
**Deprivation of liberty, space and justice.
An interview with Jean-Marie Delarue in Paris (France), the 2th
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Justice Spatiale - Spatial Justice (JSSJ) Thank you, Jean-Marie Delarue, for having *Justice Spatiale - Spatial Justice* and talking to us about what you have learned in your position as *Contrôleur général des lieux de privation de liberté* [tr.: inspector-general of deprivation of liberty premises] which you held for a number of years.

My first question would be: Does this position exist in many other countries or is it something that is unique to France, and does the unique nature, or to the contrary, the rather widespread nature of this position inspire you to make any observations?

Jean-Marie Delarue (JMD): This position originates from an international convention. The little-known fact is that it is a United Nations convention adopted by the General Assembly in 2002. This convention itself is an improvement to a slightly older one, which dates back to 1984 and is entitled the United Nations Convention Against Torture. After a number of years, the United Nations Organization and the Member States – a certain number of them, at any rate – came to the realization that this convention against torture was somewhat ineffective (I will come back to this term) and, as a result, the means were sought to oblige the states that had ratified the convention to go further in the fight against torture. That is the reason behind this convention appended to the convention against torture, the Optional Protocol to the Convention Against Torture, called by its English acronym 'OPCAT'. This OPCAT consists of a certain number of provisions or stipulations, one of which requires each ratifying State to create its own institution designated to fight against torture.

The State – the French Republic – signed this convention in 2005 and was therefore required to create this body, which it did through a law on October 30, 2007. However, France was not satisfied with assigning the struggle against torture to the new body named "Contrôleur général des lieux de privation de liberté": the State made this body responsible for protecting the fundamental rights of persons deprived of liberty.

The reason I recall all that is to answer your question in two ways. The institution itself

is not unique. I think there must be today some sixty States that have signed and ratified the Optional Protocol to the Convention Against Torture, and a good 40 or 45, that have created comparable institutions to this one. Most of the time, nonetheless, these institutions are solely for the purpose of fighting against torture, and moreover, in many States, the institution has been conceived as a sort of appendage to the previously existing ombudsman. I further explain to our readers that in many countries, the ombudsman is the equivalent of the "Défenseur des droits" [tr.: protector of rights] existing in France. Accordingly, both organically and functionally, this does not look exactly the same as in France. But the answer to your question is still for the most part affirmative, with the addition of this little unique something extra for France.

This something extra is actually not that little. Basic rights cover the whole of what I call "the right to daily life", meaning a person's inalienable rights in his daily life. So, for example, it's the right to free speech, the right to marry freely, the right not to be subject to torture, the right to the protection of one's life, the right to an identity, the right to protect one's family life. In short, an entire set of things that are by their nature challenged when one is deprived of liberty and therefore, I believe, the attention we can bring overall is obviously a crucial design component of the body we're discussing. Accordingly, I believe that France – French legislators – did very well to give it this aspect.

It must be remembered that French law has evolved a great deal in the area of human rights in the last 40 years under the motivating force of international law; few initiatives in the area are actually France's per se, which proclaims itself as is well known, the country of human rights. Robert Badinter always explains that it was France that proclaimed human rights. But I believe that this motivating force has worked intelligently in France in the sense that the body, which has remained independent from other bodies and whose mission has been expanded, remains for the most part something unique to France. So, it also remains to be seen how this body has established itself in French public life compared to other states. A word about that: in Eastern Europe, it is relatively more difficult for the bodies to gain independence with regard to the political authorities compared to France (in this regard, I had no particular concern), and then, there are some states that are far from having signed or ratified this optional protocol against torture. I was in the United States a few years ago. The very idea that an independent person could have free access to places for the deprivation of liberty, particularly the American prisons, is still completely inconceivable in the United States. Accordingly, we are somewhat further ahead on the international scale with regard to what you have just mentioned.

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JSSJ: Thank you. I'm coming back to what you just said: two important points (among the others): the institution's independence and on the other hand – we'll perhaps come back to it in the course of the interview – the fact that you wanted to expand your initial field of

jurisdiction to other types of deprivation of liberty spaces. You address rights and particularly the rights to daily life. We would like to ask you what you think of the physical conditions of detention. In the reports you have written, I was personally struck by the emphasis you place on some aspects of daily life which may appear minor from the outside, but which for the detainee, are certainly very important.

JMD: This is really along the same lines as geography. There are two aspects to be considered: the establishment of deprivation of liberty facilities on the one hand, and their physical organization on the other, the organization of the cell space. I believe that we do not sufficiently measure how much the deprivation of liberty affects the organization of a person's daily existence. First, in that by definition the person's space is much more limited, and accordingly, how the space is organized takes on considerable importance. Secondly, because one is necessarily dependent on a third party in this life of deprivation of liberty in the sense that you are locked in and as a result, if you want to do one of the few things that are allowed in this place, well, you depend on your keeper's willingness to have access to a doctor, meet with your family, mail a letter, etc. And then, thirdly, you're not all by yourself in these places, and I would say, by definition, these places are to a very large extent the disappearance of privacy, the disappearance of personal life, because groups of human beings have to be simultaneously managed in these places (there are no individual prisons, that doesn't exist) and on the other hand, you have to assume that you're there so that no secret of your life is kept from the person who is responsible for you, because escapes have to be prevented, because bad behaviour has to be prevented, etc. Consequently, the man or woman deprived of his or her freedom – it's especially men, something to think about – has no secrets from his or her keeper.

I'm returning to my two items: the location on the one hand, and organization of the premises, on the other. The location: basically, I believe there have been considerable changes in the last 30 years. In the 19th century, in this country (I'm speaking of France), there were roughly 350 penitentiaries, a few thousand squads of gendarmes and precinct stations, and that's about it. These components (squads, precincts and prisons) were inseparable from urban life. They were in the centre of town with the prisons generally attached to the courthouses, and every city had a courthouse; this was more than in every administrative district, it could be said there was one in every administrative sub-district. So, the very idea of deprivation of freedom was inseparable from community life and particularly from its urban aspect. Today, things are quite different. For reasons pertaining to both the spaces deemed necessary for designing penitentiaries, which must now have much more extensive areas – so they can have a soccer stadium, for example – and because the costs related to the purchase and servicing of land in downtown areas are now impossible for public budgets, prisons are located in the country. And basically, this harkens back tremendously to our history when starting in the 18th century the cemeteries that had been formed around the churches were put in the country – as Pierre Chaunu pointed out. Well, it now so happens that the deprivation of liberty had to be hidden or at any rate, hardly noticeable, and it has been

moved to the countryside. This has immediate effects. The most significant impact is that regardless of what one wants or does, the prison is an environment that is certainly much less open than others to the outside (just for receiving the families, service providers and staff, who of course, don't live there). The more remote the prison is, the more difficult it is for these people to be there. This is very important for the families in particular. The family connection for an individual deprived of liberty is absolutely indispensable, both for the family which needs to see the person whose life is in something of a mess, and for the inmate himself for whom his family is virtually his only help. I will give you a very simple example. I have in mind a detention centre in Normandy, in the west of France, that was established in the 1990s as part of an early prison construction plan in France that dates back to 1987. It is about 10 km from the centre of town and from the train station, more specifically. There is no mass transit because it's too far from the centre of the agglomeration; it's a small administrative sub-district. As a result, you have to take a taxi. The taxi is €10 out and €10 back. For families coming to see inmates and who are often in difficult financial straits, because the inmate was the breadwinner, it's impossible. This remoteness therefore introduces significant breaks in ties with loved ones. And furthermore, it doesn't stop there! At these premises one day – excuse me for straying a bit from your question – there was a fairly serious revolt. The inmates on one corridor were able to get out of their cells and ransacked pretty much everything they came across. This revolt occurred the day after a general search, which had taken place on this corridor – as the wardens of the institutions are entitled to do. All the cells are opened when the inmates are not there, and they collect everything they find using in-depth searches. In these cells, a certain number of cellular phones had been found in particular. What exactly did this revolt mean? That the cellphones in this prison far from the centre of town were the only means the inmates had for communicating with their families. Removing this sole means of communication was absolutely unbearable for them. So, you see that remoteness from city centres has impacts on an absolutely daily basis on how life is organized, including – we'll come back to this – resistance on the part of the inmates. So, there you go for location.

