Prison Worlds
To L. H. and all those for whom prison makes this life, which they are in the process of pointlessly losing, so insistently precious

To F. F. and all those working in prisons who strive to make incarceration more dignified, or simply more livable

For A.C. D. and all those who work to defend the rights of prisoners and to improve prison conditions
And by “justice” I mean nothing other than the restraint necessary to hold particular interests together, without which men would collapse into the old state of unsociability. Any punishment that goes beyond the need to preserve this bond is unjust by its very nature.

Cesare Beccaria, *On Crimes and Punishments*, 1764

But the prison memoirs – “Scenes from the House of the Dead,” as he himself called them somewhere in the manuscript – appeared to me to be not without interest. The completely strange world, unknown until that time, the strangeness of some of the facts, some particular notes on those lost souls, attracted me, and I read with curiosity.

Fyodor Dostoevsky, *Memoirs from the House of the Dead*, 1862

There people live their hard and heavy lot
cooped in deep rooms, – their gestures show they’re scared,
more terrified than any yearling herd;
and outside wakes your earth, its breath is stirred,
but these, though living still, now know it not.

Rainer Maria Rilke, *The Book of Poverty and Loss*, 1903
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Presented by its promoters two and a half centuries ago as moral progress in the administration of punishment, prison has become over the past decades one of the most vexing and unsettling issues in Western societies for both the spectacular increase of its population and the grim reality of its facilities. But while imprisonment is today in most countries the ineluctable reference and the ultimate horizon of the penal system, until recently neither its efficacy in reducing crime nor its respect for democratic principles has been seriously discussed outside a few academic circles. The correctional institution has been taken for granted and is barely visible. An elephant in the room, it has largely been ignored by the public. To take the most extreme example, in the United States, the number of people incarcerated increased more than sevenfold over four decades, reaching the impressive figure of 2.3 million inmates in the early 2010s, which made the country’s incarceration rate the highest in the world, yet without provoking a major debate. New laws were constantly being passed, imposing new mandatory minimum sentencing and criminalizing new offenses. New facilities were regularly being built, involving new private actors and new security measures. An ever tougher legislation and an expanding correctional system were business as usual in government, and these widely popular policies were little questioned. Only in recent years has the problem begun to be addressed, in large part because of the colossal share it represents in the states’ budgets. The political, moral, and social implications of mass incarceration have remained for the most part in the background.

In fact, what prisons entail involves two distinct, albeit related, aspects: penal and correctional – how offenders are punished and how incarceration is conducted. Studying the penal system involves analyzing how problems are socially constructed, how the public emotionally reacts to particular events, how some crimes are deemed serious and others are not, how the executive and the legislator produce norms and laws, how the police use their discretionary power to focus on specific offenses or offenders, how prosecutors and judges decide to indict and sentence certain acts while ignoring others. In the end, it is this entire complex process that leads to
the filling or emptying of prisons and determines the composition of their population. Studying the correctional system implies examining the infrastructure and functioning of its facilities, the recruitment, training, activity, and supervision of its personnel, the rights and obligations that inmates are supposed to have, the daily interactions among those who are confined and with those who guard them, the formal and informal modes of regulating, settling, and sanctioning the various issues that may arise. Indeed, it is this dense network of material and immaterial elements that defines what life in prison looks like for those who serve a sentence as well as for those who work there.

Both the investigation of the penal chain and the inquiry into the correctional apparatus are indispensable to a full understanding of the prison system. However, they represent distinct challenges for social scientists, since the former, being open, is much more accessible to direct observation and other scientific approaches than the latter, which is, by definition, closed. This explains why most research is carried out on the penal chain, while little knowledge is available about the correctional apparatus. This is particularly true in the United States, where an impressive sum of sociological, historical, and legal studies exists on the logics and mechanisms that have led to the phenomenon known as mass incarceration, but where what it means to be incarcerated for the millions of individuals who enter prisons and jails each year is hardly studied. Indeed, the Federal Bureau of Prisons, most of the 50 State Departments of Corrections, and the 3,000 local jails have maintained a high degree of opacity regarding what goes on in their facilities, restricting both scientific activities and external assessment, and therefore avoiding public or legal accountability about how prisoners are treated. It is much less the case, however, in other countries, such as Britain, where observational methods and interview techniques have recently resulted in substantial works on prison.

In France, the penal chain and correctional apparatus are relatively open to outsiders’ gaze. The ministry of justice, which is in charge of both, has its own small research unit, as does the National School of Prison Administration, and it finances the main public research center in criminology. Social scientists and legal scholars are regularly solicited to conduct surveys on various aspects of the justice and prison systems, notably to evaluate new policies or respond to specific questions, but independently conceived projects can also be granted permission, which has given birth to a growing field of research on justice and prison. The present book has greatly benefited from this relative opening. Over four years, I have been able to spend time, day and night for a total of seven months, in the short-stay facility of an important urban area. Such an institution is generally reserved for pre-trial detainees, the proportion of whom has recently decreased to one-fourth of the facility’s population, and for convicted persons with a sentence of less than two years, although some inmates may remain five years or more. During my research I have gradually been authorized – and have progressively authorized myself – to be present in all
parts of the facility and attend all sorts of its activities, from cultural pro-
grams to parole board meetings, from disciplinary hearings to the solitary
confinement unit. It has been more difficult to gain the trust of the prisoners
than that of the personnel, and probably also to have sufficient confidence
in myself to sit with the former in their cells than to stay with the latter in
the walkways. But however fascinating life in such a facility may be, and
however demanding its observation may become, I have repeatedly tried
to step outside, on the one hand to study the everyday work of the justice
system in the district criminal court, and, on the other, to examine the
considerable body of legal, administrative, and statistical documents on the
evolution of punishment practices, in order to apprehend the processes that
have led to the prison system being what it is. This book is thus an attempt
to analyze both the penal chain and the correctional apparatus. It aims at
characterizing the punitive moment through which French society – like
many others – is going, and at comprehending the carceral condition as it is
experienced by those who endure it.

* * *

France today has the highest number of prisoners of its peacetime history.
Its incarceration rate is 100 per 100,000 inhabitants, which is still seven
times less than in the United States. In the past six decades, there has been
a more than threefold increase in the prison population, which has swelled
from 20,000 in 1955 to 67,000 in 2015. One could logically imagine the
reason for this evolution to be a rise in crime. Such is not the case, however.
Although the curve of crime statistics is always difficult to interpret, since
it is influenced by the way offenses are represented in the public sphere and
constituted under the law as well as by the activity of the police and the
decisions of the judges, for the most robust data available, which also cor-
responds to the most serious crime, namely homicides, the trend over the
past century and a half is clearly of decline, except for a short period in the
1970s when a moderate increase was observed. In fact, the dramatic expan-
sion of the prison population is the consequence of a more severe penal
system. This repressive turn results from two main phenomena. First, new
offenses have been criminalized. Driving without a license, for instance,
was until the 1990s a rare violation of traffic laws usually sanctioned by
a fine. In the following decade, with the creation of a penalty point system
and the multiplication of radars on the roads, the number of suspended
licenses skyrocketed, while a 2004 law made it an offense punishable by
a one-year prison sentence. Today, driving with a suspended license is the
cause of one incarceration out of ten. Second, for a given breach of the law,
prison sentences have been passed more frequently and for longer periods.
Most notably, a 2007 law establishing mandatory minimum sentencing for
recidivists has contributed to an increase of 9 percent in prison sentences
and 17 percent in time to be served that was observed during the following
five years. But when one examines these statistics closely, it appears that,
paradoxically, the smaller the offense the greater the escalation in harsh-
ness. Other factors have also played a role, in particular the growing use of immediate appearance trials, which has a prison sentencing rate twice that of the normal procedure, and the activation of prison sentences for minor offenses perpetrated several years earlier, for which probation was already in progress. In sum, an increase in harshness rather than a rise in crime caused the expansion of the prison population. French society was undergoing a punitive moment.

