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EDITOR'S NOTE

A review of the book, by Alexia Jonckheere, is published here: <https://journals.openedition.org/champpenal/11912>

AUTHOR'S NOTE

This paper is an improved translation of a book published in French by the Presses universitaires Blaise Pascal (PUBP). Available here: https://www.pubp.fr/actualite-societe/1549-1057-la-prison-9782845168701.html#/27-format-livre_papier

Introduction

- 1 Everyone has an opinion on prison, and on what it should be: some find it too lenient, others too severe; some too comfortable, some too archaic. Some want to abolish it where others want to make it harsher. Whatever the views on prison, it always appears to be failing to fulfil its role. Still, despite these persistent, ever-contradictory criticisms, prison remains the main form of punishment in France's criminal justice system: imprisonment was the main penalty in almost 50 per cent of sentences handed down in 2017.¹ How are we to explain the longevity of this controversial institution, then? This is the question this paper proposes to address, drawing on recent decades of social science scholarship on prison.
- 2 Prison is an organization that is recognizable among all, pictured as a homogeneous space in the collective imagination: cells, corridors, bars, walls, towers. It stands out in

landscapes – increasingly often on the outskirts of cities – as a singular space, whose walls and the reality they conceal fascinate and repel in equal measures. Prison is both exceptional and banal, the archetypal punishment, suspected of arbitrariness; it is also a public service *institution*, operating under stable rules and endowed with a social function. In everyday language, the word prison refers to a closed-off *place* of imprisonment and to a *penalty*: the deprivation of liberty. Yet, upon closer inspection, the simple question “what is prison for?” turns out to be a puzzle. Is its purpose to dissuade free citizens, to punish transgressors, to reintegrate marginals, or to neutralize dangerous individuals? If these four functions coexist, how do they combine in practice?

- 3 In the process of considering these questions, this paper sheds light on the realities and paradoxes of prison: what do prisons, the workplaces of many professionals and the living environments over 70,000 inmates in France, actually look like? Why doesn't prison impact everyone equally and how does the experience of prison affect life courses? How did prison become the cornerstone of our criminal justice system and why haven't alternative sentences replaced it? Why do incarceration rates continue to increase when so many have voiced uncertainties about the meaning of this type of sentence?
- 4 This paper offers a synthesis of contemporary research on prison and in doing so provides empirical elements to readers curious about what goes on behind prison walls. It is not entirely about prison per se: we wrote it as an invitation to deconstruct common beliefs about an institution that has been shaped by a history and founded on political choices.

1. What is prison ?

- 5 Prison is not a monolithic entity, and the term serves as a stand-in for multiple practical realities. There is a considerable diversity of places of imprisonment, actors in prison and ways of organizing everyday life in prison.

1.1. The multiplicity of prison spaces

- 6 In our collective psyche, prison is a homogeneous space, consisting in cells bordering star-shaped corridors and surrounded by thick outer walls dotted with towers. Yet, France's 187 currently active penal institutions² are primarily characterized by their great diversity.
- 7 This diversity is, first, of an architectural nature. French prisons date back to a variety of eras: some are housed in former monasteries, military citadels or even castles; others were built in the nineteenth century in facilities that are now badly dilapidated. The most recent are the results of successive construction programmes that reflect a political effort to update and expand the stock of prison buildings, and to accommodate more prisoners (see Part 2). Each prison's architecture bears the marks of the time when it was built, and conditions of imprisonment vary widely from one prison to the next (Milhaud, 2017): in the oldest ones, which are often small, dormitories are still occasionally found, communal showers remain frequent, and the disrepair of the buildings is matched by sound insulation problems in noisy corridors. While the close contact to which these old prisons subject those who live and work in them increases

tension, it also facilitates interactions, especially between workers. On the contrary, more recent prisons are more comfortable but were designed to separate spaces (accommodations, activity rooms, treatment rooms, etc.) and often give their occupant a sense of isolation, dehumanization and insecurity (Scheer, 2013). This feeling is heightened by the very large size of these facilities, intended to achieve economies of scale, and by the growing distance between these places and urban centres: whereas older prisons were often located in city centres, modern prisons are built in peripheral, rural areas that are sometimes difficult to access. It is, for instance, difficult to compare the experience of an inmate at the *maison d'arrêt* of Montluçon (with a capacity of 21), which opened in 1884 and is located in the heart of the city, to that of another at the *centre pénitentiaire* of Le Havre (with a capacity of 690), built in 2010 at a distance of around nine miles from the city centre.

- 8 Beyond spatial differences, the conditions of imprisonment vary widely from one type of prison or from one detention area to the next. Prisons are designed to separate men, women and minors.³ In France, the main distinction is between two types of facilities: *maisons d'arrêt* (which house ca. 49,400 prisoners), which, not unlike US county jails, are meant for persons awaiting trials or serving short sentences, but in practice also often hold individuals serving longer sentences, in some cases awaiting a transfer; and correctional facilities referred to as *établissements pour peine* (20,528 places in detention centres, 2,168 in penitentiaries called *maisons centrales*, 1,454 places in semi-open centres, 705 in alternative sentencing centres), which are for convicts only. Incarceration modalities there are more variable than in *maisons d'arrêt*, which ordinarily function as closed facilities, where cell doors remain closed all day. Paradoxically, there, persons awaiting trial or who have committed some of the less serious offences are subjected to a more restrictive detention regime than convicts. In *établissements pour peine*, security can be very strict – for instance in the *maisons centrales* where individuals sentenced to long terms and considered dangerous are locked up – and in some cases far looser, with prisoners allowed to circulate freely with detention areas or even to perform outside activities. To name two extremes, for instance, the prison in Casabianda opens onto land that is farmed by detainees, whereas the one in Condé-sur-Sarthe is encased within high walls and fitted with a sophisticated surveillance system.
- 9 Accordingly, experiences of prison are primarily experiences of the successive facilities where detainees are incarcerated.

1.2. Beyond the prisoner/guard relationship: a plurality of actors

- 10 Guards make up the biggest occupational group in prison, with approximately 30,500 agents for 73,162 inmates as of 1 May 2023. Entrusted with the task of regulating the daily operation of prison facilities, these agents – who include a growing proportion of women – are on the frontlines when it comes to dealing with the practical effects of criminal justice and prison policies: prison overpopulation, longer sentences, or the constant tug-of-war between respecting detainees' rights and maintaining order (see Part 4). There is a profound malaise among these agents who are situated at the bottom of the prison hierarchy and who have little autonomy in the execution of their tasks. This creates tensions in prisoner/guard relationships, even if they are far from always

characterized by conflict; they can sometimes be “normalized, negotiated or personalized” (Rostaing, 1997).

