

It takes a border to escape

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Abstract

Although the modern prison has evolved over time, it remains commonly defined by its walls and their role of confinement.

Nevertheless, evolutions, such as the rise of community sanctions and electronic monitoring or the constant monitoring of how a sentence is enforced, have opened new perspectives beyond the wall.

The 500 pages of preparatory work for the Belgian penitentiary law (2005) show the development of a new vision of prison. The central concept of 'normalisation' calls into question the classical border separating the 'abnormal' prison from the rest of society.

In our contribution, we will show that this new prison project is based on the requirement for openness and mobility from inmates and other actors, rather than closure and immobilisation. In this context, being outside the walls does not mean that one has done his time or has escaped the carceral system.

Therefore, can we consider the inmates as freed by mobility, or should we consider the option to free them from mobility? In other words, do the recent evolutions of the carceral imply reconsidering the ways in which one opposes the prison and defines the problem it poses to our societies?

Introduction

One of the key characteristics of the prison is its borders. The distinction between the inside and the outside is the very base of its functions, but it is also necessary for our perception of it, as a building, as an institution, or as a punishment. In this perspective, the question of boundaries is essential to our relationship with it.

For instance, it takes a border to escape from prison. If the limit is blurred or suppressed, it becomes much harder to define what, how and why to escape. In this sense, the 'advantage' of a border-based prison is that it really is clear whether or not one is 'in prison' and whether or not one can escape it.

In the same way, the criticism of prison, a traditional thematic of critical criminology, needs borders to define what to oppose to the prison. If the criticisms about the prison are used to imagine 'alternatives' that appear to be in continuity with it and complement it, rather than weakening it, the blurring of the distinction between the outside and the inside makes it more difficult to contest the way societies are dealing with 'criminals'.

It appears that equivocal prison borders make it harder to think and oppose the system. In this contribution, we shall suggest a specific way to define the carceral (not only the prison, as we shall show) and its evolutions, through the concepts of time-space and mobility. By describing a shift from a painful immobilisation to trying mobilities and from a circumscription to a network, we shall propose a theoretical structure that helps us to think about the carceral and the way to escape it.

The prison will thus appear as a changing institution, hidden behind unchanging walls and social representations.

The classical prison: a painful immobilisation

What are we talking about when we use the term 'prison'? A building? An institution? A punishment? We are usually talking about all three, indistinctly.

In modern societies, at least since Thomas Hobbes, freedom is identified with physical mobility (Cresswell 2006). Being free is nothing other than being able to move without obstacles. Therefore, in modern liberty-praising societies, punishment is logically seen as being deprived of this central gift. The central punishment should logically be a (temporary or not) suppression of freedom, in the form of confinement.

Thus, alongside the foundation of modern political regimes in Europe, from the late 18th century, has come the creation of the modern prison: incarceration serves the purpose of punishment, and is not, as in the past, a way to hold someone awaiting trial or the execution of a sentence. Prison penalty in this light can be summarised as a painful immobilisation (Mincke and Lemonne 2014; Mincke 2016b).

In this context, prison space is defined by its borders, at least in the cell system¹. As a building, a prison is made of walls and (closed) doors, which clearly separate it from free society. Crossing of the physical border is severely restricted: detainees can only go out when they have done their time, families and services from the society cannot easily enter. Inside the prison, the space is also heavily compartmentalised: inmates are prevented from living with each other, from communicating and from circulating in the buildings. The so-called Pennsylvania system of solitary confinement, which was officially adopted in Belgium following the proposal of Ducpétiaux, relies on a strict isolation of each individual in cells and the limitation of any possibility of contact between the detainees (while moving, attending religious services, etc.).

This prison closure is a physical, but also a social one. Convicts are intentionally isolated from their social networks and families, considered as criminogenic (Demonchy 2004, 282–85). Inside the prison, they are prevented from forming a society through isolation systems and they are also classified (Maes 2009, 229–76). The rule of silence, applied until 1972 in France, is a perfect illustration of the inner social compartmentalisation of prison (Demonchy 2004, 280, 290). These measures are prophylactic, since in this realm social contacts are seen as fostering criminalisation, just like physical contact spreads diseases.

In this context, almost all autonomous activities are prohibited, replaced by mere waiting or standardised and repetitive behaviour patterns (work, walk, grouped movement, etc.). Although immobilisation is at the heart of prison, it does not prohibit certain types of mobilities: heteronomous social mobilities, aimed at reintegrating the inmate into his due place in society (Mincke and Lemonne 2014). For example, there are hopes for the person's moral and religious reform, as a road to Damascus, and this can be seen as a wish for the convict to have social and moral mobility, yet a very specific and limited one.

