

Article

# Prisoners and the burden of dealing with high mobility / The ideal of highly mobile prisoners. Re-legitimizing prison through a new paradox

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## Abstract:

*In our paper, we develop the hypothesis of a general call for high mobility and discuss the consequences of it. First, we examine the contemporary social representations of mobility, looking for a definition of what is seen as being properly mobile. We will then show how intertwined social representations of space and time result in the prevalent vision of an inevitable and constant mobility. Next, we will thus discuss the importance of seeing mobility as much more than its material facet. Our third step will be to propose a formalisation of the contemporary requisite for mobility. Through four imperatives (activity, activation, participation, adaptation), the mobilitarian ideal requires each person and organisation to be constantly active, mobile, flexible, networking, etc. We argue that, today, we are all meant to be highly mobile.*

*We will illustrate this point with the example of the parliamentary documents of the Belgian Prison Act (2005) in which prison is open and porous, good inmates are described as dynamic individuals on the move and the legitimate penitentiary system is a paradoxical mobilisation system.*

*We will conclude by discussing the need to reshape our vision of the prison, considering its apparently paradoxical relation with mobility.*

**Keywords:** prison; mobility; activation; activity; participation; adaptation

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## 1. Introduction

If one thing is certain, it is that when we speak of the 'highly mobile', among the last ones who come to mind are inmates. Our imagination summons images of individuals with a lifestyle largely based on physical movement over long distances. Internal business professionals or civil servants, migrant workers or managers traveling to company branches across the globe come to mind.

Nonetheless, if we consider the place that mobility holds in our social norms, it becomes clear that this image of high mobility is too restrictive. Once we recognise

that the term refers to the behaviour of people whose way of life largely depends on mobilities and, even more, a serious investment in mobilities, we can see the need to broaden the envisaged field.

Much more, the matter of social normativity entails questioning the extent to which the notion of "highly mobile" is a model, or an imperative even, and also the extent to which it can shed light on prevailing social norms, as well as the way broad population categories relate to the world.

Our touchstone in this questioning will be the situation of prison inmates, or more exactly, a recent public discourse aiming to trace the outlines of a legitimate prison system for the 21<sup>st</sup> century: the preparatory works for the 2005 Belgian Prison Act.

Our aim, in the first section, is to explore the definition of what, in the current social context, is experienced as relating to mobility. In fact, although our society is especially aware of the highly mobile, this type of mobility actually takes place in a particular universe of meaning where it assumes a specific significance.

We will then discuss why the notion of mobility must be understood to refer to material movement, but also to non-physical forms of mobility. The question here will be which behaviours can be included in the notion of 'highly mobile'.

In the third section we will propose a formalisation of the contemporary requisite for mobility. Through four imperatives: activity, activation, participation, adaptation we will describe how mobility has become a key criteria in the evaluation of social practices and institutions.

On the basis of these imperatives we will investigate the hypothesis according to which, in the representations of the authors of the Belgian Prison Act, the ideal inmate is highly mobile and the prison is an institution responsible for encouraging mobility.

We shall conclude by questioning, on the one hand, the sustainability of this vision of the prison system, in its ambition to make prison a vector for mobility at the same time as it maintains its basic principle: detention in the aim of security, and on the other hand, the way we define the carceral.

## 2. Materials and Methods

This text is based on a discourse analysis, more specifically on preparatory work leading to the Belgian Prison Act, the law of 12 January 2005 on principles governing the administration of prison establishments and the legal position of detainees. A large part of the texts emerged from the report of an experts commission, the "Dupont Commission", from the name of its chairman, which had been entrusted to draw up considerations on the future of the prison system and to prepare draft legislation. The Commission issued a significant report presenting a vision of the prison grounded for the most part on notions of normalisation and limiting the harmful effects of detention.

This report and the draft legislation were submitted to the Belgian Parliament, which decided to submit the text as a proposed law and to add the Commission's

report to the set of parliamentary documents.<sup>1</sup> This forms the essential part of document 1076 of the 50th session of the Belgian House of Representatives. The proposed law itself, was submitted and discussed in documents 231 of the 51<sup>st</sup> session of this same House.

We chose these texts for analysis precisely because they contain discussions particularly rich on the way a discourse on the prison can be formulated at the start of the 21<sup>st</sup> century. They are largely nourished by the reflection of experts in the carceral and rooted in the evolution of international recommendations on the execution of sentences entailing deprivation of liberty. In view of the profound discredit of this form of punishment and the institution in which it is generally served, for many years lawmakers opted for a wait-and-see approach. In the late 1990s, in favour of a renewed interest by lawmakers for general prison questions, it was decided to adopt the first prison law in the history of Belgium and to sketch the layout of a prison that would once again be legitimate. The text adopted in 2005 governs all aspects of prison life, from rules on visits, to communication with the outside world, access to healthcare, prison discipline and so on.

These documents represent a multi-voice public discourse on the future of the prison. By studying them we hope to sketch a vision of what is considered acceptable today. Our aim, therefore is not to describe how a contemporary prison functions, but rather how it can now be discussed and described. Nearly 15 years after adoption, the law has yet to be implemented in its entirety, which is one more reason not to conflate discourse with practices.

The parliamentary documents are analysed through the lens of the mobilitarian ideal developed together with Bertrand Montulet and presented in the book *La société sans répit ('Society without respite')*<sup>2</sup> and described in a chapter of a collective work.<sup>3</sup>

The methodology adopted is fairly classic. The first step was an inductive reading of the preparatory works during the theoretical framework development phase, in parallel with analysis of several other public discourses on the question of change, mobility or the relation to space. Then, once the theoretical framework was finalised, we used NVIVO to perform deductive analysis. The results presented here are based on coding by NVIVO of 220 pages from the Dupont Commission Report (50-1076), comprising the full set of introductory reports (Lieven Dupont, Minister of Justice, Chair of the Justice Commission), as well as texts on the general motivations and the first sections of the commentary on various articles of the law. Although this is not yet a complete analysis, it nevertheless focuses on over half of the first document (containing 441 pages) and on the most general texts, those that presented the general orientation of the project, but also – and especially – the general principles guiding it.