This repressive trend being what it is, two further questions need to be asked. Is punishment justly allocated? Is it fairly distributed? In other words, are the crimes that cause more damage to society the most severely sanctioned (justice), and is the same offense punished in the same manner across society (fairness)? Ample discussion of these two points is provided in the book, and I will therefore limit the answers to one illustration: drug law violations. In terms of justice, suffice it to say that in the 2000s the number of convictions for use of marijuana has more than tripled, as a result of the establishment of quota of arrests by the police, while for financial crime it has decreased by one-third, after the introduction of legal measures rendering the indictments for such law infringements more difficult. It would be difficult to argue that smoking a substance that is legal in certain countries might be more prejudicial to society than embezzling funds. Currently, in France, imprisonment sentences for drug law violations represent one incarceration out of seven, essentially for possession and resale of cannabis, with one-fourth of these violations corresponding to mere use. In terms of fairness, while epidemiological surveys show that marijuana consumption is widely distributed among the youth, being even slightly more frequent in the middle class, those sentenced to imprisonment belong only to disadvantaged groups and ethnoracial minorities. The main reason for this discrepancy is that law enforcement officers concentrate their activity in housing projects rather than around universities, and use socioracial profiling to decide whom to stop and search. Presently, in French prisons, half of the prisoners are unemployed, half of them declare to have no profession, four out of five have not finished high school, and in the short-stay facility where I conducted my research, three-fourths of the inmates belonged to ethnoracial minorities, being mostly black and Arab men. The unjust and unfair allocation of punishment explains in good part the formidable disparities observed in French correctional institutions. In this respect, it should be noted that the expansion of the prison population with its socioracial component occurred at the very moment when socioeconomic inequalities started to deepen after a long period of contraction and when ethnoracial minorities became the target of stigmatization campaigns from right-wing parties. The penal state has definitely been a way of governing the poor.

With this analysis in mind, it is possible to enter the prison system itself and better apprehend the way it operates. Indeed, it is not enough to wonder how contemporary societies have come to incarcerate so many people with such a disproportionate representation of the most disadvantaged and
discriminated categories. One has to ask: what is it to be confined in a French prison today? Guards often say that the only thing of which prisoners are deprived is their freedom, and this belief has been at the heart of the very idea of the prison since its inception. Judges even maintain that the so-called incarceration shock may be salutary for the person convicted in the sense that it allows him to realize the consequence of his act. Yet, were freedom the only deprivation endured and the incarceration shock actually salutary, French correctional facilities might not have the highest suicide rate in the European Union, twice that of comparable countries such as Germany or Britain and five times what it was half a century ago. While the reasons for this suicide epidemic are unclear, it suggests that what inmates lack in prison is not just liberty. It is also privacy in their shared cell, an affective and sexual life with the constraints imposed on their rare visitors, the possibility to make decisions on ordinary needs like taking a medicine when in pain, the right to express emotions like anger when facing frustrations. What they are deprived of is their dignity, as they are subjected to body searches, and fair treatment, when they are sanctioned for misdeeds that the administration knows they have not committed. What the incarceration shock implies can be the loss of their job with the anticipated difficulty involved in finding another one, the disruption of their marital, family, and social life, and the exposure to violent encounters and criminal networks. At the end of the four years I devoted to studying prison life, the most obvious conclusion I could draw was that, contrary to the common idea that the prison system is expanding like an archipelago beyond its walls, something remains irreducible in the carceral condition.

For the social scientist, and probably for the public as well, the question that then comes to mind is: what is prison life like under this carceral condition in France? Much of my work has been an attempt to provide an answer to this question. Beyond the deprivations and the shock, beyond the drastic security measures and the harsh conditions of confinement, what is the prison experience for both personnel and prisoners? As one gets progressively immersed in the correctional system, whether as a new inmate, a novice officer, or a social scientist, one becomes aware of much more complex relationships and arrangements between the multiple agents and within the various contexts than what one expected. The imagined total institution appears as a field of forces, where the rules are permanently tested, negotiated, and diverted by guards as well as inmates. Of course, these rules are defined by the prison staff; certain officers do misuse them; all ultimately enforce them strictly and even brutally in the event of conflicts. In other words, power is unevenly distributed and some abuse it. Yet, in the daily life of the facility, compromises constantly occur: a shower is authorized although it is not supposed to be, an inmate back from a visit is left for a while in the walkway instead of being locked up, an officer agrees to serve as intermediary to pass tobacco or coffee from one cell to another. These adjustments are deemed to contribute to keeping the peace within the prison for the evident benefit of all. But they also reveal the existence,
within limits steadily iterated, of mutual respect acquired through months or years of cohabitation.

The institution plays an important role in the production of this internal order. The threat of sanctions, which affects not only the stay in prison but also the time served and the possibility of parole, definitely counts. Yet, after having been publicly criticized at the turn of the century, and so as to conform with the European Prison Rules, the correctional system has undergone important transformations, both material and organizational, such as an improvement of the environment in the admissions unit or the presence of a lawyer during disciplinary hearings. A person familiar with the correctional apparatus in the United States would certainly be surprised to discover that French inmates are incited to vote rather than being disenfranchised, and cannot be submitted to solitary confinement for more than 30 days instead of having no maximum. Conversely, an observer of the French prison system would undoubtedly be astounded to learn that in the United States inmates may be shackled or controlled by pepper spray, and guards can beat up a prisoner and even kill him without being sanctioned by the institution or indicted by a prosecutor. National contexts differ. They matter. They influence legal guarantees, institutional regulations, and professional ethos.

Yet, beyond these differences, which are certainly crucial for those who spend months or years behind bars, one question is of universal relevance: that of the sense and function of the prison. It can be formulated in philosophical terms, but it has to be examined on an empirical basis. A common justification of the prison is utilitarian: it reduces crime via incapacitation, deterrence, and rehabilitation. For short-term sentences, which represent in France the great majority, with four out of five being less than one year, this justification is difficult to argue, since studies show that recidivism is higher after incarceration than when an alternative penalty is given. Indeed, the destructuring of family and professional life is not compensated by efforts toward reinsertion during prison time, the stay being too short to provide useful activities and plan re-entry under supervision. The months spent in prison are experienced as vainly lost: no work, no class, no sports, and no social work undertaken. Imprisonment reveals the naked truth of its sole meaning: the retribution of a wrong as a form of socialized vengeance. However, even if one accepts this justification, according to which the suffering of the person convicted must be commensurate with the injury to the victim or the damage to society, could one argue that smoking marijuana, driving with a suspended license, even stealing a cellphone or an auto radio is worth several months in prison?

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After having spent a decade or so exploring the compassionate elements of contemporary societies via the analysis of the deployment of humanitarian reason, I have since dedicated my research to their repressive component through the study of policing and punishing – the dark side after the bright
one, so to speak. In that respect, my earlier book, *Enforcing Order*, and this one, *Prison Worlds*, constitute a diptych illuminating how repression operates from the street to the cell. Both texts rely on the same ethnographic method, a similar presence in the field for a long period of time, an analogous endeavor to connect local observations to the legal framework, the political context, the demographics of the concerned populations, and, in the end, an equivalent attempt to draw conclusions of general value regarding the logics and mechanisms involved in the way punishment is distributed. From that perspective, I tend to think that the deeper the ethnographic inquiry the broader the anthropological comprehension. In the same way as the study of the daily work of an anticrime squad in the disadvantaged outskirts of Paris can illuminate the activity of law enforcement in Ferguson, Rio, Johannesburg, or Bangkok, so the investigation in a French short-stay prison can shed light on the functioning of correctional facilities in the United States, Brazil, South Africa, or Thailand. It is not a matter of suggesting that things would be similar everywhere, but that certain phenomena may be found anywhere. To deny ethnography this sort of generalizability is to try to deprive it of its unique critical edge. Indeed, some facts, details, interactions, and meanings can only be observed and interpreted via this method: they remain invisible or impossible to measure via others. And recognizing them entails not only scientific discoveries but also political issues.

