceptual dead end. "I graduated university," she says, "with, unfortunately, only a very vague idea of how the law is implemented in everyday practice and of

what prison really is." On November 29, 2022, Kevin Johnson was executed by lethal injection in the United States. Coppola cites the still-fresh case as an example of a punitive state power that seems to have lost all interest in balance and rehabilitation. "In no other democratic country in the world," she says, "is there a higher percentage of the population in prison: more than 500 per 100,000 inhabitants, around 2 million in all. Too many people are simply locked away."

"Solitary confinement constitutes torture."

FEDERICA COPPOLA

For Johnson's Missouri state judge, the case was unquestionably clear: 17 years earlier, the then 19-year-old African-American man had shot and killed a white police officer in a St. Louis suburb. There had been pleas of mental instability on the part of the perpetrator, and two of the jurors considered him too young for a death sentence, but in the end, the Republican governor of Missouri and the U.S. Supreme Court – again with two dissenting votes – rejected an appeal. The victim's relatives, the court declared, were entitled to satisfaction and had waited far too long for it. Coppola dismisses such reasoning as atavistic. How, she asks, does a state-backed desire for retribution square with an enlightened society's claim to rehabilitation?

"Beccaria was against the death penalty," she says. "That was progress. But how is it actually any different from a life sentence without the possibility of parole? Isn't a sentence that in principle excludes any pardon or any chance of resocialization, itself like a sentence of death by incarceration?" Indeed, in the U.S., a life sentence often means prison until death. About one in four people sentenced to life in prison are never released. In the German system, a life sentence is initially a sentence for an indefinite period. After 15 years at the earliest, parole is possible. However, the safety of the general public takes precedence. A person may stay in prison if they continue to be assessed as dangerous. On average, a life sentence in Germany lasts about 19 years, but even in this country there are people locked up for decades. Like Kurt Knickmeier.

In Geldern on the Lower Rhine, he has been serving 37 years for kidnapping and triple murder and is fighting for his right to die a self-determined death. So far, the Kleve Regional Court has rejected his claim. In Belgium, the conditions for assisted suicide during life im-

PHOTO: WOLFRAM SCHEIBLE FOR MFG

prisonment are being discussed, and in Canada it is already being practiced. The discourse is in full swing, but has yet to make a real impact. “In Italy, last year alone, there were 84 cases of suicide in prisons,” Coppola adds, “without support from the authorities.” Many took their own lives at an early stage of their sentence, and by no means were all of them serving life sentences.

“In my eyes, this is disconcerting,” says the jurist, “a declaration of the system’s bankruptcy.” She points to Norway as an example of a humane penal system geared toward reintegration into society from day one. Prisoners live in open housing communities, receive visitors, and have paid work and contact with the community outside the prison. The Scandinavian concept is a confirmed success: there is significantly less violence among inmates, including against guards and by guards, there are fewer escape attempts, and, ultimately, the recidivism rate is less than 20 percent compared with 50 percent or more in countries with a conventional prison system focused primarily on incapacitation and punishment.

A right to new opportunities

Yet even in Norway, a mass murderer like Anders Breivik, who killed 77 mostly young people in Oslo and on the island of Utøya twelve years ago, sits in solitary confinement. The conditions of his incarceration are hu-

mane, and he even has comfortable furnishings, yet the door is firmly locked. Federica Coppola shrugs. Resocialization is an extremely complex process, she says. It relies on everyone involved seeing a chance to succeed and being willing to work at it. “Above all else, the vast majority of people in prison are not Breiviks; they are people who have committed property crimes, or perhaps fraud or tax evasion. Or perhaps they just rode the train without a ticket a few too many times. Many of those who are in prison, including those who are in prison for committing serious crimes like homicide, have histories of severe trauma and social adversity. All of them are entitled to a right to opportunities for change and social rehabilitation.”

The case of Kevin Johnson in the United States sparked consternation around the world when his 19-year-old daughter asked to hold her father’s hand in the execution chamber. She was a toddler when the sentence was handed down; it was only during her visits to the prison, she explained, that a relationship of affection and trust was able to develop between them. The request was denied: witnesses to an execution must be at least 21 years old under current law. A photo shows her with her newborn son during a visit to death row. The new grandfather is beaming.

Federica Coppola shakes her head. “Any state response to crime,” she demands, “must actively aim for reintegration into the community. Anything short of this is inhumane.” www.mpg.de/podcasts/sicherheit (in German)



Justice, reimagined: against the backdrop of neuroscientific findings, Federica Coppola questions the conventional concept of penal confinement.