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Pascale (2004) French Prisons: une humiliation pour la République.  
Modern and Contemporary France, 12 (2). pp. 159-175.

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## French Prisons: *une humiliation pour la République?*

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In January 2000, the publication of Véronique Vasseur's book Médecin-chef à la prison de La Santé<sup>1</sup> created a public outcry. In this book, a prison doctor exposes, in diary-like form, the conditions in which prisoners in the Paris prison of La Santé are detained. She talks of the appalling conditions of hygiene, the squalor and the vermin, the drug abuse, the dilapidated and inadequate buildings, the physical and sexual abuse, the humiliations at the hands of staff and fellow prisoners which are a part of inmates' daily lives. There has, of course, been no shortage of literature on the prison experience. Indeed, since the 1970s, much research on imprisonment<sup>2</sup> has been carried out by sociologists, legal experts and historians. Moreover, in recent years, a number of celebrities from the worlds of politics and business have found themselves discovering at first hand life behind bars, and several, such as Alain Carignon, Pierre Botton, Loïk Le Floch-Prigent and Bernard Tapie have published their experiences of prison or have exposed them to the media.<sup>3</sup> Vasseur's blunt revelations, however, were exceptional, since they came not from an inmate with an axe to grind, but from a member of the prison staff with no personal interest at heart, and who subsequently found herself criticised by the Administration pénitentiaire (prison services) for allegedly having breached professional confidentiality.

Although, hardly surprisingly, Vasseur was not to remain at La Santé for long following the publication of her book, extracts of which were published in Le Monde on 14 January 2000, virtually immediately after it appeared in the bookshops, the impact of her work was not negligible. Politicians and journalists rushed to inspect La Santé, both the Assemblée nationale and the Senate commissioned reports on the state of France's prisons, and Prime Minister Lionel Jospin and Garde des Sceaux Elisabeth Guigou declared their intention to devise une grande loi pénitentiaire to remedy the ills denounced by Vasseur. In fact, Vasseur is certainly not the first person to have raised these issues, which go some way to explaining both the multitude of prison riots which take place all over France and the dissatisfaction of the prison warders. In perhaps more discreet fashion, well before Vasseur's book, Hélène Dorlhac de Borne, to name just one specialist, a doctor who had been secrétaire d'Etat à la condition pénitentiaire from 1974 to 1976, was already denouncing the state of France's prisons: '...des prisons vétustes, indignes de notre fin du XIXe, j'en ai vu beaucoup lors des visites que j'ai multipliées, tout au long de ce dédale pénitentiaire' .<sup>4</sup> But it must be the repeated and regular imprisonment of well-known public figures, a 'nouvelle catégorie de délinquants', which explains the extensive media coverage of this issue today. Since the publication of Vasseur's book, a new generation of specialists – philosophers, sociologists, psychiatrists and lawyers – appointed by France's politicians, are endeavouring to 'repenser la prison', continuing along a path embarked upon first in the 1960s. This is not without its difficulties in a climate where the most insignificant offences can be quite severely reprimanded: for example, it is not uncommon today to hear of a prostitute receiving a two-month prison sentence for soliciting. Moreover, the atmosphere of insécurité and the attitude of an Interior Minister keen to reassure the public via repressive policies is not likely to encourage judges to hand down moderate sentences. For French judges are not tolerant, and those members of the general public viewing judges as laxistes are seriously misguided: one simply has to observe a trial for a criminal offence to observe that the fate of the defendant and

the circumstances leading him to the dock appear completely immaterial to those enforcing the law.

In this article, we will commence with a brief historical overview of the origins of the French prison system, highlighting the growing interest which some observers of the situation in France have for the history of incarceration. For, as Jean-Claude Farcy (op.cit), himself a historian, explains, it is principally historians who have examined the concept of imprisonment in the course of the last thirty years. Rémi Lenoir, in his homage to Michel Foucault, twenty years on<sup>5</sup>, explains that specialists from a variety of backgrounds – sociologists, historians, lawyers, economists – combine their research with the work of the philosophers. Jacques-Guy Petit, in the same volume, states that an undeniable widening and diversification of historical research into justice, sanctions and prison can be observed, and attributes to Foucault both the legitimisation and the acceleration of historians' research into fringe groups. In fact, prisons have not always had the same vocation as they do today, as our overview will demonstrate. Following our historical overview, we will examine recent attempts to tackle the present malaise in French prisons and to focus on the well-being of the prisoner, looking at the concepts of 'detention' and 'the sentence' – decisions reached by judges living in a climate dominated by the fear of crime and also by issues of human rights for every category of society.

### **Historical overview**

The history of incarceration in France began in the 16th century, when François I<sup>er</sup> decided to lock up poor marauds, vagabonds, incorrigibles, belistres, ruffians, caymans et caymandeuses in small premises. In the mid-16th century, 'reformatories' opened in England and the Netherlands, where delinquents and vagabonds were locked away to be reformed and set to work. According to Michel Foucault, however, mass imprisonment dates from the 17th century, after which this new method of controlling individuals by marginalising them through

imprisonment became more widespread. In Histoire de la folie (1961), Michel Foucault mentions the creation in 1656 of the hôpital général in Paris, which at that time was not yet a medical establishment but resembled rather more a semi-legal, administrative structure, reaching decisions, passing judgements and imposing sentences independently of the judiciary. The directors of this type of establishment resorted to the use of the iron collar, prisons and dungeons. In 1676, a royal edict declared that there should be an hôpital per town in the kingdom, and the Church played an active role in this initiative. In 1662, there were already 6000 people imprisoned, of whom the vast majority were without resources and socially deprived. In 1657, Vincent de Paul, a man of the Church who devoted himself to improving the lot of the poor and of the convicts in the galleys, gave his seal of approval to this decision to ‘ramasser tous les pauvres en des lieux propres pour les instruire, les entretenir et les occuper’. Thus, the elderly, the orphans and the sick were all assembled together in these institutions. Quartiers de force were also set up to imprison women who could not be sent to the galleys. But throughout this time, prisons were considered a solution to problems of public safety rather than representing a pre-determined punishment for a specific crime, and institutions to detain the poor and put them to work multiplied across Europe. The Prisons of the Ancien Régime were first and foremost entrepôts, and sentences as we understand them today were not served out there. The royal aim was to ‘correct’ those who had wandered from the straight and narrow and to draw them back to ‘[de] meilleurs sentiments envers leurs proches et la Société’.<sup>6</sup> In order to make the most of the inmates (in the interests of profitability) and to ‘correct’ their weaknesses, these institutions endeavoured to establish workshops and to manufacture goods. Here, as in the galleys and penal colonies (les bagnes), we can already see taking shape the penal approach which was to be adopted in the nineteenth century, when, following the committing of an offence, a criminal investigation would be carried out, a trial would take place, and a sentence would be pronounced commensurate with the type of offence committed. In fact, the