In this respect, it may be that contemporary societies – some of them at least – have reached a turning point or are on the verge of doing so. The punitive moment that I have analyzed in this book is finally being questioned, at least in certain places. The cost and efficacy of the correctional apparatus are sometimes disputed. The social disruption provoked by incarceration and its role in the production and reproduction of crime begin to be acknowledged. In recent years, several European countries with already low incarceration rates, such as Germany, Netherlands, Denmark, Sweden, and Finland, have reduced even more their prison population. This trend has also been noted most recently in the United States, although at a slower pace and starting from a much higher level. Conversely, in France, like in most countries worldwide, the incarceration rate continues to grow, as the retributive ideology is kept alive via law and order policies often underlain by a politics of fear. But even if the decline in the prison population were to be confirmed and extended, it should not distract attention from the carceral condition to which I have devoted most of this book. Ultimately, society can be judged on the state of its prisons and the way it treats its prisoners.

*D. F., March 2016*
Acknowledgments

Prisoner: You’re back, then? Are you writing another book?
Me: No, it’s still the same one.
Prisoner: It’s going to be never-ending, then.
Prison officer: It’s like *The Lord of the Rings*: it’ll run into volumes!
(returning from the yard, July 2013)

It is a remarkable paradox that in France, prison, the prime site of confinement, is a space open to research. One need only point to the number of studies carried out there and the books and articles published on the subject. The contrast with the closed world of the police is notable in this respect. I, like others before me, have benefited from this openness, both at the central level of the Directorate of Prison Administration and the local level of the prison where I conducted my research. Not only was I warmly received by those in positions of responsibility in these institutions, but I was also welcomed by the staff – correctional officers, probation and re-entry counselors, and contractors employed by the private service provider – and the civilian personnel – doctors and nurses in the walk-in clinic, the clergy of diverse faiths and members of various advocacy organizations – as well as by sentencing judges, prosecutors, and defense attorneys, and even, in the district court (*tribunal de grande instance*), magistrates sitting in immediate appearance trials.

As I indicated to all these informants when I outlined my project to them, my aim is both to respect the anonymity of places and persons, and to ensure the confidentiality of the observations and testimonies gathered. For this reason I am unable to acknowledge individually all of the many people who allowed me to conduct my research with an exceptional degree of freedom, for which I am grateful to two successive directors and their deputies, and in the atmosphere of trust and cordiality that I encountered among the staff and others involved in the prison. This desire to protect my sources, as journalists put it, has also led me to modify some personal attributes and elements of biography that would have rendered the people whose actions or words I report too easily identifiable. In particular, where
duties are exercised by a small number of agents, I have usually used gender-
neutral terms, except in cases where indicating the gender of the person
concerned was essential to understanding and not potentially prejudicial to
them. I wish to express my sincere gratitude to all those I cannot cite.

We may wonder about the reasons for the French prison system’s
relatively benign disposition toward researchers – an attitude that is not
necessarily echoed in other countries. After all, given the information on
the situation in French prisons that filters through in newspaper and maga-
zine articles, TV programs, press statements from organizations such as the
International Prison Observatory (Observatoire international des prisons),
parliamentary reports, and also reports from the National Ombudsman
(Médiateur de la République) and especially the General Inspector of
Prisons and Detention Centers (Contrôleur général des lieux de privation
de liberté) – all of them generally authoritative documents that are unspar-
ing in their criticism of prison policy and practices – the institution might
well fear the proliferation of outside scrutiny, and could easily cordon itself
off from the curiosity of social scientists. That it does not is entirely to its
credit.

There are two explanations for it. The first, more clearly manifest at the
level of national administration, is due to a form of democratic culture, cer-
tainly reinforced by pressure from the forces listed above, combined with a
will to knowledge that is evident from the fact that the Directorate of Prison
Administration has its own office for surveys and planning, that the main
research center in this field operates under the aegis of the French Ministry
of Justice, and that calls for scientific projects on the prison system are regu-
larly published. The second, more perceptible at the local level, relates to
a degree of dismay felt in the prison service over the negative public image
of prisons and prison staff, which these latter consider unjustified. Working
for an institution that the French president described in parliament as a
“national disgrace for France” just as I was beginning my study is not
easy, especially when the staff have the feeling that the realities of the
prison environment are ultimately as much the result of political choices,
legislative measures, budget constraints, and court decisions as they are of
penitentiary practice itself. In these circumstances, the scrutiny and reflec-
tions of researchers could hardly make the representation worse, especially
as researchers are credited both with spending more time there, allowing
them to immerse themselves in the environment and thus to understand it
better, and being more independent of ideological and institutional interests.

“We have nothing to hide,” I was often told by members of the management
team in the prison, and indeed they were as good as their word, letting me
organize my work as I wished, including in places and at moments that did
not show the establishment in the best light, and even after the publication
of my book on policing, when I was applying for a renewal of my research
authorization, which might have been refused in the context of the public
debate generated by that book. Prison guards too encouraged me: “We
hope you’re going to show prison how it really is.” They felt that they were
still too often tarred with the traditional image of the “screw,” and regularly inquired about the progress of my research.

But the world of prison is not made up solely of the prison management, its staff, and independent contractors. It is also, above all, made up of the life of the prisoners who spend months or years there. They too were generous in their welcome. Admittedly, one of their most frequent complaints was that they were not listened to by the wardens, the guards, or the probation and re-entry counselors. If a stranger comes in and invites them to talk, it is likely that he will be well received. Nevertheless, it seemed to me that the relationship went beyond a simple expectation of being heard. What was being manifested was the feeling that they were recognized as something other than just inmates. What was also expressed was the idea that the vehicle of the written word could give weight to what they were telling me. I am grateful to them for the interest they showed and the confidences they shared with me.

I hope that in this book I have preserved something of the truth of their experience, while at the same time protecting the anonymity and confidentiality of their individual histories, a procedure that has in some cases led me to omit elements of their stories or statements. The family names that appear in some of the reported conversations have of course been changed. However, I have never resorted to the practice, widespread in the social sciences, of using an invented surname or forename, or even an initial, as it seems to me that this process gives an anecdotal turn to their story. Contrary to this common usage, I have preferred to call them simply what they are: men. I use the term “prisoner” or “inmate” only in the context of administrative or demographic data relating to the prison population and in descriptions of interactions with prison staff, where the roles of each are predetermined. I have adopted the same practice in relation to the terms “defendant” and “suspect” in situations involving the courts or the police. When I recount the story of an individual or describe his relationship with me or with others, I say “the man” in order to restore to him a kind of dignity of which prison, the courts, and the police tend to deprive them – a fact they themselves complain of, maintaining that once they cross the threshold of the prison they are no longer anything but their inmate number.

This study was financed by an advanced grant that I was awarded in 2009, under the IDEAS program of the European Research Council: my proposal was to explore a domain I called political and moral anthropology. The support afforded by this grant goes far beyond the actual funding: it opens the doors of institutions, makes it possible to employ young researchers, 10 of whom were involved in this collective project, focusing on different areas and different subjects, and, finally, facilitates the dissemination and discussion of research outcomes – in other words, contributes to the production of a public space in which the social sciences have their place. The study was conducted in France, but has become a book in the United States. The freedom I enjoy at the Institute for Advanced Study, the
interdisciplinary interactions that constitute the daily life of this institution, and the intellectual ethos characteristic of it were all essential to the work of reflection and writing. It is also the Institute, along with Iris, Institut de recherche interdisciplinaire sur les enjeux sociaux, and the program Tepsis, that funded the translation. As was the case with Bruno Auerbach at Le Seuil, so John Thompson, at Polity Press, accepted this project enthusiastically when I proposed it to him. And, as for several of my previous books, I have benefited from Rachel Gomme’s remarkable work of translation as well as from Patrick Brown’s, Laura McCune’s, and Sarah Dancy’s attentive copyediting. Finally, the book owes much to the conversations I had throughout the writing process with Anne-Claire Defossez, particularly during our precious mountain hikes, and beyond these discussions, to a particular idea that we share of what the world is and what it could be.

