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# “Investing In Doing Time. The Potential of Self-Transformative Activities in the Prison World”

Focus on Prison Education and Spiritual Guidance in France

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All opinions, translations and errors are my own.

## ABSTRACT

This thesis focuses on the importance and implementation of non-vocational education and spiritual guidance in prisons. France is taken as the primary case study although other countries' policies are cited, when deemed relevant and for reference purposes.

Prison education is part of the right to education for all and the right to spiritual guidance derives from the freedom of religion. Those fundamental human rights are protected on many levels through international legal and soft law benchmarks.

This research presents prison education and spiritual guidance as important tools for the rehabilitative aim of prison. They can be perceived as complementary. Indeed, teachers and chaplains both play the role of educators, the latter in an informal way. Furthermore, both have been presented as playing a role in desistance from crime, institutional adjustment and reintegration.

Following in-depth research and the conduct of interviews with teachers and chaplains, conclusions were drawn on whether France adequately provides access to educational and spiritual activities and ensures their quality.

This research's findings suggest that a strong emphasis on the disciplinary purpose of prison imperils human rights as a whole. Non vocational education is still too often perceived as a "privilege" a detainee is only too lucky to have access to and not as a basic human right. It has direct consequences on its availability and quality.

On the other hand, counter-radicalisation efforts in prison following a wave of terrorist attacks led by former detainees may impact the prison chaplains' task and its relationship with detainees, especially Muslim inmates who might require his guidance but who may doubt the chaplains' motives. The precarious status of chaplains may also impact negatively access to spiritual guidance in this setting.

The situation is worrisome. Inmates are more likely to lack basic education and a significant number also lacks religious instruction. This makes them a target of choice for preachers of violence.

Furthermore, the failure to uphold these rights constitutes a wasted opportunity to form law-abiding citizens mindful of other people's rights and values.

Keywords: prison education ; spiritual guidance ; total institution ; carceral shock ; desistance from crime ; rehabilitation ; moral contract ; unequal treatment

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## INTRODUCTION

First and foremost, it is important to understand why we imprison before assessing the purpose of spiritual guidance and education for detainees, at the core of the following study. Both rationales are interrelated: the existence of educational and religious programmes depends heavily on the main purpose of prison.

The most manifest aim of prison is punishment, defined by the American sociologist Newman as "a pain or other unpleasant consequence that results from an offense against a rule and that is administered by others who represent legal authority, to the offender who broke the rule."<sup>1</sup> The laws have to be clear, enshrined in legal instruments and advertised and the punishment should be proportionate to the nature of one's offense. The social contract, as defined alternatively by Locke, Rousseau or Hobbes<sup>2</sup>, lies at the basis of the State's right to punish. In this context, it is "a heuristic device that illustrates how individuals give up individual liberties to act with aggression in return for safety"<sup>3</sup>. Those who ignore it and break the laws of society are to be punished or else the social contract would be void and laws would lose their authority. In that regard, the retributivists consider punishment is an end in itself as long as two conditions are met: a fair trial and the involvement of the State. Indeed, "whereas revenge is personal and not necessarily proportional to the victim's injury, retribution is impersonal and balanced"<sup>4</sup> and therefore legitimate.

Utilitarians argue punishment would be illegitimate if it did not serve other goals. According to this theory, "prisoners are sent to prison as punishment, and not for punishment"<sup>5</sup> and "the good coming from punishment must outweigh the inherent evil of the punishment itself." Those goals are incapacitation, deterrence and rehabilitation<sup>6</sup>. Incapacitation is the natural consequence of incarceration. This purpose of punishment is rather self-explanatory.

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<sup>1</sup> NEWMAN G.R. (1978), *The Punishment Response*, Transaction Publishers, p. 7 (323 p.)

<sup>2</sup> LOCKE J., *Two Treatises on Government*, Awnsham Churchill, 1690; ROUSSEAU J., *Du Contrat Social*, Marc Michel Rey, 1762; HOBBS T., *Leviathan*, 1651

<sup>3</sup> POLLOCK J.M., *The Rationale For Imprisonment*, in *The Philosophy and History of Prison*, p.17

<sup>4</sup> *Ibid* p.3

<sup>5</sup> ACLU, *Prison As Punishment Not For Punishment*, 26 March 2010

<sup>6</sup> POLLOCK J.M., *The Rationale For Imprisonment*, in *The Philosophy and History of Prison*, p.3

However, the link between punishment and specific deterrence is less manifest<sup>7</sup>. Indeed, in France for instance, 4 prisoners out of 10 were recidivists in 2013<sup>8</sup>. Thus, deterrence is not necessarily induced by punishment because individuals are not always aware of the illegality of an action or cannot easily control their behavior<sup>9</sup>. This is the reason why we "ought to provide an avenue for change"<sup>10</sup> in prison. Without it, punishment cannot serve as a deterrent. The crime may only be delayed and this does not contribute to a safer society, which is the aim of the social contract in the first place. If "what is good is that which benefits the majority"<sup>11</sup>, rehabilitation, defined as "the internal change that results in a cessation of the targeted negative behavior"<sup>12</sup>, is the justification for punishment according to utilitarians and the purpose of prison.

This research discusses the value of prison education and spiritual guidance as essential tools for rehabilitation purposes. They have been presented as turning points for many detainees and may indeed share this potential. The questions that should be discussed in this thesis are the following: first, how are the prisoners' right to education and to spiritual guidance protected in human rights law? What is the rationale behind their protection and their link with the rehabilitative aim of prison? Are they merely means to the same ends? Lastly, are the core principles established in international and regional instruments fully respected in practice to enable them to fully fulfil their potential?

First, the protective framework (at the international, regional and French level) of prison education and spiritual guidance in prisons will be assessed. Second, the rationale behind their protection and their necessity in a prison context will be outlined. Third, their interrelatedness will be explored in details with regards to institutional adjustment, distance from crime and reintegration. Fourth, their implementation in French prisons will be evaluated. Human rights violations are not always obvious. Sometimes, it is the addition of obstacles that constitute a violation. One needs to be aware of those subtleties to urge relevant actors to do better.

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<sup>7</sup> Specific deterrence refers to deterring an individual from committing further crime with punishment. General deterrence applies to a society: punishment serves as an example not to follow (source: *ibid* p.4)

<sup>8</sup> INSEE, France portrait social 2013

<sup>9</sup> POLLOCK J.M., The Rationale For Imprisonment, in *The Philosophy and History of Prison*, p.3

<sup>10</sup> Remark of Former Special Rapporteur on Education Vernon Munoz in *Prisoner's Right To Education*, OHCHR, 28 July 2009

<sup>11</sup> POLLOCK J.M., The Rationale For Imprisonment, in *The Philosophy and History of Prison*, p.5

<sup>12</sup> *Ibid* p.5

## METHODOLOGY

The focus of this thesis will be the right to education and to spiritual education. This will not encompass vocational education because one can assume that, while it facilitates rehabilitation, the focus is largely on manual work and the link with self-introspection is less tenuous than for prison education and spiritual guidance. Cultural activities could also be compared to educational activities but they are perhaps too punctual to have a significant influence on a detainee's experience of prison.

France was chosen as the primary case study for four reasons. First, prisons are one of the very few institutions where the State is in direct relation with religious authorities and is held accountable for the promotion of religious rights. In general, the State tends to dissociate itself from religious matters because of the 1905 law on secularism. In France, the special relationship between the State and cults is already complex and interesting, let alone in derogatory contexts. Second, French prisons are often described as ticking time bombs. It is widely assumed in public discourse that they became "schools of radicalisation". This fear became concrete in the past three years. Indeed France was repeatedly targeted by ex-inmates claiming their affiliation to terrorist groups. In this context, access to spiritual guidance in prison was widely discussed as a preventive counter-narrative. This was also an opportunity to discuss the current status of chaplains in the French framework and the difficulties they may face. Third, France is badly ranked with regards to upward mobility<sup>13</sup>. This reflects badly on the state of education, which does not fulfil its promise as it is. In those conditions, one might wonder if prison education can fulfil its promises. Finally, France's short-term prisons are infamously known because they are overcrowded<sup>14</sup>. This may have an impact on prison education and spiritual guidance, if both activities are perceived as "complementary" rather than "necessary". Taking into account the fact that the French Ministry of Justice is also less well-endowed<sup>15</sup> than other ministries, this might force authorities to make detrimental choices.

This study is mainly based on research. There is an extensive body of literature on prison education, especially on countries where such structures have been established for decades,

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<sup>13</sup> This will be discussed in chapter IV.