- 11 While most guards struggle to give meaning to their work, it is also because it is often limited to keeping watch over inmates. Rehabilitation-oriented activities are mainly entrusted to specialized professionals: medical and healthcare staff, teachers and trainers, integration and probation officers, members of charities or religious groups, whose “services have been added to previous activities as if what existed before had not been considered and without regard to the presence of guards” (Chauvenet, Benguigui, Orlic, 1994). In recent decades, the prison administration has secured “the assistance of other state services, local authorities, associations and other public or private persons”.

⁴ This outsourcing results from an effort to give detainees an access to healthcare, education, sport and culture that matches that offered outside of prison, in the name of respect for their rights. However, the introduction of private contractors in prison is also the result of prison authorities delegating certain tasks including maintenance, cleaning, laundry, catering, the supply of “canteens” (stores supplying prisoners with products), or the provision of jobs for detainees and the reception of family members.

Private contractors in prisons

Unlike in other countries like the United States, there are no entirely private prisons in France: the sovereign missions of surveillance and administration are performed by the state everywhere. Since 1987, however, the share of private contractors in prison has kept growing: public procurement contracts have been signed in over 70 prison facilities (hosting over 60 per cent of the prison population) to delegate the performance of some tasks. Additionally, since 2002, the state has been paying rent for fourteen prisons built under public-private partnerships. This type of funding has been widely criticized as it requires a commitment spanning decades from the French state and in doing so forces future generations to continue with the current prison policy.

- 12 Prisons are not simply populated by prisoners and guards: they are places where multiple actors pursuing a variety of professional trajectories work and visit. Should prisons, then, be considered as institutions like the others? Despite a degree of normalization in their operation, “all interactions [...] are informed, marked by the stigma of prison. They are over-determined by the fundamental rupture that prison produces” (Combessie, 2000). The geographical isolation of the new prisons makes them less attractive to external partners, for instance. Most importantly, however, major logistical and security constraints slow down or in some cases compromise prison activities. The logic of prison also often changes the meaning of work: reduced sentences are granted partly on the basis of the prisoners’ participation in activities. As a result, some professionals feel that their mission is instrumentalized for the benefit of the management of prison order.

1.3. Serving time: the diversity of everyday lives in prison

- 13 Prisons are far from impenetrable black boxes: on the opposite, they are placed under the scrutiny of a multitude of outside observers: visits by the institutions, by activists, journalists’ reports and scientific studies document the reality of prison in detail. What does everyday life look like in prison? In theory, prisoners have the opportunities to fill

their days with a variety of sport, socio-cultural, educational, training or work activities. In reality, however, especially in *maisons d'arrêt*, most prisoners spend interminable days waiting in their cells. The fact is that the supply of activities is very unequally distributed and dependent on the choices made by widely varying funding bodies: for instance, access to vocational training depends on the supply set up by the regional councils, and work opportunities partly depend on contracts signed with private concession holders.

- 14 As a result, only a quarter of detainees have access to work, paid largely below minimum wage, sometimes on a piecework basis, and there are long waiting lists to do this precarious work, which is neither regulated by employment contracts nor protected by union rights or social security. Prison jobs are also often menial: with the exception of services of general interest (laundry, cleaning, cooking, etc.), the jobs on offer often consist in performing repetitive industrial tasks that require no training (conditioning, folding brochures, assembling small objects, etc.). This is a recurring complaint in prison: although some of the activities may occasionally have a special value (concerts, sporting events, public conferences, etc.), generally they are simply designed to keep inmates busy and appear to have little use in preparing the rehabilitation of individuals who have often experienced a long process of social disaffiliation (see Part 2).

Psychiatrists in prison

Since the late 1970s, prison facilities have been gradually endowed with psychiatric services affiliated with the public hospital system, to provide detainees with access to mental healthcare services whose quality is meant to equal those offered to the general population. Nowadays, each prison has at least a medical unit that includes psychiatry and psychology consultations. Outpatient and inpatient hospitalization services have also been distributed across the country. The supply of healthcare remains, however, far inferior to the demand: an epistemological study (Duburcq et al., 2004) has estimated that around 30 per cent of detainees suffer from serious mental health disorders. Some observers have asked whether incarceration has become a default response for offenders in highly precarious situations with serious mental health illnesses (Lancelevée, 2018).

- 15 In their cells, prisoners also have opportunities to remain active: in *établissements pour peine*, they generally rearrange and decorate their cell, read, write, play cards, smoke. Some sign up for distance learning courses; others put impressive creativity into cooking with whatever they have on hand. In *maisons d'arrêt*, these occupations are compromised by the frequent overcrowding of cells. Prisoners find themselves having to protect a space for intimacy that is limited to their bed and to negotiate with cellmates over what TV programme to pick, whether to open the window or not, etc.
- 16 Life in detention is not completely cut off from the outside world: those who have managed to maintain relationships with their loved ones have opportunities to communicate with them: in addition to written correspondence, which is monitored by prison administrations, phones are placed at the disposal of detainees in corridors, near the cells – although a black market exists and many mobile phones make it into prison, their use is prohibited. Prisoners can also see their loved ones in the traditional visiting rooms (small booths or rooms with minimal furniture, placed under surveillance) or, in the 52 prisons equipped with them as of July 2019, in “family life

units” – small apartments allowing for some intimacy, in which loved ones can stay for periods of up to 72 hours.

- 17 While the everyday life of a prisoner who works and sees family members on a regular basis bears little resemblance with that of an isolated inmate spending over twenty hours in their cell, experiences of prisons are nevertheless characterized by at least two constants: the first, described by US sociologists in the mid-twentieth century using the term “prisonization” (Clemmer, 1940), is the necessity of adjusting to the constraints of prison and to the loss of autonomy resulting from incarceration. Strategies differ between individuals, but all pursue forms of “secondary adjustments” (Goffman, 1961) aimed at preserving a degree of agency and intimacy. The second resides in the degree of violence to which detainees may be exposed. Some see this as evidence of a criminal counter-culture that reproduces authoritarian hierarchies in detention; others relate it to some structural factors, arguing that violence is more likely to occur when people who often distrust each other live in close quarters. They suggest that violence arises from one of the fundamental paradoxes of prison: it is a space that forcibly brings together individuals from different walks of life in the same place, but at the same time prevents a genuinely common world, meaning a world made of stable and predictable interactions, from arising. Prison has been described as a “fragile social structure with unpredictable effects” (Chauvenet, Orlic, Rostaing, 2008).

2. Who goes to prison ?

- 18 A common-sense answer to the question “who goes to prison?” would probably be: people who have committed offences and crimes and have been sentenced to prison. The actual answer is, however, more complex: the composition of the prison population is both the result of criminal policy choices and of a selection that is performed throughout the penal process. Additionally, prison contributes to constructing crime, by producing social trajectories that are characterized by disaffiliation. Ultimately, contrary to the idea that prison only concerns prisoners and their loved ones, prison is everyone’s problem, in the sense that it contributes to structuring our society.