criminologists of the late eighteenth century considered detention in the galleys or penal colonies to be a prison sentence because it had been preceded by a criminal investigation. However, the writers of the Enlightenment tend, in general, to confuse the notions of ‘détention’ and prison. Practices show us that the detention of an individual was carried out essentially in order to extract a confession (very often under torture), and this therefore did not represent a punishment or sentence handed down for a crime the individual had been proved to have committed, as we understand in the prison sentences of today. We note the terms of the ordonnance criminelle of 1670: ‘l’ordonnance criminelle assure le repos public et contraint, par la crainte des châtiments, ceux qui ne sont pas retenus par la considération de leur devoirs’. Of course, in practice, detaining an individual in order to extract a confession is also a punishment. The appearance of prison in the modern sense of the word dates from the French Revolution; by this time, prison was no longer considered as a transitory phase before physical punishment, but as the chastisement of the soul.

As Robert Badinter has often reminded us, penal institutions have given rise to conflicting emotions depending on the moment in history: at times, such as following a revolution, there has been a passionate interest in them, at others a complete indifference, as during the Second Empire. The Third Republic saw the founding of a genuine republican prison policy. In the run up to the Second World War, the number of delinquents decreased continuously and only two prisons were built, Fresnes in Paris and Les Baumettes in Marseille. After the Second World War, penal policy revolved around attempts to improve the poor conditions of hygiene in prisons, but this was done with only limited resources, and this area was subsequently neglected until the 1970s.

### **France’s prisons today**

The current situation of French prisons is very worrying, denounced not just by Vasseur. According to the annual report of the Observatoire international des prisons (OIP)<sup>7</sup>, conditions in

French prisons have continued to decline. The root of the problem lies in prison overcrowding, which is due to hardline policies on public safety (constantly being reinforced) and also in the age of the buildings and poor conditions of hygiene. In fact, according to the OIP, the 185 French prisons, which were built for 48,600, held more than 61,000 prisoners (convicted prisoners and those on remand awaiting trial) in the 2001-2002 period, although the figures published in 2003 by the justice ministry, Place Vendôme, are a little more optimistic (see page 13). The OIP's figures correspond to an overall rate of occupancy of 125.4 %, with the rate of occupancy at over 200 % or 250 % in some institutions. Historian and observer Michelle Perrot reminds us that prisons are bursting at the seams,<sup>8</sup> and Véronique Vasseur that prison overcrowding leads to riots. Furthermore, overcrowding also has an influence on the functioning of the prison services, with the result that prisons simply become 'dumping grounds' for delinquents. Interestingly, this situation is not peculiar to the French and we should note that both British and French systems suffer similar rates of overcrowding.

Vasseur's book has much to say about the conditions of hygiene and the state of the inmates' health (both mental and physical) in prisons, and the implications of overcrowding are clear: promiscuity caused by the phenomenon of overcrowding naturally has an impact on the morale and mental well-being of inmates and not uncommonly translates into violence, which is in turn either directed against the individuals themselves (self-harming) – there were 73 suicides during the first six months of 2003<sup>9</sup> – or against others. Prison warders are perceived by detainees as police officers or even as members of the military, and their job has become increasingly difficult and dangerous over the years.<sup>10</sup> Moreover, the situation in French prisons limits the possibilities of reinsertion for some prisoners who may have been disturbed psychologically by the conditions of their detention. Already, in the 1980s, despite limited room for manoeuvre and a reticence from the general public, Robert Badinter, only too aware of the crisis brewing in French prisons, and moved by Foucault's work and by his recent death, had

been able to impose a certain number of reforms as Justice Minister: the elimination of, or improvement of, high security areas, the removal of separation screens in visiting rooms, abolition of the convict's uniform, authorisation of television sets in cells. But, the idea that one should be able have a reasonable life style in prison was still unacceptable to many, and Badinter emphasised that it was folly to believe prison was really a place where prisoners were prepared for reinsertion into society. Badinter formulated his assessment that the general public would never be able to tolerate prisoners experiencing a better life style than that of the most underprivileged category of society as the 'loi d'airain':

Je l'ai appelée 'loi d'airain', car je ne l'ai jamais vue démentie: vous ne pouvez pas, dans une société démocratique déterminée—je ne parle pas des prisons totalitaires, car l'idée même de respect de la dignité humaine n'existe pas—porter le niveau de la prison au-dessus du niveau de vie du travailleur le moins bien payé de cette société.<sup>11</sup>

If we look to France's neighbours, we can see that the prisons without incident are in the northern European countries, nations which have a strong social conscience and sense of equality, and where the social protection offered to the least privileged classes of society is the most generous (Sweden, the Netherlands and Norway; the 'loi d'airain' sets them well above France).