D. F., Princeton, August 2015
Prologue

Where It All Begins

“I don’t know this law,” said K.
“So much the worse for you then,” said the policeman.
Franz Kafka, The Trial

“So, this case . . . is quite extraordinary! All in all, it’s just another unfortunate road traffic incident, of the kind we see all too many. But, you’re giving us a real adventure story.” Thus the presiding judge, adopting a cheery tone, introduces the final case of the immediate appearance trials in a session she described to me later as “light, but quite representative of our work.” To be specific, the session has covered armed robbery, domestic violence, resisting arrest, and driving without a license. The last glimmers of winter daylight are filtering through the high windows of the plain concrete and glass district court building. At one end of the vast, almost empty courtroom, the judge sits on a raised dais, accompanied by her two associate magistrates, whose voices remain unheard throughout the four hours it takes to try the five cases. Alongside her, the court clerk does not lift her eyes from her computer screen, while the court usher busies himself looking for a lost document.

In the defendant’s box, partially enclosed by walls of wood and plexiglass, stands a man of 35 who looks 10 years younger: thin, haggard, shaven-headed, dressed in jeans and a tee-shirt. With his drawn features, doubtless the result of being held in custody, he seems lost, frowning with a sort of anxious perplexity at the judge’s torrent of words, which are interrupted only by occasional questions to which he replies in brief sentences uttered in a low, uncertain voice. Behind him, the two policemen who brought him in after removing his handcuffs. In front of him, the court-appointed attorney he met a short time before, and whose assistance he has accepted. Opposite him, a young prosecuting attorney. I am the only one seated on the public benches. Not a single relative, friend, or witness is in attendance for any of the five cases heard. In contrast with the presiding judge’s breezy remarks, a motto inscribed in giant letters on the wall above her offers a sententious reminder of the solemnity of the place: “The court is the ultimate arbiter, declaring and recalling the value of things.”
It takes all of the presiding judge’s talents as a storyteller to liven up the account of the – all in all rather banal – events that have led to the defendant’s appearance before her. One Sunday in late summer, in a small town nearby, a car veered off the road and crashed into a signpost. The collision caused it to roll onto its side, but the occupants lifted it back up again and drove off. When the police, who had been called by a witness, arrived, the vehicle had disappeared, but they found the license plate that had been torn off in the collision and easily identified the car in question, which was found in a parking lot not far away. When they questioned the owner, a woman in her 30s, she explained that her partner had been driving the vehicle. She claimed to have no idea where he was, but stated that he “had friends among Roma people.” The police officers then asked her to tell him that he was required to present himself at the police station. The man did not comply with the oral summons given to his partner, and four months later, the police arrived at his home at 6:30 in the morning to question him. Discovering that he no longer had a driver’s license and that his car was not insured, they arrested him and notified the public prosecutor; the following day, they brought him to court for an immediate appearance trial.

Having recounted the facts, the judge asks the accused how he pleads, and when he admits to the charges, she explodes: “What a completely stupid thing to do! Did you think you could live on the run like that?” The defendant explains softly that he was not on the run; he lives close to the police station, and on his return from work in the evening he has several times met police officers who know him well and could easily have asked him to accompany them down to the precinct. “Come on, tell the truth in court!” the judge insists. “You took advantage of not being arrested to enjoy the holidays with your family.” The defendant lowers his head. He has three young children, one of them adopted, and his partner is expecting a fourth. The judge feigns surprise: “Looking at you, you give the impression of someone showing remorse, but you’re not at all sorry! When the police officers questioned you, you said you would only talk to the judge with your lawyer.” Realizing that this remark is highly inappropriate, she corrects herself, acknowledging that this is indeed his right.

Examination of the case file reveals 19 citations over the previous 15 years, generally for similar offenses. These often resulted in a fine, once in the confiscation of his vehicle, and four times in prison sentences: of two months, four months, six months, and one longer stay of 36 months on account of violence and the activation of suspended sentences. “It’s a mystery how to make you understand that you cannot drive without a license and without insurance. You’re a danger to the public, and we’re only going to be safe if we put you in prison. What do you think?” The man remains silent. The judge moves on to rapidly scanning the social review, which is required in immediate appearance trials and is conducted by a psychologist from a rehabilitation organization. The report states that the man’s late father was a mechanic and that his mother brought up her seven children on her own. Having dropped out of a vocational school, their
son began working at a very young age in temporary jobs, before finding more stable employment as a delivery driver, during the course of which he received 12 points on his license. The resulting prison sentences caused him to lose his job, and it was also one of these sentences that interrupted the lessons he had begun taking precisely for the purpose of regaining his license. He was released eight months earlier from his most recent prison sentence and looked for work for a long time before being hired as a temporary warehouseman in a company that was about to offer him a fixed-term contract the following week. He is also a former heroin user and is still enrolled in a methadone maintenance treatment. “You’ve been on methadone for four years?” asks the judge reprovingly. “That’s pretty much a treatment for life, isn’t it! One drug replacing another.” Suspecting that he ran off after the accident in order to avoid being breathalysed, she adds: “And if you drink on top of that, it’s hardly going to help.” Overwhelmed, the man remains silent.

It is now time for the prosecution to present its case. Of the three offenses, explains the public prosecutor, only two have been proven. In this tale that she describes, in an echo of the judge’s dramatization of the narrative, as “surrealistic,” the offense of fleeing the scene cannot be legally established because the circumstances of the accident meant that the accused was forced to stop, and did not drive off immediately. However, the lack of a license and insurance is confirmed, and moreover these are repeat offenses since he has recently been convicted of the same crimes. Because of this aggravating factor, she asks the judge to apply the mandatory sentence principle; in doing so, she effectively extends the scope of this automatic sanction beyond that prescribed by the legislation, which limits it to crimes punishable by sentences of three years or more. Moreover, far from encouraging clemency, “the recent employment and his good integration into his family” only make things worse from her perspective and justify a heavier penalty since, she argues, these favorable circumstances have not prevented him from committing further offenses. Regretting only that she cannot request the confiscation of the car, which is registered to his partner, the prosecutor concludes by calling for a custodial sentence of six months imprisonment with immediate incarceration. The judge suggests that she add reckless driving to the list of charges, in order to allow for compensation of the municipality, the mayor having submitted a claim, backed up by invoices, for 240 euros to replace the damaged signpost.

When it comes to the public defender’s turn to address the court, he begins, to the evident surprise of his client, by denigrating his partner. In an attempt to refute the offense of fleeing the scene, which has however already been dropped by the prosecutor, he accuses the young woman of lying to the police by stating that her partner was not at their home, when in fact he was; and so it was she, not he, who obstructed the course of justice. The lawyer does, however, acknowledge that the offenses relating to the lack of driver’s license and insurance are incontestable, “offenses which represent a danger to society, since he’s hardly the world’s greatest driver,” he adds.
with irony, to the increased astonishment of the defendant. But he bases his arguments against returning the accused to prison on the social context. He makes mention of the defendant’s family and work circumstances, noting that he “supports his partner and their three children,” “doesn’t sit around doing nothing and living off welfare,” “is following a treatment plan,” and “is attempting to reintegrate into society.” He therefore asks that the accused be “given this one last chance, or maybe the first chance after his troubled criminal past,” in view of both the recent change for the better with the job he has just been offered and the family’s precarious financial situation, with their only income being his wages. In a weary tone, he concludes his case by recalling, without conviction, the “possibility of alternative penalties that will help him become aware of the seriousness of his actions and support him on the path to proper integration” – penalties that he does not, however, specify. The judge intervenes once more to correct him on the stability of the employment, reminding him that it is nothing more than the promise of a fixed-term contract. A discussion ensues with the public prosecutor and the public defender on the meaning of temporary jobs and the need to reform labor law. The accused appears once more amazed by this unexpected digression. Finally, the judge turns toward him to ask if he wishes to add anything. In a scarcely audible voice, the man says that he regrets his action and is now “on the right track.” Hardly has he finished speaking when the judge declares a recess in order to deliberate. The hearing has lasted just 35 minutes.

Half an hour later, the court is reconvened. For driving without a license and insurance, the judge issues a sentence of six months’ imprisonment, and also awards damages to the civil claimants. The man appears despondent but resigned. The police officers replace his handcuffs and escort him to the prison, where he will be incarcerated.