This brings me to the interior organization of these premises. There, too, there have been considerable metamorphoses from the old traditional jails in France which were inherited if not directly (that did happen sometimes), at least indirectly from the design of monasteries, in other words, very old: division into cells and nave architecture, i.e. a multi-floor building open in the centre with corridors going around the walls. The nave construction style had the main advantage of very great safety for the guards because regardless of the floor they were on, each one of them could be seen by his colleagues. Today that has all been abandoned. For the last thirty or so years – since 1987, to be exact – when a penal institution construction program law was launched – the same occurred again in 1997 and then in 2002 – a new prison plan was devised which included a number of special features. The first, and most important, of these special features is that while the prisons in the old days would hold 100, 200, 80, 50 people (I'm talking about inmates, of

course), present-day prisons generally have 690 spaces. With the over-population of prisons being experienced, which we can come back to if you wish, today we have prisons housing 700-800 individuals with terrible consequences. That is the first choice that was made.

The second choice was to mix penal institutions of different statuses on the same site. Traditionally, a distinction is made between remand prisons, where the accused are housed while awaiting trial, on the one hand, and those serving very short sentences (less than two years, and in principle, even less than a year) on the other, and correctional institutions where those serving longer sentences are placed. In these new sites, resulting from the 1987 law, a number of structures were built, each being an institution for serving sentences and a remand prison. In other words, people with extremely different statuses were grouped in the same facility. And, in general, the more serious offenders were leading the way. In other words, in these new sites, the people there serving sentences complain that they are governed as if they are in remand prison, and everyone in this country knows that the remand prison is the harshest system there is.

The third choice was to abandon traditional architecture. There is no more nave architecture. There are floors separated from one another and this has tremendous impact on the relations between the inmates and the guards because the guards are legitimately afraid to find themselves alone in a passageway, a corridor, facing unhappy inmates. The colleagues would not see them. Accordingly, they only go there very reluctantly. In the facilities we're talking about, this translates into huge waiting times, delays, because quite simply, the guards are not there and they will only come very reluctantly. As a result, impatience and aggressiveness mount, and inevitably, violence.

The fourth choice was to renovate the interior of the cells and to bring the standards of the conveniences up to those of the social housing in the 1960s, meaning that starting in the 1990s and then the early 21st century, prison conveniences were brought up to the standards of working-class dwellings from the 60s, i.e. a shower stall, etc. (Don't think that a shower stall is the same as what you have at home. It's much cruder, but it's at least an effort). But this effort to improve the conditions of daily life translates into complete anonymity in the relations between the guards and inmates, through a nearly permanent absence of the guards, and as a result, relations that are much more strained. And what is very important is that today, when inmates, as well as the guards and staff, are put in these prisons, their heart-felt cry is "Take us back to our old prisons!" – this has been tried a number of times.

This is what has enabled me to conclude that in the construction programs that have followed since 1987, inmates and staff basically have been left to choose between filth and solitude. In other words, there's penitentiary modernism for you!

This refers to the prisons. We should talk about the other deprivation of liberty facilities. But in reality, they have evolved much less. Overall, the generally very distressing conditions are something to complain about. I'm thinking about the police stations in particular. However, even though one stays there a relatively short time, this is no excuse! But

it's true that the physical conditions, for example, the corridor which is no longer open to the rest of the prison, which therefore makes the guards fearful, who is no longer there, with impacts on the mood of the inmate who waits endlessly when he has to ask a guard something – these physical conditions have a very strong effect on the climate that prevails in a penal institution, and moreover, in all institutions for the deprivation of liberty.

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JSSJ: Indeed, with regard to these physical issues, the impression is one of being stuck in an impasse, as you sum up so well with the idea of filth or solitude, with this idea that everything is linked. That is, if bigger prisons are built, it's in part to save on staff or to have guards less present, therefore, passive security must be increased, meaning electronic bars, everything that will reinforce anonymity, in other words, decreased familiarity with the inmates. At the same time, we say to ourselves, if we put ourselves in the place of an architect or prison administration, the choice for prisons seems to be between bad and worse! And you, by having done inspections, in your reports you systematically emphasize specific things, like the lighting, odours, etc. In fact, I wonder if it's a question of degree, I mean is the organization of collective life pushed to a degree where you, as inspector, say to yourself that it's not acceptable? And finally – this is a question about your work as inspector – how do you navigate between the right to privacy and at the same time, all the constraints of collective life? How, in concrete terms, do you write a report once you have observed this or that situation in these old prisons or these ultra-modern prisons?

JMD: What you're asking me calls for a lot of answers! I'm afraid my answer will be too long so you can certainly shorten my comments. What you are basically asking is the gap between dignity and disgrace. When I was studying philosophy a few years ago, my philosophy prof asked this question like a joke, as a question calling for no rational answer: "What time will the bread go stale?" Unlike this question, I believe that the question of the separation between disgrace and dignity is perfectly clear! I'm going to give you a specific example: In the prisons as well as in the police stations, there is what is called a body search. This means completely stripping someone and looking to see that he has not hidden something on his body. When I say 'on his body', this is a figure of speech. I understand that this procedure may be necessary in certain cases. For example, in a police station, this is generally done for those who are charged with drug trafficking. I dispute the number of these searches but in some cases, it's very useful. There are times when the search – which is embarrassing for everyone, as much for the staff ordering it as for the person subjected to it – goes in a dignified manner, meaning that the staff member, officer, police officer, the guard, stays quiet, and is satisfied with looking at what has to be looked at without comment. It's an obligation he had to deal with, no problem! Where things go wrong is between that, and someone not entirely amiably ordering another person to disrobe, handles his clothing somewhat roughly, adds his comments on the person's physique to what he finds, etc., gives

additional orders to expose things that are not normally supposed to be seen by others; all this is going to turn this somewhat unpleasant but necessary procedure into one that totally discredits the individual. So, for me, the boundary is extremely clear.

We were talking about the physical conditions. I thought about something while listening to you, to which we had drawn attention in a public notice, published I believe on January 9 or 6, 2009, in the *Journal Officiel*¹, which concerned the increased amount of wire mesh in the prison windows. This mesh is placed in addition to the bars that cover all the windows, with and without glass (because there are windows without glass) in the prisons. Extremely tight mesh was added. Why? Because supposedly they wanted to prevent food being thrown to the lower part of the cellblocks. You have to know that when the inmates find that the cooking they're given is relatively mediocre, which is pretty frequent, things get thrown from the window and the lower part of the buildings, which are not always clean, generally look pretty bleak, not to mention the critters this can attract. Actually, there was another reason behind the installation of this mesh and that was to prevent 'fishing' between cells. This is using string or thread as a way to pass a pack of cigarettes or a bit of tobacco from one place to another. So, that led to the installation of extremely tight mesh and we, we saw it installed in this prison that we commented on in this public notice. The light in the cell went from being already not very great because the window is fairly small, to near darkness that makes it necessary to keep artificial lighting on all day. There you have something, including the effect on people's eyesight, which seemed disproportionate to us compared to what they were trying to prevent, namely, throwing food out the windows and 'fishing'. All that seemed out of proportion to us and I believe that installing this mesh was one more sign of the lack of dignity with which people were treated. I believe that the idea that I just introduced is key in this matter – the idea of proportionality. Proportionality - a traditional key of human rights – is that all constraint measures – and prison is one of them – must be proportionate to the risks the person presents. And again, throwing food from the window may be unpleasant but perhaps it would have been better to try to improve the quality of the food rather than putting up barriers of this type. This was not tried. The use of force was the preferred means for resolving the problem. I would say that this is the reaction of security forces a bit too often. They are legitimately concerned with keeping things in good order, I'm not going to reproach them, it's indeed their mission. But they more readily resort to placing constraint upon constraint, and then constraint that is added to the constraint, etc., for settling issues.

And it's – I'm about finished with this – very characteristic of these construction programs that I referred to and which you came back to, which came one after the other three or even four times since 1987. Basically, no thought was given to what modern incarceration needs were in our society. We were content to "modernize", in other words, to effectively make contact more rare between guards and inmates, to make sports easier, etc., to modernize the traditional conditions of incarceration. But the cell plan, a multi-storey

¹ Translator's note: The French government's official publication. SWM

prison, the fact that people remain primarily in their cells – individual if possible and otherwise, shared – this has never been called into question. And architects have already said it better than I could: much has been modified in the design of prisons elsewhere than has been done in France. In France, we have bet on security without any imagination. And I would say that the way that was chosen in 1987 is now imprisoning us – pardon the bad pun – because the prisons built starting in 1987 are considerable institutions, due to their size. These are some giant public works buildings that have taken hold of this market. Today there are three French firms or international conglomerates that know how to build prisons. They are always the ones asked to build them. And basically, in order to economize, they always have the same basic plan which for all practical purposes, has not changed since 1990, with the exception of a few nuances, and which is repeated *ad infinitum*, to the point where no more prisons are needed – but some people think there will always be a need for them. Whatever the case, this plan has been endlessly repeated without the will to introduce other options. In other words, we did not rethink incarceration in the late 20th century.