Despite Badinter's reforms, in 1994, on the verge of a major reform concerning prison health, Simone Veil had revealed that over 50 per cent of detainees suffered from some kind of health problem, ranging from problems of mental health (20 per cent of all inmates), dermatological complaints, pulmonary diseases such as tuberculosis, cardiovascular and digestive illnesses, dental health problems and alcohol-related illnesses; 80 per cent of inmates had been heavy smokers and 15 per cent were drug users of some kind; 30 per cent were on regular medication, but of the 4000-5000 males admitted annually to La Santé, most had never in their lives consulted a doctor before they were admitted, were in bad health, and illness often developed rapidly with the shock of incarceration and poor conditions of hygiene in prison.<sup>12</sup>



There is also a considerably higher incidence of HIV amongst the prison population than the national population, a condition alarming by its irreversible nature, but also by the risk of contamination of fellow inmates due to the comparatively widespread drug abuse in prisons and use of shared syringes, and the incidences of sexual violence and rape. We can see that different governments, whatever their political allegiance, have been familiar with the appalling dysfunctioning of the prison system recounted by Vasseur, and the conditions described above explain how Vasseur's revelations – in reality an open secret divulged to a political class in denial – could give rise to such uproar.

### **Official reactions to the revelations**

The two parliamentary committees which had been charged with investigating the state of French prisons following Vasseur's revelations, set up in February 2000 under the leadership of Louis Mermaz and Jacques Floch (Assemblée nationale) and Jean-Jacques Hyst (Senate) constituted an historic event, representing the first committees on this matter since 1875. They led ultimately to considerable reforms on the execution of sentences (application des peines), but disappointingly most of their proposals were not to become reality. The committees reported back in June 2000, publishing their findings on 5 July in two reports entitled respectively La France face à ses prisons and Prisons: une humiliation pour la République.<sup>13</sup> As the titles indicate, both reports were highly critical of the state of French prisons, and united politicians across the whole political spectrum and from both chambers. In the course of the inquiries, sénateurs Jean-Jacques Hyst and Guy-Pierre Cabanel had interviewed more than 60 people and visited 28 penal institutions, proposing 30 emergency measures that should, in their view, be taken. These ranged from reducing overcrowding, overhauling prison buildings, enhancing the career pattern of personnel and improving the daily experience of inmates, who should be offered better possibilities for work and training and free access to television in each cell—for

politicians discovered that prisoners can have to spend very large amounts of their day locked up in their cells, left to their own devices, with few constructive activities to occupy them, a sure recipe for disaster. The report said that the inflated costs of materials bought from the prison trolleys (la cantine) should be lowered and that there should be greater openness for families coming to visit inmates, who were often allowed only brief and irregular visits to loved ones, which took place in crowded and impersonal visiting rooms. Subsequently, two years after the reports, it was revealed that, in the absence of any official regulations concerning the granting of visitors' permits to children wishing to see their incarcerated parents, some parquets (public prosecutor's departments, responsible for granting visitors' permits in the case of prisoners who are in the process of being tried or appealing against a judgement) implemented a practice of systematically refusing all requests made by children to visit a parent, on the grounds that exposure to the prison environment would have a negative impact on the children. A completely haphazard system led to a situation such that the Versailles parquet refused to allow children aged between seven and 16 to visit a parent in prison, the Lyon parquet only allowed such visits by children of the prisoner, but not, for example, by their partner's children; the Paris parquet recognised that the situation was not ideal but authorised visits, and the Douai and Bordeaux parquets felt it was important to maintain family ties wherever possible.<sup>14</sup> This contrasts with the spirit and terms of the Code de procédure pénale, which clearly authorises visits by family members for remand prisoners (article 145-4).

The Assemblée nationale report, for its part, advocated a major debate on French prisons, on the role and mission which prison should have, on the meaning of the sentence, and the urgent development of legislation. It proposed the introduction of a numerus clausus as in the Netherlands: prisons should not admit more prisoners than places available to house them; those admitted should receive more attention in terms of management of their time and the type of activities available to them, with greater possibilities for professional training; there was a need

for more probation officers and social workers; the report supported the institution of a method of independent external auditing of penal establishments. However, it was the findings of the committee led by Guy Canivet, premier président of the Cour de Cassation, which made the most impact. Canivet had been charged with investigating the possibility of an independent monitoring board to supervise prisons; his committee, convened in the autumn of 1999, reported back to Guigou on 6 March 2000, just two months after the publication of Vasseur's book, with a damning account of prison law, or rather lack of prison law. He concluded that there appeared to be virtually no national legal framework governing prison law; that prison law seemed to emanate solely from the Administration pénitentiaire (AP), and that even the most sensitive issues—such as matters relating to the respect of an individual's dignity (body searches, monitoring of prisoners' correspondence) were tackled through circulars from the AP. Furthermore, he noted widely divergent treatment of prisoners from one establishment to another, due to the fact that each prison abided by its own set of internal regulations. Canivet's commission thus proposed that legislation should be drawn up—a codification of prison law, which would outline clearly the role of the AP, the rights of prisoners and the conditions in which they were to be detained. He also advocated a re-examination of the procedure regulating the execution of sentences (application des peines), to enable the prisoner to contest in adversarial fashion decisions regarding the conditions of his sentence made by the juge de l'application des peines (JAP), who monitors the implementation of the sentence and follows its progress, reviewing and judging any requests for parole. Access to support from a lawyer should be provided to do this and legal aid if necessary. Finally, in respect of the initial purpose of the commission, Canivet recommended the setting up of an independent monitoring board, to be headed by a general inspector of prisons (contrôleur général des prisons). Thus, when Marylise Lebranchu was appointed Justice Minister in October 2000, taking over the reins from Elisabeth Guigou, who had been transferred to the Ministère de l'Emploi et de la Solidarité, she found

herself instructed almost immediately by Prime Minister Lionel Jospin to elaborate a grande loi pénitentiaire, to be presented to the cabinet by the summer of 2001, and for debate before the Assemblée nationale by the autumn of 2001.