At this step, we encoded the material by identifying considerations relating to various registers and domains: the context in which the legislative process intervenes, different domains of prison life covered by the law, aims that the prison should pursue and lastly, representations of space, time and mobility in prison.

### 3. Mobility?

The mobility we are interested in here does not relate to physics. It is not a pure movement through a space over time, but rather a social construct and practice.<sup>4</sup> In other words, our approach will not be based on a mobility seen as incontestable, but as something produced by a given society, linked to and built by its representations of the world. Thus, what interests us is the characterisation of what a given society, at a given time, considers to be a form of mobility and the way it formalises the corresponding behaviours.

What we have written above does not mean we can no longer see mobility in its simplest light, as a mere movement in space over time or, even better, as a variation, over time, in localisation data – which determine one's situation in various possible spatial dimensions. We could also refer to Cresswell's thought that movement consists in spatialising time or temporalizing space.<sup>4</sup> This nevertheless implies the question of how a given society conceives of space and time.

#### 3.1. *From the border to the network*

In order to qualify representations of space-time, we make use of 'spatial-temporal morphologies',<sup>5</sup> in other words, mixtures that combine representations of space and corresponding time. The basic idea is that space and time are interdependent and that the way a society conceives of space has an impact on its concept of time, and vice-versa. These representations are not immutable; spatiotemporal morphologies can follow from one to another, marking fundamental evolutions in the relationship to space, to time and consequently to mobility. This is precisely what is happening now. For some decades we have been experiencing the emergence of a morphology that can be called 'flow-form' competing with the one that predominated since the 19<sup>th</sup> century, the 'limit-form'.<sup>2</sup>

The limit-form is characterised by a representation of space based on the notion of border, which enables the passage from an unformed stretch to organised space. Borders circumscribe territories having particular characteristics, for example, an area controlled by a State. This is how the Europe of nations took shape, but it is also the way the colonialist world created by this Europe became structured. Planting a flag, tracing lines, delimiting, finding natural borders, defining precise contours for continents, drawing maps, all these acts served to make borders the ideal way to order space.<sup>6</sup> Obviously, each circumscription can also contain others. This is how the nation-state came to be divided into states, provinces, counties, townships and so on. Furthermore the State is not alone in defining itself by its borders. The business world does the same, surrounding its production facilities with walls that are hard to pass through.<sup>6</sup> A spatiotemporal morphology is actually not an organisational principle limited to one specific domain, but rather a way to represent space-time, based on all the different relations between the two.

A border obviously must be defined, but also guarded.<sup>6</sup> It calls for efforts to preserve, consolidate it against erosions or opposition: it is meant to last. Thus, it corresponds to a particular representation of time: spasmodic, alternating periods

of stasis and rupture. A situation can remain stable for a long time, then change brutally: a border is moved following a conquest or a treaty, a company expands its territorial coverage by purchasing new building plots, prison doors open to let someone out or bring someone in. These are not slow transformations but sudden changes to borderlines, boundaries.

This spatiotemporal morphology, which we call 'limit-form',<sup>2,5</sup> is a special way to envision space-time, likely in competition with others. This is how its power gradually receded in profit of another.

The change that follows here is closely linked to an evolution in the social representation of time: the idea that it is possible for any kind of stability to disappear gradually. Time is no longer seen as composed of sudden ruptures, but is more akin to a process of constant erosion and evolution. In this incessant time flow, the present increasingly contracts, the past is never truly over and the future is already announced.

In a time that constantly flows, it becomes hard to define, or even conceive of, a border or boundary. The idea of stability, in fact, is consubstantial to boundaries. In a constantly changing world, in which evanescence is the rule, it may appear unfeasible to structure space by means of a boundary. In an unstable environment, constantly changing, a boundary appears to be increasingly indefensible, and in fact, counterproductive. If movement between inside and outside the prison becomes incessant through a series of factors such as early release, electronic monitoring, growing availability inside of services offered outside the prison itself, families encouraged to visit the detainees or even the need to prepare for release, then the question emerges whether the prison is best defined by its boundary.<sup>7,8</sup> What is the use of conquering a territory, colonising it, creating permanent settlements, when the real issue at stake is having access to it when needed? Furthermore, who can guarantee that this need will remain over time? At a time when technological evolution and instant communications, it seems useless to secure spatial perimeters. Likewise, companies no longer try to locate all their processes at the same site, but to be situated at the hub of exchange networks giving access to permanent and flexible supply, through hundreds of sub-contractors. We can find here what Bauman called 'light capitalism', the incarnation of 'liquid modernity'<sup>6</sup>.

In the face of this declining use of borders to structure space, must we, like Zygmunt Bauman, conclude that time has killed space?<sup>6</sup> We do not think so, for that would no longer enable the reference to space when analysing the contemporary relationship with mobility. And it is constantly a question of space. The challenge is thus to understand what type of relationships with space are now woven, against the backdrop of constant temporal flow. Nonetheless, maintaining space does not imply seeing it as everything or holding it up like the cornerstone of relations with the world, as Michel Lussault has done.<sup>9</sup> The decline of the limit-form does not lead to vacating representations of space-time, but rather to a new morphology: the flow-form.

The network is a spatial organisation mode perfectly suited to constant temporal flow. It does not rely on a pre-established spatial grid, nor on setting up *a priori* delimitations, within which objects, people and organisations are assigned a clear position prior to any movement. Quite the contrary, a network is based on a scaffolding of potential relationships between points, it is a system of links that unite elements, one by one, rather than a system of partitions separating them. In this context, the relative positions of the network elements vary with time, depending on the reinforcement, creation or abandoning of the links. The question is no longer that of being closed into a circumscription, but of the expanse, number and sturdiness of the relations with other nodes on the network. The relations between positions are no longer measured in terms of distance but of accessibility.