2.1. Understanding the prison (over)population

- 19 As of 1 May 2023, there were 73,162 persons in detention for 60,867 available places in France. Over half (59%) of these prisoners are in a facility where over-occupancy exceeds 120 per cent; prison authorities have estimated that 2,241 sleep on mattresses on the floor. Prison overpopulation is concentrated in *maisons d’arrêt*, which unlike *établissements pour peine*, are allowed exceptions to the *numerus clausus* rule. One might think that this state of affairs results from a lack of prison places. Yet, the past thirty years have shown that the expansion of the prison system has systematically come with an increase in the number of incarcerated persons. The detention rate has continued to grow along with the successive construction programmes (with 13,000 additional places in 1987, 4,000 in 1996, 13,200 in 2002, and 15,000 new places for 2027), passing the symbolic threshold of 100 prisoners for 100,000 residents in 2012. France’s prison population is around the European average, far behind Northern European states, whose detention rates are very low.⁵

- 20 Upon first glance, no surge in crime can explain this increase in incarceration rates – crime has actually tended to decline over the recent decades (Robert and Zauberman, 2011). The higher numbers of detainees is rather the result of a “punitive turn”, characterized by a heightened severity of criminal sanctions informed by populist discourses (Carrier, 2010). In addition to this severity, interpersonal violence, especially sexual, is also more harshly punished; in the 1980s and 1990s, this has resulted in longer sentences for the perpetrators of these kinds of violence.
- 21 Demography boils this increase down to a simple equation: the *stock* of prisoners depends on the *flux* of incarcerated persons and on the *duration* of incarceration (Tournier, 1998). In France, incoming and outgoing flows have increased, particularly since the early 2000s, whereas the average duration of incarceration (around ten months) has more than doubled in the past forty years, partly due to the increase in the length of long sentences. Likewise, the number of persons placed in provisional detention has also increased, leading in turn to an increase in the average duration of these detentions: nearly one in three individuals in prison (27.2%) are currently awaiting trial.
- 22 This simple equation has allowed observers to put forward solutions that may seem obvious to reduce the size of the prison population: relying less on pre-trial detention and more on alternatives like judicial supervision and house arrest; developing alternatives to incarceration (such as community service or suspension with probation) for the shorter sentences, which make up a vast majority (95 per cent of sentenced individuals have to do under three years, 75 per cent under a year, 40 per cent under six months⁶). Lastly, to reduce the duration of incarceration, forms of alternative sentencing have been devised, such as work releases in approved social rehabilitation associations, electronic monitoring, social-judicial supervision or parole. In econometric terms, these measures are often presented as less costly than a day of detention (105 euros on average). This array of measures has considerably expanded in recent decades. While it may have curbed the growth of the prison population, it has yet to help reduce its size. On the contrary, these “probation” measures appear to result in an “extension of the penal net” (de Larminat, 2014), in the sense that they are added to prison sentences instead of replacing them: in addition to imprisoned persons, ⁷ over 174,515 individuals were, as the official phrase goes, “in the hands of the justice system”, in 2022.
- 23 Far from a mechanical reaction to offences and crimes, incarceration is a means among many others to penalize deviant acts. This means we should refrain from looking at the inflation of the prison population as a foregone conclusion: it is the result of political choices as to the best way to punish.

2.2. Prison at the end of the penal chain

- 24 Evidently, prison stands at the end of the penal chain: the people who end up in prison have been arrested, charged and, for the most part, convicted. As a result, the composition of the prison population is determined by criminal policy orientations and the actual practices of the police and the justice system. In other words, the prison population is the answer to a simple question: who gets put in prison and why?
- 25 Official statistics give us some indications regarding the type of offences that are punished by prison sentences: as of 1 January 2022, 25,8 per cent of individuals in

prison were convicted for theft and property offences, 17,1 per cent for drug offences, 6,1 per cent for traffic violations that did not result in injury or homicide. There were also 18,1 per cent of individuals convicted for interpersonal violence, 11,4 per cent for rape and sexual assault and 10,2 per cent for homicide. This snapshot of the prison population should be complemented by stats on sanctions to enable us to measure not the stock, but the flux of convicted people: this would show that the most frequently punished offences are by far theft and property offences. This state of affairs is partly the result of criminal policy orientations, meaning of the offences that the legislator chooses to (de)penalize. The severity of criminal sanctions varies: hosting an undocumented foreigner is for instance more severely punished than dumping waste without authorization.⁸

- 26 Incarceration also results from the activity of each of the links in the penal chain, which help sorting individuals and selecting those who will ultimately be incarcerated. This selection partly depends on the activity of police, which tends to target some offences or urban areas specifically. It also results from the activity of the justice system, which produces “criminally and socially marked judicial destinies” (Gautron, Retière, 2013). As they are more frequently held in pre-trial detention, unhoused and foreign individuals are eight times more likely to receive a prison sentence. In addition to these procedural causes, some forms of discrimination are more difficult to pinpoint. This suggests that “there is no equality in the face of prison and [that] the allocation of prison sentences hinges on rationales that aim to reassign everyone to their place in society. Some are spared the dreaded experience of prison as much as possible, whereas others have the purportedly beneficial shock of incarceration forced upon them” (Fassin, 2015). There are for instance very few white-collar criminals in prison – individuals convicted from economic and financial offences or crimes (Sutherland, 1949). Regardless of the offence or crime being considered, being a member of the upper classes reduces the risk of incarceration.

A minority of women in detention

Among the 73,162 individuals imprisoned, only 2,356 are women. This proportion has not always been this low: by the mid-nineteenth century, women accounted for around 20 per cent of the prison population. The first reason is that women commit fewer acts punishable by prison sentences. Second, they receive less severe criminal sentences: the share of women decreases as the penal chain progresses. They make up around 20 per cent of defendants but only 3,2 per cent of the prison population. While women appear to be relatively protected from prison, this is not the case of those who “transgress gender norms”, meaning that they commit offences or crimes that are considered particularly morally reprehensible – acts of physical violence, infanticide, etc. (Cardi, 2007).

- 27 Ultimately, the vast majority of prisoners are rather young (around half under thirty years old) men with working-class backgrounds.⁹ Twenty-five per cent of incarcerated persons are foreigners – compared to 7 per cent of the French population.¹⁰ A study of a representative sample of male prison entrants (Plancke et al., 2017) has shown that one in three inmates was placed as a minor, that around half have no degree, and that two thirds are unemployed at the time of incarceration. The illiteracy rate stands at around 11 per cent according to official figures; many prisoners do not speak French. These social conditions are compounded by serious health problems: more than one in three

detainees have addiction issues (alcohol or drugs); there are seven times more cases of schizophrenia upon incarceration than in the general population. These socio-demographic indicators lead many observers to consider prison, in the words of Michel Foucault, as an institution that regulates “working-class male illegalism” (Foucault, 1975).