### **Lebranchu and reform: one step forward, two steps back**

From her appointment in autumn 2000, Lebranchu applied herself vigorously to the grande loi pénitentiaire, setting up a Conseil d'orientation stratégique of 30 experts in prison affairs, and organising a massive consultation of prison warders. In July 2001, she was able to present the first draft of her law, an ambitious text, influenced by the more humane philosophy of increasing the rights of the defence enshrined in the recent loi no. 2000-516 du 15 juin 2000 renforçant la protection de la présomption d'innocence et les droits des victimes, elaborated by her predecessor Elisabeth Guigou, and which had come into effect on 1 January 2001. This draft included the major changes advocated in previous studies: the setting up of an independent inspector of prisons, to be nominated by the cabinet for a non-renewable period of six years; a commitment to respecting the human rights of detained persons, notably their right to privacy, family rights, extending from 18 months the age limit at which mothers are separated from their children, their right to work,<sup>15</sup> and restricting body searches and restraint only to cases when this was strictly necessary; a redefining of the role of the prison officer and a classification of penal institutions, with the aim that prisoners should be incarcerated in institutions according to their profile and not according to the length of sentence remaining to be served. The text met with violent opposition from prison staff and their unions, due to the emphasis on respect of prisoners' rights and the difficulties of observing these, and the revised text, presented in November 2001, coloured already by the pre-2002 presidential election hype on insécurité, was somewhat watered down. For example, Lebranchu had to abandon her proposal to reduce the maximum length of time to be served in solitary confinement from 45 days to 20 days. With the

focus on the elections well under way, it was decided to put on one side the plans for the grande loi pénitentiaire until after the elections—elections which were won by the opposition, and therefore saw the arrival of a right wing Minister of Justice, Dominique Perben.

The grande loi pénitentiaire appeared to have been shelved, much to the dismay of all those who had participated in the debates and been affected by them, and to the outrage of associations such as the Observatoire international des prisons, Act Up-Paris and the Association française de criminologie. However, there were constant reminders of the need to act and constant reminders that not enough was being done. Guigou's loi sur la présomption d'innocence had tackled the status of decisions made by the juge de l'application des peines in relation to the execution of sentences. In fact, these new measures had not been part of the initial bill, but were introduced by members of both houses—in the aftermath of Vasseur's revelations—in the course of debate. Before the loi sur la présomption d'innocence was passed, the greater part of the decisions made by the juge de l'application des peines had been considered as administrative ones as opposed to judicial ones, and therefore could not be challenged by the offender on an equal footing. The law made certain decisions relating to the execution of sentences those of a board which would respect the rights of the defence, allowing the prisoner access to a lawyer. Decisions would be reached via adversarial procedures, would be justified and be subject to appeal.

The loi sur la présomption d'innocence also intended to lower the number of people detained in France's overcrowded prisons, and more specifically the prévenus, those detained on remand prior to trial, and consequently innocent until proven guilty. The state of France's prisons can be seen as the by-product of a system of criminal procedure which uses imprisonment as a weapon to encourage a suspect to confess, apparently not an uncommon practice. No sign here then, of the presumption of innocence, and imprisonment becomes the norm for a suspect under investigation when it should be an exceptional measure. The

consequence of this practice is a high prison population, and between 1975 and 1995, the French prison population had doubled, an increase ten times that of the national population, which grew by only ten per cent at the same time. It reached a peak in June 1996 at 58,856 inmates, compared to only 27,000 in 1976. Forecasts of a prison population of 70,000 by the year 2000 if the trend continued set alarm bells ringing and spelled trouble in terms of prison infrastructures. Furthermore, approximately 40 per cent of France's total prison population consists of remand prisoners, an area where France has a particularly bad reputation with human rights observers. In order to reduce this number, the loi sur la présomption d'innocence created the post of juge des libertés et de la détention. The two functions of investigating a criminal offence and ordering the pretrial detention of the suspect under investigation had previously both been the domain of the juge d'instruction—a long criticised practice, since it essentially required the juge d'instruction to make judgements on the progress of his own investigation. Following the new law, decisions relating to remand (remanding in custody of a suspect, extending a period of remand, and release from remand, if this has been refused by the juge d'instruction) must be submitted by the juge d'instruction to the newly-created juge des libertés et de la détention. Thus, from being the remit of the juge d'instruction alone to remand in custody, it has now become the responsibility of two juges. Despite initial concerns that the juge des libertés et de la détention would simply be the juge d'instruction's 'yes man' and would therefore have no impact, the number of prisoners remanded in custody dropped significantly from 17,842 at the time the law was adopted in June 2000<sup>16</sup> to reach 15,698 in October 2001. And at this point, this trend was dramatically reversed. Jean-Claude Bonnal, a multiple recidivist arrested in 1998 for a robbery on a department store in Paris, was released from remand just before the loi sur la présomption d'innocence came into force, in December 2000, with no trial date set. Two armed raids committed in October 2001, which left six people dead, amongst them two police officers, were thought to be the handiwork of Bonnal. The Bonnal Affair gave rise to a series of

demonstrations and protests by police unions in late 2001, criticising the laxism of juges and declaring the loi sur la présomption d'innocence to be a 'loi pour les voyous',<sup>17</sup> and coincided with the growing debate on insécurité or the fear crime, which was to dominate the 2002 presidential electoral campaign. Juges reacted with a more severe approach to sentencing and remanding in custody, and the prison population began to climb from 46,698 in October 2001.

The Justice Ministry's most recent statistics, released on 8 April 2003, show an alarming increase again, with as many as 59,155 prisoners detained in 185 prisons offering 48,603 places. This represents the highest number since prison statistics began to be recorded, in 1852, with the exception only of the Liberation, when there were 60,000 prisoners in French jails, a third of them suspected collaborators.<sup>18</sup> However, it still compares favourably with UK statistics, which stood at 73,379 in June 2003, about 7000 higher than the system's uncrowded capacity.<sup>19</sup>

### **The impact of the juges' decisions**

For the juges, it is a difficult balancing act. Releasing an offender or suspect too soon may have serious consequences. But so may incarcerating him. Official statistics gave annual prison suicide figures in France as 120 in 2002,<sup>20</sup> an increase of 16 compared to 2001 figures,<sup>21</sup> seven times that of the civil population (OIP) and higher than the equivalent for England and Wales, which stood at 72 in 2001 and 81 in 2000, despite a higher prison population.<sup>22</sup> In France, a prison suicide occurs every three days. Following a month-long enquiry, the organisation Informations sans frontières noted that Justice Ministry criteria were vague and that information on geographical incidences of prison suicides non-existent. Along with the association Ban public, Informations sans frontières set up the Observatoire du suicide en prison on 13 April 2002, using information provided by the families of prisoners, support agencies, doctors and the prisoners themselves, which communicates news of every suicide to local and national media. This move has been prompted by a serious deterioration in conditions of detention. Indeed, in

2002, for the first time in history, the Administration pénitentiaire was found guilty of non assistance à personne en danger, following the suicide of a prisoner, and in July 2003, the former director of La Santé , Alain Jégo, was placed under investigation for involuntary homicide in connection with the suicide of a prisoner.<sup>23</sup> It is shocking to note that the number of prison suicides has risen by 200 per cent in the course of the last 20 years, but even more so that 60 per cent of suicides concern detainees awaiting trial, therefore presumed innocent, and that one third of suicides take place during the first month of detention.