As such, in this view, a city is no longer a fixed geographical reality, defined by an administrative circumscription, walls, a ring road or clear spatial constitution (population density, type of buildings, town planning modalities, etc.) A city, seen through the lens of the network is above all a hinterland or a basin. This is how it will be defined by its relationships with its own environment, which vary depending on domains (employment, education, culture, businesses, etc.) and time periods, accessibility depending primarily on the time of day, week or year, or on the time of departure. The expanse of the city in question will thus be variable once it is conceived as a scaffolding of relations, like a network. Far from being challenged by time passing, this definition of the city is founded on the question of time, because the city cannot be defined without taking this dimension into account.

And, corresponding to a time socially constructed as an irrepressible flow, there is, a space seen as structured by reticular interconnections.

### 3.2. *From crossing to drifting*

We have just seen how the notion of space-time, as a social construct, cannot be conceived of as an immutable data. It is therefore logical that the same holds for mobility. Even if it is defined quite simply, as a modification of spatial coordinates over time, we can nevertheless see that its nature depends on the representation we have of space and time.

In the context of the limit-form, mobility is understood as a movement in a pre-structured space, with fixed borderlines that always have already marked out the space. Movement means crossing borders, leaving one anchorage in a circumscription to enter another. This is what we call 'crossing-mobility' a second mobility that follows inclusion within borders and depends on conditions allowing them to be crossed. This mobility is obviously limited in time, as it consists in linking two points in space located in different circumscriptions. It is also intrinsically linked to the notion of scale, because on the basis of the scale, because this is what determines whether limits appear or not. Scale is what makes it possible to define mobilities that are intercontinental, international, interstate, and so on. In the context of the prison, this mobility will be that of an inmate leaving their cell or leaving prison after serving the sentence, crossing a clearly established limit.

On the other hand, in a flow-form, mobility can no longer be based on crossing and is understood through modification of the relative position of the points under consideration. Indeed, in a network, a position does not depend on the relation to a previously marked space, but is determined in a relative manner, in relation to other network nodes, through the links that, themselves, structure the space in question. Thus, if the position of each node depends on its relation with the other nodes in the network, then any movement by one of them modifies the position of all those in direct or indirect relation with it. A network is thus the epitome of a reality in motion. Mobility therefore is no longer spawned by the fact of leaving a state of rest to start a movement towards a place where the state of rest will resume. In the flow-form, it is consubstantial with presence in a space. The state of rest has thus disappeared and the spatial structuring comes about through dynamic relations themselves, which is what we call drifting-mobility. In such a situation, mobility is thus a constant phenomenon, rather than an action that is planned and set in place for a limited period.

### *3.3. Non-material mobilities*

If mobility can be defined as any modification of spatial coordinates over time, there is no reason for considering it as a strictly material phenomenon. Thus, once a space can be any reality conceived through categories of positioning, distancing or accessibility, we can consider that a social space is just as much a space as the physical one of a room or national territory.<sup>10</sup> This is how human societies, referring to largely shared categories of understanding, thought of social, religious, philosophical, ethnic, clan, family and other realities as spatial categories of understanding. The boundaries between disciplines, family inclusions and exclusions, topologies of the hereafter, separations among human groups (families, clans, ethnic groups, etc.) are nothing more than ways of looking at these categories as spaces. As the spatialization of these realities has shaped them into spaces it is now possible to analyse them as such, using the same analysis categories that we apply to material spaces. As it is a question of examining how our societies think of and govern the relation to space-time and mobility, it thus seems necessary to not limit our thoughts to material spaces, but to include all spatialised realities.

An excellent example of this need is that of the nation-state, a phenomenon that can be considered as the intertwining of multiple spaces, both material and non-material. As we saw earlier, the nation-state is organised around a circumscribed territory. Yet it has its physical borders correspond to immaterial ones. For example, the aim to give a nation a political embodiment implies a national group of humans, separated from other people through their nationality. This group, moreover, is often considered distinct from others in virtue of ethnicity, language,<sup>11</sup> race etc. This is why nation-states take shape around narratives that hold this population up as something special, corresponding to their nation, with their own national language, specific cultural characteristics and so on. In another facet, the spatial organisation of national territory corresponds to a legal organisation based on mirroring normative boundaries: the territorial subdivisions

correspond to subdivisions in normative, judicial, administrative, fiscal, etc. competence. In this context the competence boundaries among various institutional authorities are defined and defended just like material borders among different territorial subdivisions.

Our proposal is thus to make use of these reflections on space-time categories and mobility to think about our societies beyond their mere relationship to physical spaces.

#### 3.4. From representations to norms

If, in the context of the flow-form, mobility is irrepressible and primary, it assumes a special meaning for our society. Henceforth, the normative relation to mobility can only be changed by the evolution of the descriptive relationship.

As such, in a context where mobility is considered as an inevitable component of space, and where it is even the prime feature – just as anchorage was in the limit-form context – then this mobility becomes a practice that is not only inevitable, but also desirable. For in world in constant evolution, where nothing can claim to be constant, trying to remain immobile would be absurd. This is what Cresswell calls 'nomadic metaphysics', born of a refusal to be rooted.<sup>4</sup>

In this light, it is not at all surprising that a representation of the world based on the primacy of mobility would be embodied in a normative system that holds mobility up as a good on its own, which we call the 'mobilitarian ideal'.<sup>1 2,3</sup> This system of requisites for material and non-material mobilities revolves around four imperatives: activity, activation, participation and adaptation.

The activity imperative enjoins people and organisations to refuse all rest. One must be in constant motion, not only professionally, but also in private life. From governance of productive processes through LEAN management to encouraging the elderly to be active senior citizens, through stigmatising people on welfare for their inactivity, any 'time-out' is tracked down and denounced.