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JSSJ: Between these places of deprivation of liberty whose architecture you have shown us has very significant consequences on the life of the inmates and on the overall effectiveness of the system, between that and the world of freedom, then, are there not some spaces in-between? To come back to the question of the prison as a closed space, and integration with the outside – geographic and social integration alike – the matter of isolation is well understood, but what could be contemplated? Are there transitional spaces within the detention space? Visitors' rooms, or premises that people from the outside, like volunteers or others, might enter? But also places outside the prison walls, a type of "air lock" or secure space that would erase or perhaps render this boundary between the closed world and the outside world more humane or softer?

JMD: It's clear that there is no space of this type for the individual deprived of liberty. Whether prison, detention centres for foreigners, or police stations, you're there and that's where you'll stay, and a judge's decision is the only way you'll get out – I'm thinking about prison and not the police station. There are special cases when one can go out. There are passes for inmates - those who have behaved well, naturally. There are also, as you may know, early release programs that allow the inmate not to serve the entire amount of time to which he has been sentenced but to get out a bit early, in accordance with very specific conditions, and these very specific conditions involve in part spaces like those you mentioned. This is the case for early release program called "day parole". Being on day parole involves returning every evening to prison to sleep but during the day, you're free to look for a job or even to fill a job if you have the necessary qualifications – anyway, the judge's order will spell it out. And so you have restrictions that are less draconian than being in prison 24/7. Day parole is said to be, to come back to your expression, an "air lock" of sorts; its

name fairly indicates it as being between prison and total freedom. There is also an "air lock" developed in the last ten years called the 'ankle monitor'. It's attached to the ankle and for a few months – because it becomes intolerable after a few months – for a time, 5-6 months max, it allows you to be monitored by an administration officer while you appear to have the freedom to move about.

Thus, there are "air locks" for inmates but never any that aren't ordered by a judge. All that is therefore extremely limited, and to come back to early release, which today is known to be extremely beneficial for helping former prisoners succeed, nearly three-quarters of inmates today still do not have this advantage. In other words, 75% of inmates come out "cold turkey", without any early release program. So, from the perspective of the individual deprived of liberty, not much of an "air lock", I was going to say.

As for individuals who are not prisoners and who can now access these deprivation of liberty places, yes, there are "air locks" – and I believe that one of the major modernizations of the French prison, and in the retention centres as well no doubt, has certainly been the increase in the last 25 years in the number of individuals who enter these places as either volunteers or professionals.

Two very simple examples. In 1987, the law that I previously mentioned established the State's ability to privatize a portion of the management functions of correctional institutions. This 1987 law moreover was intensified in subsequent laws such that today, a great many prison functions – nearly all, with the exception of the strict management and guarding of the inmates, of course – can be entrusted to private companies. For example, the organization of the work in the prison workshops can be managed by a private business. So, today, in detention, you have salaried employees of private companies who come to work everyday – with this very particular clientele, the inmates – just as they would to any other business place in France. The second example is a law of January 18, 1994, which entrusted management of prisoner health care to the public hospital. So, while previously doctors were recruited by the prison administration, now doctors from the public hospitals look after the health unit, as it is called in the correctional facilities, to perform the duties of a doctor from town – so to speak! And so, these are also people from the outside, government people, of course, but who have nothing to do with the prison administration and who are working in prison on a daily basis.

So, for these individuals, there are in fact – you described it quite correctly – special places. There are workshops for those managing the work. There are the health units with examining rooms, rooms for treatment, nurses' rooms for those who are providing care. There are also classrooms for the teachers who come to give classes and there are also various activity rooms for those who want to come give a music workshop, a pottery workshop, etc. You can do everything in detention. Not just anywhere, of course. But you can, you can do many things in detention. I always ask a major question after that: Yes, but how many people? You have a tai-chi workshop, for example – that exists; but you realize pretty quickly that out of 700 inmates, there will be 5 or 6 who come. So, this significance has to be

put into perspective. But you are right to say that there are spaces that appear a bit more neutral to the inmates in the sense that they are not managed exclusively by the guards. I said "not exclusively", as the guards are always there, come what may. There are always one or two guards in every health unit; there is always a team of guards in the workshops. Consequently, these professionals we're talking about, or these volunteers, do not have a monopoly in a portion of the prison. In any case, it always remains very strictly managed and guarded by the penitentiary administration. So, these neutral rooms are not really neutral because they are shared.

Finally, a word just the same on the prison's visitors' room, the main transitional space. In every prison, there are visitors' rooms, meaning places where the families meet and which are fairly well set up. In the past, these were common rooms with chairs and tables set up like in a classroom, basically, or a meeting room – so to speak – with a tremendous amount of noise. You would see awful things there without the possibility of any privacy, of course, because everyone could see each other, naturally. This still exists in many of the old remand prisons, but today, in the new institutions we have spoken of a number of times, there are in principle visitors' rooms that have booths that are a bit separated, where there is a bit more privacy. And in the last twenty or so years, there is also what are called family life units which are small two-room or even three-room units which enable inmates to receive part or all of their family for periods ranging from 6 to 48 hours, up to a certain number of people, of course. But this may be a wife and children, two children, no more. And in principle, this is really one of the most neutral aspects that can be found in prison as the guards have the tact not to go into these "family life" units – which are a reconstruction of family life – without a very serious reason, meaning unless they are called. And for the couples that are there, you can be pretty certain – even if it's a certainly with mesh barriers up high – that they are not disturbed during their stays in the family life unit. These are extremely precious things. You should just know that today there are "UFs" [unité de vie familiale], as the family life units are called, in some forty institutions out of the 200 prisons in France. Still a minority. There are, thank God, visitors' rooms but with meeting conditions that are much more difficult. So, that is the most neutral space. There is also something else interesting and that is that there are now many prisons with a reception place outside the prison wall for families, generally belonging to an association. In these reception premises, families are comforted because the visitors' rooms are a joy, but they are also quite an ordeal! A difficult ordeal. So it's necessary to try to support these families a bit. They receive information on administrative matters, etc. There is a growing number of reception premises which thus form what you have called a transitional space between prison and the outside.

Outside of that, it must be admitted that contact is always tough and all individuals deprived of liberty – in all places: detention centres, police stations or prison – tell you how tough the transition is between being free and being in captivity. There is no transition. You are handcuffed with your hands behind your back or in front of you. In the police station, it's behind your back, in the gendarmerie, it's in front. Go figure that one out! And then you're

led to a cell where you'll stay closed in for 13-14 hours in custody – that's the average – and from there you'll be taken out for 20-40-50 minutes for a hearing, and then the rest of the time, you're left to rot there, in a cell that is not very comfortable and which is even generally pretty dirty. And prison is the same. It's so true that, everyone knows it, they talk about a sort of arrival-in-prison syndrome. As is also known in particular is that a large proportion of the suicides in prison occur in the first hours or days following incarceration; that's how very difficult "cell shock", as it is called, is. It must also be acknowledged that France's corrections administration has tried in recent years to soften this shock at the urging - in this area, too, incidentally - of international law, and international recommendations. A great deal of work has been done in French prisons on what is called the arrivals area, meaning an area apart where the intake occurs, where there are intake formalities for those arriving, that are much more evolved than in the past. So, there are transitional places and there are transitional procedures. But it has to be said, that doesn't change reality: the drastic absence of transitions between one state and the other.

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JSSJ: The question I was going to ask you now is along the same lines as one of the points you addressed but perhaps it could be explained: How does one remain a citizen behind bars? Of course, some of the information you have provided already partially answers this question. Are there other aspects, for example, on exercising the right to vote and other citizenship practices?

JMD: This is in fact something I should have already mentioned with regard to knowing who may arrive in prison from the outside. I think that one of the issues of prison – apart from guarding the inmates which naturally falls to the correctional administration guards who perform a very difficult job – is basically knowing what its other duties are: Do things function like on the outside or in a way that is quite specific to prison? I come back to my example of medicine. For a long time, prison doctors were doctors recruited by the corrections administration; they were employees of the administration. As a result, their way of doing things, perhaps even their judgement, could be biased by this fact. Prison medicine has been set aside and care – it's appropriate to use the word – for inmates' health has been given to regular (hospital) medicine. Why would it not be the same for the rest? In fact, it is the same for the rest in part. The teachers who go to give classes to the inmates are teachers from National Education, teachers from schools for the most part, who train inmates with low literacy skills and foreigners who do not speak French, etc.; there are a few miraculous cases of individuals completing secondary education or a university degree, but these miracles focus on a few cases rather than the big picture, and I really want to remind you that there are many more people who are prevented from pursuing studies in prison than are able to do so. So these are the National Education people. But we could go further and estimate that there must be people from outside services in the prisons and the best example I can find is

social work. The inmates often come from extremely modest backgrounds. This is vast majority of inmates who often have little in the way of qualifications, are young, etc. and as a result, they have particular social and economic reintegration problems when they leave prison. One may basically wonder why the departmental or community social workers aren't the ones to deal with this. And one could multiply the examples ad infinitum.