Furthermore, as already outlined, the prison population tends to be an unhealthy one. Despite reforms following these revelations, in May 2003, a Pôle de réflexion et d'action was to highlight the number of sick inmates dying in prison. It seemed that the loi du 4 mars 2002 elaborated by Health Minister Bernard Kouchner, in order to authorise the suspension of sentences for those who were terminally ill or whose state of health was incompatible with the prison environment, was not being applied consistently. This state of affairs must have been made all the more irksome since Maurice Papon had benefited from this law, being released from prison on health grounds in September 2002.

In the absence of major reform, the inadequacies of the prison system continued to hit the headlines at regular intervals. Cases such as that of Michel Lestage, a victim of violence, murdered by his cellmate on 15 March 2001 in Gradignan prison, Bordeaux, caused outrage. Lestage had served, as a remand prisoner, all but two days of the sentence he finally received in court, and was sent back after sentencing on the decision of the juge de l'application des peines to serve the remaining two days in the overcrowded prison of Gradignan. Unfortunately, he found himself sharing a cell with a violent and unbalanced criminal just released from solitary confinement. Guislain Yakoro reputedly found his talkative cellmate irritating and silenced him for good with a homemade iron hook.<sup>24</sup> This tragic incident clearly should never have occurred, but was made all the more poignant by the fact that the juge de l'application des peines had



overstepped the mark in returning Lestage to prison, this being the remit of the parquet; and that Yakoro had been released from solitary confinement a day early on the order of a prison warder who had not checked the computerised records carefully. The French public was also deeply moved by the case of Patrick Dils, released from prison in 2002 after fifteen years, and who appeared on TF1's Sans Aucun Doute to describe his experiences. Dils had been found guilty of the murder of two young children in 1986, when he himself was only sixteen years old, and, a shy young man with the social skills of an eight-year-old, confessed to the crime under the pressure of police questioning. Before his successful appeal court appearance, he declared:

Je ne suis pas un monstre, mais un humain qui a dû se construire tout seul pour se protéger de l'univers carcéral destructeur ainsi que des adultes qui m'ont, dans la majorité de mon parcours, trahi ou abusé de ma gentillesse et de mon honnêteté et surtout ont profité de ma naïveté et de mon jeune âge! La torture psychologique et mentale est pire que tout et je ne sais pas si un jour je n'en souffrirai plus...<sup>25</sup>

As an adolescent remand prisoner, Dils had been denied visits from his parents for over a year, due to the nature of his alleged crime, and once sentenced had been the victim of brutality and rape in prison, experiences which he said made it difficult to contemplate the relationships he might normally have hoped to have in life.

The machine à broyer was also publicly denounced by a group of well-known dangereux repris de justice, regulars in the VIP cells of French prisons, who founded the association 'Mialet', naming it after a former police officer who hanged himself in his cell. In February 2002, just before the presidential elections, 'Mialet' organised a conference entitled Justice et Citoyen to draw attention to the conditions of their detention and the horrors of their interviews with the juge d'instruction. Loïk Le Floch Prigent (five months on remand for the Elf affair), Jean-Michel Boucheron (mayor of Angoulême, sentenced to 18 months for fraud), Jean-Christophe Mitterrand (three weeks remand for the Angola affair), Jean-Jacques Prompsy (sentenced in the Lyonnaise des eaux affair) and Olivier Spithakis (five months on remand) had

all been deeply marked by their brush with the law.<sup>26</sup> Jean-Christophe Mitterrand was appalled at finding himself in prison:

Ma garde à vue était totalement inutile. Ils savaient déjà tout... Je considère intolérable que pour sortir d'une prison où l'on a jugé que je ne devais pas entrer, il faut que je paie alors qu'il n'y a pas de partie civile et aucune victime à indemniser, que je suis toujours présumé innocent et que je ne suis redevable d'aucune amende.<sup>27</sup>

He was also deeply shocked at the apparently deliberate humiliation of being handcuffed to be taken from the judge d'instruction's office to the Palais de Justice: 'J'avais le sentiment d'être traité comme un meurtrier, d'avoir assassiné je ne sais qui.'

Despite a slightly different regime and VIP accommodation, which often consists simply of an individual cell in a reserved area of the prison, even for celebrities prison life is not an easy experience. Pierre Botton, a business man from Lyon and son-in-law of Lyon's mayor, Michel Noir, was sentenced in 1996 to five years in prison for fraud. Despite the preferential treatment he received at Grasse prison, of which prison warders were scathing, Botton bore his incarceration badly, even attempting to commit suicide. By the time he had been transferred to La Santé and released early on parole, he was in a very fragile state of health.

Accounts such as these, and the saga of Patrick Henry, released in 2001 after serving 25 years for child murder, and returned to prison in 2002 for a string of new offences, have led observers to question the true mission of French prisons: are they really returning offenders to society as reformed and improved characters? And is there any hope for improvement in conditions of detention?