¹ Although other forms of carcerality existed at these times, like penal colonies or prison-factories, they do not incarnate the classical model, heavily theorised in the Western world.

This oriented and heteronomous mobility was developed further as the rehabilitation movement reformed the prison, formulating new psychosocial demands on the detainees and the repressive system. Under the direction of experts – doctors, psychologists, sociologists – the confinement system was asked to run a system of compulsory relocation (Mincke and Lemonne 2014). Immobilisation was therefore a means to keep the detainee under the supervision of these specialists and to submit them to external mobilising interventions.

As a matter of fact, both painful immobilisation and the relocation-oriented immobilisation cohabited for decades. The classical prison is thus a combination of painful immobilisation and of heteronomous, limited and teleological mobility. This system of (im)mobilities structures its physical and non-physical spaces.

In this context, the carceral, the prison administration, the prison building and the prison penalty are so densely interlocked that they are hard to distinguish. Most of the time, the same terms can be used to point at these conceptually different realities. The overwhelming presence of physical immobilisation keeps us from viewing the dichotomy between freedom and mobility. There seems to be a clear alternative between physically mobile and free people, on one hand, and physically immobile inmates, on the other. Transgressing the border of the buildings – escape or release – is the sign of passage from constraint to liberty, just like incarceration characterises the reverse movement. Thus only two states seem to be apparent: free and not free, respectively identified with (physically) mobile and immobile.

The moment the wall is crossed opens a new era. This draws attention to the structure of time in prison (Mincke 2016b). It is made of brutal ruptures and infinite repetition. The brutal changes are the ones at the opening of the confinement-time and at the end of it. There is no question of gradual exit: one day you are incarcerated, the next you are free to go, without further restrictions. There is no proper articulation of times, just a succession of eras, separated by clear and instantaneous shifts. Moreover, time in prison is dead, a pure loss, nothing is expected from its flow. Although in the rehabilitation model, this time will be used by experts to reform the convict, nonetheless the articulation between the time of the cure and freedom will remain largely brutal.

At another scale, day-to-day life inside prison is utterly repetitive. Each day looks the same, as if time were immobile through constant repetition. Time to be locked in cell, to go to the chapel, to walk in the courtyard, etc. The days are also characterised by a strong scansion, without flexibility, improvisation or personal adaptations.

In Belgium this classical prison is called the ‘Ducpétiaux model’, named after the founder of the Belgian penitentiary system. It is the system from which the new system aims to distance itself.

At the heart of this penitentiary system, which was progressively applied under the impulsion of Ducpétiaux as a reaction to a community regime badly organised, the following elements are to be found: strict separation without possibilities to communicate with other inmates, but with the possibility to work in the cell; individual walks in the open air in an inner courtyard; regular visits of family members in visiting rooms, separated by a window; regular visits of the penitentiary staff; censored and limited correspondence, religious services, education, wearing of a ‘hood’ or a ‘cowl’ during every move in the facility, and wearing of a numbered penitentiary uniform. (Decroly and Van Parys 2001, 130)

The carceral as a system of trying mobilities

In recent years, we theorised a new conception of prison space-time and mobilities. It is not that the walls collapsed, nor that the institution changed in a radical way, but the fact is that a new discourse has recently emerged, sketching a new prison, based on a radically different vision of its space-time. We analysed this discourse through the parliamentary documents of the Belgian Prison Act of 2005². One of the key elements is the report of the 'Dupont Commission' in which its members, specialists in carceral issues, propose a new project and a new legitimacy for the prison of the future.

In his introduction, the professor Dupont, head of the commission, points out four principles that guided its work: limitation of the prejudice due to the incarceration, normalisation of the prison, respect and reponsibilisation, and, lastly, participation. The normalised prison is at the very centre of the reflection and is supposed to be the perfect site to apply the other principles.

Spatially, the new prison is (or, rather, should be) profoundly different from the classical one. First of all, it is described as physically open. Services should have access to it, just like families and goods. Even the inmates should enter in the perspective of their liberation – the prison therefore being a transitory space – and occasionally be able to go out to prepare their reinsertion.

Preventing or limiting the adverse effects of confinement [...] implies the suppression as far as possible of the prison as a 'total institution', the maximal normalization of daily life in the prison, an opening as broad as possible to the outside world and the definition of a carceral trajectory placed in the perspective of early release. (Decroly and Van Parys 2001, 69)

This openness is a matter of walls, but also of social networks. Normalising prisons implies allowing the inmates to build a society through social interactions, and to maintain their social bonds with their relatives.