Nevertheless, the activity required is not just knee-jerk compliance with instructions, like Charlie Chaplin in *Modern Times*. Neither is it an exercise in discipline as described by Foucault.<sup>12</sup> On the contrary, the imperative also implies activation, that is, the capacity to set oneself in motion. It promotes being proactive, taking initiatives, following the less travelled road, to be the initiator of one's own movement, autonomously. As such the unemployed are activated, implying that they are not just sent by a 'placement office' to a job available, but that they look towards the future, decide on their trajectory and muster the means needed to ensure their return to the work force. Rather than playthings in the hands of agencies who decide for them, they are presumed to be the ones who truly drive their professional reinsertion.

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<sup>1</sup> We should note in passing our use of terminology has evolved, from 'mobilitarian ideology' to 'mobilitarian ideal', so as to avoid any misunderstanding arising from the scope of the term 'ideology'.



The activation requirement is deployed in a project logic, governed by the participation imperative. The activities that people and organisations develop must not be lone ventures, but involve networking. As such, the basic unit of the activity is the project, collective and temporary. The accumulation and interlinking of projects become pathways formed of multiple projects, reuniting a set of partners collaborating, for a time, in relation to their skills and needs. To return to the person on welfare, they are now almost systematically asked 'What are your plans?'<sup>13</sup> And so people head into the fray, attempting to reconcile their projects for their professional life, parenting, matters of the heart, personal development and so on. Obviously, each project lasts for just a certain time and one challenge for social actors is the ability to bounce from one project to the next.<sup>14</sup>

Accumulating and enchaining projects calls for quite specific capabilities, to begin with, a high capacity for adaptation. This is the fourth imperative: adaptation, which requires maximal flexibility from everyone, an aptitude for combining different postures in multiple projects and revisiting these postures when they interact with successive or simultaneous projects.<sup>14</sup> People and organisations are thus supposed to abandon all rigidity, all anchorage, all stability and make themselves totally available. Workers, for example, are urged to reorient themselves and follow permanent training throughout their career so they can adapt to the fluctuating requirements of the workplace. Or companies working in just-in-time mode must constantly adapt their supply to align with the demand. Or States adapt their laws to mirror social demands rather than formulating them as a framework of obligations to which society must adapt.

The mobilitarian ideal thus revolves around these four imperatives, which are also criteria enabling each one to evaluate a situation or a behaviour. These normative axes can thus be considered as values imposed on people and organisations, whether explicitly or through discourses indicating behaviours deemed to be acceptable or desirable, but also as points of references enabling everyone to give meaning to their observations and experiences. In this light, activity can just as well be something required of an inmate in the hope that he shakes the doldrums caused by being in prison as it may be criteria evaluating the situation of this same inmate when he applies for parole.

#### **4. Incarceration in the age of mobility**

In the theoretical framework that we have just described, the notion of 'highly mobile' is seen in a new light. It is no longer merely a question of constant movement, across vast distances or at length in material space, but rather one of incorporating the mobilitarian imperatives and striving towards mobility in multiple material and non-material spaces. One who is highly mobile may work 10 km from home and rarely travel abroad, yet deploy her mobility in family, professional or political domains.

It is along these lines that we shall look at the preparatory works for the 2005 Belgian Prison Act, in order to determine whether the inmates themselves are

invited to join the ranks of the highly mobile, even though they are being held by an institution that symbolises the quintessence of immobility.

This discourse is particularly interesting especially as it places the ideal prison under the sign of normalisation: the objective being to make prison life correspond as closely as possible to what happens on the outside. As such it clearly announces the ambition to submit prison life to the same imperatives as life as in free society. We have here sound reasons to consider that the mobilitarian ideal which, we think, is widespread on the outside, can also be applied on the inside. In the following pages, we will examine the forms it takes in the preparatory work for the above-mentioned prison law and the description of the ideal prison and prisoner, with particular attention on the theme of mobility and seeking traces of the mobilitarian ideal.

#### *4.1. The prison, an open space*

'Prison' designates not only an institution but a type of punishment and a building as well. The latter, in virtue of its structure and appearance, can be the epitome of something closed, thus of the immobility of those who are not authorised to walk out the door. One may thus expect carceral space-time to be described in a way that reflects the organisational principles of the limit-form: structuring space through boundaries and time through clear sequencing.<sup>15</sup> However, if signs of this register are obviously clear, it is far from without competition.

Indeed, on many occasions, the ideal prison is described as an open space. This implies several things: opening carceral space, releasing inmates quicker, eliminating barriers to communication between the inside and outside, bringing services available on the outside into the prison, or even dismantling the internal partitions that isolate inmates from one another.<sup>16</sup>

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.<sup>1</sup>

Furthermore, in accordance with the normalisation principle, the above-mentioned principle [the right to maintain contacts outside the prison] implies [...] endeavouring actively to maintain and stimulate these contacts. This also implies, as far as possible, the removal of obstacles to contacts with the outside world entailed by deprivation of liberty.<sup>1</sup>

The principle of equivalence is strongly linked to the continuity principle [...] according to which the inmate is entitled during his prison term to a continuation of health care similar to that prior to his imprisonment.<sup>1</sup>

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.<sup>1</sup>

Even more, the Commission foresaw that the prison would no longer be the only place for serving a deprivation of liberty sentence. This calls into question one of the main functional specificities of the prison that distinguishes it from the world outside, namely that it is the place where custodial sentences are served.

[Article 4] opens [...] the prospect of a possibility of an alternative manner to serve a sentence or measure of deprivation of liberty, outside the prison.<sup>1</sup>

We thus see a new concept of carceral space emerging, one of open space. Of course, the persistence of walls is found in all discourses. Nonetheless, the closing often appears, not as a sought-after effect, but rather as a problem inherent to the prison, something that must be endured, all the while attempting to reduce and mitigate the negative impact.

#### 4.2. Activity

In this carceral space, intended to be open, the inmate must evolve in line with the imperatives of the mobilitarian ideal and is encouraged in this approach. As such, rather than seeing incarceration as lost time, the Commission considers it to be a period of activity, useful time, a period among others over a lifetime.