2.3. Life after prison

- 28 Almost everyone who goes into detention will one day come out.¹¹ This simple fact calls for considering the ways in which prison stays fit into the life trajectories of incarcerated people; in other words, to think of the prison experience “beyond the walls” (Chantraine, 2004). Incarceration is rarely experienced as something beneficial. It may allow people who are addicted to drugs or living in great precarity to take a break from their lives and take care of their health in a protected environment. Others see it as a risk inherent in the criminal activities they have chosen to pursue, or even as a school of crime. But for most prisoners, incarceration is a violent disruption in the life course, and it weakens social ties, as they lose their jobs, break up with their spouses, etc. With the exception of the few who make some money off the prison black market, most people in detention become poorer, as it is difficult to find a prison job, pay is low, and many expenses are needed to complement their diet, take care of their hygiene or access a phone or a television. Prison is also tough on the prisoners’ loved ones, who go through what has been called “the extended prison experience” (Touraut, 2012): families who support and visit a loved one in prison may see their often already precarious economic and social situations further destabilized.

Suicide in prison

In 2012, 125 individuals in detention took their own lives, adding up to a suicide rate six times higher than in the general population with comparable demographic characteristics. Establishing the causes of suicide is a complex endeavour: often, they relate to individual life stories and vulnerabilities. However, the letters of prison suicides point to the importance of the “specific stressors” produced by incarceration and everyday life in prison: the feeling of being ostracized and unfairly treated; threats or verbal and physical violence, conflicts with prison staff, etc. (Pan Ké Shon, 2013). Suicide prevention, which is a major concern for the institution in part due to the media scrutiny of these numbers, therefore depends directly on the overall improvement of living conditions in prison.

- 29 The critique of the harmful effects of incarceration is widely shared, to the extent that the supreme reward for a prisoner is to be released early. Yet release is also a critical juncture in the carceral trajectory: although there are many active associations that will help, returning to life outside is a path fraught with obstacles, to have one’s social rights restored, explain gaps in résumés, erase the stigma of incarceration and in some cases avoid the pitfalls of crime or drugs. Release conditions sometimes lead former inmates to reoffend. Studies on repeat offenders have found that individuals serving alternative sentences are less prone to reoffending, or more exactly to returning to prison (De Bruyn, Kensey, 2017). This is partly due to a selection bias – the individuals who are granted alternative sentences are generally those thought to have better chances of reintegration into society than those who are denied them. While the effect

of supervision by socio-judicial services is difficult to assess, it is likely that a prepared and supervised prison release will reduce the risk of reoffending. Additionally, adaptation in prison may play a counter-intuitive role: the prisoners who have fewer discipline issues in detention are also those who struggle most after release (Goodstein, 1979). To put it bluntly, integration in prison may be a factor of social exclusion.

- 30 We therefore find that while 60 per cent of individuals released from prison are reincarcerated within five years, this rate varies strongly depending on the nature of the initial offence, the existence of previous sentences, age and marital status. Overall, repeat offences are mostly committed by unpartnered young men with multiple convictions – the typical profile of young adults in criminal careers. The exit from a criminal career, which has been called “desistance” (Mohammed, 2012), depends on a variety of complementary factors pertaining to socio-economic integration and to the evolution of kinship and family ties. Among this set of factors, the punishment of prison appears to play a limited dissuasive role: stays in prison, especially when repeated to the point that they end up being a significant part of biographies, may end up discouraging people who were simply looking to find their place in society.

3. Where does prison come from?

- 31 The prison system as we know it today is the product of nearly two centuries of history. It began with the emergence of modern prison in the early nineteenth century, at a time when major political and economic changes were underway. Since then, devising fair and effective prison sentences has remained a constant concern. Prison changes but efforts to reform prison persist, to the extent that it can be argued that this endless quest is precisely what makes this institution last even as its failings keep being pointed out.

3.1. The rise of modern prison and the birth of incarceration as a self-evident kind of punishment

- 32 Imprisonment has existed for a long time, but it was only in the nineteenth century that prison was institutionalized as the place for serving a legal sentence. “Modern” prison, which prefigured today’s correctional institutions, was the outcome of (pre)revolutionary eighteenth-century thought. By that time, corporal punishment was becoming intolerable. Torture was gradually banished: the “preparatory interrogation” (*question*), which was designed to extract confessions, was for instance discontinued in 1780. In 1791, deprivation of liberty was made a punishment in itself: “modern prison” was no longer a place of arbitrary exclusion pending physical punishment. But corporal punishment was abolished only in the nineteenth century, sometimes in the twentieth century in France: branding, cutting off fists in parricide cases, public humiliation using stocks were ended in 1832; the death penalty was eliminated in 1981. Although it ostensibly departs from these types of punishment, modern prison does also impose a form of corporal torture by confining bodies in small spaces.

Prison: a more lenient sentence?

In 2006, ten individuals sentenced to life and incarcerated in the high-security prison of Clairvaux signed a petition that began with the words “We, who have

been walled up alive...”. They asked for the effective re-establishment of the death penalty (which France abolished in 1981) to end the slow and painful death of life in prison (Bérard and Chantraine, 2008). In addition to calling into question the foundations of long prison sentencing, their call asked an essential question: could the purportedly humanist invention of prison have introduced a new form of inhumanity?

- 33 Over the course of the eighteenth century, arbitrary royal power was also increasingly challenged. In the field of criminal justice, this legalist momentum informed codification efforts. Cesare Beccaria, in *Of Crimes and Punishments* (1764), defended a few principles that would serve as the basis for France’s new Penal Code:¹² no crimes or punishments exist unless they are mentioned by law; every individual shall be considered innocent until declared guilty; punishment must be proportional to the offence.¹³ Prison as a punishment must therefore be considered in the history of the gradual development of modern criminal law and of its underlying philosophy. Alvaro Pirès (1998) has called “modern penal rationality” the idea that whoever commits an offence must be punished accordingly. This connection between a behaviour and a punishment norm comes with a calculation: the more “serious” the behaviour, the “harsher” the punishment. The “amount of wrong” that has been done defines the value of the norm that has been transgressed. From this twofold operation, two self-evident assertions ensue: a criminal must be punished for his acts; the punishment will depend on the gravity of these acts. Deprivation of liberty, which is easy to quantify in duration, appears to be an obvious punishment. This modern penal rationality established a framework from which it is difficult to stray.