The ordinary Community regime allows inmates to spend their detention time in community living and working areas and to participate jointly in organized activities in the prison (art. 49). [...] the stay in the individual living space is not considered as a form of exclusion from the community of prisoners, but as an opportunity to exercise the right to privacy. (Decroly and Van Parys 2001, 128)

The first category, privileged (parents and relatives in direct line, tutor, spouse, partner, brother, sister, uncles and aunts or the persons the inmate considers as family) is automatically admitted. The director cannot prohibit the visit unless, in a particular situation, there are indications of a high risk for riot control and security. This prohibition is temporary and must regularly be re-evaluated. Regarding a prohibition, one must first examine the possibility of preserving riot control and security through a different organisation of the visits [...] (Decroly and Van Parys 2001, 232)

The inner compartmentalisation and the segregation from the outside are both weakened. The ideal prison would be in spatial continuity with the free society and internally open, which is not compatible with a time of stasis and ruptures. If people and

² Loi du 12 janvier 2005, dite loi de principes concernant l'administration des établissements pénitentiaires ainsi que le statut juridique des détenus, [Law of 12 January 2005 on the prison administration and the legal status of prisoners].

services come and go, time management can rely neither on routine, nor on rare instants of sudden change. As for the inmates, the question is no longer simply to determine the day of their release and wait for it. The system must rely on a continuous time management. Through a co-elaborated detention plan, the intervention of the sentence application court (*tribunal de l'application des peines*) and a progressive liberation process, evolution takes the place of revolution: there are no longer ruptures to be identified, but rather continuous changes, constant monitoring and a dependency on the time flow.

The new prison thus relies on a new social construction of space-time: spatial continuity in a network of relationships and constant flow of time that transforms and erodes everything. We call this space-time morphology 'the flow-form' (Mincke 2016a).

Since the aim is no longer to wait for release day, new demands are placed on the convicts and on the organisations that participate in running the prison.

The prison-time is no longer dead time. Thus, an *activity* imperative imposes the obligation on the whole system to constantly keep working on its goals. For instance, the inmates should write a detention plan, explaining what projects they are planning for the years to come. Although, eleven years after its adoption, this part of the law still is not in application, it lays out a new project that implies constant activity by the detainee – to study, to compensate his victim, to assume his family obligations, etc. – it also imposes a constant monitoring and help by the institution and the private and public actors gravitating around the inmates. This last point is certainly one of the reasons why this part of the law still remains unapplied.

This [detention] plan identifies the obstacles to reintegration and elaborates strategies to overcome them. In agreement with the inmate, it also includes a programme of activities of which he can take advantage in the prospect of his release. (Decroly and Van Parys 2001, 74)

The activity demanded from individuals and institutions is of a specific kind. It does not consist in mechanically applying instructions; it is not about functioning as a social gear, but about taking initiatives. This *activation* imperative implies the obligation to be proactive, at the very source of the activity. Therefore, the prisoner is not asked to comply with a treatment defined by experts – as in the rehabilitation model – but to elaborate his own plan. Services, in prison, are just offers made to the inmates. Their responsibility is to accept them and to integrate them into a wider project.

All effort must be expended during the time in prison in order to [...] make available to the inmate an offer – with no imperative nature – of activities and services as varied as possible, corresponding as closely as possible to his necessities and needs, particularly in view of his future reintegration into free society. (Decroly and Van Parys 2001, 74)

People and organisations are not intended to act alone, but on the contrary to build collective cooperation. Their activation must result in *participation* in projects. This means a federation of actors around a common goal, in a temporary and coordinated action. There is no need to create a permanent structure, integrating the actors in a long-term perspective. It is all about the combination of various projects, both at the same time and over time. One must participate in multiple simultaneous projects and be able to quickly enter new projects as old ones come to an end. As such, the detention plan is collectively elaborated and executed, with the detainee, the social services, the

penitentiary administration, but also private actors offering restorative justice processes, reintegration follow-up, professional training, therapies, etc. The execution of the prison penalty is itself conceived as a co-production of powers – with the growing intervention of the judicial one, in a context which once was the preserve of the executive one – in the context of the growing importance of private intervention in the building and running of the prison.

It is crucial to transfer competencies from the executive power to the judicial power regarding the decisions concerning individual freedom of convicts (Decroly and Van Parys 2001, 7)

This combination and succession of collective projects requires *adaptation* faculties of the individuals and organisations. It means they are called on to understand the context, as well as the needs and will of their partners, to adopt a proper attitude to create and run the project, but also to drop it as soon as it ceases to be useful. Flexibility, ability to change one's mind and behaviour are therefore key virtues.