The present situation is seen in a negative light because 'the inmate is deprived of the possibility to assume personally responsibilities relating to his own life and that of others (especially any family members)'.<sup>1</sup> Reduced to a passive role, 'the inmate can no longer take care of anything, which leads to a feeling of frustration'.

The project's ambition is thus to encourage the inmate's activity, especially in the framework of a new detention regime.

The choice of principle favouring a community regime implies, for the prison administration, the obligation, on its own or through other channels, to provide inmates with a full-time programme of community activities.<sup>1</sup>

This concern about inmate activity is placed in the context of the wish to take advantage of time spent in prison. Yet, 'a study on the way an inmate spends time in order to prepare an optimal start after prison underlined flagrant shortcomings. In almost all the areas studied (education and training, work and training, sports and culture, assistance and healthcare), the prisons were shown to be mediocre.'<sup>1</sup> This scandal of lost time is one shortcoming observed that justified the lawmakers' intervention. It is in striking contrast with the classical idea of a prison sentence, founded precisely on depriving one of a slice of life, spent in a penitentiary institution, without any particular objective, suffering in retribution for a crime committed.

Obviously, the 19<sup>th</sup> century prison-workshops aimed to keep inmates active, discipline them through work and even turn a profit.<sup>16</sup> Likewise, the rehabilitation currents in the 20<sup>th</sup> century also promoted the idea of turning prison time into the opportunity to reform a convict, in the aim to resolve the problems that led to committing a crime.<sup>12</sup> In our times, it is no longer question of being limited to disciplinary activities nor making them mere tools to reform the individual. The

type of activity sought by the Commission and lawmakers concerns all facets of life. Furthermore, the objective is not discipline or reforming, but one of activating the individual.

#### 4.3. Activation

The classical image of the prison is founded on the institution being in charge of all the aspects of the inmates' lives. The prison was a so-called a 'total institution'<sup>17</sup>. Even if major reservations have been expressed on this subject,<sup>18</sup> the members of the Dupont Commission seemed to have had no doubts about this description. Indeed, on several occasions, it affirmed (especially in the first quote above under point 4.2) that the prison is a total institution and that the draft legislation aimed to put an end to this situation because it was harmful to inmates.

Prison as a total institution naturally influences the psycho-physiological well-being of the inmates, which is not without causing numerable psycho-social problems [...].<sup>1</sup>

It was first of all a question of reacting to the fact that 'regulation and supervision by the penitentiary places the inmate in a situation of heavy dependence on others'<sup>1</sup> and doing so by moving 'from a view of assistance to implementation of an action principle'<sup>1</sup>. The idea is thus to propose rather than impose.

All effort must be expended during the time in prison time 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.<sup>1</sup> (Decroly and Van Parys, 2001: 74)

'[The] draft [legislation] contains [...] the principle of respect which, from a legal point of view, should permeate penitentiary practices in all its aspects: "The deprivation of liberty sentence or measure is implemented in psycho-social, physical and material circumstances that respect human dignity, making it possible to maintain or increase the inmate's self-respect and soliciting his sense of personal and social responsibility." <sup>1</sup> This sense of responsibility is also embodied in the inmate's capacity to take initiatives, whether to use the time in prison as an occasion to redirect a personal trajectory or to set up reparation actions towards the victims.

In accordance with the principle of normalisation [...] inmates placed in detention centres must be granted the possibility for a large measure of self-determination.<sup>1</sup>

A main feature in this self-determination is a tool that is a key element in the prison law: the detention plan. It aims to define, for the period of detention, projects corresponding to the inmate's wishes and needs. Undoubtedly, one sign of the rupture this detention plan represented can be seen in the fact that, over 15 years after adoption, the Prison Act provisions concerning this plan have yet to enter into force.

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.<sup>1</sup>

The objective is thus to render the inmate responsible for taking initiative to give a certain form to the sentence being served. It would obviously be naïve to think that this requirement would not be subject to an evaluation process.

Being willing to deploy special efforts in view of reparation to victims of crime and openness to the problems of the latter could constitute one specific motive to grant the regime of semi-detention, semi-liberty or placement outside the [prison] establishment.<sup>1</sup>

Furthermore, the logic of the detention plan is extended with a reclassification plan. The inmate is thus expected to have a new type of relationship with his own sentence and the way it is served.

Granting of parole depends notably on the inmate's will and reintegration efforts, which must be laid out in a reclassification programme that he must present.<sup>1</sup>

The inmate is thus required not only to be active and not consider the time behind bars as lost, but also to be the driver of his own movement. The individualisation of objectives pursued during incarceration, at least in the discourses, is such that the inmate can also be obliged to give meaning himself to his sentence, in the absence of any determination by the State.

the convicted person is responsible for the meaning to be given to the detention because, after all, this is "his" sentence. The detainee gets a say regarding the content of the sentence.<sup>19</sup>

#### *4.4. Participation*

Deconstructing the total institution that the prison is said to be not only implies giving inmates the possibility to become activated, it also means that incarceration must cease to be a purely unilateral process, founded in institutional decisions taken without any possibility for participation. If, at the individual level, the activation imperative implies opening possibilities for initiatives, the participation imperative concerns the collective facet. It turns the prison and its processes into occasions for collaboration, co-constructions. The Dupont Commission, for its part, was explicit about this articulation between activation and participation.

If people are to become responsible, they must be respected and associated in decisions in which they are concerned.<sup>1</sup>

Participation is thus central in the new carceral project and is held up as one of the principles guiding the Commission.

Principle of participation. To a large extent it is possible to avoid the harmful effects of detention if the question of the form given to execution of the deprivation of liberty sentence is not addressed primarily from the penitentiary institution and its interests, but also from the world of the detainees themselves, the values and interests they deem worthwhile, as well as from the representation they have of their necessities and needs. [...] It is therefore appropriate, in the framework of decision-making processes

on their subject, to consider the detainee as a valid interlocutor and full-fledged partner when it comes to dialogue.<sup>1</sup>

Participation is thus embodied on the one hand, in the detention plan – the result of a joint work between the inmate and various carceral actors, and as well as being the opportunity for activation – and, on the other, in setting up a process for collective participation.