<sup>14</sup> Ibid

<sup>15</sup> Ibid

such as France. Access to spiritual guidance is proven to be more challenging. There are two main hassles. First, freedom of religion encompasses many realities in prison. All aspects are often examined together and not separately. When there is a focus on specific religious rights, it is mostly on clothing and dietary requirements, which make up the majority of cases discussed by the European Court of Human Rights. When there is a focus on prisoners' rights, the angle is more often than not on the right to education compared to prisoners' religious rights. Too few articles dealt with this issue while many articles dealt with the right to education.

Second, spiritual guidance has not been widely discussed by French scholars or in the context of French prisons<sup>16</sup>. It is perhaps more of an American specialty. After all, faith-based prisons are an American concept, which was widely discussed when implemented and continues to attract attention with regards to its effectiveness. There is no similar project in France: prisons all are run by the State, which is bound to guarantee the respect of religious rights, not put them at the heart of its initiatives. That would go against the principle of secularism. Yet, although there is space for more research on this topic, spiritual guidance is increasingly at the forefront of research projects in France, especially since the terrorist attacks in January 2015 against the journalists of "Charlie Hebdo" led by ex-inmates whose experience in prison was presented as a turning point for the worse.

Since particularly Muslim detainees lack access to spiritual guidance, the fourth chapter takes Muslims chaplains and detainees as a primary example. This research does not claim that chaplains from other religious denominations do not face hurdles in their relationship with the prison administration and their target audience, only that they might be less significantly impacted, according to existing testimonies and literature. In any case, this research does not claim to be exhaustive.

With regards to the influence of radicalized preachers in the prison environment, the current state of research confirms this trend only with regards to men. Again, there is space for more research on this topic with regards to women.

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<sup>16</sup> Defined as the "fifth wheel of the penitentiary cart " in BERAUD C., *La religion en prison*, Presses Universitaires de Rennes, p.56



Three interviews were conducted for this research. The discussion with a prison pastor, David Buick<sup>17</sup>, ambassador of the International Chaplains' Association, proved particularly useful as he demonstrated critical distance, notably on his role in the hierarchy and the importance of his mission. The interviews of two prison teachers, Thierry Gracia and Younes Rachidi, who respectively teach French as a foreign language and mathematics in corrective institutions. Their observations confirmed the available literature on the topic. Lastly, there was a written communication with a major youth association in France (GENEPI) established in 7 French cities. This association previously organized educational workshops in prisons. However, this has not been the case for a decade now none of the current members have had the opportunity to visit prisons. They argued that it had become difficult for associations to visit prisons because of additional security measures. Thus they now work mainly on advocacy matters and were not able to provide further practical information.

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<sup>17</sup> Protestant chaplain based in Rennes, Representative of the International Prison Chaplains' Association (ICPA). More here: <http://www.ipcaeuropa.org/ipcaeuropa/extern/steering-committee.htm>

# I. A MULTI-LAYERED PROTECTION

Prisoners' rights to education and access to spiritual guidance have been enshrined in soft and binding international human rights law since 1948. Thereafter, regional organisations have integrated the United Nations Declarations and Recommendations into their own set of rules. Since France was chosen as the primary case study, only the European Union and the Council of Europe's jurisprudence will be examined in this chapter. France's own legislation will be assessed at the last place. Indeed, the signatories of the aforementioned recommendations have had to translate those standards in their legislation, according to their own norms and traditions.

Close attention will be paid to the wording as well as the nature of the reference to prison education and spiritual guidance. Prison education is not always explicitly mentioned and access to spiritual guidance can be referred to without using those exact words. Lastly, the purpose of prison education and spiritual guidance depends on the organisation's take on those rights.

## 1. International Legal and Soft Law Benchmarks (the United Nations)

### 1.1 Prison education

The right to education was first formally recognized as a human right for all in 1948 with the Universal Declaration of Human Rights<sup>18</sup>. This non-binding benchmark states "everyone has the right to education" (Article 26-1). In 1960, The UNESCO Convention Against Discrimination In Education will formally reiterate the universality of education, claiming "depriving any person or group of persons of access to education of any type" is tantamount to discrimination (Article 1-1).<sup>19</sup>

The aims of prison education were mentioned in a wide array of instruments, some more precise than others. Each text outlines the most important aspects of education according to the legislators' interpretation at the time. Article 10-3 of the binding International Covenant on Civil and Political Rights states that "the penitentiary system shall comprise treatment of

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<sup>18</sup> General Assembly Resolution 217 A, The Universal Declaration of Human Rights, A/RES/217 (10 December 1948)

<sup>19</sup> Convention Against Discrimination in Education, ED/2003/CONV/H/1 (14 December 1960)

prisoners the essential aim of which shall be their reformation and social rehabilitation<sup>20</sup> without going into further details. The non-binding Basic Principles for the Treatment of Prisoners and the binding International Covenant on Economic Social and Cultural Rights (ICESCR) are more ambitious. Both mention as what should be the aims of prison education "the full development of the human personality"<sup>21</sup> (in articles 6 and 13-1 respectively). The ICESCR also claims in Article 13 that education preserves "the sense of one's dignity" and enables "all persons to participate effectively in a free society and promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups."<sup>22</sup>

Most importantly, General Comment 13 drafted by the UN Committee on Economic, Social, and Cultural Rights (CESCR)<sup>23</sup> states the four basic standards of education. Education must be available. In short, there must be structures serving as classrooms, which should be fully equipped with adequate teaching material, and teachers employed in educational facilities must be adequately trained a priori. Education must be accessible. There should be no financial, administrative or legal barriers and it should be fully inclusive<sup>24</sup>. Education must be acceptable and meet strict quality standards, "relevant to the student's context, needs and evolving capacities". Lastly, education must be adaptable to the student and "flexible enough to respond to changing societies and the need of students within diverse social and cultural settings".<sup>25</sup> This is a particularly useful tool to assess the quality of educational programmes.

Lastly, the United Nations Standard Minimum Rules For The Treatment of Prisoners (known as the Mandela Rules)<sup>26</sup>, although non-binding, are undoubtedly the most comprehensive and ambitious framework with regards to prisoners' rights. There are clear and demanding criteria: prison education is not a privilege made available to prisoners. Indeed, the education of illiterates is deemed "compulsory"<sup>27</sup>, prison education must be mainstreamed "with the

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<sup>20</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, General Assembly resolution 2200A (XXI), (16 December 1966)

<sup>21</sup> UN General Assembly, *Basic Principles for The Treatment of Prisoners*, Resolution 45/111 (14 December 1990), UN General Assembly, *International Covenant For Economic and Social Rights*, Resolution 200A (XXI) (16 December 1966)

<sup>22</sup> UN General Assembly, *International Covenant For Economic and Social Rights*, Resolution 200A (XXI) (16 December 1966)

<sup>23</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10

<sup>24</sup> TOMAVESKI P., *Make Education Available, Accessible, Adaptable, Acceptable*, Primer, p.14

<sup>25</sup> *The Right To Education*, ESCR.Net

<sup>26</sup> UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*, A/C.3/70/L.329 (September 2015)

<sup>27</sup> *Ibid* Rule 104-1

country's educational system"<sup>28</sup> and "the prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings"<sup>29</sup>. Furthermore, there must be "adequate human and financial resources to assist in the improvement of prison conditions and the application of the Nelson Mandela Rules", thus enough teachers.<sup>30</sup>

Access to educational material is also a human right<sup>31</sup>. There are limits to this right specified clearly in the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment<sup>32</sup>: "A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment".

## 1.2. Spiritual guidance

Article 18 of the Universal Declaration of Human Rights guarantees access to spiritual guidance when stating: "Everyone has the freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".<sup>33</sup>

The Mandela Rules are once again the most relevant framework. According to Rule 2, "the religious beliefs and moral precepts of prisoners shall be respected".<sup>34</sup> The chaplain shall be allowed to visit prisoners upon request on an individual basis<sup>35</sup> and the access to ministers of faith shall not be refused to any prisoner<sup>36</sup>. "Religious care" is cited as "one of the appropriate means of prisoner treatment geared towards future reintegration into society".<sup>37</sup>

There are clear conditions for the accreditation of prison chaplains: when the prison contains a sufficient number of prisoners of the same religion, a qualified representative of that religion

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<sup>28</sup> Ibid Rule 104-2

<sup>29</sup> Ibid Rule 5

<sup>30</sup> Ibid Rule 14

<sup>31</sup> Ibid Rule 64

<sup>32</sup> Principle 28-1, UN General Assembly, Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, R (1988)

<sup>33</sup> General Assembly Resolution 217 A, The Universal Declaration of Human Rights, A/RES/217, 10 December 1948

<sup>34</sup> UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*, A/C.3/70/L.329, September 2015

<sup>35</sup> Ibid Rule 64

<sup>36</sup> Ibid Rule 65

<sup>37</sup> Ibid Rule 92

shall be appointed<sup>38</sup>. If the number of prisoners justifies it, the arrangement should be on a full-time basis<sup>39</sup>.