Again, the detention plan is a good example. It is a way to adapt the penalty to each individual, but also to adapt the projects of each individual to the available services and to the characteristics of the victim (in the context of a restorative justice process). But adaptation of the penalty can also lead to it being carried out beyond the walls. Depending on the possibilities (technical and individual), the opportunity will be given to fulfil the punishment under electronic monitoring, with a fully personalised schedule and conditions.

the individual detention plan [...] can be considered as an instrument to individualize the punishment of deprivation of liberty, as a necessary condition to humanize it, there must be opportunities for differentiation in the planning and in the form of the prison stay, where a staggered detention should be in the context of a gradual increase in the freedom to come and go. In this perspective, the prison can no longer be seen as the exclusive place to serve a liberty deprivation penalty. (Decroly and Van Parys, 2001: 418)

This new prison project corresponds to what we call the flow-form morphology (space as an open network, time as a constantly eroding flow) and the mobilitarian ideology (the praise of mobility for itself through four imperatives: activity, activation, participation, adaptation). We qualified this new project as 'trying mobilities': mobility tests addressed to the inmates to determine their progression into what has become a personal carceral trajectory. Those who cannot prove their ability to cope with the mobilitarian imperatives are reoriented towards the more classical prison, into the remaining immobilising treatments, while the successful ones can go further along their own personally defined path.

We can also see that when the prison is opened up, the building, the administration and the penalty cease to correspond. The penalty may be served outside the building. The prison itself is normalised, which implies, in last instance, to make it disappear by its dissolution in the society, or to make it the normal life experience of the whole population. Moreover, the administration is no longer the only actor on site, as other public and private entities collaborate in building the walls, running the system and achieving its goals. 'Prison' can no longer be used today to conveniently point out a multi-layered but coherent phenomenon.

The carceral complex as a system of mobility constraints

So we are now faced with the need to redefine the carceral (Mincke 2016c). For instance, one definition already put forward is that of a 'carceral continuum' that encompasses electronic monitoring, release on parole, etc. We will suggest trying to redefine it through the lens of time-space and mobility. This point of view offers us some new questions and an opening for new answers.

We could in fact explore the questions regarding (1) relations of the carceral with space(s) through mobility monitoring, (2) the nature of the mobility constraints on convicts, (3) the relationships between these different constraints in different spaces and (4) the relation of this system with freedom.

Prison affects position and mobility not solely in physical space, but in social, familial or professional spaces as well (Mincke 2016c). For instance, more often than not, the physical immobilisation in prison implies a (downward) social mobility through the loss of income, the criminal record that bars being hired for certain jobs or the loss of some rights. It also frequently causes a family mobility by making someone exit the family or even lose all contacts with it. The rupture of professional relationships, the loss of employment, the difficulty of finding a new one on release or the devaluation of one's professional qualifications during the incarceration are also forms of (downward) professional mobility caused by the immobilisation in prison.

The classical prison cannot just be considered as a pure immobilising phenomenon. Moreover, if we take into account the fact that the prison itself evolved towards a system of mobility tests, it becomes clear that we should consider this punishment as a mix of mobilisations and immobilisations. The opening of the prison aims precisely at preventing a too radical non-physical mobility: authorising the entry of the family, relatives and services aims to limit the detrimental mobility caused by the prison.

In the same way, we can consider that electronic monitoring is intended to preserve physical mobility, in order to foster social, professional and family immobilities. Being able to keep one's position in the professional or familial spaces can be seen as protecting an immobility by making physical movement possible.

We can therefore suggest, firstly that the prison can be seen as a system of mobility constraints that extends outside the walls, part of a larger carceral system that should be defined by the constrained mobility monitoring it implies. These constraints concern not only physical space but also non-physical spaces, which are as crucial as the physical ones. It is thus necessary to think of the carceral as a system of multispatial constraints.

Secondly, these constraints may tend to immobilise, but also to mobilise or to keep mobile. These constraints can be seen in what has been called the 'pains of imprisonment' (Vanhaelemeesch 2014). As a matter of fact, there is a growing interest in the pains of freedom and of electronic monitoring. Research shows that monitored convicts report suffering linked to limitations of their mobility: the feeling of a false freedom, the difficulty to experience a normal family life when you cannot freely leave your house, the loneliness of bachelors unable to go out to meet people, the feeling of being 'home where the machine is' (Vanhaelemeesch 2014). In addition, some complaints are due to the demands of mobility: the huge responsibilities of convicts compared to the time available to assume them, expectations in terms of active search for a job in the difficult context of electronic monitoring, the lack of psychosocial support, tension due to multiple and sometimes competing obligations (professional,

familial, judicial, etc.), the necessity to articulate the electronic monitoring with relations with the free world in terms of schedule, but also of justification and temptations to live normally, the need to be heavily self-disciplined, etc. (Vanhaelemeesch 2014).