* * *

It is there that I see him again three days later. He is in the new arrivals section of the prison, a sort of acclimatization zone between the outside world and the reality of incarceration, where inmates spend a few days before being transferred to the main buildings. The cell, where he is alone for the time being, measures about 100 square feet. The walls are painted pastel blue. It is minimally furnished: a basin with a mirror above it, a toilet hidden behind a screen, an iron bunk bed, a table and two plastic chairs, a closet. The barred window is covered by a thick rubberized grille, through which an exercise yard can be glimpsed, its high walls topped by coils of concertina razor wire. The few essential items given to each new arrival are placed in one corner. A transit zone, the cell does not have any of the decorative items found in cells where prisoners spend longer periods of time. After offering me one of the two chairs, the man sits down on the bottom bunk.

As I explain my research to him, he smiles fleetingly and says that he recognizes me, having noticed my presence in the courtroom, and wondered
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who I was. I ask him how he feels. “When I came in I was really down. I’m feeling a bit better now.” Upgraded to meet the standards of good practice of the European Prison Rules for “caring for and accompanying the detained person during the intake phase,” the arrivals section is a source of pride for the prison warden, who has had it refurbished, and for the correctional officer in charge. It allows for a less abrupt transition into detention, particularly for those who are imprisoned for the first time. Inmates held there receive special attention and meet with key personnel, from the senior management to the probation and re-entry service, as well as the private contractor that provides employment opportunities and the outpatient health clinic. “I was worried I wouldn’t get my medication, because I was brought in on a Friday night,” the man tells me, referring to his daily 60mg dose of methadone. “But the doctor came on Saturday. She trusted me. Lucky I had the medication on me, so she knew I was telling the truth and was on it, and she wrote me a prescription.” The prospect of going without medication during their first few days in prison is indeed one of the worst fears of both prisoners on methadone treatment and guards, who dread the consequences of withdrawal.

The man soon returns to the subject of his sentence. “Sure, driving with a suspended license is illegal, but you can’t call it a serious crime. It’s not right that you end up together with burglars and rapists just for that. Sometimes you go into jail calm and you come out more crazy. I’ve been inside four times, and I’ve been offered loads of stuff. I’ve even been asked straight up to join in robberies. There are Islamists here too, they try to recruit us . . . They put you in jail with all those guys, but the judges don’t realize what it’s like in here!” He breaks off and then resumes: “You might as well go to jail for actually doing something. Driving with a suspended license is no big deal. This place messes with your head.” Visibly marked by his three previous stays in this same prison, he describes the everyday violence: “There’s a fight in the exercise yards at least every two or three days. And then there’s the shakedowns. Last time on my first day, when I joined the main prison population they took the sneakers I was wearing.” His frail physique obviously did not make life in prison easy for him: “In here, if you’re weak, you’re the maid. You have to do everything the guys tell you to. When they put you out there, it’s like sending a lamb out into a pack of wolves . . . And then there aren’t that many French guys in the prison. Most of them are blacks and Arabs. You can count the number of French guys on one hand. We’re the victims. They put pressure on us. Either that or you just don’t leave your cell.” Without spelling them out, he hints at the forbidden activities imposed on the most vulnerable – picking up packages thrown over the walls or hiding prohibited objects among their belongings, at the risk of severe punishment. But he also makes broader reference to the rule of the strongest and its consequences: “Sometimes guys kill themselves and you don’t know why. He’s been in here for months and then he kills himself. That doesn’t just happen. People kill themselves as soon as they arrive here, not after months. Unless there’s a problem.” He speaks of the
prisoner he felt closest to last time he was in prison, who was “found dead in his cell” four days before he was due to be released. “And they claimed it was ‘death by natural causes,’” he adds bitterly.

However, what seems to distress him even more than the prospect of time in prison, of which he has some experience and which he is already getting used to again, is the loss of his outside life: “When I get out I'll be out of work, I'll have to start all over again. It took me nearly a year to find a job, now it's fucked up. When I'm released I won’t have anything left. Two months I was at that company as a warehouseman. The judges don’t understand. They don’t think a temporary contract is a real job. But fixed-term contracts don’t grow on trees. Especially in my situation. That’s what really pisses me off: I was just about to get a contract.” His main concern is that he will not be able to see his three children grow up and take care of them: “Last year I was jailed just before my son was born. And now I won’t be there for his first birthday. I won’t see my new baby born either. That’s really hard, you know … My kids are what keeps me going.” He falls silent for a few moments, then resumes, anxiously: “I’m worried. One of the older two is starting down the wrong path. That’s what I’m scared of. When I’m not there, their mother has trouble controlling them, especially my 13-year-old boy. And we can’t keep telling them ‘Dad’s away on vacation.’ They’re too old for that now.” But suddenly remembering what was said about his partner in court, he is furious at the way she was stigmatized: “And then they call my wife a liar. They’re full of shit! Anyway I didn’t have any confidence in the public defender. When he came to see me in custody he started by scolding me. I said to him: ‘Hold on, are you here to judge me or defend me?’ Those lawyers, they just turn up to collect their money,” he concludes, returning to the familiar refrain of defendants without money.

Recalling the accusation of lying against his partner then leads him to confide something about his identity: “I’ll be honest with you, we’re kind of Roma. But I didn’t say that in court because they’re real prejudiced and it would only get me a worse sentence.” This point, which was actually mentioned in passing when the facts of the case were read out during the hearing, was indeed not taken up by anyone. Yet it was explicitly identified in the police’s report as a detail communicated to the court, which could therefore not ignore it. Whether or not the court took it into account, the secret of his origins was equally difficult to hide in the prison. A little later that day, in the exercise yard, I heard another prisoner call out to him, in friendly greeting: “Hey, gypsy!” Two of his cousins and their father were also incarcerated in the facility and, as I was often told, news travels fast in prison.

As we part, the man tells me of his hope that, this time, he will get the sentence adjustment he was refused four times during his previous long prison term. “I have to do everything I can to get out of here as soon as I can,” he says, adding, lucidly: “But I know it’s not likely, because they’re all backed up.” And indeed, contrary to his hopes, he was eventually released right at the end of the specified sentence term, reduced only by the sentence
reduction credits – seven days per month – that are automatically allocated on condition of “absence of disruptive behavior” in prison. However, he did not benefit from any additional sentence reduction – four days per month, for a repeat offender – that are awarded in recognition of “efforts toward social rehabilitation” through work or training in prison, since the shortness of his sentence effectively made these two activities inaccessible to him. In the end, his stay in prison lasted four months and 23 days, without any provision made for helping him reintegrate into society. Constraints due to the heavy workload of the probation and re-entry counselors mean that sentence adjustments enabling a smoother transition to life on the outside, possibly in the context of a job, are only exceptionally granted in sentences of less than six months, as priority is given to inmates with longer sentences. Release is thus almost always “cold,” without the period of reintegration and work that allows prisoners to be placed under electronic surveillance, in other words the “ankle bracelet.” In this case, the court itself could even have stipulated the sentence adjustment, since the defendant was on the verge of signing a contract with the company where he had temporary employment. It did not.

Those serving short prison sentences are therefore doubly disadvantaged: on the one hand, they cannot work, receive training, or attend classes, and so are also deprived of additional sentence reductions; on the other, they do not benefit from the efforts of the probation and re-entry service, meaning that their sentences cannot be adjusted. Prisoners are not generally aware of this when they arrive. They ask to be able to work or study. They write to their counselor to arrange a meeting to discuss sentence reductions and adjustments. When they get no response, they ask the senior officer whether their repeated requests were indeed transmitted. Finally, as they see the weeks go by without anything being offered to them, and often without even receiving any reply, they understand that they will spend the rest of their sentence without any activity other than the twice-daily walk. Until one day, they are told they are being released, finding out when the guard, himself just informed by the prison administration, calls them on the internal telephone in their cell to tell them to pack their belongings because they are getting out.

Six months after our conversation, I was accompanying a prison officer and an auxiliary as they distributed the lunch to the inmates, when a door opened and I suddenly came face to face with this same man. As surprised as I was by this unexpected meeting, he greeted me without formality: “Dude, what you still doing here?” After the guard laughed at his question, he realized how inappropriate it was, having taken me for another prisoner. This gaffe, for which he laughingly apologized, suggested to me that he had unconsciously filed me in a different mental category from the authority represented by the prison administration. We had time for no more than a brief exchange. The cell door was already closing and the meal distribution continued. Intrigued by his presence beyond the specified term of his sentence, I learned a little later that three weeks after his release he had
once again been convicted of assault at an immediate appearance trial. This
time he had been sentenced to ten months’ imprisonment, with five months
suspended for two years. Over his chaotic career, with the prison terms he
had listed to me – “2010, 2011, 2012, 2013” – he had never relapsed so
quickly.

