SYMPOSIUM

Challenge to What Is: The Effect and Aftermath of Exposing Intolerable Conditions of Confinement

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This collection could not have come in a more prescient time. As the editors suggest, "The present volume is, at once, then, a historical archive, a conceptual challenge, and a tactical tool kit."[1] I will focus my comments on some tactical questions regarding the effect and aftermath of the GIP investigation on the intolerability of incarceration. What effect did it have on those incarcerated? On prison conditions? On the rationale of confinement?

My own work focuses on the connections between prison abolition and anti-disability confinement, especially the movements of deinstitutionalization and anti-psychiatry. To me, this monumental collection/translation project highlights again the continuity of disability confinement – mental crisis in prison is a general condition not an exception, as seen by many testimonies; in addition, "prison suicides in France marked not only a symptom of these desperate conditions, but also a final form of protest and escape;"[2] and the GIP, through Foucault's work, also saw the connections to psych incarceration outside the walls of the prison (the psych information groups that I hope someone translates next..).

The GIP (Prisons Information Group) "sought to make the intolerable physical, mental, and emotional conditions of incarceration visible in ways that provoked and supported public intolerance of them."[3] The role of the GIP, then, was: "to unite the interior and exterior of the prison in the same struggle."[4] In my work,[5] I discuss the cumulative effect

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[1] Kevin Thompson and Perry Zurn, "Introduction: Legacies of Militancy and Theory," in *Intolerable: Writings from Michel Foucault and the Prisons Information Group, 1970-1980*, eds. Kevin Thompson and Perry Zurn (2021), 7.

[2] Thompson and Zurn, "Introduction," 7.

[3] "Introduction: Legacies of Militancy and Theory," 8.

[4] Groupe d'information sure les prisons, "Back Cover of *Intolerable* 1," in *Intolerable: Writings from Michel Foucault and the Prisons Information Group, 1970-1980*, ed. Kevin Thompson and Perry Zurn (2021), 94.

[5] Liat Ben-Moshe, *Decarcerating Disability: Deinstitutionalization and Prison Abolition* (2020).

of litigation and exposés of institutions for people with intellectual, developmental and psychiatric disability labels, especially in the 1960 and 1970s, which is when the GIP was active (1971-72). The value of many of these investigations of intolerance was to bring attention to the conditions of confinement in prisons and mental institutions, to which the general population was oblivious.

The symbolic value of such inquiries was much bigger than their effect on specific demands and specific facilities, however. One such effect was that it constructed and reified those incarcerated and institutionalized as people deserving of rights and protection from the State. As Foucault remarked on the Toul uprising in 1972: "They inverted the functions of the wall, the bars, and imprisonment itself. On that day, they did not want to get out of prison, but rather to be free of their status as humiliated prisoners."[6]

Although I critique, following many others, the rights framework throughout my work, it is important to note that obtaining rights as incarcerated people was not a small or obvious feat. Without perceiving those imprisoned (and in deinstitutionalization those with psychiatric and intellectual disabilities) as groups deserving of rights, no appeals to justice or legal reform could have been brought. On the most fundamental level, they had to be perceived, by the court and the public, as *people* and not as property of the state, otherwise any discussion of *human* rights is non-sensical. What is of interest then is that the era of prisoners' rights had to begin with granting prisoners' not rights but selfhood. The perception of prisoners as property of the state and as objects was not questioned in the US legal system in a sustained fashion before the 1960s, the era of reform litigation and early feminist and Black power.

These exposés went beyond the scope of the rights of those incarcerated though. Prison uprisings, the GIP investigations (and lawsuits in the US context) acted like exposés in questioning the efficacy, legality and to some extent the legitimacy of carceral institutions, whether for punishment or for rehabilitation. This was evident in the list of demands in the prison revolts in France in 1972. As Foucault stated at the time: "these are not merely details, or rather, every detail is essential when one struggles to obtain, against a boundless arbitrariness, a minimum of juridical status, when one struggles to have the right to demand. It is important to have the right to wash, but it is essential when one obtains it in this way."[7] Even though some of the prisoners' demands may seem mundane (temperature, nutrition, visitation) they also encompassed a comprehensive ideal of justice, and the two are inextricably linked. As Hélène Cixous states in the excellent interview in this collection, an honorable system of justice and specific demands (for food, visitation) are the same thing: "they are all inscribed in reality and in the flesh."[8]

Prisoners' rights, rebellions and litigation made the prison a topic of public discussion. It made those incarcerated visible on a national scale, especially in this era, 1968 to 1972,

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[6] Michel Foucault, "To Escape from Their Prison," in *Intolerable: Writings from Michel Foucault and the Prisons Information Group, 1970-1980,* ed. Kevin Thompson and Perry Zurn (2021), 234.

[7] Foucault, "To Escape from Their Prison," 235.