### **Perben's Reforms**

Following the 2002 presidential elections, Nicolas Sarkozy, new Minister of the Interior, outlined his proposed law on sécurité, and shortly afterwards, Dominique Perben, Justice

Minister, unveiled the proposals for his programme pour la justice. The two reforms aimed at reassuring the electorate that the government was taking seriously the preoccupations with insécurité, which had dominated the election campaign. The emphasis of Perben's reform—the loi no. 2002-1138 du 9 septembre 2002 d'orientation et de programmation pour la justice, or (LOPJ)—was on reinforcing the rights of the victim, reducing the number of sentences not carried out and implementing a prison-building and modernisation campaign. His ultra-sécuritaire, tolérance zéro policy led Perben to plan the creation of 13,200 prison places, signifying the building of some 30 new prisons by 2007, at a cost of 1.4 billion euros. Of the new establishments planned, eight were to be for young offenders, each to house between 40 and 60 juveniles, with the remaining adult prisons not exceeding a capacity of 600 inmates. The newly-appointed secrétaire d'état aux programmes immobiliers de la justice, Pierre Bédier, was to oversee the programme and René Eladari, an engineer who had masterminded former right-wing justice minister Albin Chalandon's (1986-88) planned 15,000-place prison-building programme, was entrusted with a mission to design the prison of the future. Perben's new prisons were to be built, as with those commissioned by Guigou, according to the instructions of the state, but by private enterprises. A number of high profile escapes in 2002 put the emphasis firmly on increased security thanks to modern technologies (ie. the disabling of mobile telephones, anti-helicopter netting, bullet-proof glass),<sup>28</sup> but the brief was also to provide decent living conditions for inmates: showers in cells, private toilets and possibly even family visiting quarters (unités de visite familiale), with improved sports facilities, cultural activities, opportunities for professional training and visiting rooms. Some progress had already been made on this front, building on Elisabeth Guigou's initiatives, of which, Liancourt's new prison, set to open in late 2003, is an example. This prison has been designed by Architecture Studio, newcomers to prison design, who have studied the sensitive use of colour, lighting and space to

improve the prisoners' experience of their surroundings and thus help reduce some outbreaks of violence resulting from the frustration of incarceration.

A further long-awaited development was the opening of the first unité de visite familiale inaugurated in experimental fashion in September 2003. A small apartment complete with garden in the women's prison in Rennes, this project will enable women prisoners serving long sentences to receive members of their family in total privacy for periods ranging from six to 72 hours. An initiative first announced in the mid 1990s, criticised severely by prison staff, who described them as parloirs sexuels déguisés, and relaunched in 2000 by Guigou, the unités de visite familiale nearly fell victim to the change of parliamentary majority in 2002. Should the Rennes model prove successful, two further units will be set up, one in the high security prison of Saint-Martin-de-Ré (Ile de Ré) and one in Poissy (Yvelines). Essentially intended to maintain and improve relationships between members of a family, the units are not only meant to allow inmates to continue a sexual relationship with a partner—although forbidden in prison, these tend to take place furtively in public view during visiting hours, to the humiliation and embarrassment of inmates, partners and warders—but also to compensate for the very short visiting hours which can be a traumatising experience for children visiting a parent. Indeed, many of the women incarcerated in Rennes have been abandoned by their partners, or have partners who are themselves in prison, and their main priority will be to receive their children or parents. Bédier, however, is reserving judgement on the future of unités de visite familiale, does not have definite plans to include them in the new prison developments. Perhaps of more pressing need is the re-examination of Guigou's aim to move towards single occupancy cells: the law ruled that remand prisoners had to be detained in an individual cell, not held with convicted offenders. In order to allow the prison authorities time to tackle the overcrowding of French prisons, this requirement was only to be applied from 16 June 2003, but by the spring of 2003, it

had already become apparent that, despite the prison-building campaign, it would be impossible to comply with such a measure, which was abandoned in March 2003.

Another element of Perben's reform is the construction of centres éducatifs fermés (CEF). The first CEFs opened on 17 March 2003 as centres where young offenders aged 13 and over, on probation or under judicial supervision, can be detained. Sixty CEFs are to be built by 2007, each to cater for eight juveniles, and to be staffed by 27 adults including teachers, medical staff, physical education specialists and psychologists, at a cost of 600 euros per youth per day—five or six times the cost of other forms of detention.<sup>29</sup> These CEFs should not be confused with the quartiers des mineurs located in prisons,<sup>30</sup> and the emphasis is to be on prioritising the continuation of the young person's education during rehabilitation. But if the young offenders fail to respect the conditions of their detention in the CEF or their judicial supervision, they can be remanded in custody in a prison, a measure not previously possible for those aged under 16.<sup>31</sup> CEFs are also distinct from établissements pénitentiaires spécialisés pour mineurs (EPSM) which will replace the quartiers des mineurs under the LOPJ, and will be modelled on the tough young offenders institutions in other European countries such as Great Britain, Italy, Spain, Belgium and Sweden. The need to tackle, as a matter of urgency, the treatment of young offenders was highlighted in April 2002, when two 17-year-olds died in their cell in the quartier des mineurs of a Lyon prison after having set a mattress alight. The appalling state of the two Lyon prisons, built in 1832 and 1860, and the inadequate staffing ratios were condemned, but also the fact that the two youths had been found guilty of délits (major offences) rather than crimes (serious offences), and that one of the youths had in fact only committed an offence against property.<sup>32</sup>

CEF's were seen by their creators as the last resort before prison, but they did not have the support of the Protection judiciaire de la jeunesse, whose teaching personnel disapproved strongly of the coercive measures of the government. Cooperation came rather from the non-state sector in the shape of the Union nationale des associations de sauvegarde de l'enfance, de

l'adolescence et des adultes (UNASEA). A further measure to remove child benefits from families of the young person detained in a CEF if the family does not attempt to 'participe à la prise en charge morale ou matérielle de l'enfant', or else try to ease his or her reintegration into the family unit met with serious criticism. It was argued by some that this measure, aimed at making the troubled housing estates safer for their inhabitants, was simply targeting the deprived and depriving them still further: 'On est dans une logique de pénalisation et de guerre aux pauvres. En suspendant les allocations familiales, on va sanctionner des familles entières déjà précarisées'.<sup>33</sup>