3.2. The unceasing reform of the prison project

- 34 Contrary to traditional forms of lockdown (oubliettes, dungeons), deprivation of liberty is characterized by the superimposition of a place (the prison as a space) and of a project (the sentence): the period of incarceration must be an individually and socially useful time. The prison project mobilized a milieu of reformers that included statesmen, philanthropists, philosophers, doctors, magistrates, architects, and so forth. This “early nineteenth-century prison quest” was aimed at giving prison a “function of redress, of reform, of amendment, or in a medical register, a curative, therapeutic function of ‘treatment’” (Salle, 2016). The birth of modern prison reflected a humanist vision: the criminal was thought of as a being that was capable of improving and returning to society.
- 35 By the nineteenth century, the prison project consisted primarily in putting prisoners to work. Deprivation of liberty took widely varying forms: it could take place in *maisons de force* (port or colonial labour camps), in *maisons centrales*, or in the *prisons départementales* that were built over the course of that century. These detention spaces shared the use of forced work for moral rehabilitation purposes. Michelle Perrot (2001) has called this a “grand design to convert the poor” by the upper classes for the benefit of the lower classes. To Michel Foucault (1975), prison is part of a “disciplinary” continuum, which, in line with schools, hospitals, the industry and the army, aims at controlling, measuring, taming and monitoring individuals to make them useful and docile. This agenda converged with the economic interests of the time: against a backdrop of strong economic development, prisoners were a welcome captive

workforce for the state and private contractors: convicts, for instance, constructed the Nantes-Brest canal between 1822 and 1832. In *maison centrales* and *prisons départementales*, inmates tended to perform labour in workshops or cells.

Prison and the labour market

In 1939, Georg Rusche and Otto Kirchheimer published *Punishment and Social Structure*. Based on the premise of a strong and direct connection between a society's social structure and punishment system, they showed how the institution of prison enables a regulation of the labour market: depending on what is needed, prison can be alternatively a place for putting prisoners to work or for sentencing them to social death, a place for profit or a place for controlling and managing the poor. In their view, prison is not a humanist tool for rehabilitation but rather a pragmatic tool to maintain economic stability.

While modern prison functioned in similar ways to the effort to put individuals to work, the question that arises for today's prison is as follows: as there is a dearth of work to be entrusted to prisoners, what becomes of the connection between prison and the labour market?

- 36 While work was the cornerstone of the prison project, reformers also considered the question of the “good prison”, meaning a prison that would play a humanist role. This reform effort has been a thread running throughout the institution's history. Debates were lively and raised political and social questions surrounding the functions of the punishment. There were talks about architecture, about the scale of penalties, how days should be spent, the role of guards, the specific treatment of women and children, and the most efficient reward system. Among the questions that were raised repeatedly during the nineteenth century, the modalities of imprisonment were a particularly important concern. In 1833, a report by Alexis de Tocqueville and Gustave de Beaumont “On the Penitentiary System in the United States and its Application to France” supported the application of the total isolation system implemented in Pennsylvania, where inmates were locked in individual cells day and night. This system was opposed to that of Auburn, who proposed silent group work by day and individual imprisonment at night. The two models – one focused on security and individual improvement and the other on rehabilitation through discipline and hard work – were discussed for decades. Eventually, the “Law on Cell Imprisonment in Departmental Prisons” was voted in 1875 and provided for total isolation in cells for defendants and those sentenced to under a year of imprisonment, to avoid the threat of “moral contagion”.
- 37 The eagerness to pursue reform was fuelled by the need to bridge the gap between the ideal prison project and the actual reality of prison. This reality was documented by numerous reports describing the state of detention conditions in detail and proposing measures for their improvement. This task was for instance taken on by the royal society for prison improvement (*Société royale pour l'amélioration des prisons*), created in 1819, and the general prison society (*Société générale des prisons*) starting in 1877. This was also an ongoing concern beyond national borders: multiple international conferences on prison began to be held in the mid-nineteenth century, bringing together reformers from various European states. Modern prison and prison reform go hand in hand: “From the outset, the prison was caught up in a series of accompanying mechanisms, whose purpose was apparently to correct it, but which seem to form part

of its very functioning, so closely have they been bound up with its existence throughout its long history” (Foucault, 1975).

- 38 This constant effort to reform has evidently had more or less direct effects on detention conditions, which have changed substantially over the course of the past two centuries.

3.3. Changes and inertia

- 39 Twenty-first century prisons no longer look much like those that early nineteenth-century reformers were discussing. Their efforts did actually transform detention conditions, sometimes dramatically, as in the wake of World War II, whose carnage (summary executions, deportations) and inflation of detainees (63,000 in 1945 compared to 18,500 in 1939) left traces. The Amor reform, named after the director of the prison administration named at the end of the war, was meant to make social rehabilitation the core principle of sentences: it created prison social services and a training school for guards, it reduced the range of disciplinary sanctions, extended access to conditional release, improved assistance to prisoners during and after their sentence. In 1945, an order on delinquent youth prioritized educational measures over penal sanctions. The 1950s and 1960s saw the introduction of new groups of professionals into prisons: educators, teachers, state-certified nurses, and especially sentence enforcement judges (1958), who played an ever-increasingly important role along with the introduction of new sentencing adjustment measures (day release, furloughs, etc.). This was the time of “penal welfarism” (Garland, 2001): in these “welfare-state prisons” (Bouagga, 2015), the hope was that offering a correctional treatment adapted to individuals’ needs would remedy the deficiencies in their socialization.
- 40 With the 1970s came a new era of protest against prison confinement and detention conditions: mutinies and detainees’ uprisings spread among prisons, whereas outside, politically engaged intellectuals mobilized, particularly under the banner of the Prisons Information Group (GIP). The publication of Michel Foucault’s *Discipline and Punish* (1975) was influential in France and beyond: this was a time when oppressive institutions were protested, especially psychiatric institutions and prisons. This outrage led to a loosening of the regulation of everyday life in prisons: corresponding with the outside world was made easier by the introduction of phones and radios, and visiting rooms without partitions were opened. France was called to align itself with the minimum standards for the treatment of detainees issued by a variety of European and international bodies. Criminal policy also changed, with the abolishment of the death penalty in 1981 on the initiative of then Minister for Justice Robert Badinter and the development of alternative penalties such as community service (*travail d’intérêt général*) in 1983.
- 41 Still, the 1980s saw a steady increase in detention rates which the opening of new prisons could not keep up with: in addition to the lengthening of the longer sentences (due to the criminalization of behaviours like sexual crimes), there were large flows of short sentences resulting especially from the fight against drug trafficking. The term “overpopulation” appeared in public discourse, culminating in the late 1990s with a new period of outrage regarding the dysfunctional state of French prisons. A series of reports denounced it as a “humiliation for the Republic”, in the worlds of the 2000

senate report. Associations mobilized: in 2006, for instance, the French branch of the International Prisons Observatory held a large-scale forum on the penitentiary condition. In the 2000s, several reforms attempted to make prisons fall in line with the principles of a democratic state: reinforced supervision of internal operation rules, and especially of disciplinary law, introduction of the very first prison act in 2009, and most importantly, improvement of the external supervision of prisons. In 2007, for instance, the position of Controller-General for Places of Deprivation of Liberty was created, responsible for ensuring compliance with the fundamental rights of detainees in France.