We can observe that, in the Mandela Rules, education and spiritual guidance are linked together. Indeed, "prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature"<sup>40</sup>.

The Mandela Rules seem to be the most ambitious framework so far with regards to prisoners' access to education and spiritual guidance. Their currentness makes them especially relevant today. Indeed, although they were first adopted in 1955, the Mandela Rules were revised in 2015 to reflect the current needs of detainees and developments of our societies.

Regional organizations seemingly drew inspiration from this ambitious international framework.

## **2. Regional/European Framework**

### **2.1. The European Union**

The binding Charter of Fundamental Rights, proclaimed in 2000 and entered into law in 2009, is heavily based on Article 18 of the Universal Declaration of Human Rights with regards to spiritual guidance. The same wording can be found in both texts without any addition.

As for the right to education, the Charter's wording is also very sparing. It is merely stated that "everyone has the right to education and to have access to vocational and continuing training."<sup>41</sup>

### **2.2. The Council of Europe**

The Council of Europe seems to have a more ambitious agenda. It has had quite a few opportunities to discuss prison education and access to spiritual guidance, through its

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<sup>38</sup> Ibid Rule 64

<sup>39</sup> Ibid Rule 64

<sup>40</sup> Ibid Rule 34

<sup>41</sup> Article 14, European Union, *Charter of Fundamental Rights of the European Union*, 2012/C 326/02, 26 October 2012

recommendations and the rulings of the European Court of Human Rights.

### 2.2.1. Education

Article 2 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms merely states that: "No person shall be denied the right to education".<sup>42</sup>

Two key recommendations published by the Council of Europe (Recommendation (89) 12 on Education in Prison and Recommendation (2006) 2 on European Prison Rules) provide additional information. Recommendation (89) 12 states that "detainees must have access to education which includes basic instruction, professional formation, cultural activities, physical activity and the possibility to have access to a library."<sup>43</sup> The emphasis was put on basic instruction and on access to education, not its quality. The European Prison Rules are more precise. Indeed, "every prisoner should be provided access to educational programmes considering their abilities, needs and aspirations".<sup>44</sup> Prison administrations are expected to manage their budget wisely to fulfil this mission.

### 2.2.2. Spiritual guidance

Article 9 of the European Convention of Human Rights guaranteeing freedom of religion and belief is heavily based on Article 18 of the Universal Declaration on Human Rights.

Spiritual guidance is outlined in the European Prison Rules. Indeed, "the prison regime shall be organised so far as is practicable to allow prisoners to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs."<sup>45</sup> This is a positive requirement. Prisoners shall not be coerced into receiving chaplain visits<sup>46</sup>. The EPR commentary of this article precises that

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<sup>42</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5

<sup>43</sup> Council of Europe (1990), *Education in prison: Recommendation No. R (89) 12, adopted by the Committee of Ministers of the Council of Europe on 13 October 1989 and explanatory memorandum*, Strasbourg: The Council, p.4

<sup>44</sup> Rule 28-1, Council of Europe: Committee of Ministers, *Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules*, 11 January 2006, Rec (2006)2

<sup>45</sup> Ibid Rule 29-2

<sup>46</sup> Ibid Rule 29-3

"this undue pressure may come from fellow prisoners too"<sup>47</sup>. Thus, legislators are very much aware of the realities of prison life. It is an important addition since prisoners are a captured audience and perhaps more vulnerable to religious coercion. Additionally, the prison administration should keep "the number of approved chaplains proportionate to the number of believers of each religious denomination"<sup>48</sup>. This will have its relevance with regards to the French context.

## 2.3.. European Court of Human Rights

### 2.3.1 Education

The European Court of Human Rights has had to rule on a number of cases regarding prison education. Most of them revolved around the issues of access and availability as visible in its caselaw.<sup>49</sup> Quite understandably, the quality of education programmes is rather difficult to evaluate.

The Court ruled in favour of the claimant in one case: *Velyo Velev v. Bulgaria*<sup>50</sup>. Officials of a Bulgarian prison refused to enrol a prisoner on remand in a pre-existing prison school. That was a violation of Article 2 of Protocol No.1 of the European Convention for the Protection of Human Rights. Prisoners on remand are entitled to the right to education: one does not need to be convicted. The government "had provided neither practical reasons, for example based on lack of resources at the school, nor a clear explanation as to the legal grounds for excluding the applicant."<sup>51</sup>

Comparably, the Court ruled in favour of the Member State on more occasions. There are self-explanatory rulings. For example, if a detainee stops attending prison classes on a voluntary basis (and not because of the staff refusing to enroll him/her or because he/she is being disciplined), there is no breach of Article 2 Protocol No.1.<sup>52</sup>

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<sup>47</sup> Revised Commentary to Recommendation CM/REC (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, (11 January 2018), p. 26

<sup>48</sup> Rule 29

<sup>49</sup> Guide on Article 2 of Protocol No.1 of the European Convention of Human Rights, 2016

<sup>50</sup> *Velev v. Bulgaria*, No. 43531/08, 16 April 2013

<sup>51</sup> *OVEY C.*, Ensuring respect of the rights of prisoners under the European Convention on Human Rights as part of their reintegration process, Registry of the European Court of Human Rights, p.4

<sup>52</sup> See *Koureas and Others v. Greece*. 30030/15, April 2018

But in other cases, it is more difficult to establish whether there was a violation, for example regarding the obligation to organize ad-hoc courses in prison.<sup>53</sup> The Court ruled there was no such obligation even if a significant amount of detainees pushed for it. The inability to pursue university studies was brought before the Court<sup>54</sup>. It was not deemed as a deprivation of the right to education within the scope of Article 2 of Protocol No. 1. A claimant was also unsuccessful when he pleaded for the pursuit of his last year of secondary school.<sup>55</sup> No high school courses were provided at the prison schooling facilities. Yet, since there is no obligation for the State to provide a course on demand, there was no violation. However, as one of the key aspects of education is adaptability, those rulings may appear surprising. The Court might have wished to avoid imposing too many obligations on the State.

Thus, these rulings have mostly proved that the principle of the margin of appreciation is very much in application when it comes to prison education. The fact that prison administrations are generally under duress because of a lack of resources may explain the Court's rulings. On a less optimistic note, there might be another reason. Indeed, this could also prove that the right to education (or lack thereof), even within human rights courts, was considered less important in comparison with other imperatives (such as overcrowding).

### 2.3.2. Spiritual guidance

While cases related to dietary or clothing religious requirements are more frequent, access to spiritual guidance was addressed on multiple occasions, particularly access to church services.<sup>56</sup>

First, a national law guaranteeing the possibility to attend religious services in prison must imperatively exist. Latvia has been condemned in 2006<sup>57</sup> because no law had been introduced yet and a prisoner in pre-trial detention had been denied entry.

The Court implied that the inability to attend church services was a cruel and degrading treatment<sup>58</sup>. However the overall circumstances of the claimant were particularly unlucky: this

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<sup>53</sup> Also discussed in *Velyo Velev v. Bulgaria*, No. 16032/07, 16 April 2013

<sup>54</sup> *Durmaz and Others v. Turkey*, 46506/99, 14 October 2004; *Aslan and Demir v. Turkey*, No. 38940/02, 17 February 2009

<sup>55</sup> *Epistatu v. Romania*, No. 29343/10, 24 September 2013.

<sup>56</sup> Guide on Article 2 of Protocol No1 of the European Convention of Human Rights, 2016

<sup>57</sup> *Igors Dmitrijevs v. Latvia*, No. 61638/00, 30 November 2006



was perhaps an "accumulation of facts"<sup>59</sup> that influenced the Court's judgment, who would have been less inclined to rule on the basis of Article 3 in other circumstances.

Although this was a surprising ruling, the Court rarely takes the side of the detainee. It might be because many cases are "ill-founded". But oftentimes, the arguments of "safety", "public order" and "the rights of others" put forward by State officials<sup>60</sup> appear satisfying. Although each case is different, the line of argumentation of detainees' lawyers offers little counterweight. The burden of proof rests on the claimant's side: his lawyers need to prove the detainee's requests were denied or remained unanswered, that security was not the matter (either with regards to the staff, the other inmates<sup>61</sup> or the prisoner him/herself<sup>62</sup>) and/or prove that the measures were disproportionate. Thus this "inequality of arms"<sup>63</sup> might subsist even within human rights courts.