### **The way forward**

Following his appointment, Perben rapidly commissioned a number of further reports: Paul Loridant's 'Prisons: le travail à la peine' (26 June 2002), Jean-Luc Warsmann's 'Les peines alternatives à la détention, les modalités d'exécution des courtes peines, la préparation des détenus à la sortie de prison' (28 April 2003), and psychiatrist Jean-Louis Terra's report on prison suicides. Loridant's report, revealed that less than one prisoner in two was granted the chance to work, that the work proposed was unskilled and did not motivate offenders to acquire skills, that rates of pay in 2002 were below 200 euros a month, that there were frequent periods of inactivity and that health and safety regulations were applied erratically. It is difficult to square this picture with the mission statement of the legislator, which says that the aim of prison work is to prepare the inmate for social and professional reinsertion into the society which he is destined to rejoin one day or another. Prison work is also essential for a certain share of the prison population who are of very limited means and who have no family nearby to provide them with the money they need to purchase items from the prison trolleys (cantiner). The punishment is very real, in that a prisoner will emerge from prison financially less well off than he entered prison, and also less well-equipped professionally to earn his living in the outside world.

Loridant proposed 62 measures towards a new prison work policy, suggesting advantageous financial arrangements for industries employing prisoners, a gradual introduction of employment law regulations, payment of an hourly minimum wage to be set at half of the SMIC and professional training—measures which were received as better than nothing, but nonetheless continuing to exploit this work force.

For his part, Warsmann was horrified by what he described as the scandale de l'exécution des sanctions pénales: several months after sentences had been passed, these still had not been implemented. He noted the case of a man sentenced to four months in prison in September 2001 who had still not commenced his sentence in April 2003. In the meantime, his sentence had been reduced by the annual presidential pardon on 14 July 2002.<sup>34</sup> He discovered that, in general, the paperwork required between the passing of the sentence and its commencement signified a seven-month delay before entering prison, making something of a mockery of the punishment. Warsmann advocated greater recourse to non-custodial sentences: electronic tagging, community service orders, suspended sentences, and semi-custodial sentences which he hoped would lead into a safer parole routine less likely to fail. Use by the juges of these alternatives to custodial sentences had declined, due to a lack of confidence in their application, according to Warsmann. One only has to consider the public outcry and blame attached directly to the juges when a dangerous criminal released on parole reoffends, to understand the reticence of the juges to apply these non-custodial sentences.

Furthermore, Jean-Louis Terra, in his report into prison suicides, presented to Perben on 4 November 2003, summed up the situation as follows: 'La prévention du suicide n'est toujours pas considérée comme un risque à gérer.'<sup>35</sup> Refusing to accept the comfortable and widespread opinion that those who attempt suicide will do all they can to avoid detection and are determined to die whatever the preventative measures in place may be, he maintains that the medical and psychological facilities in place to assist those at risk are not common knowledge to inmates:

‘Un silence total est fait sur les actions sanitaires pour prévenir le suicide et sur le traitement de la souffrance psychique liée aux maladies mentales.’ Suicide rates were found to be higher amongst those in solitary confinement and in conditions of overcrowding, and the inexplicable presence in prison of the mentally ill was highlighted. There was found to be little consideration of the state of mind of prisoners punished with solitary confinement, very infrequent medical checks were carried out amongst those in solitary confinement, medical opinions were not sought regarding allocation of cell mates, and in 37% of prisons, no advice or notification was given to prisoners as to the risk status of their cell mates. Terra proposed the obvious solutions of training prison officers in spotting risks, of training prisoners also, so that someone can be on hand round the clock for an inmate at risk. Ironically, morbid thoughts lead to aggressive outbursts and self-harming, offences punishable by solitary confinement, where the condition is exacerbated and the risk of suicide attempts is highest... Terra insisted that being deprived of ones freedom should not be tantamount to being deprived of ones human rights, for this represented a double sentence, and he repeated the recommendations of Canivet in 1999 that an independent authority should be created charged with making recommendations to the AP. Finally, he proposed the objective of reducing prison suicides by 20% within the next five years.

### **In conclusion**

According to Michel Foucault, a nation has the criminal system it deserves; equally, one could say a society has the prison system it deserves, and the situation in France now is far from exemplary. Prison can be described as the hidden side of society, and as such it is a reflection of the shortcomings of that society. There has certainly been an opening of eyes and minds to the situation of French prisons, demonstrated in the considerable number of reports commissioned on the subject in recent years. But will these reports be acted upon, or will they be put on one side and ignored until crisis point is reached again? More than twenty years after Badinter’s



moving speech for the abolition of the death penalty, in which he lists the rights to which we should all be entitled, it is only too obvious that these do not extend to the prison environment:

Les droits de l'Homme sont universels parce que tous les êtres humains ont des droits fondamentaux que l'on ne peut nier sous peine de nier l'Humanité elle-même. Partout, on doit respecter l'intégrité de la personne humaine, partout, les êtres humains ont le droit de ne pas être torturés, tués, mutilés, de ne pas être réduits en esclavage, de recevoir des soins, d'avoir accès à l'éducation, à la culture, partout, les êtres humains doivent pouvoir penser et s'exprimer librement...

(Robert Badinter's speech for the abolition of the death sentence, Assemblée nationale, 17 September 1981).

It will be particularly interesting to follow developments in France, at a time when the UK public is focusing on the state of its own criminal justice system. Justice Ministers' and Home Secretaries' responses to the crisis in prisons usually begin with plans for massive prison-building campaigns, with modern institutions and sophisticated technology, promising better conditions, increased security and more space. Overcrowding is always one of the culprits of prison crises, and the annual Bastille Day presidential pardon is a god send for the French prison services, releasing pressure before the hot summer period, when the situation in prisons is particularly volatile. However, it is difficult not to conclude that the development of non-custodial sentences should form an important part of the solution. Prisons are a little like motorways. The more you build, the more people use them.

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#### Notes and references

<sup>1</sup> VASSEUR, V., Médecin-chef à la prison de La Santé (Cherche-Midi, 2000).