* * *

“I’m real pissed, because I was putting my life back together again. I had
a job. I had my kids,” he had said to me when we had met the first time.
Obviously there is no knowing whether, despite the promise of employment
and the birth of his new child, he would have had all the social resources he
needed to see through this rebuilding process, if he had been let off with a
noncustodial sentence such as community service, or with a sentence adjust-
ment stipulated by the magistrate during the trial to be implemented by the
sentencing judge later on. However, it is certain that imprisonment with
immediate incarceration and no prospect of adjustment left no opportunity
for social reintegration and made it highly likely that he would reoffend.
Sentencing him to prison maximized the risk that he would return there.
The presiding judge was well aware of this.

When, at the end of the hearing, I asked her why she chose prison time
for driving without a license and insurance – two offenses that are linked,
since the first almost automatically implies the second – despite the man’s
family and work circumstances, she replied, dispiritedly: “Yes, I know, we
talked about that while we were deliberating. We don’t know what to do in
these cases. We’re helpless. We feel as if it doesn’t make the least difference.
We know he’ll do it again, but we still have to apply the punishment. With
his previous convictions, what else could we do?” Without any further jus-
tification of her decision and with little illusion as to its efficacy, she felt
that her only option was imprisonment, both to punish the crime (because it was
a repeat offense rather than a serious one, a fact she emphasized dramati-
cally in court), and to protect society (at least during the sentence, for she
could not have been unaware that short prison sentences with no possibility
for adjustment have been shown to encourage recidivism).

In fact, on that day, all the defendants except one were returned in hand-
cuffs to the prison, either because they had agreed to be tried immediately
on arrest and had been sentenced to prison, or because they had invoked
their right to request a postponement in order to prepare their defense but
had been remanded in custody awaiting trial. When the public prosecutor’s
office puts forward a case for immediate appearance trial, it indicates that
they have reasonable grounds for believing the defendant is highly likely to
be sent to prison, either after sentencing or in pretrial detention. Moreover,
at the immediate appearance trials I attended, except in cases where there
was a blatant lack of evidence that resulted in the defendant’s acquittal, the
judge almost always granted the prosecution’s request for sentencing. The
role of the defense attorneys, usually appointed by the court, seemed a mere
legal formality to which evidently no one attached any great importance,
starting with the public defenders themselves who readily acquiesced to this
assessment when I spoke with them after trials.

During the first days of my research at the prison, in order to familiar-
ize myself with the facility and its occupants I sat in on the interviews
that members of the management team and the probation and re-entry
counselors conducted with new inmates on arrival. For them the aim of
these was to establish a first contact, to evaluate circumstances and needs,
to identify problems, particularly risk of suicide, and more broadly, in the
case of the wardens, to know “their” prison population. I was struck then
by the frequency of short sentences, and still more by the trivial nature of
the offenses that had resulted in them. The number of sentences for driving
with a suspended license, among other offenses, was soaring, having quad-
rupled in France over the past 20 years, largely as a result of the increased
number of speed cameras on roads. These offenses were often punished by
a suspended sentence that “came down” when the individual was convicted
for a second offense, in which case the two penalties were added together,
creating a sentence lasting several months. People working for trucking and
delivery companies – those unskilled, poorly paid jobs that are inevitably
taken by young working-class men – were singularly vulnerable precisely
because of the conditions of work in these professions, where they are under
pressure to maintain productivity.

“Two weeks in jail for a repeat offense of driving with a suspended
license: what’s the point in that?” raged one of the directors after an inter-
view with one inmate. “What’s he going to learn in prison? And what can
we do in two weeks? All it does is desocialize him. What’s the guy going to
say to his boss? And to his wife and children?” But these driving offenses,
which were often punished by sentences much longer than two weeks, were
for him just the most visible aspect of a pattern whereby imprisonment was
becoming the routine punishment for actions whose perpetrators would
never have been incarcerated when he began his career 25 years earlier.
Moreover, he was aware that not all those who committed such offenses
bore the same risk of being arrested and ending up in prison: “The other
day, I saw among the new arrivals a man who’d been convicted of driving
with a suspended license. He was black. I asked him about the circum-
stances of his arrest. He told me that it was a routine police road check,
but he pointed out that he had been checked 15 times since the start of the
year.” The warden added: “I’ve only ever been checked once in my life,”
implying that if he had driven with a suspended license no one would ever
have known. Thus, the selection of the prison population begins in the
street, where ordinary policing leads to the profiling of individuals on the
basis of their physical appearance, and continues in the public prosecutor’s
office through the real-time processing that is reserved for certain kinds
of cases and above all certain kinds of defendants. Immediate appearance
trials, which usually result in custodial prison sentences, are the ultimate
end-point of this selection.

The judge’s embarrassed justification of her decision precisely reflects this
reality and the concern it causes: the growing centrality of prison both in the thinking of magistrates and in their arsenal of available punishments leads to imprisonment being readily seen as unavoidable for repeat offenders, all the more when, as in the case described above, they are people whose lives have been marked both by social precarity and by previous incarcerations. But the judges are not the only ones who have begun to think in this way more and more often. It is society as a whole that has become more repressive, to the extent that the courts, which have been imposing increasingly harsher penalties, are constantly accused of being too lenient. In a context where security has become a major electoral issue, new offenses have been added to the penal code, stiffer penalties have been voted in, mandatory sentences have been introduced, guidelines have been issued to public prosecutors, and judges have been subjected to political pressure. As a result, the number of people imprisoned has doubled over the last 30 years. This situation is not, in fact, specific to France: it is evident in almost all Western countries, notably the United States, where the prison population has risen almost fivefold in three decades.

However, those sent to prison are not evenly distributed throughout society. The fact that the man sentenced for driving without a license and insurance was from a poor background and belonged to a minority group is not random accident, either in terms of cases sent for immediate appearance trial or in terms of custodial sentences. These are in fact the two most characteristic features of those whose offenses are processed summarily and whose prison sentences lead to immediate incarceration: they come from disadvantaged urban communities, often living in public housing projects, and belong to ethnic minorities, generally North Africans or sub-Saharan Africans, sometimes Roma. Because they are disproportionately involved in the offenses that are most subject to repression, and because, even when this is not the case, police activity tends to focus on them (for insulting a police officer and resisting arrest, or for use and possession of drugs, for example), they are consistently overrepresented in fast-track prosecution procedures and among those sentenced to imprisonment. Here again, beyond individual variations related to national history, we see a similar sociodemographic distribution in all Western countries. In the United States it is even more pronounced, with imprisonment seven and three times higher, respectively, for blacks and Hispanics than for whites, and eight times higher among black dropouts than among those with college degrees.

The opening scene in the district court therefore has exemplary value. It both illustrates and reveals a triple reality of the contemporary world that has long been identified by social scientists researching prison policy and the world of prisons in the United States, Britain, France, and elsewhere. First, prison occupies a central place in the social imaginary and court practice, as the ultimate sanction and routine mode of punishment not only for serious crimes, but also a growing number of petty crimes, particularly when they are repeat offenses. Second, the solution of imprisonment is disproportionately and arbitrarily applied to socially disadvantaged and ethnically
discriminated populations, particularly during times of economic difficulty and growing inequality. Third, these two facts have a relatively recent history that can be read on two temporal levels: that of our modernity, with the invention of prison in the eighteenth century, and that of our present, with the expansion of prison over the last 30 years.

The judge who sentenced a father of three in precarious financial circumstances to six months in prison solely for having committed a repeat offense of driving a vehicle when he had a suspended license thus acts within a larger context. She is participating, without being entirely conscious of it, since her reflection takes place in the immediate moment of the decision, in a fundamental transformation of the relationship between punishment and inequality. The fact that the justice she administers is not applied in the same way to all, as sociological studies have long shown, and as parliamentary reports have more recently noted, emerges from social patterns and political choices that are beyond her awareness. She could of course issue different penalties – and variations in the severity displayed by different judges and different jurisdictions are sufficient to illustrate the part played by each magistrate in the decisions made, even when done so collectively – but it would be wrong to see this simply as a question of individual choice. In this case as in others, the presiding judge is effectively pronouncing the judgment she thinks society expects of her.