In any case, when access to church is restricted, access to clergy often serves as a substitute. This side of spiritual guidance seems to bear more weight against security requirements, perhaps because it is harder to justify an imminent threat in the case of individual visits. The inability to receive visits from a priest was ruled as a violation of Article 9.<sup>64</sup> However, the detainee does not get to fix the schedule of the visit, even on important feast days, which was a very controversial ruling.<sup>65</sup> Those discussions do not always have to take place with both protagonists in the cell. If the inmate is considered dangerous, the chaplain can choose to stay outside the cell.<sup>66</sup> However, those discussions must be kept private.<sup>67</sup> "Given the fact that religious practitioners may be feeling a need to discuss intimate aspects of their religious faith, troubles of the conscience, and indeed actually wish to 'confess' to a representative member of their faith, it is hard to see how privacy rights can be severed from religious rights."<sup>68</sup>

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<sup>58</sup> *Gavrilovici v. Moldova*, *Gavrilovici v. Moldova*, No. 25464/05, 15 December 2009

<sup>59</sup> Freedom of Religion or Belief in Prison: A Critical Analysis of the European Court of Human Rights' Jurisprudence, *Oxford Journal of Law and Religion* (2017), Volume 6, Issue 1, 1 February 2017, p.48

<sup>60</sup> *Enea v. Italy*, No. 74912/01, 17 September 2009; *Guzzardi v. Italy*, No. 7367/76, 2 October 1980; *Seredyuk v. Russia*, No. 24984/02, 19 January 2006.

<sup>61</sup> *Antonio Indelicato v. Italy*, No. 34442/97, 6 November 2003

<sup>62</sup> *Childs v. the United Kingdom*, No. 9813/82, 1 March 1981

<sup>63</sup> Freedom of Religion or Belief in Prison: A Critical Analysis of the European Court of Human Rights' Jurisprudence", *Oxford Journal of Law and Religion* (2017), p. 10

<sup>64</sup> *Poltoratskiy v. Ukraine*, No. 38812/97, 29 April 2003

<sup>65</sup> *Florin Andrei v. Romania*, No. 33228/05, 15 April 2014

<sup>66</sup> *M. v the United Kingdom*, No. 25087/06, 24 June 2008

<sup>67</sup> *Mozer v. the Republic of Moldova and Russia*, No. 11138/10, 24 February 2010.

<sup>68</sup> MURDOCH J., Protecting the right to freedom of thought, conscience and religion under the European Convention of Human Rights, Council of Europe Human Rights Handbooks, Strasbourg, 2012

### 3. The French Framework

#### 3.1. Spiritual guidance

The 1905 law guarantees the separation between church and state as well as the free practice of religions. However, there are derogatory procedures regarding public institutions, namely "schools, hospitals, asylums, prisons and military bases"<sup>69</sup>. There, the free practice of religion is directly under the responsibility of the State who is in charge of their management and financing on occasions. Indeed, in those institutions, "people do not have the opportunity to freely practice their religion on account of their isolation".<sup>70</sup> Thus, "every detainee must have the possibility to meet the requirements of his religious, moral and spiritual life in conditions that should adapt to the prison's organisation".<sup>71</sup> According to the Council of State's<sup>72</sup> ruling "Witnesses of Jehovah"<sup>73</sup>, it is legal for the State to finance chaplains since they are part of the public service and as long as the State does not use it as an opportunity to favour one denomination over the other<sup>74</sup>. This is not only legal: it is a positive obligation. The penitentiary administration must be sufficiently organized so as to have a sufficient number of chaplains for each cult. A small number of believers is not an excuse not to appoint chaplains.

The tasks of chaplains are clearly enumerated<sup>75</sup>. They chair official ceremonies, celebrate the cults, move around the prison and visit detainees at their demand, on an individual basis and without surveillance". According to this administrative note, they are also authorized "to move around as they wish, within areas where persons held in custody are accommodated"<sup>76</sup>.

However, their role is described in a restrictive way: "chaplains only perform a spiritual and moral role regarding detainees".<sup>77</sup> Meanwhile, in a report of the Ministry of Justice, spiritual guidance was praised by the Ministry of Justice as one of the key elements in the

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<sup>69</sup> Article 2, Loi du 9 décembre 1905 concernant la séparation des Eglises et de l'Etat

<sup>70</sup> Opinions and Recommendations of the French Contrôleur Général des Lieux de Privation de Liberté, 2008-2014, p. 86

<sup>71</sup> Article R. 57-9-3, Code de Procédure Pénale du 2 mars 1959

<sup>72</sup> The "Conseil d'Etat" is the highest French administrative Court.

<sup>73</sup> Conseil d'Etat, Témoins de Jéhovah, 16 octobre 2013

<sup>74</sup> Article 26, Loi pénitentiaire du 24 novembre 2009

<sup>75</sup> Article R. 57-9-3, Code de Procédure Pénale du 2 mars 1959

<sup>76</sup> Ministère de la Justice, Note du 16 juillet 2014 relative à la pratique du culte en détention

<sup>77</sup> Ibid Article D439-3

"humanisation of the conditions of detention".<sup>78</sup> It is somehow confusing: in practice he is given a lot of liberties within the prison but his role is described in a limitative manner.

Today, 7 chaplaincies are officially recognized by the prison administration regarding the Catholic, Protestant, Muslim, Jewish, Orthodox, Buddhist and Witnesses of Jehovah religions<sup>79</sup>. In August 2017, 1585 chaplains were counted.<sup>80</sup>

French chaplains are recruited by the regional director of penitentiary services, based on the advice of the relevant religious authority and the prefect<sup>81</sup>. French chaplains must be fluent in French. This is the only official condition of recruitment, as stated by the law. The rest is at the discretion of the recruiter.

Some receive a stipend and the rest are volunteers<sup>82</sup>. Indeed, Article 2 makes it possible for the State to finance them, not compulsory. In 2004, they were 324 paid chaplains (only 44 worked full time) and 594 volunteers. In 2015, 453 chaplains were received some sort of stipend while 1170 were unpaid.<sup>83</sup>

### 3.2. Education

Prison education is the joint-responsibility of the Ministry of Justice and the Ministry of Education ever since 2005.<sup>84</sup> They are bound by a convention, updated in 2011.

In the French system, detainees have to exercise an activity one hour per day in prison, whether it be education or work<sup>85</sup>. If the detainee has issues with literacy or numeracy, special attention must be provided<sup>86</sup>. It must be possible to work and study at the same time.

In the "code de l'éducation", education is the "first national priority"<sup>87</sup> and aims at "enhancing the student's personality". This approach seems to be inspired from the Mandela Rules.

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<sup>78</sup> Rapport d'activité du Ministère de la Justice 2004, June 2005, p. 58

<sup>79</sup> Ministère de la Justice, Pratiques et organisation du culte en détention, updated on 14 February 2018

<sup>80</sup> Ibid

<sup>81</sup> Article D 437-1, Code de Procédure Pénale du 2 mars 1959

<sup>82</sup> Ibid Article D. 439-2

<sup>83</sup> Ministère de la Justice, Pratiques et organisation du culte en détention, updated on 14 February 2018

<sup>84</sup> Ministère de la Justice, L'enseignement en prison (online), 2007

<sup>85</sup> Art. 27, Loi pénitentiaire No. 2009-1436 du 24 novembre 2009,

<sup>86</sup> Ibid

<sup>87</sup> Article L. 111-1, Code de l'éducation

Education must also promote republican values and "offer the means tools to thrive in a professional career". Its overall aim is to "fight against social and territorial inequalities", which was also the approach, of the ICESCR (or CRC?)

The penal procedure code repeats prison education is a fundamental right. Primary education is to be taught in every prison<sup>88</sup> and illiterate detainees must take classes while others may do so upon their request<sup>89</sup>. In 2005, there was an important addition with the possibility of sentence reductions if a detainee passes an exam or can give evidence of self-improvement<sup>90</sup>.

To conclude, a few observations can be drawn from this chapter.

The proliferation of human rights instruments at the universal and the regional levels reaffirming the right to education and spiritual guidance in prison might raise the question of the possible fragmentation of these norms. However, the norms are similar on the international, regional and french level and recent recommendations such as the European Prison Rules or the revision of the Mandela Rules only seemed to strengthen this protective framework.

This revision was based on the "best penological practices of the time"<sup>91</sup> and seems to be firmly anchored in reality, with recent additions on coerced religion for instance. This consolidates the authoritative weight of this instrument, although it remains non-binding.