[8] Perry Zurn, "Hope is the Blood of it: The GIP, Paris 8, and the Urgency of Writing," in *Intolerable: Writings from Michel Foucault and the Prisons Information Group, 1970-1980,* ed. Kevin Thompson and Perry Zurn (2021), 395.

which Berger and Losier name, in the US context, 'the prison rebellion years.'[9] Therefore, these investigations, lawsuits and exposés became a powerful pedagogical and mobilization tool. The prisoners' rights movement and prison uprising (as well as anti-psychiatry and self-advocacy movements) galvanized and politicized those inside as well as those not incarcerated to understand confinement as a host of social and not just individual issues.[10]

These investigations enabled those incarcerated to collectivize across facilities and borders. It also created coalitions of resistance beyond the prison or asylum bars (lawyers, families, doctors – many of them whistleblowers in the deinstitutionalization and anti-psych movements as well). In this sense, "to unite the interior and exterior of the prison in the same struggle" was achieved as a goal, at least in that era.[11] (Notwithstanding the permutable lines between 'inside' and 'outside'). To be clear, the GIP did not make the revolts in the prisons happen, but it did amplify them.

What were the lingering effects of such amplifications? One might think that attention to prisoners' rights and uprisings has eviscerated since the 1970s. It is true that the image of the revolutionary prisoner, a la George Jackson (who the GIP devoted one of their investigations to), has subsided, but it is equally important to remember the gendered dynamics of that image. Elsewhere I discuss more fully how the image, tactics and populations targeted by prison litigation and prison rebellion had shifted but did not die; they only became less masculine and able-bodied and therefore less known or discussed.[12]

If the image of THE prisoner in the 1970s was that of (mostly black) revolutionary figures, and in the 1980s the frivolous complainers (the image that led to the creation of the notorious Prison Litigation Reform Act in the US), the image of the prisoner in the 2000s is that of the overcrowded, mentally and physically injured incarcerated individual, as Jonathan Simon suggests.[13] In other words, at least in the US, from 2000 onward, state violence manifested not just in incarceration and its conditions but in its quantity; the mass character of it. The effects of which (disabling and maddening nature of solitary confinement and supermax prisons and its opposite of extreme overcrowding) led to debilitation en masse. This became deathly apparent with the spread of COVID in prisons across the US from the beginning of the pandemic.

Exposing and activating intolerance does not necessitate an action from the state, or at least not the one desired by those who are doing the exposing. COVID campaigns to release those incarcerated from prisons and nursing homes (#Free Them all) have not resulted in mass or even small-scale acts of decarceration. In addition to the symbolic and collectivizing power of these investigation of the intolerable, in the US at least, the focus on deplorable conditions did not lead to abolishing them; instead, it led to calls to reform

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[9] Dan Berger and Toussaint Losier, *Rethinking the American Prison Movement* (2017).

[10] See Groupe d'information sur les prisons, "Preface to *Intolerable* 1," in *Intolerable: Writings from Michel Foucault and the Prisons Information Group, 1970-1980,* ed. Kevin Thompson and Perry Zurn (2021), 89-90.

[11] GIP, "Back Cover of *Intolerable* 1."

[12] Ben-Moshe, *Decarcerating Disability*.

[13] Jonathan Simon, *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of Prisons in America* (2014).

them, which often aided in their expansion. As Rachel Herzig suggests regarding campaigns to reform prison conditions: "Improved conditions allow imprisoned people to resist that inhumanity... They also make it possible to stay alive while living in a cage."[14] However, "it can further entrench the popularly held assumption that imprisonment is a necessary evil."[15] What reform litigation did in the US after the 1970s, cumulatively in addition to a politicizing and collectivizing effect, was to usher more *effective* ways to incarcerate, and those two effects do not necessarily negate each other. In addition to indifference, invisibility or abuse, now those incarcerated are treated with bureaucratic measures, often measuring the excess and not rationale of confinement (not too crowded, too hot, too much death).

But perhaps this is not a critique of the GIP project. As Cixous states in the collection: "it wasn't meant to be a success, it was meant to be a testimony."[16] One of the most pervasive critiques of the abolitionary framework is that it does not provide specific solutions but only critiques of the present system, and this critique has been often laid out in relation to the GIP as well. I critique this elsewhere and suggest that embracing dis-epistemology and letting go of specific attachment to finite solutions is a strength of abolition work.[17] In a later interview, Foucault asserts that critique "should be an instrument for those who fight, those who resist and refuse what is. Its use should be in processes of conflict and confrontation, essays in refusal. It doesn't have to lay down the law for the law. It isn't a stage in programming. It is a challenge directed to what is."[18] To me, this challenge towards "what is" is the unfinished work of abolition today.

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[14] Rachel Herzing, "'Tweaking Armageddon': The Potential and Limits of Conditions of Confinement Campaigns," *Social Justice* 41:3 (2015), 190-195.

[15] Herzig, "'Tweaking Armageddon'", 193.

[16] Zurn, "Hope is the Blood of It," 399.

[17] Liat Ben-Moshe, "Dis-epistemologies of Abolition," *Critical Criminology* 26:3 (2018): 341-355.

[18] Michel Foucault, "Governmentality," in *The Essential Foucault*, ed. Paul Rabinow and Nicolas Rose (1994), 236.

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