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It might seem surprising that a book on prisons should open with a court scene. After all, if there is one world that is closed, that deploys extraordinary ingenuity and a wealth of technical resources to cut itself off from the outside, it is that of the prison. It might then seem consistent with the prison project that the picture drawn of it should be equally self-contained. And indeed, a number of reports and analyses of prison present it in this way: as a world apart. This insular perspective, which views prison as a community closed in on itself and describes it as a subculture, has long been subject to debate in North American research, and has been taken up more recently in French writings. It is becoming ever less tenable as prison occupies an increasingly central place in public debate, as external scrutiny penetrates prisons, contemporary technology spreads inside them, and finally as one appreciates the extent to which the prison population, just like the social differentiation observed in delinquency and criminality, reveals the disparities that operate in the repression of crime.

Prison is the product of the work of the police and the judges, governments and parliamentary representatives, journalists and film directors, and even society as a whole, through the fiction known as “public opinion” and the impact of the statements made on its behalf. A change in the legislation relating to the penal system or the implementation of European regulations, a spectacularly violent crime committed by a convicted criminal out on parole or a book denouncing scandalous prison conditions, a judgment against the state in an international court or a case brought by
a nongovernmental organization, a demonstration by correctional officers following an attack on one of their number or the reactions to the suicide of a prisoner: all of these influence not only what prison is and the way it operates, but also what those who work there and those who are serving their sentences there think and do.

The man imprisoned for driving without a license and insurance therefore owes his sentence to the recent recategorization of his offense, now classified as vehicular crime, and the subsequent revision of penalties, which changed the punishment from a fine to imprisonment. More broadly, his incarceration is due to increased media focus on road traffic accidents, to a heightened sense of insecurity, to the suspicion that the courts tend to be overly lenient, to the increasingly routine use of immediate appearance trial to deal with minor crimes committed by people with little social standing, and to the belief of judges in the salutary effects of “the carceral shock” on repeat offenders. Thus the overpopulation of prisons and the social composition of those held there represent the culmination of a whole set of decisions taken by the government or parliament, by the police and the courts, but they are also the product of the multiple representations society has of crimes and misdemeanors, and the best ways of punishing and preventing them. Hence the sense of injustice felt by prison staff, particularly guards, when the shame of the conditions in which offenders are held falls purely on them, when they are just “the end of the line,” as they themselves often put it.

Moreover, the reverse is also true: both the reality and the image of prisons have an impact on public debate and the social world, on expectations of compensation for victims and on the precarious financial situation of inmates’ families, on the sense of whether the punishment fits the crime, and on the reproduction of inequalities. Once someone discovers, or pretends to discover, that some prison sentences are not served or that some prison establishments suffer from a serious shortage of resources, the media is soon overtaken by polemics orchestrated by political parties, advocacy groups, or journalists denouncing the inefficiency of the court system, or the indignity of prison conditions. But prison does not just provide fodder for imagination and controversy; it also disrupts the social order. The incarceration of the man for driving without a license and insurance just when he was due to sign a contract of employment that will no longer be open to him when he gets out, while his partner struggles alone with a desperate financial situation, and his children, left to themselves, seem to be following a worrying path, contributes to the increasing fragility of what are already the most vulnerable groups in society, and to the perpetuation both of social inequality and of criminal ways of life. More generally, the way in which people think of prison, the role attributed to it by the courts, and the place it is given within the law have a major influence on society, particularly on the prospects for rehabilitation of inmates and the risks of breakdown in family relations, on the alienation of particular groups and the marginalization of particular districts, on the balance between punishment and prevention of
crime and wrongdoing, and on the choice between exclusion and rehabilitation of those who commit them. Those working in prisons are aware of these issues, especially those in the probation and re-entry services, who continually raise the question of the “meaning of the sentence.”

Prison worlds are thus simultaneously a reflection of society and the mirror in which it sees itself. They should therefore be thought of in ways that go beyond simply referring them to their buildings, their staff, and their regulations. We need to open the scope of our analysis to the extent that prison is open to the social space. The day-to-day life of a correctional facility can only be understood in relation to the facts, events, discourses, and actions that take place outside it. Viewed in this perspective, our scene in the courtroom is not just a way of offering a glimpse of what happens prior to incarceration and how people come increasingly to be sentenced to this ultimate punishment. It also reminds us that, for both inmates and personnel, the prison is closely linked to its environment and sensitive to the spirit of the times. For prison worlds may be closed, but they are still porous. Life on the inside intersects with life on the outside. Prison is not separate from the social world: it is its disturbing shadow.
The concept “punishment” is in fact not one meaning, but a whole synthesis “of meanings”: the previous history of punishment in general, the history of its employment for the most various purposes, finally crystallizes into a kind of unity that is hard to disentangle, hard to analyze, and, as must be emphasized especially, totally indefinable.

Friedrich Nietzsche, *The Genealogy of Morals*, 1887

Prison is a recent invention. This may seem a surprising assertion, given the extent to which deprivation of freedom appears, in contemporary society, to be the most evident and the most universal form of punishment. Yet, incarceration as the central modality of retributive justice has existed for little more than two centuries. Historians certainly agree that confinement could be used in antiquity, in the Middle Ages, and in the Renaissance, but it was a rare and marginal practice, generally imposed either while awaiting judgment or the execution of a capital sentence, for the early Christians in the Roman Empire in particular, or while conducting an interrogation of the accused through torture, in the context of the Inquisition for instance. Seldom did it serve as the actual punishment, except in the case of the dungeons of Châtelet and, later, the Bastille. For a long time the most severe sanctions were corporal and public, ranging from flogging, branding, and mutilation up to death by hanging, decapitation, drawing and quartering, or burning at the stake. Executions were sometimes preceded by torture, the most frequent form of which was the wheel on which the executioner broke the condemned person’s bones. Depending on the crime, banishment, varying both in duration and in distance of removal, was a frequent alternative punishment, often rescinded upon payment of a fine.

By the early modern period in Europe, however, incarceration was beginning to emerge as a mainstay of punishment, partly through the internment of undesirable individuals in general hospitals like Bicêtre and la Salpêtrière, in which were gathered paupers, vagrants, thieves and prostitutes, and partly through forced labor by convicts in the form of the galleys and, later, arsenals in France, of the workhouses and the North American colonies for
England. Imprisonment as such nevertheless did exist, used either as an additional constraint within the general hospital, with a confinement block for delinquents and criminals, or as an alternative sanction for women or old men who were to be spared the rigors of forced labor.

But it was not until the eighteenth century that imprisonment emerged as the supreme form of punishment, one both reserved for convicted criminals and dedicated to carrying out the punishment – this at least is the idea, since today short-stay prisons in France, for example, also serve to confine, sometimes for several years, individuals who have been charged but have not yet stood trial and are therefore still presumed innocent. The fact that prison became the central modality of punishment obviously does not mean that it is the most used or the most serious: on the one hand, minor sanctions, particularly fines, are much more frequently issued; on the other, the death penalty was for a long time, and in some countries still remains, the ultimate sanction. Prison, however, emerged as the paradigmatic punishment, one that most clearly epitomizes the historical shift of the penal thinking from an action on the body to a suspension of freedom, and one that most acutely concentrates the ambiguities of the meaning of the sentence, perpetually oscillating between vengeance, reparation, prevention, and rehabilitation.