On the negative side, important pieces of information might be missing with regards to access to spiritual guidance. It is not precised how long the visits of chaplains "ought to last minimally", or "what should roughly be the quality of these inmate-clergy conferences"<sup>92</sup>. Minimum requirements could be of importance to ensure a quality guarantee.

Moreover, both rights are seemingly strongly dependent on security requirements. The special environment in which classes and clergy visits take place has a strong influence on the

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<sup>88</sup> Ibid Article D456

<sup>89</sup> Ibid Article D452

<sup>90</sup> Ibid Article 721-1

<sup>91</sup> MURDOCH J., Protecting the right to freedom of thought, conscience and religion under the European Convention of Human Rights, Council of Europe Human Rights Handbooks, Strasbourg, 2012

<sup>92</sup> Opinions and Recommendations of the French Contrôleur Général des Lieux de Privation de Liberté, 2008-2014, p. 86

implementation of those rights. The expression "so far as is practicable" which can regularly be found in those reference texts is very much a reality<sup>93</sup>.

Lastly, legislators not only emphasize social and professional rehabilitation but also the enhancement of the student's personality. It has its importance. Putting the sole emphasis on economic and social reintegration would have been counterproductive. Indeed, prisoners face a number of barriers in their search for employment due to their low levels of educational achievements and their criminal record<sup>94</sup>. Education could improve their prospects in a society very much centered around qualifications and diplomas but it might not be enough to convince employers. Furthermore, it appears rather risky and counterproductive to base the rationale for a human rights on its sole effectiveness. "A human right is not something whose status is dependent on some cost-benefit calculation, but stands secure and independent of any assessment of the consequences or benefits that might attach to the possession of the right itself."<sup>95</sup> Thus, it is important that human rights instruments chose to also emphasize other aims of prison education in order to protect this right in the best possible way.

Thus, the rights to education and spritual guidance in prisons are protected by a wide array of instruments. Their implementation is of utmost importance because they play key roles within the prison environment. This will be explored in the next chapter.

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<sup>93</sup> This will be further explored in chapter IV.

<sup>94</sup> See VISHNER C.A., DEBUS-SHERILL S.A., YANNER J., *Employment After Prison: A Longitudinal Study on Former Prisoners*, Justice Quarterly, Volume 28-2011, Issue 5, Pages 698-718 | Published online: 10 Dec 2010

<sup>95</sup> VORHAUS J., *Prisoner's right to education: a philosophical survey*, London Review of Education, Volume 12, Number 2, July 2014, p. 168

## II The necessity of education and spiritual guidance in the prison context

Depriving detainees of their right to education and spiritual guidance is both unjustifiable and counterproductive.

### 1. Depriving detainees of their rights to education and spiritual guidance: an unjustifiable policy

One could argue prison education is not a human right<sup>96</sup>. Indeed, if prisoners are already deprived of their freedom, why should they retain their right to education? If some rights are absolute (freedom from torture and inhuman punishment) and should be upheld in any setting, it is not necessarily the case for the right to education. It could be limited for those who forfeit their liberty and are not bound to compulsory education anymore. However, the issue is addressed backward. Indeed, nothing justifies that a detainee should be deprived of his right to education. Prisoners' rights are "limited only when this is considered necessary for the prevention of crime, prison security, or to protect the safety of prisoners or others. Any limitations should be proportionate to the aim that the authorities are seeking to achieve"<sup>97</sup>. Similarly, the Council of Europe's Commissioner for Human Rights stated that "measures should be taken to ensure that imprisonment does not undermine rights which are unconnected to the intention of the punishment"<sup>98</sup>. Denying freedom of movement to a detainee serves a specific purpose. The detainee could pose a threat to the safety of his co-citizens if justice is not being served. Yet, the right to education serves no such purpose and public security is not threatened by the multiplication of educated men. As a rule, "a human right is to be forfeited, if at all, only on condition that this is what is required by respect for an overriding moral concern or on the occasion of conduct that merits treatment over and above what is entailed by imprisonment"<sup>99</sup>.

The same reasoning applies to detainees' access to spiritual guidance, although the legitimacy of this right might not be at stake while prison education continues to be discussed.

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<sup>96</sup> Ibid p. 168

<sup>97</sup> Article 2-3 of the European Convention of Human Rights and Fundamental Freedoms

<sup>98</sup> Prisoners should have the right to vote, The Commissioner for Human Rights' Comment, Strasbourg, 31 March 2011

<sup>99</sup> VORHAUS J., Prisoner's right to education: a philosophical survey, London Review of Education, Volume 12, Number 2, July 2014, p. 169

Yet, discussing the legitimacy of such rights is not only looking at the problem backwards: it is also counterproductive.

## **2. Depriving detainees of their rights to education and spiritual guidance: a counterproductive policy**

### 2.1. The adverse effects of a prison without teachers

#### 2.1.1. The failure of the educational system as an underlying factor of social exclusion: the School to Prison Pipeline

Advocates of the retributivist theory of punishment may argue that there is no reason to count on prison education's efficiency. Indeed, detainees already had access to education in countries where education is compulsory until 16. If they did not take advantage of it the first time, there is no reason they will take advantage of it once incarcerated. There is no reason education should become a turning point for them if it has not been important in their life before incarceration.

Nonetheless, this argument is flawed because it does not taken into account the characteristics of detainees. Indeed, "the prison population is characterised by multiple forms of socio-economic disadvantage"<sup>100</sup> and it may have tremendously impacted their relationship to the schooling system and thus their chances of success.

Indeed, statistics show the majority of French<sup>101</sup> detainees were born in low-income families.<sup>102</sup> A significant amount also had great difficulties in school. In France, "1,6% of detainees have never been schooled, 5% do not speak French, 43% left school without a degree, 28% dropped out of school and 76% have not been educated beyond the vocational certification level"<sup>103</sup>. At their admission in French prisons, detainees take a reading test. 22% of inmates fail this test and among them 10% is declared illiterate. Those statistics speak for themselves. They do not only apply to the French context. Indeed, "the latest research on literacy levels among French prisoners indicates that the average literacy level of the prison

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<sup>100</sup> NEWBURN T., Social Disadvantage, Crime and Punishment, LSE Research Online, October 2016

<sup>101</sup> Since France was chosen as the primary example of this study, this argumentation will be based on the statistics of the French Ministry of Justice.

<sup>102</sup> Qui sont les personnes incarcérées, OIP, 29 August 2017

<sup>103</sup> Chiffres clés, Ministère de la Justice, June 2014, p.7

population was much lower than the general population. Similar levels of educational disadvantage have been found among prisoners in other jurisdictions."<sup>104</sup>

Thus, one can presume the existence of a link between low-income parents and the poor educational record of their children. Bourdieu has extensively worked on this correlation in the context of France. He believed that this correlation was not the product of coincidence.

According to Bourdieu, the concept of "formal egalitarianism" at school is a lure. To put it simply, there are key differences between the children of working class families and the children of the upper classes. Low-income families often lack what he defined as "cultural capital"<sup>105</sup>. This cultural capital is decisive. Indeed, children born in low-income families are fatally "unequally prepared by their family culture to assimilate an educational message."<sup>106</sup>

Yet, the educational system dismisses this structural difference between pupils in the name of "formal egalitarianism"<sup>107</sup> and fails to take additional measures to better support children born in families who lack sufficient cultural capital. Thus, the educational system prevents this issue from being corrected. Children grow apart and take different paths. Ultimately, their social background will have been decisive.

This theory was coined in 1970 but remains very relevant in contemporary France. Indeed, the indicators of social climbing demonstrate that it is very complex for children born in working class families to rise above their social condition.<sup>108</sup> Just like their parents, they lack cultural capital and this will determine their resources and level of educational achievements. Thus, "the lack of education is what it means to be impoverished". They are likely to pass this legacy to their own children and so forth: cultural reproduction will influence social reproduction. Bourdieu defines it as "the social reproduction". This is a sad reflection on the educational system which is unable to counterbalance the effects of "social reproduction".

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<sup>104</sup> SALANE F., *Les études en prison: les paradoxes de l'institution carcérale*, Connexions, 2013/1, No.99, p. 45

<sup>105</sup> There are three forms of capital according to Bourdieu: economic capital, cultural capital and social capital (relations).

<sup>106</sup> BOURDIEU, P. (1986), *The Forms of Capital: Handbook of Theory and Research for the Sociology of Capital*, J. G. Richardson, New York, Greenwood Press: 241-58

<sup>107</sup> *Ibid* p.71

<sup>108</sup> POUPEAU F., DISCEPOLO T., *Education et domination*, 2002, p.44



Additionally, one could argue "prison is the logical consequence of social exclusion."<sup>109</sup> Indeed, due to the fact that inmates had poor educational records and left school without a degree, they were seen as a liability to the job market. This claim is confirmed by statistics since the rate of participation of detainees in the workforce before their incarceration is under 50 %<sup>110</sup>. Yet "if you're uneducated and unemployed in this competitive world, your options are severely limited. And crime just looks better and better".<sup>111</sup> Thus, "lawbreaking is not an accident"<sup>112</sup>. The School to Prison Pipeline<sup>113</sup> is a reality.