So, the question you're asking already has this element of a reply. It's that it's difficult to look at the inmates as ordinary citizens in the current state of things. Let's look at things a bit more theoretically. A President of the Republic who entered a prison one day – it was in 1974 – is said to have spoken this sentence that he did not utter but it doesn't matter, it is still valid, which is "Prison is the deprivation of liberty and nothing more." This means that regardless of who, whoever goes to prison – except when the judge has deprived him of his civic rights, of course, but this occurs less and less often these days – is still a citizen. Accordingly, he still has the benefit of all his rights of citizenship: family rights, and as you said, the right to vote. Personally, I have always thought this viewpoint something of a joke. Let's take a very simple case: the right to have custody of one's children. When you're in prison, how are you supposed to read a report card, go see a teacher, or help with the upbringing of your daughter or son? It's absolutely impossible. We know substitutes are sought for all that but they are substitutes precisely because the situation doesn't apply. I'll take another example. Let's suppose that you're in prison and you want to run a business. In this country, there is a right called freedom of trade and industry that normally allows you, if you abide by this principle, to engage in some business activity. Moreover, the code of penal procedure has provision for economic activity, with the authorization of course, of the warden. But it's absolutely impossible. How can you buy and sell when you're in a cell? The same thing for the right to vote that you mentioned. The right to vote assumes going to place a ballot in an urn, or if you cannot travel, to vote in accordance with the electoral code, by proxy or by power of attorney. For all practical purposes, this is not done. Why? For a number of reasons (we can spend a bit of time over this difficulty):

- Firstly, because those who are in prison are often – it's appropriate to say – at odds even before going to prison. Meaning that they are far from sharing the ordinary citizen's political concerns.
- Secondly, there are proportionately three times more foreigners than members of the regular French population in prison.
- Still another reason: These are often people who have broken their ties with friends and family either before detention or due to detention, and for whom giving someone power of attorney to vote for him is not a given, particularly in the original administrative district where they're still on the voters' list if applicable, because either they have committed crimes in this city and don't want to see anyone there again, or they've lost touch with those who were their friends or family.
- And then there is another: Organizing balloting is very difficult in prisons. The correctional administration starts by putting up a poster to inform everyone that this year – I'm using the

current situation as an example – there will be departmental and regional elections, and those who want to vote can take the steps for registering on the voter lists and then arrange for a proxy. But in actual fact, things are so slow, the posters go up so late, and the processes are so laborious for the social workers I just mentioned, that after the elections there are generally always a few people who really would have liked to vote but who were effectively put in a situation to not be able to do so.

Therefore, saying that one is still a citizen in prison is an illusion that must absolutely be dispelled as quickly as possible. I never believed it and the state of what I saw in detention did not shake this opinion, quite the opposite. And I'll add something here that is crucial: basically, when you're in prison – you can be charged, but three-quarters of the inmates are convicted – it is because you have broken the law. And the very significant aspersions cast by the rest of us, regular citizens, but also the prison staff, weigh on you that, because you have broken the law, you are not quite an ordinary citizen. And that because you have broken the law, it's not a given that you deserve to have the law apply to you. And since you are an outlaw, an outlaw you remain. This belief is widely held among the staff - police or penitentiary alike, and accordingly, this belief is not going to help the inmates to feel that they're considered or looked at as citizens in the eyes of others. Here is a very simple example: When you're in prison, everything bad that happens to you always draws the response: *"Well, you've made your own bed and now you'll have to sleep in it!"* I recall an inmate who told me about having been taken from a very far away court for an old case undoubtedly, to the prison he was in, in a police van, thus, belonging to the corrections administration, the driver of which drove fast, undoubtedly with blasts of siren, etc. You know that the corrections administration vehicles have extremely narrow cells where one is neither seated nor standing because there is not really enough room to sit. For 200 km he was tossed around with every turn and ended up being completely sick. And when he got out of there with his chains on his feet and cuffs on his hands, he couldn't help himself from saying to the driver "Well, you could've driven a little slower." And the reply was what I just told you, with a big laugh: "Well, buddy, you shouldn't have been there." There you go! This reply, which cannot be challenged, does not make you feel you have status as a citizen; quite the opposite. It helps remove your status as a citizen. And as long as you have this opinion, which is, I think, that of most of our contemporaries about inmates, I do not believe that inmates can claim the status of citizen. I basically believe, coming back to Athens, that one is only a citizen in the eyes of other citizens. There is still a tremendous amount of progress to be made on this point.

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JSSJ: Are there forms of resistance or coping strategies inmates use to withstand the deprivation of liberty and also guarantee the respect of what you called the "rights of daily life" earlier, through the right to dignity, etc.? And to what extent are these strategies and

resistance considered illegal?

JMD: There are a number of ways to put up resistance when in detention but not that many. One that a small number of inmates resort to is violence and open resistance. This means that they protest each decision of the staff involved with them and will resist by means that involve physical force, ill will, etc. There are a few cases that are very well-known to the entire corrections administration, as in order to get away from it, the administration has no means except transferring inmates from one institution to another. I recall that one of us witnessed the arrival one evening from another institution of a guy who had been transferred about eighty times, eighty transfers, from one prison to another for discipline reasons! The first guard – I’m going to have to be crude to quote his remarks, you’ll have to excuse me – looked him up and down without so much as saying hello, and said to him, and I quote: “What are we going to do with this piece of shit!” So, these are instances of very strong clashes between the staff and the inmates who choose the path of open resistance. It’s obviously always to their detriment, meaning that they are always punished, and if the occasion arises, or rather if an offense results, penal sanctions.

Here is the case of someone I saw twice in my visits. This is someone who was sent to prison in 1997, I believe, with a three-year sentence for robbery with violence, and who will not get out before 2040 because he has accumulated penal sanctions for violence toward guards or other individuals. One of his most recent battles took place in a maximum security prison specialized in housing the most rebellious inmates from the other maximum security prisons, thus, those serving long sentences that are placed there because they were rebellious elsewhere. This is the Condé-sur-Sarthe prison, opened two years ago. They were told, with extreme tactlessness in my opinion, incidentally, “As long as you don’t improve, you’ll stay in this prison.” Well then, a few weeks after his arrival, I believe, this same individual, and one of his fellow inmates, took a guard hostage. Well, that ended well enough for the guard, thank God, but that very evening the inmate was transferred to another prison. He said to the guard, “I knew I’d get out of this prison.”

So that is a form of resistance used by a minority. The opposite type of resistance, if I may call it that, is resistance by good will. This is a model inmate who is trying to get the maximum benefits from his detention. So, he registers in courses, and does everything necessary to cross all the t’s and dot all the i’s. And it doesn’t work. It doesn’t work because there are always times when the will of the administration does not coincide with his. And I recall, I believe I even read it in public one day, I recall a letter from an inmate because we were corresponding a great deal with them, who said roughly that and which said “*Listen, for a year and a half, ever since I entered prison, I have tried to get out, meaning to acquire qualifications, look after my health, etc., everything, and all I’ve got for it is disappointments and now, he said, I’m drawing back and living minimally.*”

This is a terrible letter, but I believe that many of them have the same feeling. A third form of resistance is complacency. This means the people who choose not to live but to survive in a sort of vegetative state. Excuse me for speaking like that, it’s very cruel. And this results in people who don’t wash, who barely eat, who completely vegetate in their cell, a cell that no

one dares to enter because it's appalling. And contacts are very difficult. I often speak about what I have seen in this regard. I would be told: "*There's no point seeing that guy there.*" When we visit an institution, we especially have to go see the people who don't want to see us. So, I went. It wasn't a very nice scene. He was lying on his bed, he turned a bit and I said a bit stupidly, I have to admit, "*So? How are things? Is everything going fine with the guards?*" He quickly said to me, "*Yes, yes, everything's going fine here.*" and turned back to the wall and that's that. There are people like this, who are undoubtedly more fragile than others, who let themselves go until possibly even death.