The pains of electronic monitoring can thus be linked to both a mobility deprivation and to a mobility demand. Looking for a job, caring for one's family, managing an agenda, respecting needs of psychological treatment, earning money, having to leave the home at certain times (Vanhaelemeesch 2014, 185) can be considered as compulsory (physical or not) mobilities. This is one more evidence of the fact that the carceral not only concerns immobilisation, but is a broader system of (im)mobility monitoring, inside or outside the walls of a prison.

Thirdly, both the prisoner and the person monitored face a system of entangled (im)mobility constraints in multiple spaces. They are required to constantly adopt the correct level of mobility, be it minimal or maximal, considering the demands regarding the concerned space. In this stop and go game, a high level of adaptability is necessary to succeed. The losers reintegrate the prison after failing at one of the tests... or even voluntarily, because they prefer the pains of imprisonment to the pains of electronic monitoring (Gill 2013; Vanhaelemeesch 2014).

Fourthly, this leads to the question of freedom. For a long time, the carceral was logically identified with the prison, incarceration being the only way to develop (punitive) mobility constraints. For an even longer period, mobility and freedom were seen as one and the same (Mincke 2016d; Mincke 2016e). At least from Hobbes onward, freedom was seen as the absence of obstacles to movement (Cresswell 2006). As we showed, in a world where anchorage is prime and movement has to be specially justified and where mobility is the crossing of a border, mobility appears as an equivalent to freedom (Mincke 2016d; Mincke 2016e). If you are mobile, it means that you have freed yourself from the obstacles preventing your movement.

But in a world where mobility becomes the priority, where you are submitted to mobility demands and where fixity is despised, mobility can no longer be the sign of one's freedom. We might be experiencing a coerced mobility. Therefore, we must abandon a conception of electronic monitoring that is based on the centrality of the prison and the pure equivalent between a (physical) movement gradient and a freedom gradient.

Electronic monitoring – like incarceration – must be seen as a part of the carceral, and as one way among others to regulate a person's (im)mobility. Freedom, in this context, cannot be seen as resulting purely from the increase of physical mobility. This is because there is no absolute reason to keep prison at the centre of the system as the ultimate freedom deprivation, but also because both mobility and immobility can be constrained, and because entangled (im)mobilities combine constraints in various spaces.

Therefore, a freedom balance can only be based on an analysis of the concrete constraints regulating the (im)mobilities in distinct but entangled spaces and on the evaluation of their impacts on the person concerned.

How to escape and oppose the carceral nowadays?

The sense of the carceral experience can thus no longer be summarised merely as the mobility deprivation of prison. This situation makes it impossible to generalise the way

any individual relates to the carceral. As the demand on the convict to show initiative and personal planning can be a mobility test and a constraint, it seems that we have no choice but to interrogate the persons themselves. Only with a view of their needs and desires are we able to evaluate their personal degree of freedom.

This leads to temporary and relative evaluations, in permanent evolution, as the mobility monitoring of the carceral is a day-to-day system of controls, checks and decisions.

This leads to two final questions that we shall not answer.

The first is something like: 'how do you escape a borderless carceral?' There is no proper jailbreak when you do not strictly respect (im)mobility guidelines. As convicts under electronic monitoring say, they feel like their freedom is an illusion, they are confronted with multiple temptations and are not able to really do what they would like to; but they are also, most of the time, convinced that life is better – if not easier – outside the walls of the prison (Vanhaelemeesch 2014). Their mixed feelings are a good illustration of the fact that, if they surely want to escape the prison, they might not be as certain about their desire to escape the carceral when, for instance, it takes the form of electronic monitoring.

The blurring of the borders of the carceral, once it is distinct from the prison, has made it very hard to know how to break out, because it takes a border to escape.

In the same way, the long tradition of opposition to prison is now facing a considerable dilemma.

If you could denounce the *prison* as a total institution that destroys the inmates and aggravates the situations it claims to treat – as you can still do nowadays – it is far more difficult to oppose the *carceral*. The extension of the carceral has itself been accomplished massively under the argument of an increase of convict's freedom, even though it has been proven that the new measures are additions to the carceral (electronic monitoring, community services or guidance) and have very few – if any – alternative effect. So, the critics of prison have been a major support to the extension of the carceral. In the present context, the second question to address should be 'how to oppose the carceral?'

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