### 2.1.2. Prison as the school of crime

Once incarcerated, there are not many incentives to turn one's life around without educational programs. More worrisome, according to the French sociologist Michel Foucault, "prison becomes the school of crime. The most efficient methods of the police and judiciary organization only boost the ranks of the criminal underworld."<sup>114</sup> According to this perspective, detainees are not only failed by the educational system but also by the penitentiary institution. Thus, without programs providing alternatives to a life of crime, detainees are more likely to give in to a life of criminality than reject it, more likely to become "bitter toward the world"<sup>115</sup> than believe they have options. If another institution fails them at this stage, there is a ready-made path ahead of them. They have access to all the information they need to become professional criminals. This is the ideal environment to learn more about illegal activities. If no alternative is proposed they might chose the only option there is left, especially if they believe the social ladder is broken. In this regard, silence is tantamount to confirmation. If educational programmes were not implemented, their concerns would be confirmed.

### 2.1.3. An opportunity to break the cycle: the Prison to School Pipeline

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<sup>109</sup> La réalité carcérale, Prison Insider

<sup>110</sup> Chiffres clés, Ministère de la Justice, June 2014, p.7

<sup>111</sup> KUNEN, J. S., Opening Minds Behind Bars, Columbia magazine, p. 22, 2017

<sup>112</sup> Michel Foucault On the Role of Prisons, The New York Times Archives, 5 August 1975

<sup>113</sup> Term used in the United States to describe the disproportionate amount of young incarcerated adults from disadvantaged backgrounds.

<sup>114</sup> FOUCAULT M., *Journal of Law and Psychiatry*, in *Dits et Écrits*, Gallimard, 1978, ed. 2001, p. 457.

<sup>115</sup> CLEAR T.R., STOUT B.D., KELLY L., DAMMER H.R., HARDYMAN P.L., SHAPIRO C. (1992), Does Involvement In Religion Help Prisoners Adjust To Prison?, The National Council on Crime and Delinquency, p. 3

We know incarceration comes at a tipping point in the lives of French detainees. They are very young for an overwhelming majority<sup>116</sup>. Half of them are under 32 and one fourth is under 25. Such programmes have higher chances of success because the characteristics of detainees will be taken into account with small classes, individual attention and a homogeneous class level. Thus prison education can succeed where the standard educational system failed. Furthermore, according to this study, "the prison removes institutional and situational barriers, such as the middle class character of mainstream adult education as well as the time and cost"<sup>117</sup>. Moreover, "life in prisons can be far safer than in the community, and it is likely to be free of alcohol, some drugs, and painful and damaging relationships".<sup>118</sup> Thus, this is an opportune timing to chose education.

Given all those variables (social reproduction, prison as the school of crime) detainees have seemingly missed opportunities because they were not put in the best conditions to succeed. Although education is a human right, it should not be the only reason those programmes should be given utmost importance. Not implementing them resonates like a criminal waste of opportunity on the part of prison authorities "for "most prisoners are able to learn and can be motivated to learn"<sup>119</sup>.

Without this option, the rehabilitative aim of the penitentiary system is doomed to be a failure. Without a Prison to School Pipeline, we condemn the detainees and their society. Thus, "it is worth investing time and energy to establish such a community where all, except for the few who cannot be reached, can thrive".<sup>120</sup>

## 2.2. The adverse effects of a prison without chaplains

### 2.2.1. Intensification of religiosity in prison as a reality

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<sup>116</sup> In 2014, 6,6% of prisoners were between 18 and 21 years old, 16,7% were in their early twenties (21-25), 20,5% between 25 and 30 years old and there were 26% of detainees between 30 and 40 years old. (source: Ministère de la Justice, Chiffres Clés de 2015)

<sup>117</sup> NICHOLS H., An Inquiry Into Adult Male Prisoners' Experiences of Education, University of Hull, 2016, p.88

<sup>118</sup> UNESCO Institute for Education and United Nations Office at Vienna, Basic Education In Prisons, 1995, p.17

<sup>119</sup> Ibid p.90

<sup>120</sup> Ibid p.90

At one extremity, an increasingly large proportion of detainees is not identified with any religion. At the other extremity, religion is a strong marker of identity for prisoners whose perception of the world is largely influenced by religious teaching. Some of those only participate in religious services every week and others yearn for more and absorb themselves in the study of religious texts and seek a continuous form of spiritual guidance. Some of those request the guidance of ministers of faith and others do not wish to be accompanied<sup>121</sup>.

Mass conversions<sup>122</sup> may occur in prison for a variety of reasons. This may result from the special circumstances of the prison environment. First, a number of detainees are psychologically fragile according to studies on mental health in prisons<sup>123</sup>. The deprivation of freedom is harmful on the detainees' mental health. They may wish to occupy their time rather than suffer from boredom and isolation, and find a new sense of purpose until their release<sup>124</sup>. In this study<sup>125</sup>, one detainee out of two claims his/her religiosity merely comes from his or her "need to believe in something" in an environment described as "alienating", preferably something that addresses his or her suffering.

Detainees might turn to religion merely because it is accessible and institutionalized<sup>126</sup> as claimed by the French sociologist Céline Béraud. There could also be other factors. Indeed, there is an overrepresentation of foreigners in French prisons. According to this study<sup>127</sup>, it represents 24% of detainees. For reference purposes, there are 12% in the French population. There is also a large proportion of inmates whose mother and/or father was born in Maghreb where the majority of the population is Muslim.<sup>128</sup> According to the same study, 25,8% of inmates' fathers were born in Maghreb (6,7% in the overall population). This does not preclude that the fathers and the inmates are Muslim but according to the study of Simon Tiberj, a French sociologist, it is likely. Indeed, religion is a strong marker of identity in Muslim-majority countries. According to Tiberj's statistics, 49% of immigrants originally

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<sup>121</sup> BECKFORD J.A., Prisons et religions en Europe, *Archives de sciences sociales des religions*, 153 | janvier-mars 2011

<sup>122</sup> Ibid p.52

<sup>123</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), De la religion en prison, Presses Universitaires de Rennes, p.45

<sup>124</sup> Ibid p.117

<sup>125</sup> BERAUD C., « Irene Becci, Imprisoned Religion. Transformations of Religion during and after Imprisonment in Eastern Germany », *Archives de sciences sociales des religions*, 164 | 2013, 17 February 2014

<sup>126</sup> BECKFORD J.A., Prisons et religions en Europe, *Archives de sciences sociales des religions*, 153 | janvier-mars 2011

<sup>127</sup> Commission Nationale Consultative des Droits de l'Homme, Etude sur les étrangers détenus, 28 November 2004

<sup>128</sup> Ibid p.7

from Maghreb are Muslim in France<sup>129</sup>. If a large proportion of foreigners and children of immigrants are religious themselves and continue practicing their faith in prison it might be part of the group effect. Demographics also play a role. According to the same study, the poor segments of the French society tend to be more religious and a majority of detainees were in precarious situations before their incarceration. The "group effect"<sup>130</sup> induced by forced promiscuity is very important in closed settings. Moreover, overcrowding in short-term prisons implies that fewer detainees will benefit from an individual cell hence even fewer opportunities for detainees to think by themselves. Indeed, "seventy-four percent of the chaplains said that efforts by inmates to proselytize or convert other inmates are either very common (31 percent) or somewhat common (43 percent) in the prisons where they work."<sup>131</sup>

Thus, the adverse effects of the prison environment (psychological vulnerability, need to believe in something that addresses their suffering, forced promiscuity, group effect) and prison demographics can explain mass conversions in prison. Detainees yearning for a sense of purpose may wish to follow their lead and convert, especially if they feel it could make them part of a group, hence the higher trend of religiosity in prison.

Although Islam is surely not the only prison religion, it is regularly put forward as the most appealing to converts based on the high rates of conversion to this religion. According to Farid Khoskorovar, this is due to its "strength as a contestation device". The fact that this religion is negatively portrayed in the news and the reputation it has in the society reinforces its attractiveness<sup>132</sup>. Embracing Islam is an anti-social political stand according to the sociologist Céline Béraud. Since Islam is perceived as the religion of the oppressed and detainees might perceive themselves as such, this exacerbates their "stigma".<sup>133</sup> Furthermore, due to the high amount of believers, Muslim detainees represent a strong community within prison. This is an advantage when a detainee wants to avoid being the target of physical assaults.