Because another form of resistance, is of course, the attack on one's own body. It is well known that France has one of the highest suicide rates among inmates of all the European countries. There are roughly a good 100 suicides in detention per year among 65,000 inmates. As I mentioned, there are many suicides during the weeks immediately following arrival. There are also many suicides in the disciplinary quarters, and there are also many more attempted suicides. Without having very exact statistics on this point, I believe it would not be an exaggeration to say that there are roughly 10 attempted suicides for every successful suicide. This means that there are approximately 1,000 attempted suicides per year for 65,000 inmates. This is already considerable, even if a single individual makes numerous attempts, this is still a lot. These suicides simply arise from the inability to affirm oneself as a human being in that place, in that particular life, dealing with fellow inmates, for example, because one has incurred debts that can't be repaid, and in this case, there are impossible troubles that occur. If you're addicted to cocaine, for example, and absolutely need cocaine, someone will give it to you but you will absolutely have to pay for it some day, and if you don't have a job, what are you going to do? There are these types of things, and there are also people who kill themselves because things are going badly with a guard. They begin to despise each other and that's enough to make a life absolutely impossible. I have encountered situations like that. So, suicide is the fourth form of resistance. But, I would say that the most commonplace form of existence is what I mentioned earlier with regard to the good student, the one who works hard and waits for it to be over. It's called "playing duck", meaning to let it roll like water off a duck's back. In this regard, I think it's the solution most inmates choose which leads me to say that finally, leaving detention – because everyone ends up getting out, which many of our fellow citizens don't know – there are basically two types of people: those who are crushed for a long time, and then a minority of those who are outraged and make society pay for the difficulty society has handed them. Basically, these are the two outcomes. There are a few miraculous cases, I'm using this expression again, who manage to build a new life in detention, earn a diploma, a vocational certificate, or at times who even make genuine friends. But these are a very small minority. In prison, you suffer and accordingly, you have to cope however you can, and coping however you can means living a life that is a bit inhuman. Pardon these strong words but I don't think I'm exaggerating.

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JSSJ: What you're saying is terrible, because it portrays a prison that is more intent on punishing than on reintegration.

JMD: Yes, since 1945, an official objective of prison has been reintegration. It was in the

framework documents of the major prison reforms that were made at that time. You know that we were coming out of the Occupation and many Resistance fighters had been incarcerated. They came to know prison and as a result, wanted to reform it. But in reality, the aspect of reintegration of inmates has always been secondary and I would like to give you a striking example of this. Basically, the question should not be asked in the abstract. What should be asked is what vision does the penitentiary staff have of the future of the individuals in their keeping. I believe that this vision is extremely simple and that it can be summed up in two terms: 1 – keep them from dying; 2 – keep them from escaping. I often tell about having a discussion one day with an officer, head of a building, in a prison not very far from here, a large remand prison. He told me this:

"Personally, when I arrive at work in the morning and see a fire truck outside the door, it's a very bad day for me and it starts off bad because I know something serious has happened during the night. I don't like this. When I don't see a fire truck outside the door, I'm happy as can be and my day starts off well."

He meant: *"My personal mission is to keep people from hanging themselves and then, if things go well, so much the better."* But there is another mission and that's to keep people from escaping, and for this, it is usually necessary to use means that are disproportionate to the actual risk. But we also understand very well the guard who is responsible for the inmate. The guard knows that if there is an escape and he is responsible for it, he'll carry that with him for the rest of his professional life. And thus he will receive a punishment that will be very severe compared to the intrinsic seriousness of the act. So they take multiple precautions so that there are no escapes. Outside of that, when they have achieved these two objectives, well, I think the professional objectives have been met.

With regard to reintegration, there is specific staff that looks after this, the 'integration and probation prison councillors' (CPIP). They are rather like social workers in prison. On the one hand, they assist judges in ordering the early releases we have already spoken about, and on the other, prepare the inmates to leave. Increasingly, we find that they are drawn toward early releases, towards tasks that are somewhat the work of the officer of the court of the sentencing judge, which are more fulfilling, and less and less towards tasks in preparation to leave, which are very exacting because they involve a great deal of contact with the outside and many skills that these social workers scarcely have because social legislation changes endlessly, they are confined to the prison, and they aren't real social workers, as I just mentioned. This part of the job is not very fulfilling for them, and add to that this fundamental aspect of which fellow citizens are pretty much unaware, and that is that most prison sentences are extremely short. Our readers should be reminded that the average length of imprisonment today, all categories combined (those awaiting trial, and long-, short- and medium-length sentences), is 11 months, that's it. The question is, then: *"What do you want to do for someone without qualifications, or without housing during a 6*

month sentence?” In other words, materially, it’s an absolutely impossible task. Accordingly, the reintegration mission that was assigned to the prison a very long time ago gives pretty weak results, even if, once again, there are people who manage to make it. But, how does one get out of delinquency? The answer remains mainly the family, not prison. In other words, the better off the family is, the closer the family is to the person coming out of prison, the greater his chances of making it. On the sole basis of the help he’ll get in prison, his chances are quite minimal.

JSSJ: Especially since there are a fair number of families who abandon inmates ...

JMD: Yes, firstly because the family lives of delinquents are a bit messier than yours and mine. A study was developed on that 16 years ago, in 1999, which unfortunately was not started again since, but the family lives are very chaotic. There are many more separations than in other families and in fact, these are young people whose conjugal ties are generally recent, with little sense of family responsibility, and many marriages break up quite simply as the result of prison life. This detail which I personally find tragic, is unequally distributed among genders, sexes rather, because the women come much more often to see the men in detention than the men come to see the women, who account for 3.5% of inmates. And a great many more men break up with their wife who is in prison than there are women who break up with their man who is in prison. That’s the way it is, life is made of these differences. But it’s true that the breaking of ties is very frequent. This depends a great deal on family solidarity. For example, I think that certain cultures allow error more easily. But there are many people who cut ties due to the simple fact of imprisonment. So, prison increases the strain on family ties that were already under strain before.

JSSJ: You have said several times that the prison population is overwhelmingly male, which we know, but is still puzzling to explain.

JMD: Yes, of course. This phenomenon is almost universal. In this country, 3.5% of inmates are female, so about 2,500. There are countries where the female percentage is a bit higher, up to 10%, or a bit more, but it’s never the majority of inmates, far from it. And whether it’s Paraguay or Burma, it’s the same thing. I can’t say why except for the usual generalities like women have different ways from men for settling their disputes. So, I dream about a society of women but unfortunately, that would be a bit difficult to turn into reality.

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JSSJ: It’s true that remains something curious. In an extension of what you are saying, we had a question on the inequalities between inmates. On the one hand, if we think in the abstract,

the impression is one of a universal citizen, and impartial justice, etc. And at the same time, when we look at who is in prison, the vast majority is men, especially young men, with very few qualifications, and according to an INSEE survey, from fairly large families. So really, *one* segment of society is highly represented. First point. And the second point, you summed it up: a good day in detention is a day when nothing has happened. Except, depending on who you are, things can happen. Just a few examples: If you're the mother of a child, and incarcerated, it's different from being a woman without children, if you're rich or poor, if you're a cross-dresser or not, if you're a Moslem or not, if you speak French or not, if you're a French citizen or not... So, it's a question on the inequalities inside the prison and what these inequalities very concretely say about how justice functions.

JMD: On this point, there is in fact the appearance, which you have touched on, and then there is reality. The appearance is uniformity. I would remind you that not so long ago, there were still uniforms in prison, pejoratively called the "drugget" and which was done away with in the 1970s. But 1970 isn't all that long ago, after all. So, there was very clearly a wish to standardize, just as there were also school uniforms, if you recall, etc. Today, the "drugget" no longer exists, even if most inmates dress the same in track pants, running shoes, not to cite any brand, and T-shirts. This is more or less the prisoners' "agreed to uniform". In reality, behind this uniformity, as you said, there are some very great differences. And one could maintain, I believe, and at any rate, this is my opinion, that there is no more inegalitarian world than prison. There are a number of reasons for this. Roughly, the reasons behind prison, the reasons arising from the functioning of justice and the reasons arising from the organization of the prison itself. Life prior to prison is, as we know, delinquency, and delinquency, especially of the type that leads to prison, is not uniformly distributed among the social classes. Accordingly, individuals growing up in poor social conditions – shall we say – are more likely to commit acts of delinquency leading to prison than, obviously, individuals who have grown up with their basic needs being met. The remark must however, be nuanced. For about the last forty years, there are violations that are punished by prison that were not prosecuted in the 1960s or 70s and that are prosecuted now. The two classic examples are on the one hand, domestic violence or domestic sexual violence, which we know exist in every social setting, and accordingly result in people being sent to prison who are on the one hand clearly older than the average, and on the other, people who are not necessarily from modest social backgrounds. And then, there is what is called dangerous driving which inevitably sends individuals to prison who are deemed responsible by the judge for fatal roadway accidents. Which makes it possible for me to tell all listeners that I meet, and I take the opportunity to repeat the same refrain: anybody can go to prison. It's not just for 'bad people', which is the automatic thought. If I cause a serious accident when I leave here, I will be sentenced to 18 months in prison. This introduces greater social diversity than in the past. And conversely, for example, there are a great deal fewer detentions today for petty theft than there were 50 years ago. In other words, to summarize my remark - I would say that 50 years ago, property crimes were punished much more, and now crimes against people are

punished more. So, this helps to expand the social spectrum a bit. But the range remains nonetheless greatly dominated by the lower classes for reasons arising from their social background.