The invention of prison was for a long time represented as the result of a humanist and even humanitarian project promoted by philosophers such as Cesare Beccaria, whose 1764 treatise On Crimes and Punishments was highly influential throughout Europe, and Jeremy Bentham, whose 1787 Panopticon immediately met with a favorable reception, and philanthropists such as John Howard and William Blackstone, who worked to transform the penal system and prison establishment in England. The ideas of these reformers, it is suggested, were borrowed by the leaders of the French Revolution in their drafting of the Declaration of the Rights of Man and the Citizen as well as by the post-revolutionaries in the United States in their construction of the famous New York and Pennsylvania prisons. According to this reading, the moral progress championed by intellectuals, politicians, and religious leaders was hence the driving force behind this great project. Appalled by the arbitrary and brutal nature of the punishments inflicted by the ancien régime, the reformers sought to make punishment more just and less harsh. Prison therefore represented a rational response, equitably applied and resolutely respectful of human dignity, introduced to replace cruel and degrading punishments.

This optimistic and generous account, which casts the institution of prison as a product of the Enlightenment, was contested by Michel Foucault in Discipline and Punish. In his view, the ending of the use of torture, the establishment of a penal code that replaced the discretionary authority of the sovereign, and the universalization of confinement as an attenuated form of sanction do indeed mark a turning point in the way that punishment is implemented, but one whose significance is more complex: “The prison, an essential element in the punitive panoply, certainly marks an important moment in the history of penal justice: its access to ‘humanity.’
But it is also an important moment in the history of those disciplinary mechanisms that the new class power was developing: that in which they colonized the legal institution.” In fact, according to Foucault, if we wish to understand the stakes at play in the birth of the prison, we must bid a definitive farewell to the idea of moral progress, which is always tainted by the assumption that there is a direction to history, so as to grasp the political project underlying this development: “The conjuncture that saw the birth of reform is not, therefore, that of a new sensibility, but that of another policy with regard to illegalities.” The point was, on the one hand, to put in place a system of punishment that broke with the arbitrary and spectacular aspects of the sovereign power to punish, as manifested in public ordeals and executions, and, on the other, to respond more effectively to offenses committed by the lower classes, which had until then been largely ignored, by enabling the introduction of differential sanctions for crimes. Prison certainly punished in a more humane way than the old penalties, but, more importantly, it made it possible to punish more often, while at the same time respecting the new judicial as well as social order, and creating a universal hierarchy of sanctions.

Following the publication of Foucault’s influential work, historians, while being quick to criticize it, nevertheless set about revising the earlier overly optimistic account whereby the invention of prison was represented as the moralization of punishment. Three main reservations were expressed in relation to this narrative. First, the historical rupture is much less clear than was long believed: corporal punishment, humiliating penalties, and extreme coercion persisted well beyond the advent of the prison. In France, for example, it was only very gradually that physical punishments within correctional facilities, such as leg shackles, metal collars, or the wooden cangue, disappeared from legal texts and from practical use. And it was not until the mid-nineteenth century that exposure in a public place in the stocks was abolished, and only in the mid-twentieth century that the last colonial penal colonies were closed.6

Second, the dominant rationales for confinement bear little resemblance to the reforming utopias initially put forward: rather than a softening of punishment, it was a more muted, less visible form of violence that was being instituted. While deprivation of freedom was the common feature of all correctional establishments, it was accompanied by a variety of punitive constraints, which, particularly in Great Britain, imposed severe conditions of imprisonment and harsh working conditions. These constraints increased in severity throughout the nineteenth century, with the development, based on criminological theories, of policies consisting in underfeeding prisoners while forcing them to perform grueling tasks under threat of brutal punishment, the aim being to make prison sentences more of a deterrent.7

And third, the dominant reasoning behind the generalization of confinement did not derive primarily from the adoption of the ideas of philosophers and philanthropists, but rather formed part of deeper changes in societies that extended beyond just the institution of prison. In the United States in
particular, where European thinkers had little influence, it was the combined effect of the conceptualization of criminality as a problem threatening the celebrated liberal model, and the belief in the possibility of transforming the individual through discipline. This dual ideology translated into a policy influenced by religious principles and experimental techniques, and led to the design of an extreme form of coercion based on isolation, silence, and labor. Thus, over and above the significant differences between countries and considerable variations through time, the shift from bodily punishment to deprivation of freedom and from execution to imprisonment is a complex phenomenon, which, as Foucault argues, marks a new way of governing “illegalisms” rather than a simple scheme to humanize punishment.

What is this way of governing based on? If we are to understand it, we need to begin by examining what lies at the root of the intention to punish. In *The Genealogy of Morals*, Nietzsche asserts that it is “impossible to say for certain why people are really punished,” and that the meaning of punishment itself cannot be simply defined, for “only that which has no history is definable” – and punishment certainly has a history, long and tortuous. In support of his argument, Nietzsche draws up a lengthy list of the widely varying and even contradictory reasons that may be invoked to justify punishment, from precluding further harm and reparation of damage to preventing disorder, even inspiring a sort of terror. And indeed, in perusing the successive penal codes, the discourses of reformers, and the debates among legislators, one cannot fail to be struck by the diversity and often the confusion of the arguments put forward. The recourse to punishment thus finds many different justifications. Moreover, certain theorists question whether it is necessary and legitimate to punish. Hence, they seek to propose alternatives, taking the view either that moral condemnation should not automatically imply the imposition of coercion and suffering on the condemned person (the naming of his crime and the concomitant social reproach is sufficient to induce him to reform), or that the offender should receive treatment rather than punishment (physicians and criminologists have proposed theories and remedies, including surgical interventions, to conquer deviant impulses). Nevertheless, if we accept the consensus among most commentators, that punishment is a necessary response to crime, how can it be rationally justified?

It is generally recognized, as John Rawls notes, that there are two main moral justifications for punishment. The first, retributivism, looks to the past, focusing on the wrong committed: the aim of punishment is to inflict a sanction proportionate to the crime. It can be considered a civilized form of revenge, its original and radical formulation being the principle of “an eye for an eye,” and its contemporary avatars being manifested in the equation established between the seriousness of the act and the length of the prison sentence. The second, utilitarianism, looks to the future, reflecting on the effects of the sanction: punishment is only justified to the extent
that it generates positive consequences for society. It is addressed both to the culprit, who it is hoped will be dissuaded from offending again, and to potential criminals, whom it seeks to discourage from their plans. In theory, these two justifications are mutually exclusive. The empirical reality is more complex. They sometimes contradict one another: it is possible to renounce punishment for the benefit of the individual and of society. Compulsory treatment, for drug users, and court warning, for minor offenses, are based on the idea that punishment would risk drawing the offender into a vicious circle of criminality. In other instances they come together, as in the case of compensation for civil parties, which impinges on the offender in proportion to the material or symbolic hurt he or she has caused, while at the same time serving to acknowledge the status of the victim and to restore a sense of justice in the social world. In fact, the establishment of norms of punishment often brings together the two types of justification: the aim is both to inflict punishment and to protect society.

This distinction between the two rationales holds true for punishment in general. But we need to consider how the invention of prison affected its meaning.

From the retributivist point of view, confinement deprives the individual of what society, or at least its philosophers from the Enlightenment on, regard as the greatest common good: liberty. It is noteworthy in this respect that the nation that represents itself as the champion of political liberalism, making freedom the cornerstone of democracy, is also the country with the highest levels of imprisonment in the world – as if the more that liberty is valued, the more its revocation becomes the supreme punishment. Be that as it may, when compared with the penalties that preceded it, prison represents a new form of expiation of the act committed. Unlike torture and exposure, mutilation and execution, it is in fact supposed to preserve the human dignity and corporeal integrity of prisoners; the campaigns of the British reformers and the French revolutionaries of the late eighteenth century, like the European Prison Rules today, specifically state this dual aim. It is, however, far from certain that this intent is translated into reality, either in the jails of the past or in today’s prisons. And so the persistence of strip searches, which prisoners find particularly humiliating, and, conversely, the controversies and resistance aroused by legislation banning the systematic use of the practice, which guards see as a threat to their security, remind us both that the work on bodies has not gone away and that dignity continues to be challenged in prisons.

From the utilitarian point of view, imprisonment should aid in the prevention of crime in three distinct ways: incapacitation, deterrence, and rehabilitation. First, it renders the offender incapable of committing harm for the duration of his incarceration: with an increase in the length of prison sentences and automatic imprisonment in cases of recidivism, this period has become considerably longer, particularly in the United States where a third offense can lead to life imprisonment without parole. It is at this extreme cost that neutralization emerges as an efficient method of removing