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<sup>129</sup> TIBERJ V., SIMON P., *Sécularisation ou regain religieux: la religiosité des immigrés et de leurs descendants*, Institut National d'Etudes Démographiques, No. 196, 2013, p.9

<sup>130</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), *De la religion en prison*, Presses Universitaires de Rennes, p.45

<sup>131</sup> CHALABI M., *Are Prisoners Less Likely To Be Atheists?*, 12 March 2015

<sup>132</sup> Muslims practices have been at the heart of public debates on many accounts in the past few years in France (namely when ostentatious religious signs were banned of public schools in 2005, when the burkini on the beach was discussed (summer 2016) or when prayers in the street were prohibited in 2011). (BERAUD C., GALEMBERT C., ROSTAING C. (2016), *De la religion en prison*, p.49)

<sup>133</sup> BERAUD C., « Irene Becci, Imprisoned Religion. Transformations of Religion during and after Imprisonment in Eastern Germany », *Archives de sciences sociales des religions*, 164 | 2013, 17 February 2014

In any case, prison authorities must adjust to this new reality. If there are more believers in prison there needs to be more chaplains. If chaplains are not present to answer questions, autonomous preachers might take advantage of this situation. Detainees might turn to a group rather than consult ministers of faith. Group behaviors "are ideal for the development of radicalization"<sup>134</sup>.

### **2.2.2 A counter-narrative to prevent distorted views of religious teachings**

Underestimating the importance of access to spiritual guidance may come at great costs. If prison is the school of crime, it might also be the school of radicalization.

According to the French sociologist Farhad Khosrokhavar, it might be particularly relevant with regards to the situation of born-again/self-made Muslims with no "previous Islamic culture" and detainees who suffer from mental illnesses. According to the sociologist, "up to a third of the prison inmates have psychological problems of whom 10% suffer from serious mental illness".<sup>135</sup>

They might become easy targets for preachers of violence using Islam as a justification for violence within and outside the prison environment.

For them, Islam is merely used as an outlet, "a justification to take revenge against those who showed them contempt"<sup>136</sup>. Indeed, young Muslims today might feel discriminated for a number of reasons this study cannot address in details. Yet, the unemployment rates might be part of the explanation: according to the latest statistics<sup>137</sup>, the young descendants of immigrants from the Maghreb region are two times more likely to be unemployed compared to the rest of young French men 10 years after the end of their studies (36% against 16%). This might fuel resentment and trigger self-destructive behaviors. Incarceration will most likely exacerbate this feeling if nothing is being implemented.

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<sup>134</sup> Contrôleur Général des Lieux de Privation de Liberté, Avis du 15 juin 2015 sur la prise en charge de la radicalisation en milieu carcéral

<sup>135</sup> KHOSROKHAVAR F. (2015), *Radicalisation*, Paris, Maison des Sciences de l'Homme, p.20

<sup>136</sup> Ibid p.22

<sup>137</sup> INSEE, *Emploi, chômage, revenus du travail* édition 2017

Due to overcrowding and understaffing<sup>138</sup>, "surveillance is at best sketchy"<sup>139</sup>. Wardens might also feel overwhelmed by the scale of the task. Identifying the signs of radicalization appears complex. Radicalized inmates are told to avoid arboring distinctive signs and covet their opinions in the presence of wardens<sup>140</sup>.

Thus, in the absence of Muslim ministers of faith and if radicalized elements in the prison cannot be identified, preachers become the main interlocutors of new converts when they "complete their rituals but don't understand the meaning to them and why they do it."<sup>141</sup>. Those who know better, the chaplains, are not able to offer a counter-narrative while preachers are easily accessible.

Chaplains can both provide the right answers and prevent the exploitation of religion for dishonest purposes. When there is room for interpretation, they are trained to provide an interpretation compatible with democratic and contemporary values. They can "assist a detainee on his or her spiritual journey, foster a sense of doubt when the detainee is convinced his or her version is the only one valuable, provide alternatives, address the themes of preachers to confront him/her to the real sources "<sup>142</sup> and "provide explanation when a book must be taken away by the prison authorities" to avoid fostering a sense of paranoia<sup>143</sup>. In short, a detainee needs somebody who addresses his/her fears better than preachers.

Thus, "it is by promoting such pluralism - rather than by suppressing religion from the prison regime -that the risk of radicalization of prisoners may be minimized."<sup>144</sup> The absence of chaplains has long-lasting consequences for the detainee and his society. Prison should be used as an opportunity to deconstruct extremist rhetorics. Prison authorities cannot do so without adequate access to spiritual guidance.

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<sup>138</sup> According to F.Khosrokhavar, there is one warden for 100 prisoners. The 2018 finance bill plans a recruitment wave. (source: Khosrokhavar F. (2015), *Radicalisation*, Paris, Maison des Sciences de l'Homme, p.20; *Projet de loi de finances Mission Justice*)

<sup>139</sup> Khosrokhavar F. (2015), *Radicalisation*, Paris, Maison des Sciences de l'Homme, p.20

<sup>140</sup> *Ibid* p.22

<sup>141</sup> HM Chief Inspector of Prisons, *Muslim prisoners' experiences: A thematic review*, June 2010, p.30

<sup>142</sup> *Contrôleur Général des Lieux de Privation de Liberté, Radicalisation islamiste en milieu carcéral: ouverture des unités dédiées*, 2016

<sup>143</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), *De la religion en prison*, Presses Universitaires de Rennes, p.46

<sup>144</sup> SPEARIT, 'Muslim Radicalization in Prison: Responding with Sound Penal Policy or the Sound of Alarm?', *Gonzaga Law Review*, Thurgood Marshall School of Law, Volume 14 No.1, 2014, p.75

Both teachers and chaplains have the means to address the needs of detainees. Teachers can present alternatives to illegal and criminal activities while chaplains are the only ones capable of deconstructing extremist discourses. They serve the detainees and their society as a whole. This problem is pivotal. If prisons do not make a society safer, they have no more justification. Without educational and religious programmes, prisons might no longer be legitimate.

### III. Faith and knowledge as different means to the same ends

There are three areas in which prison education and spiritual guidance might have a positive impact. First, a detainee needs to adjust to prison life. Indeed, freedom is not the only thing of which he/she might be deprived. Second, a detainee needs to come to terms with his/her former life to "break the cycle of crime." The relationship one is likely to develop with educators, wherever one can find them, might facilitate self-forgiveness and restore one's self-esteem. In that regard, both chaplains and teachers can be educators. Third, prison education and spiritual guidance might also help a detainee project into the future, an essential part of one's ability to reintegrate into the society they were detached from throughout their incarceration. It might be difficult to do so without regular contact with the outside world.

Those aspects relate to different time periods, namely what happened before the detainee's incarceration, the time spent behind bars and what will occur once he/she is released. Spiritual guidance and prison education may provide different means to the same ends, if implemented adequately.

#### 1. "Institutional adjustment"<sup>145</sup>: surviving prison life

The former chairperson of the European Prison Association once wrote that "our focus should be on the process by and through which the prisoner navigates his/her way through his/her sentence and beyond rather than a raging debate on the objectives of such programs".<sup>146</sup> This is of utmost relevance in this context. The objectives of prison education and spiritual guidance are often analyzed thoroughly but the process in which detainees survive the prison environment is just as relevant.

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<sup>145</sup> JOHNSON B.R, LARSON D.B, PITTS T.C., Religious Programs, Institutional Adjustment and Recidivism among Former Inmates in Fellowship Programs, published online 18 August 2006, Justice Quarterly, Volume 14-97, Issue 1, p.145

<sup>146</sup> COSTELLOE A., Learning for Liberation, Teaching for Transformation: Can Education in Prison prepare prisoners for an active citizenship?, Irish Journal of Applied Social Studies, 2014, p.30



Spiritual guidance and prison education are "mental health imperatives"<sup>147</sup> in a "total institution"<sup>148</sup>. Making their own choices and abiding by their own rules and discipline changes the prison experience of detainees. Indeed, freedom is not the only thing prisoners lose in the process. Prison education and spiritual guidance help them cope with the loss of things generally considered vital: freedom of movement, freedom of speech, physical integrity and autonomy.