The second factor arises from the organization of justice. In this country, judges still – I hope – function with relative impartiality with regard to the organization of justice. This does not prevent the quality, influence, substance and interest of the lawyer you have access to from being unequal, depending on your means. Most, even nearly all, of the inmates that I have met with, that I have questioned, with whom we have conversed and corresponded, always complain of having the feeling that they were not defended at the hearing. Rightly or wrongly, this is how they feel. But I believe that in many cases, this idea is not unfounded. Most of them are there as the result of misdemeanours, procedures for which there is an immediate summons. And it's well known that defense in an immediate summons is a 10 minute meeting with a lawyer in a hallway half an hour before the hearing. In other words, in these cases the defense will be connected to the inmate's personality: *"a poor wretch who does not deserve everything the judges would like to do to him and whose living conditions are so bad that it was the only thing he could do"*, etc. Obviously, if you have a lawyer looking after your case for days on end, entire weeks, who brings in three colleagues and who meets with you ten times, the oral argument is not going to be the same. And so I believe, and I've said so many times, that despite the efforts justice makes, in this country access to defense is still very unequal.

And the third factor is the living conditions inside the prison. Firstly, there is a strict social segregation in prison among the inmates based on the reason for their detention. Clearly armed robbers are at the top of the heap with the highest prestige in prison accorded to the modern-day "Robin Hoods" – especially if no blood was spilled during the robbery, a crime against a society for which no love is lost. Then at the opposite end, on the lowest rung of the ladder, are those serving long sentences for sex crimes, and lower still are the unfortunate mothers who have murdered their children, who experience hell on earth.

So there is an entire social scale, as the first question you're asked the first time you enter your cell is *"What're you in for?"* This is for placing the person on the social scale according to the values of detention. Then there are quite considerable differences in wealth. Most inmates have very few resources – we've studied bank accounts held in the names of inmates which give very accurate figures about this – but there are some who either have greater assistance from the families for various reasons – their numbers are very small - or those who have illegal revenues which they continue to take advantage of in one form or another in detention. And, I'm being simplistic here, but I would say that there have been Christmas Eve parties in the cells with champagne and foie gras. Our readers should by no means think that this is usual in detention. I mention this by way of example to say that there are some extremely wealthy people who represent about 1% of prisoners. These people

obviously are going to have an influence over the others. They are going to shape the lives of the others. Those who have both prestige and money will be able to buy goods from the outside, what's called the "canteen" (a type of mail order grocery store where you can get pasta, meat, well, not meat because they don't want perishables coming in now, but a bit of coffee, cigarettes and all sort of this type of thing). Those who have money buy, and they will pay the others using these goods in a form of bartering. The classic trade is providing protection to the people with money. And how? By doing illicit things for them. For example, transporting drugs or hiding a cell phone for them in their own cell, instead of in the phone owner's cell – having cell phones is prohibited in detention, you must remember. So, it's classic, the people with money have a very easy means for dominating the others which doubles the effects of social and economic disparity. That is why, I believe, the question of work is absolutely crucial in detention because work is firstly an opportunity to earn money. In 2011 we calculated that only 27.8% of inmates worked and that hasn't changed unless it has gone down. Nearly all of them had one wish only and that was to be able to work, for a multitude of reasons, but mainly it was to earn money. Earning money means freeing yourself even a little from those holding you under their thumb. This prison society is a society that despite appearances, is marked by tremendous inequality. And if I had time, I would simply say that if you don't understand the dialectic between uniformity and peculiarity, you don't understand a thing about detention. I think there are times when it's in the interest of the guard, or staff in general, to single someone out. You just mentioned it: those who are of French nationality and those who are thought to be terrorists, etc. Then conversely, there are other times when the system has to be standardized. For example, when someone has to be taken out to go to the hospital, everyone is going to be shackled and handcuffed, regardless of the degree of risk for escape. This dialectic between variety, peculiarity and standard treatment is at the very foundation of how prison life functions.

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JSSJ: Among the inequalities, or perhaps differences is the more appropriate term, we particularly wanted to ask you about the problem of minors. This isn't just involving facilities for minors, or minors' quarters in detention; closed educational facilities also have to be taken into account. On the one hand, we're dealing with the incarceration of minors, as minors, and on the other, the 1945 Amor reform, which you mentioned, seems quite something else where the idea of education getting precedence over punishment was defended. What light can you shed on the specific category of minors?

JMD: There are relatively few minors incarcerated in France and this we owe to the virtue of the judges. For decades we were endlessly told that juvenile delinquency was exploding. Well, for decades the number of minors incarcerated remains roughly between 600 and 800

every year. The judges have not allowed themselves to be influenced by the talk going on around them. I believe that judges as a group are convinced that prison is a truly last resort solution and that people are sent there at considerable risk. So there is this sort of restraint. And I would simply infer this from it, and that is that the reform you mention, the February 2, 1945 order, put into effect the principle that education is better for children than prison. I persist in saying 'children' rather than 'minors', after all, it's clearer. I believe that this principle is still true in France today despite the efforts that have been made to challenge this principle multiple times, notably under governments not that long ago. Even if there have been changes, the principle remains the same. You alluded to it – educational methods. In 2002 there was even a closed education method created called 'closed education centres', which were initially intended – at any rate, this was the intention of the minister who presented this plan, Dominique Perben – for a very particular type of delinquent known in legal jargon as the 'multiple repeat offender'. Meaning, those who commit multiple petty thefts for which sending them to prison really isn't an option. Reality has shown that this is not what happens. What I mean is that the people who ended up in the closed education centres are those who youth judges sent there because they deemed it was some sort of step before prison, which had to be avoided. So, those we find in these closed education centres are not only the multiple repeat offenders of the type I just mentioned but also those who have committed serious crimes and who, for various reasons, were not sent to prison. I recall having opened a closed education centre in the company of a President of the Republic – I remember this because it was the only time I did this, I never did it again. The President had a quite unexpected and quite aggressive encounter – I'm talking about the child – with a child who was there for aggravated rape. In reality, children of very different types are mixed in these closed education centres, which has not helped with their success, it must be said. But prison remains an exception for children. Let me add that prison for children was an opportunity for reflection like nothing that has happened since the war. I just made reference to the traditional prisons whose plans were not reviewed top to bottom or at any rate, that these reviews were not accompanied by reflection about what incarceration is today. Well, this was done for the children, and also in 2002, institutions were designed for minors. These are penitentiaries that were intended to be different from the others and notably the traditional quarters for minors that you mentioned, which are quarters especially designated for minors in traditional remand facilities. There are no quarters for minors in correctional facilities, than God! The design of these institutions for minors was really original, like nothing that existed in France and which had to be built. There were designed on two guiding principles, which in my opinion are partially sound and partially wrong. The first principle was that education had to continue in prison, and so the National Ministry of Education [Education Nationale] was brought into close association in the operation of these institutions. Then there is the second principle, which I find much more contestable, and which is the absolute fear of these children being inactive or lazy – idleness and sloth being the root of all evil, as we all know! So, effort was put into keeping them active, over-active, all

day from 7 in the morning until 7 in the evening, for fear that they get bored and do something silly. And there, I think, they really missed the mark, as the teenager also needs to dream, to sit or stretch out on his bed. The institutions are of uneven quality. The one kind functions rather well with very difficult children, this has to be acknowledged. And the other, not well at all because the trilogy – penitentiary/social services (i.e. penitentiary integration councillor) /national ministry of education – has not functioned well. I'm thinking of one of them in particular, where in the early years of operation a boy committed suicide which was no doubt due to the poor handling of his case, sadly. But some of them have done rather well, despite everything, even if the architecture of these places is not always easy-going. For example, something was introduced there that has never yet been introduced in French prisons: a form of community life. In these 'establishments for minors', EPMs as they're called [using the French initials], the children are divided into small groups of about a dozen. So, in these institutions for about 60 – but they're rarely full as 60 is unbearable – there are four or five groups of a dozen children, at times mixed – this is however very rare as it was seen that this caused more problems than benefits – under the responsibility of one guard who knows them well, and a corrections councillor. And at times this works rather well. What we don't know – and moreover the same holds true for the closed education centres - is the long-term future for these children. When we visited these institutions, we worried about that and finding out if the wardens knew basically what the outcome was of their efforts. None of them was able to tell us. I recall this sad admission of a warden of a closed education centre whom I asked what happened to the children he had sheltered for 6 months or longer and he replied somewhat sheepishly: "*Ah, well, occasionally some of them send me a postcard.*" In other words, the administration that designed this institution was incapable of determining whether or not it served some purpose, which is just the same, a paradox of our public action, but unfortunately, this is not limited to prisons. I would say that with regard to minors, there is still a high awareness that they are different and that prison be considered a means not to be used except with multiple precautions and multiple operational guarantees. And otherwise, education still remains – regardless of what is said and certain governments have wanted to do – the corrections system matrix for children.