On this subject, the draft of this law on principles contains two basic principles:

'Each prison shall attempt to install a climate of dialogue and create a body for reflection in order to enable inmates to express themselves of matters of community interest in which they can participate' [...].

And on the question of the category of the convicted prisoners:

'The detainee must have the possibility to collaborate constructively in drawing up a personal detention plan [...].'<sup>1</sup>

Furthermore, the specific attention also given to restorative justice reveals the centrality of participation, since both the offender and the victim are invited to participate in resolving the conflict.

The expression 'restorative justice' has now become the generic term for a new approach to the problem of criminality, whereby under various concepts such as reparation, restitution or compensation, the criminal justice administration is responsible for transforming the relationship between the perpetrator and society, historically privileged by penal law to the detriment of the victim, in a (triangular) relationship in which the victim is involved as a full-fledged third party in settlement of the case, in this way enabling a dialogue directed towards resolving problems between perpetrators and victims.<sup>1</sup>

Participation induces a deep-seated change in the relation to inmates, to the extent that, even when it is planned to request assistance in drawing up a diagnostic in view of defining a carceral trajectory, this is also seen in its participatory form.

In view of drawing up the individual detention plan, the draft [legislation] foresees a preliminary enquiry about the person and the life situation of the detainee [...].

The extent and legitimacy of this enquiry does not go beyond what is required to gain the knowledge needed to draw up the individual detention plan. The degree to which the detainee is willing to collaborate is a determining criteria, so as to ensure that the person concerned is not reduced to a mere object of research.

Consequently, it is highly important for the information to be collected in function of the realities that the detainee himself considers as essential in his world.<sup>1</sup>

As we said, the detention plan itself is seen as a participatory process.

[...] preparing this plan naturally implies collaboration from the detainee. A collaboration based on constraint is bound to fail. Accordingly, the individual detention plan is voluntary cooperation agreement of sorts

whereby both the convicted inmate and the penitentiary authority [...] undertake to expend certain efforts. In the absence of agreement, a draft detention plan is nevertheless drawn up and will be studied with the inmate at certain times.<sup>1</sup>

The principle appears so essential in the eyes of the Commission that it sees it as a tool for managing inmate complaints, in place of formal procedures.

[The canteen service] must ensure, as far as possible, that the food products offered meet the wishes and needs of the inmates. In this area, the principle of participation [...] could be applied usefully, especially in enabling inmates to protest in the hypothesis that for some products, the canteen prices are higher than those listed in free society.<sup>1</sup>

#### 4.5. *Adaptation*

It should be clear now that the inmate – who is expected to be active, take initiatives and participate in projects – cannot be rigid. Quite the contrary, he must be flexible and adapt. Even more, he must redirect his trajectory and use his time in prison as an opportunity to become someone different.

The theme of adaptation plays out in a context where, according to the Commission 'judges and people sentenced to deprivation of liberty sentences never know [...] the real significance of being condemned to serve an effective sentence. This applies not just to the probable duration of the sentence to actually serve in prison, but also to the very content of the sentence in so far as it is served.'<sup>1</sup>

It thus seems logical to have opted for a system where it is while serving the sentence – if actually served – that its content is defined.

Once it is decided that the deprivation of liberty sentence must be served, it is up to the penitentiary administration to give a form and content to a detention regime.<sup>1</sup>

As opposed to the classical view where the nature of the punishment is already determined by lawmaker and its length by the judge, we now see a system where each punishment is adapted to the circumstances.

The lawmaker's intervention in organising the execution of sentences should not contradict the mobility indispensable to the penitentiary administration activity, and consequently be limited to indicating general directives for executing penal sanctions and the limits in which such execution of sanctions can infringe on the natural and constitutional rights of the convicted citizen.<sup>1</sup>

Likewise, adaptation of the sentence is not the result of a unilateral process, but relies mainly on the detainee's intervention.

On this subject, the objectives set out above [...] necessarily imply an individualisation of the deprivation of liberty sentence, which cannot be attained in an institution that is 'total and of a uniforming nature', where the detainee's individuality is not taken into account. These objectives call for an individual detention plan to be developed progressively and then

readapted throughout the detention, and [it is something] that the draft legislation has made the basic instrument for penitentiary treatment.

The sentence is thus adapted through a detention plan, which itself is adaptable in cases where the situation evolves. The sentence is thus seen in terms of a trajectory, with all that implies in changing one's cap and adapting to the obstacles encountered.

As the detention plan is a form of sentence adaptation, drafting it also requires the detainee to be capable of adapting the project to the circumstances, available services, characteristics of his case, but also to the expectations of society, the victims and the penitentiary administration.

On the part of the detainee, the detention plan aims to individualize a sentence execution that is **safe** and the least harmful possible, directed towards reparation and reintegration and, in this perspective, to trace a personalised carceral itinerary, taking into account 1) the possibilities offered by the differentiation of the penitentiary facilities and by the Communities, especially in terms of community service; 2) particular modalities of the sentence served; 3) and this, in the perspective of modalities relating to early release.<sup>1</sup>

The process is all the more important because it is not just a matter of drawing up a plan. It also puts the inmate to the test, in the aim to evaluate suitability to the models, which is obviously extremely important because parole is especially contingent on presenting a social reintegration plan.

If possible, the result of this process must be that, in function of the way he serves his sentence, the inmate is offered a chance, both towards himself and towards the victims and free society, to break from the past. He therefore must be able definitively to put behind the negative image he may have of himself in virtue of his misdeeds, and look towards the future positively, [one where] he and others consider that he is capable of adopting law-abiding behaviour.<sup>1</sup>

We can thus see that the adaptation imperative is at the heart of the new carceral project.