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<sup>2</sup> FARCY, J.-C., L'histoire de la justice française de la Révolution à nos jours, (PUF, Droit et Justice, 2000, p266 and following). Farcy explains that, during the last decade, and more precisely the last few years of the decade, a resurgence of interest in the history of imprisonment on the part of historians can be noticed: 23 history theses on this subject were completed between 1995-1999.

<sup>3</sup> BOTTON, P., Prison (Laffont, 1997); CARIGNON, A., Une saison dans la nuit (Grasset, 1995).

<sup>4</sup> DORLHAC DE BORNE, H., Changer la prison, Plon, 1984, p 32

<sup>5</sup> LENOIR, R., 'Michel Foucault. Surveiller et punir : la prison vingt ans après', Revue Sociétés et représentations, CREDHESS, numéro 3

<sup>6</sup> PETIT J.-G., Ces peines obscures, Fayard, 1990, p 26

<sup>7</sup> OIP Internet Site, 2001-2002 figures.

<sup>8</sup> See PERROT, M., Les ombres de l'histoire (Flammarion, 2001).

<sup>9</sup> See 'Le taux de suicide dans les prisons françaises est l'un des plus élevés d'Europe', Le Monde (29 October 2003), p 9.

<sup>10</sup> It should not be forgotten that the prisoner, whether he was convicted or on remand, will end up leaving prison one day. The prison officers, on the other hand, have to remain in prison when the doors close again.

<sup>11</sup> Commission d'enquête parlementaire sur la situation dans les prisons françaises (23 March 2000).

<sup>12</sup> BOLZE, B., Le guide du prisonnier (Éditions de l'atelier/Éditions ouvrières, 1996). For a further discussion of the prison health reform, see TROUILLE, H., 'Holiday Camp or Boot Camp? Where does France stand in the Prison Reform Debate?', The Justice Professional, vol. 13 (2000), pp. 391-403.

<sup>13</sup> Rapport no. 2521 au nom de la commission d'enquête sur la situation dans les prisons françaises, déposé à l'Assemblée nationale le 28 juin 2000; and Rapport no. 449 au nom de la commission d'enquête sur les conditions de détention dans les établissements pénitentiaires en France, déposé au Sénat le 28 juin 2000.

<sup>14</sup> PRIEUR, C., 'Les visites des enfants à leurs parents détenus soumises à l'arbitraire', Le Monde (15 June 2002).

<sup>15</sup> Conditions relating to work in prison were to be regulated: a contract was to be drawn up, and inmates paid at least 50 per cent of the national minimum wage (SMIC), with some form of payment if the prisoner was absent from work with good cause.

<sup>16</sup> The law came into effect on 1 January 2001; the decline in remands began even before the text became law, in a climate favouring the rights of the defence. In January 2000, there were 20,527 remand prisoners in French jails.

<sup>17</sup> Ibid.

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<sup>18</sup> GARCIA, A., 'Avec près de 60 000 détenus, les prisons dépassent le record atteint en 1996', Le Monde (10 April 2003).

<sup>19</sup> See TRAVIS, A., 'Prisons chief says future is orange (bibs)', The Guardian (17 June 2003); 'Prison at bursting point, says inspector', The Guardian (3 June 2003), and [www.number-10.gov.uk/output/page1144.asp](http://www.number-10.gov.uk/output/page1144.asp).

<sup>20</sup> Ministry of Justice figures. See [www.prisons.free.fr/mortsuspectes.htm](http://www.prisons.free.fr/mortsuspectes.htm).

<sup>21</sup> Administration pénitentiaire. See [www.prison.eu.org](http://www.prison.eu.org).

<sup>22</sup> See 'Prison suicides down by 11%', [www.ananova.com/news/story/sm\\_485785.html](http://www.ananova.com/news/story/sm_485785.html).

<sup>23</sup> Kamel K committed suicide a few days after having been confined to a punishment cell following a brawl with a fellow prisoner. Jégo, not present on the day of the suicide, is accused of not having taken account of Kamel's psychiatric history. See 'L'ex-directeur de la prison de la Santé mis en examen', Le Monde, (25 July 2003).

<sup>24</sup> PRIEUR, C., 'Michel Lestage, égorgé en prison, victime de dysfonctionnements', Le Monde (27-28 January 2002).

<sup>25</sup> DUMAY, J.-M., 'Patrick Dils: L'innocence au grand jour', Le Monde (14 November 2002).

<sup>26</sup> BACQUE, R., 'Les juges et la vie en prison remis en question par «un groupe de dangereux repris de justice»', Le Monde (9 February 2002).

<sup>27</sup> Agence France Presse (AFP), 'Jean-Christophe Mitterrand dénonce l'"expression de haine" du juge Courroye' (10 January 2001).

<sup>28</sup> In September 2002, two prisoners escaped by rope ladder from Ploemeur (Brittany); in November, a prisoner was killed trying to escape from Arles prison (Southern France); in March 2002, well-known criminal Joseph Menconi escaped from Borgo prison (Corsica), aided by accomplices with fake weapons.

<sup>29</sup> PRIEUR, C., 'Les premiers centres éducatifs fermés prêts à accueillir des mineurs', Le Monde (15 March 2003).

<sup>30</sup> As of 1 July 2002, 901 juveniles were incarcerated in 55 quartiers des mineurs in French prisons ('La réforme de la justice, 24 juillet 2002', <http://www.vie-publique.fr/actualite>).

<sup>31</sup> Ibid.

<sup>32</sup> VICTOR, E., 'Polémique entre magistrats lyonnais sur le danger d'incarcérer les mineurs', Le Monde (30 May 2002).

<sup>33</sup> Michel Tubiana, director of the Ligue des droits de l'homme, quoted in CHAMBON, F., KREMER, P., MATHIEU, M., 'La loi sur la justice alarme les syndicats et les associations', Le Monde (7 August 2002).

<sup>34</sup> PRIEUR, C., 'Le député Jean-Luc Warsmann presse le garde des sceaux de relancer les alternatives à l'incarcération', Le Monde (30 April 2003).

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<sup>35</sup> See SIMONNOT, D., Une nouvelle peine de mort derrière les barreaux, Libération (3 November 2003)