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JSSJ: And finally, if you don't mind, there is another specific point on which we would like to have your opinion. That would be the deprivation of liberty for individuals who have not committed any crime but who because they are mentally ill, or for other reasons, have to be (at least that is the feeling) deprived of their liberty. I believe that you have insisted that your jurisdiction be expanded to some of these systems. What are your thoughts about this? What inspires this feeling in you?

JMD: The law that instituted the *Contrôleur général des lieux de privation de liberté*

[inspector general of deprivation of liberty facilities], indeed, placed under the control of the *Contrôleur général* psychiatric facilities in that these institutions have, since the 1838 law, received individuals who are hospitalized without their consent, in other words, against their will. French law has long provided that individuals who are in no state to be aware that they must be cared for can be committed by a family member – this has been the case particularly since 1990 (it is what was called a third-party request for hospitalization), or, if there are law and order reasons, what is called ‘automatic hospitalization’. This terminology is no longer current since a reform in 2011. You must know that there are a great many of our fellow citizens who are subject to these measures, as year in, year out, there are approximately 85,000 individuals per year who enter psychiatric hospitals under this dual system (third-party request for hospitalization and automatic hospitalization). Or to be more exact, 85,000 actions are taken under this dual system, some of which possibly concerning the same individual over the years. But the fact remains that there are at least 65,000 individuals who are forced to go into a psychiatric hospital each year. That’s a lot!

As a result of this jurisdiction that we had, we requested to inspect these institutions and we observed that these institutions were basically to look at these people not simply from the perspective of the illness, as caregivers, but from the perspective that they are individuals deprived of liberty and the rights they were entitled to enjoy as individuals deprived of liberty. I know that this pooling, I believe, and indeed inclusion of the institution, was ill-perceived. I customarily would bring together the associations that worked in the entire sector under our jurisdiction, deprivation of liberty facilities. The first time we all had to sit down around the same table – those who, for example, were inmate visitors and those who were the families of patients – they found it to be a rather improper pooling of interests. And I believe that the situation then made each of them see the utility there was in addressing certain problems together. For example, access to a lawyer is a difficulty they all have in common. The way I see it, this was not enough to account for the current social reality and notably, the reality that much more generally affects elderly dependent persons. They are, as we know, growing in numbers as the average age of this country rises. Today there are hundreds of thousands of people who are sheltered in what are called in jargon ‘EHPADs’, shelters for dependent elderly persons [Etablissement d’Hébergement pour Personnes Agées Dépendantes]. And for the last few years, these EHPADs as well as the psychiatric hospitals, have had increasingly frequent recourse to closed units where individuals are placed who are thought to be at risk if they leave these institutions as it is not certain they’ll have the capacity to be reintegrated. This movement has been very highly encouraged by some unfortunate accidents, and the media have played these up, of individuals who have left without anyone knowing and been found dead from exposure, etc. This is all very tragic, but what is just as tragic is to shut away hundreds of thousands of people without any sort of administrative or court order, without these people *ever* having asked for it, or even often without anyone bothering to ask what their families thought. I wasn’t intending to dispute this, even though there is something to complain about, but I

found that the fate of these individuals was exactly identical to that of the mentally ill, foreigners in detention, or even inmates. In other words, individuals *de facto* deprived of their liberty, and very dependant on third parties, and who had not asked to be there; I stated this at the very start of our interview. Today, all the EHPADs request that the individual sign a paper stating that they are there voluntarily, but there is no special procedure for going to a closed unit and being locked up in there. I find it odd that in this democratic country – I really wish to recall this – we lock away people by the hundreds of thousands today and nobody objects. And after all, one has to admit that it gives the family some comfort, some certainty.

Anyone who has not visited these EHPADs is certainly unaware that the first thing residents request, like those in psychiatric hospitals and prison is "*Please get me out of here, get me out of here.*" So, I believe they deserve to have someone take an interest in their fate. The *Contrôleur's* jurisdiction did not extend to these EHPADs and I therefore asked the government – in 2012, I believe – to expand the jurisdiction to the EHPADs. I made this request – the story deserves telling – somewhat discretely in order not to annoy the government of the time. I did not receive any answer until 2013; so, in the 2013 public report I explicitly stated that I was requesting that this jurisdiction be expanded. This obviously gave rise to strong protests, notably from the professionals of these institutions, who deemed it shameful to want to compare these shelters to institutions for the deprivation of liberty. I recall how one of these reactions was expressed: "*We, we're [we, the shelters for the elderly] places for life*" which obviously implies a terrible opposite with regard to the other institutions that were under our jurisdiction. In any event, the government – whose officials I met with a number of times about this – chose to listen to the professionals and not take into account the opinion of the *Contrôleur général*, which is a perfectly understandable choice, but which I nonetheless regret as I believe that there are some genuine needs. There is no way we would not have served the cause of the shelters but rather would have been able to help them move toward acceptable solutions. And we would also, I believe, have reassured the families in some way, because if the families request that the person not leave in order not to be lost, or only to be found laid out at the bottom of a ditch, it was also a way of reassuring them on the relations that could be established between these elderly individuals and certain individuals who are under-trained – this has to be said – for looking after seniors, and who lack patience because there are too few of them to deal with the number of elderly, and who occasionally engage in reprehensible actions toward them; we have all more or less witnessed this. So, I believe that the question deserves to be asked again. Since you have asked me, I'm giving you a very straight answer. I hope that the institutions for the dependant elderly also come under 'control', in quotation marks. Let me put this clearly: I mean inspections to encourage them to move forward, not to punish the professionals who do what they can with the means they have.

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JSSJ: Thank you very much. And if you would allow me one last question, unless my colleagues have others in mind. In your reports, you have occasionally set out very specific facts and logically, you accompany them with very specific recommendations. Could you say a few words about the outcome of these recommendations?

JMD: Of course. This is obviously the crucial point. Basically, what is expected of an administration like this, an independent authority such as this, is to know if it serves a purpose. I am personally against institutions that serve no purpose. In any case, I believe that the creation of this institution is useful in that it worries, that it concerns, the professionals. And we made immediate effort through the choice of destinations and the many institutions that we inspected, to let the professionals know that regardless of who they are, they could be visited at any time. Only this conviction anchored firmly - I hope - in their minds leads to changes in how they envision the profession, even if most of them are obviously above reproach. But I recall, just to mention something that doesn't pose many problems as the national police force is a very organized corps: One day we went to a very particular gendarmerie; it is particular because it came under the maritime police force whose role - this was in south-western France - was mainly to control fishing, notably Spanish ships fishing in French waters, etc. I think they'd taken six people into custody in ten years. They'd said to themselves - they told us afterwards - that they had never given any thought to inspection and accordingly, they could... Naturally, we arrived at this gendarmerie without any warning, as with all the others, because we had to show that we would go anywhere. We went very far, including overseas. There's nothing like this to put people, professionals, on their toes, to say the least. I also think that gendarmerie and police occupational trainers, etc., I hope they have included a certain number of things we applied and recommended in their training programs. I devoted myself at any rate, to pretty much systematically visiting all the officer training schools of these occupations: the ENAP [Ecole Nationale de l'Administration Pénitentiaire (tr.: National school of prison administration)], which had some problems welcoming the *Contrôleur général*, the National Police Academy [Ecole nationale supérieure de police], the National Police Force Officer Training School [Ecole des officiers de la gendarmerie nationale], the Penitentiary Integration and Parole Services School [Ecole des SPIP], as I just said. We toured the greatest number of schools possible, in part to show the next generations that inspections had to be among their concerns. Their very existence depends on it.

Afterwards, obviously, our recommendations have a very direct effect. Two distinctions have to be made here, I think. I have to say, and this allows me to pay tribute to them, that overall we received a welcome that was well beyond anything we could have expected from the wardens, police chiefs, gendarmerie lieutenants, and penitentiary services

directors of the national police. In the sense that basically, they understood that it was in their interest to use us as a vehicle for improving their own institutions. Basically, this means that they knew their jobs well and they were highly aware that there were things to be improved, naturally. And the most intelligent understood that our visit was the much desired opportunity to make another request, for example, for money that they had not been able to obtain for making this or that investment, or to bring an internal regulation up to standards which they had been unable to get approved by their interregional leadership; I'm referring to penitentiaries, etc. when I say this. So, we had a great deal of satisfaction in this regard. I'm thinking of an example that was something of a crisis because it was drastic. It was the motivation for the emergency recommendation we published in the *Journal Officiel* concerning the Baumettes penitentiary in Marseille where we found a warden who was in complete agreement with our observation of the disastrous state of his institution. 1700 inmates, mind you, stuffed into 1100 spots in totally unhealthy buildings. He was well aware of all that. And he provided us with all the information we needed, in all sincerity and hiding nothing because he felt that we were offering him a lifeline that he hadn't dared hope for. So, in this regard, we had few failures and, I believe, some successes together with productive dialogue with the professionals.