## 5. Re-shaping detention

We have just examined the preparatory works of a prison law, based not only on exchanges among the MPs but also on preparatory work conducted by a commission of experts. These works were considerably enhanced by scientific works, but also by reflections undertaken by organisations such as the Council of Europe or the United Nations. We sought the traces of the mobilitarian ideal, this normative register characterised by the value placed on mobility for its own sake. Even if this ideal is obviously not the only one expressed in the preparatory works – and new publications are planned where we focus on the way this value co-exists with other, opposing, values – it is massively present. Moreover, we cited only a limited number of examples, centred on representations of the carceral space and inmates. Had it not been beyond the scope of this article, we could have added



several extracts relating to penitentiary staff and administration or even to the very nature of the deprivation of liberty punishment.

The image that emerges from these official discourses – and we stress this term – on the prison, is that of the prisoner as a highly mobile person. This is the ideal prisoner. This is the person who, at the same time, spontaneously, can meet the requirements for conformity to the mobility ideal, but who is also the one produced by tomorrow's prison, which has been able to foster the development of mobility aptitudes. This ideal inmate is thus able to turn the prison stay into a productive period, the occasion to develop an activity as diversified and constant as possible. Obviously, there is no question of sticking to standardised, mechanical, actions. Quite the contrary, the inmate demonstrates a capacity for activation, taking initiatives, drawing up projects that not only conform with expectations of the carceral system, but are also personal and motivated by his own hopes and ambitions. These projects are participatory and based as far as possible on mobilising available resources, combined in order to attain the desired objective. This participation stamps both the inmate's mobilisation and his involvement in the social fabric of the prison. Lastly, the ideal prisoner is neither rigid nor submitted to standardised procedures that would turn his detention into an experience identical to all other detentions. Just the opposite, he is at the heart of intertwining processes of adaptation, inciting to take charge of his own adaptation to society's requirements, making use of potentials for adapting the sentence.

This is the portrait of the inmate as seen by a model, by a particularly demanding ideal. It is no longer question of limiting oneself to demonstrating (or feigning) discipline, being obedient, patient, not standing out or melting in among all other inmates. The prison no longer wants to be a school for passivity and conformity, but one of mobility. Without a doubt, if it was hard, for all those years, to be subject to this pitiless discipline, we can wager that it is just as hard to lift oneself to the level of this model inmate.

On this subject, we may question the sustainable nature of a carceral model founded on the notion of the mobile inmate. Knowing the strength of security imperatives (fight against trafficking and prison escape, internal confinement of dangerous inmates, attempts to fight 'contagions', for example in the area of violent radicalism, etc.), knowing the lifetime of buildings erected largely without an inkling of the principles laid out here, either because the constructions date from earlier times or were inspired by other principles; being aware of the importance of carceral cultures, especially among prison professions; seeing the importance of the social demand for prisons, we can rightfully wonder to what extent this ideal of a mobile prisoner is not just a pipedream. As such, the unfulfilled implementation of provisions relating to the detention plan – despite being at the heart of the legal instrument – may signal the impossible co-existence between the ideal and the reality of the carceral institution.

The question that comes to the fore is what role could the mobilitarian ideal play in prison if it does not foster a deep-seated reform of carceral practices. One can imagine two possibilities. The first is that this discourse is quickly forgotten. Its

usefulness would have been merely ephemeral, the time to enable writing of a prison law and wrapping it in an appearance of legitimacy. This hypothesis hardly seems likely seeing how mobilitarian discourses have spread through the justice system, and has done so in less than two decades.<sup>20,21</sup> The second possibility would be for this discourse to be maintained, in parallel with practices largely outside it. This would create a situation where prison's proclaimed values would barely correspond to its practices. This situation would place the institution under tension, which may seem untenable at the long term. Nevertheless, as Olivier Milhaud has pointed out, prison is customary, at the same time an accumulation of ill-compatible assigned functions (expiation, neutralisation, moralisation, social reintegration, etc.) and a dissonance between legitimations through its official functions and its actual function: that of a security punishment aiming to keep undesirable elements out of society.<sup>18</sup>

The sustainability of the situation that we describe, therefore, does not seem to be in doubt; so many obvious contradictions between official principles and practices or between legitimations and functions were common and sustainable in the past. One can thus hypothesise that the mobility register is one facet of the implementation of new legitimations aiming to make it possible to maintain a carceral institution whose function has for the most part remained unchanged.

Obviously in no way does this mean that these discourses will have no effect on practices. Indeed we will probably see evolutions in criteria for parole, practical organisation of prison life or guidance methods for inmates. This has largely happened already, notably based on mobilitarian imperatives. The security function, for example, can certainly follow suit by implementing certain monitoring technologies (in the first rank, obviously, electronic surveillance) and developing new work methods, introducing a certain porosity in the prison and circulatory logic within the carceral system.

One risk of these developments, nonetheless, would be for a significant part of 'carceral' to elude the view of prison researchers and critics.<sup>22</sup> We have inherited from the prison's classical age a definition of the phenomenon that largely identifies the institution (the prison), the sentence (in prison) and the building (the prison). This framing, perfectly logical in the limit-form context - where building walls circumscribed the carceral phenomenon practically, legally and symbolically, in our times risks becoming completely outdated.<sup>23</sup> The relativization of the prison's closure, the gradual disappearance of its monopoly as the place to serve deprivation of liberty sentences and the concept of punishment as consisting in a combination of immobilisations and mobilisations, all these elements indicate that carceral policies have spread beyond the strict boundary of the prison walls. Therefore we must endeavour to think of the prison as a phenomenon that manages mobilities and immobilities, where the penitentiaries are major but not consubstantial poles of the carceral.<sup>24</sup>