- 42 The birth of the modern prison was imbued by a progressive, humanist approach that has time and again come up against the reality of the inability of confinement to fulfil the missions assigned to it. This observation suggests a weighty question: what is the (actual) use of prison?

4. What is the use of prison today?

- 43 Contemporary penitentiary policies entrust prison with the protection of public order and social rehabilitation, missions whose very terms are contradictory: how can one rehabilitate an individual by temporarily removing them from society? In response to this complex equation, there has been, on the one hand, an effort to improve access to rights so that prison is a “deprivation of the right to come and go and of nothing else” and on the other, the deployment of an extraordinary risk management apparatus. The carceral institution acts as a magnifying lens of some of our society’s paradoxes: it increases the freedom of some to focus control on others; it strives to empower without giving the tools needed to achieve autonomy.

4.1. The contradictory functions of contemporary prison

- 44 Article 1 of the 2009 Prison Act defines the meaning of the penalty of deprivation of liberty: it “reconciles the protection of society, the convict’s sanction and the victims’ interests and the need to prepare the integration or rehabilitation of the detained person to allow them to lead a responsible life and to prevent the commission of further offences”. This definition¹⁴ superimposes a number of contradictory social functions that can be unpacked and analysed with the help of sentencing theory research.
- 45 There is a first tension at work between two logics one might respectively call retributive and consequentialist: on the one hand, the sentence is expected to punish the convict, i.e. make them pay for the harm they have done, and bring justice to the victim(s). The prisoner is meant to atone for their wrongdoing and the retribution is calculated in proportion to it. On the other, the sentence is supposed to fulfil several social functions: protecting society and preparing the detainee’s rehabilitation. This entails an attention to the consequences of incarceration: the usefulness of confinement must be maximized. These two logics may clash when – and this is a criticism frequently levelled against overpopulated *maisons d’arrêt* – imprisonment conditions cause suffering and lead to repeat offences. Such a sentence has the paradoxical effect of being detrimental to society.

- 46 There is a second kind of tension at work between the objectives of neutralization and rehabilitation: prison is expected both to protect society by temporarily or durably removing individuals and putting them in a position where it is impossible for them to cause harm and to contribute to their reintegration into society. Between prison walls, this creates a reality that is made of numerous paradoxes. Having allegedly dangerous individuals kept away from society meets the objective of neutralization, but this social exclusion makes it difficult to rally these individuals around social rehabilitation projects: how can one claim to empower a person who has been denied any form of autonomy? Conversely, for short sentences, how could a quick prison stint allow a prisoner to commit to real self-examination for the purpose of “leading a responsible life”? How can one socially justify the fact that short-term “neutralization” can durably threaten the possibility of “rehabilitation”?
- 47 These contradictory functions make prison a square wheel, and acutely raise the question of why the prison sentence remains such a prominent reference in our penal system. How can we explain the extension (increasing incarceration rates, prisons for minors opened since 2002, etc.) of such a paradoxical institution? The success of prison may in fact partly be a result of its failure: by gathering these opposed functions in the same location, prison still acts as the place that cements our penal rationality; it somehow keeps irreconcilable objectives bound together.

4.2. “The deprivation of the freedom to come and go and nothing else”?

- 48 In 1974, French President Valéry Giscard d’Estaing claimed, on the occasion of a visit to Lyon’s Saint-Paul prison: “Prison is the deprivation of the freedom to come and go, and nothing else!”. This incantatory phrase has enjoyed great success: it is regularly cited in contemporary debates on prison reform. But can this wish come true? The reality of prison tends to show that by removing the freedom of movement, prison causes multiple other deprivations: it limits social contacts, organizes the supervision of intimate and sexual relationships, imposes searches on personal property, cohabitation with non-chosen individuals; it reduces the individual’s autonomy in the choice of their activities, and extensively regulates the conditions of their existence and the management of their time.
- 49 However, the ideal of prison as only a place of “deprivation of liberty” has continued to guide reform attempts. The carceral institution has been called to “normalize” its operation and it has been recommended that “Life in prison shall approximate as closely as possible the positive aspects of life in the community” (European Prison Rules, 2005). Nineteenth-century thinkers theorized the “less eligibility” principle, which holds that prisoners’ living conditions should only be inferior to those of the poorest honest citizen for dissuasion purposes; it is now recommended to provide detainees not only certain living standards but effective access to individual rights such as the right to healthcare, to education, to training or to work, legal representation and vote, sexuality and family. This is a guiding principle of penitentiary policy: it is for instance officially to ensure the “maintenance of family ties” that “family life units” have been introduced, and to ensure access to healthcare that “hospital units” dedicated specifically towards detainees have been opened. These normalization efforts come up against the

constraints of prison and the breadth of the needs of detainees, as a result of which accessing such rights is often effectively impossible. Despite these limitations, the normalization ideal is the current horizon of the good prison. Yet the good prison is strangely defined in the negative: the main thrust behind it is to *not* deprive detainees from anything other than freedom of movement and to reduce its negative effects. Overall, it is “as if the end of belief in the potentially positive action of carceral confinement has been explicitly acknowledged” (Faugeron, 2000).

The hidden face of prisoners’ rights

The fight for the recognition of detainees’ rights is part of a long history. A few of its landmarks have been the basic rules on the treatment of detainees issued by the United Nations (1957), the creation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) and of the Controller-General for Places of Deprivation of Liberty (2007), and the publication of European Prison Rules in 1973, 1987 and 2006. Multiple legal safeguards have been introduced to establish the criteria for a just and dignified deprivation of liberty, and to ensure their implementation. Yet, a number of elements cast doubt on the actual efficiency of law when it comes to transforming prison: first, the imperative of security is often put forward to limit the application of these rights. Second, the rights in question shift the reality of prison instead of reforming it extensively: this leads to a depoliticization of the fight for prisoners’ rights (Chantraine, Kaminski, 2007).