This point must be carefully distinguished from the central agencies, meaning the major ministerial headquarters: Headquarters of the National Police Force [Direction générale de la police nationale], the National Gendarmerie Headquarters [Direction de la gendarmerie nationale] and the Penitentiary Administration Headquarters [Direction de l'administration pénitentiaire], with which contacts were much more difficult. This is basically because they are the representatives of everything these deprivation of liberty facilities stand for today, together with the physical organization of the facilities we have just spoken about. After all, they are the ones who came up with the plans. For example, the National Gendarmerie Headquarters, unlike the National Police, has not yet installed showers in its new brigades. And indeed, they are also the ones who are responsible for the institution's rules and regulations, and above all, personnel management. And I believe that in the dialogue that we had with these departments – obviously, dialogue that was very beneficial and very direct – I had nothing but pleasant people across from me, in general, at any rate. But they also need to have dialogue with their staff. It's easy to choose between the two. And staff very often prefer the strictest security measures, and have no desire to see discipline in their institution go off the rails, not to mention the additional workload that might arise from taking individuals into greater consideration. And so that is why we had a great deal more problems with the central agencies than with the heads of institutions.

There are things that got through, naturally, but I'll quickly take a very simple example of failure with regard to two orders, if you don't mind. On the one hand we very quickly requested a reduction in the number of inmates per prison. I earlier gave 690 as the norm. We said – without giving figures, moreover – that much lower numbers had to be achieved.

Here we had a complete failure. Why? Because preparing new plans for penitentiaries requires years and years. We had made this request in late May 2010, I believe, and accordingly, not until 2013 did the Keeper of the Seals [minister of justice] – no, not even the Keeper of the Seals, the penitentiary administration – form a working group to study these questions. So, three years have passed. It will take a good ten years before the working group produces any fruit, knowing the unwieldiness of these infrastructures. So, it's inevitable. Another example, which is much more realistic, is the introduction of the Internet in detention. We very much hope to bring the Internet into detention. Not just any type of Internet, we're not going to introduce sites for making Molotov cocktails. But today we know how to filter sites, this happens in certain countries. We were thinking that introducing *Pôle emploi*, for example, or sites for looking for housing, or person-to-person sites would be a way of giving the inmates responsibility for their own futures. That is all some inmates ask for, as they're always complaining about the inadequacies of their penitentiary integration and parole councillor – their social workers, if you will, and then, there are all sorts of educational sites. I'm not going to go on about it. I was very impressed when visiting an American prison to see in a common room – because there are common rooms in American prisons – there was a large table with six computer keyboards where inmates could send messages to their families. This also strengthened family ties. And I don't see why something that is authorized in a maximum security prison – and I know that the Americans don't fool around on this point and that their prisons, moreover, are deadly – I don't see why it couldn't be done in France. You can't get access in France but I'm sure we'll get there. It's absolutely inevitable. I would point out that before Robert Badinter made the decision in 1984, televisions in prison were considered with the same feeling of horror, saying, "*It's dangerous, it's a luxury that should not be given to inmates*", etc. It will be the same thing with the Internet and it will end up coming, of course. I'm happy to have planted this little seed in the ground. When it will bear fruit, I don't know, but very well... It takes time.

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JSSJ: Thank you very much. A very last question. In reading your reports, you often stress the quality of the individuals you meet in the various institutions. This is a very general question on the strength of our democracy. When one observes what could be called authoritarian spaces, considering their function, do you have the impression that the strength of our democracy rests on the individuals or rather on the policies and the legal, physical and professional framework that can be used as support for the respect of rights?

JMD: It's somewhat both. I would say that first of all we must pay tribute to a certain number of individuals who are amazing people in these places, moreover, both staff and inmates or individuals deprived of liberty alike. There are some extraordinary individuals. And the particular nature of these places is that since one is unhappy, one is immediately at the heart

of the concerns of human life so it's fairly easy to engage in fundamental conversations.

For a long time it has been obvious that there are rules, that there is a set of internal penitentiary regulations, there is a code of penal procedure, that is relatively detailed, written moreover for the most part by the penitentiary administration itself, which I find unfortunate. And then there are also a few laws governing the behaviour of the police officers in the police stations at the same time, etc. Just recently, in 2009, and we have Parliament to thank for this, a penitentiary law was passed which basically integrates the main advances in the last 30 years of international law with regard to detention – and God knows there have been some. All that is rather satisfying. So, we still have, thank God, some guiding principles passed by the Parliament of our democratic country. To take a single example, this country was hit very hard by the question of torture. Allow me to go back to my starting point: during the war in Algeria, people were sufficiently traumatized by the torture in prison that they still realize abuse, such as blows, can occur today, although it's rare. There are countries where this is still commonplace. So we still have this valid democratic distinction.

I will not be as optimistic about these rules of the last few years, as since 1973 especially, the Code of Penal Procedure has constantly been modified in a fairly regressive direction, despite the penitentiary law that I just mentioned. I think that the conception, especially of the individual who has broken the law, is in the process of changing, which is what essentially characterized the Amor reform, but behind this reform was what is called 'social defence', which was born in the 1930s and was a movement for the possible reintegration of the inmate. Meaning that someone who erred, yes, certainly had to be punished in accordance with the fine principles of Beccaria from the 18th century, but there also had to be an effort to rehabilitate him and reintegrate him into our society. This survived until very recently. And, in the last ten or so years – a bit more, as it started in fact with the last laws of the 1990s – we're seeing other ideologies appear, based on old schools of thought, notably Italian, of the late 19th century which are, let's say, ideologies based on the "*dangerous personality*"... and that it's necessary not only to punish but, positive action must also be taken against this personality, even though the person has already served his sentence. The theme of "*dangerousness*" – that how things were described – was introduced into our positive law, in a piece of French legislation in 2005. But it was referred to starting in laws that were a bit more repressive in the late 90s. I also recall that it was in a law just from 1995 where the French people's so-called right to security that we 'delight' in every day now was first made part of our positive law. So, all of that is of recent invention. Dangerousness is to me something very negative because it's based on a wager and has terrible consequences. The wager is that we're capable of assessing this dangerousness. This comes from an entire Anglo-Saxon school of thought in particular, which developed tests used especially in Canada, through which it is claimed that based on the age you began to smoke, whether or not your parents were divorced, etc. it could be determined if you were going to be a dangerous recidivist or not. I've looked at these questionnaires. They are relatively simple –

20 or 25 questions max – that pertain to your biography, from which absolutely wild things are deduced, and from which the subject himself is removed, as pointed out by Robert Castel in an article that I quoted in one of my annual reports. The individual is objectified, making him into a sort of being who is no longer responsible for his own behaviour. So I believe that wager to be absurd, because even if you take the repeat rapist – what everyone worries about, starting with me of course - it's very rare - about 0.2% of rapists repeat offend. The more serious the crime, the less recidivism there is. Everyone has in mind repeat rapists because they make the headlines. In reality, few repeat offend. So, if you take, let's assume, 1,000 rapists that you want to line up in the prison yard to find out which of the 2 per thousand will repeat offend, have fun. Even with the Canadian questionnaires! So that is a wager that I believe to be absurd.

And a terrible consequence was that this led us to what is called in the law of February 2008, 'preventive custody'. In other words, it is deemed that certain individuals cannot be freed, even though they have completed their sentence, and they have to be placed in a specialized institution. And there are other means for those who escape this unfortunate fate. Years before preventive custody, what is called 'socio-judicial monitoring' was developed – the electronic bracelet, a tool through which not Big Brother but unfortunately, our judicial system, watches over the individual, or rather has the person under surveillance, to be sure that the person makes no new attacks on property or another person. I believe that this outlook resolutely ignores our entire penal practice – not incarceration practice but penal practice – over the last 100 or more years. So, I believe that this trend must be reversed because I would be very worried if it were to grow. It is likely that France isn't the only place where this trend might grow, as the questionnaires I was speaking about are currently used in a certain number of European countries, in Norway and Switzerland, I believe, or in the Netherlands. So, this is all very worrisome. Obviously, there must be reflection on these themes underlying the deprivation of liberty, but which are intrinsically connected to it.

JSSJ: Thank you very much for this most fascinating time!

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