Lastly, to succeed in the task of redefining the carceral, undoubtedly we need to reconsider the ties between liberty and mobility.<sup>25</sup> Indeed, for so long, mobility came second. In the limit-form universe of meaning, anchorage preceded

crossing-mobility and was also its goal. The ordinary state was characterised by immobility, while mobility was conditional and limited by the borders that structured space. In such a context, it was completely normal to see mobility as flowing from liberty. Being more mobile effectively meant enjoying the capacity to cross more borders. Nonetheless, a world that sees mobility as irrepressible, even as obligatory, raises the question of whether it is still relevant to associate mobility with liberty. Now more than ever the time has come to consider mobilities (plural) as complex intertwinings<sup>10</sup> of movements and immobilities, in various spaces, and to realize fully that mobility can be just as constraining as immobility. Once we deem that increased mobility in one space can involve restriction in another, or that even an overall increase in mobility certainly does not signify a similar evolution in liberty, it will likely be easier to consider the carceral beyond prison walls and as a domain that has little to do with immobilisation. Without a doubt, it will be easier to ask whether an inmate will truly be freer if he manages to become as highly mobile as he is encouraged to be.

## References

- (1) Decroly, V.; Van Parys, T. Rapport Final de La Commission “Loi de Principes Concernant l’administration Pénitentiaire et Le Statut Juridique Des Détenus”. Rapport Fait Au Nom de La Commission de La Justice Par Vincent Decroly et Tony Van Parys. *Doc. parl., Ch.* **2001**, No. 50-1076/001.
- (2) Mincke, C.; Montulet, B. *La Société sans Répit. La Mobilité Comme Injonction*; Éditions de la Sorbonne: Paris, 2019.
- (3) Mincke, C. From Mobility to Its Ideology: When Mobility Becomes an Imperative. In *The Mobilities Paradigm: Discourses and Ideologies*; Endres, M., Manderscheid, K., Mincke, C., Eds.; Routledge, Taylor & Francis Group: London, 2016; pp 11–33.
- (4) Cresswell, T. *On the Move: Mobility in the Modern Western World*; Routledge: New York, 2006.
- (5) Montulet, B. *Les Enjeux Spatio-Temporels Du Social : Mobilités*; Villes et entreprises; Harmattan: Paris, 1998.
- (6) Bauman, Z. *Liquid Modernity*; Polity Press Blackwell: Cambridge, UK Malden, MA, 2000.
- (7) Mincke, C. Immobilisation, Relocation and Mobility Monitoring : On the Evolution of the Carceral, 2016.
- (8) Mincke, C. Immobilisation, Relocation and Mobility Monitoring: On the Evolution of the Carceral; San Francisco (USA), 2016.
- (9) Lussault, M. *L’homme Spatial: La Construction Sociale de l’espace Humain*; La couleur des idées; Seuil: Paris, 2007.
- (10) Mincke, C.; Kaufmann, V. Mobilités Changeantes, Mobilités Intriquées. *EspacesTemps.net* **2017**.
- (11) Mincke, C. Qu’est-Ce Que La Mobilité? Tentative de Déconstruction d’une Évidence. In *Mobilité, Histoire et Émergence d’un concept en sociolinguistique*; Espaces discursifs; L’Harmattan: Paris, 2020; p to be published.
- (12) Mincke, C.; Lemonne, A. Prison and (Im)Mobility. What about Foucault? *Mobilities* **2014**, *9* (4), 528–549. <https://doi.org/10.1080/17450101.2014.961258>.
- (13) Lacourt, I. “Quel est votre projet ?” L’insertion socioprofessionnelle des usagers dans les CPAS bruxellois. *Brussels Studies* **2007**, No. 5.
- (14) Boltanski, L.; Chiapello, E. *Le Nouvel Esprit Du Capitalisme*; NRF Essais; Gallimard: Paris, 1999.
- (15) Mincke, C. Prison: Legitimacy through Mobility? In *Carceral Mobilities. Interrogating Movement in Incarceration*; Routledge: London, 2017; pp 236–249.
- (16) Demonchy, C. L’architecture Des Prisons Modèles Françaises. In *Gouverner, enfermer. La prison, un modèle indépassable ?*; Artières, P., Lascoumes, P., Eds.; Presses de Science Po: Paris, 2004; pp 269–293.

- (17) Goffman, E. *Asiles. Etudes Sur La Conditions Sociale Des Malades Mentaux*, Les éditions de minuit.; Paris, 1968.
- (18) Milhaud, O. Séparer et punir. Les prisons françaises : mise à distance et punition par l'espace. Thèse de doctorat, Université Michel de Montaigne - Bordeaux III, 2009.
- (19) Erdman, F.; Bourgeois, G.; Coveliers, H.; Dardenne, M.; Herzet, J.; Hove, G.; Lalieux, K.; Talhaoui, F.; Van Parys, T. Proposition de Résolution Relative Au Rapport Final de La Commission "Loi de Principes Concernant l'administration Pénitentiaire et Le Statut Juridique Des Détenus." *Doc. parl., Ch.* **2003**, No. 50-2317/001.
- (20) Mincke, C. Mobilité et Justice Pénale. L'idéologie Mobilitaire Comme Soubassement Du Managérialisme. *Droit et Société* **2013**, No. 84, 359–389.
- (21) Mincke, C. La Médiation Pénale, Contre-Culture Ou Nouveau Lieu-Commun ? Médiation et Idéologie Mobilitaire. In *Médiation pénale. La diversité en débat. Bemiddeling in strafzaken. En wispelturig debat*; Beckers, C., Burssens, D., Jonckheere, A., Vauthier, A., Eds.; Maklu: Antwerpen/Apeldoorn, 2014; pp 85–110.
- (22) Mincke, C. *It Takes a Border to Escape*; University of Birmingham, 2016.
- (23) Mincke, C. Une prison sans limites. Porosité ou extension ? In *Working paper*; Université libre de Bruxelles, 2017.
- (24) Mincke, C. *From confinement to monitoring. The carceral as management of the transitory*; Boston (US), 2017.
- (25) Mincke, C. *Freed by Mobility, Freed from Mobility?*, 2016.