- 50 The treatment of the issue of the safeguarding of rights reflects an evolution of social representations: prisoners are no longer seen as poor people whose deviant behaviours must be corrected by carceral discipline, but as citizens entitled to rights that incarceration must guide towards a “responsible life”, to use the phrase employed in the Prison Act. This formalism provides detainees with legal recognition and tools to combat arbitrary decisions against them and to improve the implementation of their rights. For instance, the introduction of postal voting in May 2019 has allowed many detainees to exercise their right to vote. Yet, it can also result in concealing, behind the formal equality of the law, the actual inequalities produced by incarceration and the specific needs of the individuals subjected to it. Also, this policy of access to rights comes with demands of accountability, as has been the case in recent welfare policy trends: like jobseekers who have to keep the “personalized project for access to work” up to date against the backdrop of the economic crisis, detainees are required to formulate a “sentence enforcement plan” which is meant to give meaning to an incarceration process in which no one truly believes any more. Ultimately, prison makes contradictory demands on individuals: “More than ever, the actor is ordered to act responsibly and become a real individual; more than ever, he is deprived of the social and symbolic resources to make good on that order” (Chantraine, 2004).
- 51 It should be noted, however, that the Prison Act provides for restrictions to rights whenever they are the consequence of “the constraints inherent in detention, the maintenance of security and order in prisons, the prevention of repeat offences and the protection of victims’ interests”, (Article 22, 2009 Prison Act). These exceptions leave significant leeway to prison authorities in the management of carceral order. When they are put in disciplinary cells for instance (“solitary”), prisoners are denied access to their personal belongings or to the activities offered by the institution. In this prison

within the prison, where suicides occur frequently,¹⁵ the only distraction consists in going out one hour per day in a fenced yard. Also, detainees who have been assessed as threats to carceral order (members of organized crime groups, terrorist movements, or individuals prone to highly violent acts) can be subjected during their incarceration to reinforced surveillance measures: solitary confinement, frequent body searches, increased supervision of personal belongings, systematic recourse to shackling outside the cell, regular moves to other facilities or cells. These particularly strict detention conditions have psychosocial effects that may include feelings of dehumanization and social injustice and conditioning to violence.

4.3. Prison as a risk management tool

- 52 If there is one social function that prison appears to fulfil quite successfully, it is that of neutralizing detainees for the duration of their incarceration. The security apparatus, both material (walls, fences, watchtowers, duckboards, ropes) and electronic (cameras, sensors) works in that it ensures the effectiveness of confinement and makes escaping practically impossible.¹⁶ The justice system in fact uses this neutralization function to lock up individuals who have yet to be judged through the custody system, to the extent that it is sometimes suspected of serving as a criminal policy tool for the state – to prevent a possible terrorist attack or appease social conflicts.
- 53 However, this neutralization function is temporary because nearly all prisoners will one day be released (see Part 2). Still, following the abolition of the death penalty, several legal changes have been designed to re-establish a sentence of social elimination: the 1994 Penal Code introduced “incompressible” life sentences (without parole), with a “minimal period” of thirty years during which the sentence cannot be adjusted. 2008 saw the creation of “secure detention” (*rétenction de sûreté*), which allows to extend the confinement of detainees initially convicted for some serious crimes, who have served their sentence but are considered at a high risk to reoffend, in special facilities. Considering the gradual lengthening of the average duration of sentences, too, it is clear that increasing numbers of prisoners face the prospect of ending their days in prison.¹⁷ Not to mention the logistical and healthcare challenges posed by the aging of the prison population, incarceration until death raises an important moral question, since it renders the rehabilitation aspect of the sentence null and void.
- 54 For individuals who have been convicted of crimes considered as particularly serious (sexual violence, homicide, etc.) the precaution principle appears to prevail over the humanist principle of rehabilitation: the possibility of prison release is conditional on a range of control measures. A “criminological” evaluation arsenal for detainees has been developed in prison for the purpose of establishing their dangerousness level and risk of reoffending. Using behavioural profiling, which draws on statistical correlations or clinical assessments, prison has become a laboratory for identifying dangerous individuals who will require supervision including after release. This eagerness to predict future behaviours rekindles a debate that is as fundamental as it is old: should justice punish actions, individuals or intentions? While it is tough to settle this question – which was asked especially during the nineteenth century (Kaluszynski, 2008) –, the scientific character of the assessments based on which the fate of individuals is settled is debatable; they have the adverse effect of generating numerous

cases of “false positives”, meaning that they keep people who would not have reoffended in prison.

The treatment of “terrorists” in prison

As of 1 January 2022, 892 individuals were detained in France for terrorism-related offences and crimes. These prisoners are often housed in solitary cells and highly secure facilities to prevent proselytizing. The fight against terror – and particularly, over the past few years, against Islamist terror – has resulted in the introduction of exceptional treatments for prisoners considered as “radicalized” or “terrorist”, implemented through the extension of classical forms of control – isolation, searches, separation – and the development of tools for detecting and assessing dangerousness. In addition to the real risk of arbitrariness inherent in separating and isolating a target group, this differential treatment perpetuates a vicious cycle: the obsession of contagion and risk management fuels a sense of stigmatization and defiance among those who are targeted by this control.

- 55 In 1992, Malcolm Feeley and Jonathan Simon identified the emergence of new penal rationality (the “new penology”) in the US, characterized by the gradual abandonment of the traditional objectives of sentencing to favour a differentiated control over individuals based on profiles established through risk management tools. In France, this approach has resulted in a dualization of carceral treatment, with, on the one hand, the management of considerable flows of people serving short sentences and on the other the tracking and extensive control, including outside prison, of those identified as dangerous. In this way, prison contributes to the construction of an unequal security-oriented society.

Conclusion

- 56 The history of prison is characterized by a constant tension between the ideal of the penitentiary project and the reality of carceral conditions. This tension regularly produces scandals during which prison is invariably accused of failing to meet the goals it has been assigned. But prison keeps surviving these challenges, as if the hope of prison reform had the properties of a philosopher’s stone, operating as an “alchemy” through which “the inevitable question of the social nature and uses of prison is avoided, and instead a dream prison, never actualized, where the ideal of the functions of sentencing would finally be fulfilled, is put forward” (Faugeron, Le Boulair, 1992). This means that the very fact that the failures of prison have been observed countless times does not harm the longevity of the institution; indeed, it may even favour it.
- 57 The search for a “good prison sentence” is still ongoing in reformist circles. New apparatuses and programmes¹⁸ are tirelessly devised to finally allow detainees to work on themselves in ways that would help them find a place in society without reoffending. This hope – that there is such a thing as a “good” prison sentence, or at least one with limited adverse effects – contributes to the surprising endurance of the dominance of prison: prison has remained the central feature of our sentencing system even into the twenty-first century.
- 58 Beyond its enduring importance, prison today is characterized by a deep, twofold paradox. When it plays its role – neutralizing prisoners convicted of serious crimes are

considered as high-level threats – prison appears to contradict the rehabilitation project, since it locks up people without any hope of release and/or in desocializing conditions. Conversely, in its treatment of the flows of short sentences, prison appears to play a role of social (de)regulation that reinforces inequalities and cements the marginalization of young lower-class offenders.

59 The belief in a humanist penitentiary project has largely crumbled. An “orphaned institution”, prison gives off the sense of being adrift “in the most diverse political contexts, without anyone daring to moor it, to relate it to democratic questions” (Artières et al., 2004). Neither reform nor abolition appear to be very convincing discourses today: it seems impossible to conceive a prison that meets these goals, but it seems equally impossible to do without this institution altogether. Prison owes its longevity to the tautological repetition of the idea that it is (a) necessary (evil).

60 Having noted all this, it is worth recalling here that prison is a social choice embedded in a long history whose course is always susceptible to change, as suggested by the alternative history penned by Jean Bérard (2011). In 2112 France, the importance of prison has dwindled following the implementation of a reductionist programme, the “Amsterdam plan”, which the director of an emptied out prison describes as follows:

“This was the year 2077, [...] all the neighbouring countries were aligned on the crime/penal severity/prison privatization trifecta. But one could follow other nearby examples, like that of Finland, which had gone from one of the highest detention rates in Europe to one of the lowest.¹⁹ [...] There were lots of reports that explained how to achieve this: lowering maximum terms of imprisonment, generalizing recourse to early and conditional recourse, developing useful alternatives such as community service, and most of all, sticking to this approach. The same applied to penitentiary matters: European experts repeated that we had to refrain from expanding the prison system to try to keep up with overcrowding; inspection reports clearly showed that large, quickly built prisons were powder kegs. [...] We tried to establish a road map, we explained that the main thing was to deliver a coherent message and most importantly to stick to it over quite a long time. We explained to the minister that he needed to stop pursuing what had been pretty much his only idea: using criminal cases that got media coverage to have repressive laws passed, most of which were disastrous or inapplicable.”

(Bérard, « La grande évasion », 2011)

61 The “Amsterdam plan” imagined by Bérard uses known ingredients from public debate: to leave behind the idea that prison is a self-evident form of punishment, we need to rethink its place in the penal system, and replace deprivation of liberty with new modes of social regulation and control. Doing so requires developing a penal imagination, drawing for instance on alternative justice models that depart from the principles of modern penal rationality.²⁰ Most crucially, we need to rethink the place of the penal system in our society, and in doing so to also consider education and social policies. Indeed, the failure of prison is also ultimately that of a society that is unable to give every individual a seat at the table.

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NOTES

1. According to official numbers from the Ministry of Justice. Imprisonment sentences are imposed in the majority of cases, but mandatory time is required in only one third of all imprisonment sentences, whereas 55 per cent are entirely suspended terms. On the other hand, criminal fines are issued in 32.4 per cent of convictions.

2. Unless stated otherwise, the numbers cited in this paper mainly come from the “monthly statistics on imprisoned and detained persons in France as of 1 May 2023” issued by the national prison administration (*direction de l’administration pénitentiaire*; DAP, 2019).
3. Juvenile inmates (648 individuals) are aged 13 and over – thirteen being the legal minimum age of incarceration. They are incarcerated in juvenile areas of adult detention centres or in one of the six juvenile facilities that have opened across the country since the 2000s.
4. Article 3 of France’s Prison Act of 24 November 2009.
5. With 51.1 detainees per 100,000 inhabitants in 2018, Finland’s prison reality is very different from that in France. The same goes for Sweden (56.5), Denmark (63.2) and Germany (77.5). Conversely, in Central and Eastern Europe, detention rates (often exceeding 180 per 100,000) reflect more severe criminal policy choices. See the Council of Europe’s Annual Penal Statistics reports.
6. Key figures from French prison authorities as of 1 January 2022.
7. In French prison statistics, a distinction is made between *personnes écrouées* (which include people in detention, people on work release, and people placed under electronic monitoring) and persons in *milieu ouvert* (in open custody).
8. “Any person who, by aiding directly or indirectly, has facilitated or attempted to facilitate the unauthorized entry, movement or residence of an alien in France will be punished by a term of five years’ imprisonment and a fine of 30,000 euros” (Article L622-1, French Code of Entry and Residence of Foreigners and Right of Asylum); “The act of placing, abandoning, throwing out or discharging, in a public or private location [...] either a vehicle wreck, or waste, refuse, litter, materials, unsanitary fluids is punishable by the fine established for fifth class offences [up to 1,500 euros; this amount may be raised to 3,000 euros for repeat offenders]” (Article R635-8, French Penal Code).
9. While the question of ethno-racial inequalities in the face of prison has not been systematically studied in France, it is likely that this dimension also factors in. In the US, the probability of being incarcerated at least once in life was 60 per cent for adult black men in the 1980s (Pettit, Western, 2004).
10. Foreign nationals are more likely to be placed in provisional detention and less likely to be offered alternative sentencing measures. When they are in an irregular situation, incarceration very often ends with deportation.
11. The exceptions are the few people sentenced to life without parole, and those, who are more numerous, who die in prison. During the year 2017, 59 deaths from natural causes and 103 suicides in detention were recorded (see box on suicide in prison).
12. France’s first *Code pénal* was issued in 1791. It was replaced in 1810 by the Imperial Penal Code, which remained in effect until 1994.
13. In 1789, the Declaration of the Rights of Man and the Citizen proclaimed that “No man can be accused, arrested nor detained but in the cases determined by the law, and according to the forms which it has prescribed.”
14. This definition does not mention the classical function of “dissuasion” that is added to those of “retribution”, “neutralization” and “rehabilitation”. Yet it clearly transpires in the architectural choices made by prison authorities: contemporary prisons, which often look like massive blocks of concrete towering over fields, are also designed to instil fear.
15. In January 2009, the Albrand report on “suicide prevention in carceral environments” found that ca. 15 per cent of suicides occurred in solitary confinement cells, even though these make up only 2% of prison accommodations.

16. In 2017, the prison administration recorded 15 effective escapes (including six from semi-open centres and alternative sentencing facilities). In some countries, like Belgium, escape is considered as an institutional failure and is as such not punished by law, but possible associated offences (such as destruction of property) are. The question of escape is complex: one might argue that they seldom happen because the security apparatus in prisons dissuades or prevents prisoners from running away, but conversely, there is also a case to be made for the idea that increased security in prisons leads to a proportional increase in the violence of escapes – as some guards will put it, “a detainee who wants to escape will always find a way to do it”.

17. As of 1 January 2018, 8,160 prisoners in France were over 50 years old; 2,626 among them were over 60, i.e. 11.8 per cent of the prison population.

18. Like the “risk/needs/receptivity” model, the “reoffending prevention programmes” or the “deradicalization programmes”

19. As of January 2018, Finland’s incarceration rate had dropped to 51.1 detainees per 100,000 inhabitants (compared to 187 in the 1950s)

20. Among these alternative justice models, which update remote or ancient penal customs, so-called restorative justice is an interesting avenue to consider: in its theoretical principles, it considers offences as conflicts whose resolution does not lie in the offender’s punishment but in reparation for the damages incurred by the victim, to mend the social bond that has been altered by the offence.

ABSTRACTS

Although it is constantly under fire, prison remains the main form of punishment in France’s justice system. How are we to explain the longevity of this controversial institution? How can the reality of prison be described? What is a prison sentence in today’s France? This paper reconsiders prison by focusing on its paradoxes. The authors question the place of prison in society, reframe the debates on prison and shed light on everyday life in prison in France. Ultimately, they call for contextualizing the analysis of contemporary prison within a broader reflection on our society.

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