First, detainees lose their freedom of movement. Yet, during educational activities and chaplains' individual visits, detainees are left alone with teachers and chaplains, out of sight of the wardens. Some "forget they are in prison" for a fleeting moment.<sup>149</sup> In that regard, those settings are among the few "interstices of freedom"<sup>150</sup> they have left. Free speech is also encouraged within those settings, while their opinions and impressions may not necessarily be valued outside. Frequently, wardens do not develop close relationships with detainees to avoid undermining their authority.<sup>151</sup> Teachers and chaplains must also keep the appropriate distance but are less constrained by this imperative since they are not in charge of security in the prison. Critical thinking is encouraged in classrooms.<sup>152</sup> Thus teachers privilege debates and discussions during and in between classes. Similarly, chaplains often let the detainees who request their guidance start the conversation to make sure their feelings and opinions are acknowledged first.<sup>153</sup> Since those discussions take place in a trusted environment where they feel at ease (classrooms, cells, prayer rooms), this may make conversation significantly easier.

The feeling of safety is another thing detainees might lose with imprisonment, and might have restored in such settings. With prison comes a possibility of physical assault. Prisons are often unsafe environments, especially at the beginning of one's sentence. At this stage, and perhaps throughout one's stay in prison, it can be challenging to find one's way without feeling threatened. New inmates can be easy targets. They do not belong to any group, which can be an additional protection against physical assault<sup>154</sup>. Thus, participants of educational and

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<sup>147</sup> CLEAR T.R., STOUT B.D., KELLY L., DAMMER H.R., HARDYMAN P.L., SHAPIRO C., Does Involvement In Religion Help Prisoners Adjust To Prison?, The National Council on Crime and Delinquency, 1992, p. 3

<sup>148</sup> This will be explained in the following pages.

<sup>149</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), De la religion en prison, Presses Universitaires de Rennes, p.133

<sup>150</sup> Ibid p.122

<sup>151</sup> Ibid p.145

<sup>152</sup> The two teachers interviewed mentioned it as their main goal.

<sup>153</sup> CLEAR T.R., STOUT B.D., KELLY L., DAMMER H.R., HARDYMAN P.L., SHAPIRO C. (1992), Does Involvement In Religion Help Prisoners Adjust To Prison?, The National Council on Crime and Delinquency, p. 7

<sup>154</sup> NICHOLS H., An Inquiry Into Adult Male Prisoners' Experiences of Education, University of Hull, 2016, p.88

spiritual activities often long for safety. At the beginning of one's stay in prison, pragmatic necessities might encourage some of them to participate in these activities. These activities might be chosen in order to be "protected from carceral violence"<sup>155</sup>. To stay out of trouble also means that one avoids disciplinary sanctions and keeps open the possibility of early release.

Most importantly, detainees are deprived of their sense of autonomy and their ability to make free and informed choices. Their personal preferences do not inform when or what they eat, sleep, leave their cells, or with whom they share their home. They live "by the agenda of their captors. For the adult, who escaped the helplessness of childhood through time, to be thrust back into childhood's helplessness is extremely painful".<sup>156</sup> They adapt to the workings of this total institution, defined by the sociologist Erving Goffman as "a place of work and residence where a great number of similarly situated people, cut off from the wider community for a considerable time, together lead an enclosed, formally administered round of life."<sup>157</sup> Prison corresponds to this place of "forced" residence. Such a place inevitably has destructive outcomes. Their ultimate goal is "effectiveness" even at the expense of the persons that are under their authority. Thus, "inmates fail to retain the kind of executive competency that demonstrate to an individual that he has some control over his world, that he is a person with adult self-determination, autonomy and freedom of action." This is the definition of what Goffman coins as an "enforced identity erasure".

Prisoners have to build mechanisms to maintain their threatened sense of agency and counterweight "institutionalization" or "learned helplessness"<sup>158</sup>. Engaging in educational or religious programs is viewed as an occasion to affirm they still have the capacity to make choices. In this context, any choice is worth taking. This explains the presence of non-believers in religious ceremonies and their requests for chaplains' visits. One chaplain interviewed for this study<sup>159</sup> claimed he visited a few non-believers because they claimed it was the only occasion to speak about themselves. Irene Beraud coined the term "internal

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<sup>155</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), *De la religion en prison*, Presses Universitaires de Rennes, p.133

<sup>156</sup> NICHOLS H., *An Inquiry Into Adult Male Prisoners' Experiences of Education*, University of Hull, 2016, p.88

<sup>157</sup> GOFFMAN E., *Asiles. Etudes sur la condition sociale des malades mentaux et autres reclus*, Paris, Les Editions de Minuit, 1979

<sup>158</sup> United Nations Office on Drugs and Crime (2017), *Roadmap for The Development of Prison-Based Rehabilitation Programmes*, Criminal Justice Handbook Series, p.7

<sup>159</sup> Interview of David Buick

secularisation"<sup>160</sup> of the chaplain's mission to describe this phenomenon. Spiritual guidance might simply be the only form of guidance available in the prison context. Detainees might just need to converse. This coping mechanism evidenced by the statistics on ex-offenders giving up religion once released. Irene Becci writes about it in terms of "imprisoned religion"<sup>161</sup> as well as a "circumstantial religiosity" or "default resource."<sup>162</sup> Indeed, religion is the "most ancient form to produce sense" according to the sociologist Joaquin Algranti.<sup>163</sup> It might also explain the "secondary objectives" of detainees who enroll in classes for reasons unrelated to the traditional objectives of education defined by the institution, merely to pass the time, to "kill time before it kills you"<sup>164</sup>.<sup>165</sup> Education might be just another way to break free from the grip of the total institution. It is a way to break free from the monotony of prison life. "I'm wasting no time, every minute must be filled, by whichever activity. This keeps me going."<sup>166</sup> Any activity is worth undertaking. Thus, it is about recreating "meaningful days." According to Céline Béraud, prison days all look alike and induce a feeling of emptiness.<sup>167</sup> She writes about it in terms of "soft violence"<sup>168</sup> towards detainees. To counter this, "recreating meaningful days"<sup>169</sup> and meaning in general is a necessity.

Detainees might also engage in those activities because they desire to feel part of a whole: "Even when we are four in a cell we are still alone."<sup>170</sup> The sense of belonging to a group "temporarily replaces the deprivation of relationships with family and friends during the period of imprisonment."<sup>171</sup> They might also crave a connection with the outside world, not just other inmates. Those activities can provide this feeling of sameness. Indeed, everybody celebrates Christmas at the same time or fasts during Ramadan periods. It applies to all

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<sup>160</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), *De la religion en prison*, Presses Universitaires de Rennes, p.222

<sup>161</sup>BERAUD C., « Irene Becci, Imprisoned Religion. Transformations of Religion during and after Imprisonment in Eastern Germany », *Archives de sciences sociales des religions*, 164 | 2013, 17 February 2014

<sup>162</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), *De la religion en prison*, Presses Universitaires de Rennes, p.122

<sup>163</sup> Ibid p.125

<sup>164</sup> NICHOLS H., *An Inquiry Into Adult Male Prisoners' Experiences of Education*, University of Hull, 2016, p.95

<sup>165</sup> Colin P., Klinger M., *Vécu carcéral et situation d'illettrisme*, *Déviance et Société*, 2004/Vol. 28

<sup>166</sup> SARG R., LAMINE A.S., *La religion en prison*, *Prisons et Religions en Europe*, *Archives de sciences sociales des religions*, 153 | janvier-mars 2011, 15 June 2011

<sup>167</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), *De la religion en prison*, Presses Universitaires de Rennes, p.123

<sup>168</sup> Ibid p.124

<sup>169</sup> Ibid 133

<sup>170</sup> Ibid p.129

<sup>171</sup> NICHOLS H., *An Inquiry Into Adult Male Prisoners' Experiences of Education*, University of Hull, 2016, p.90

believers, wherever they are, and they celebrate in the same way behind bars or outside. "This synchrony creates a link between inmates and the church community and suggests that the prison population is part of a larger community."<sup>172</sup> Indeed, "chaplains affirm openly that the principal aim of chaplaincy is helping to maintain relationship"<sup>173</sup>. This sense of togetherness is emphasized by the fact that education is aligned in all settings. National exams are passed on the same days inside and outside.

Last but not least, in extreme cases, detainees might lose the will to live. Indeed, upon arrival in prison, a detainee is likely to go through "carceral trauma."<sup>174</sup> This phenomenon tends to occur at the beginning of one's first prison sentence to a greater or lesser extent. At this stage, detainees often complain of stress, anxiety and unrest. It has frequently led to suicides.<sup>175</sup> Chaplains might play an important role in addressing this, as evidenced by detainees' testimonies. One of them recalls that his chaplain gave him/her the "strength to stay alive."<sup>176</sup> Wardens sometimes report certain worrisome behaviors directly to chaplains and not to psychiatrists when they know the person is religious and might be positively influenced by the intervention of a chaplain.<sup>177</sup>

This demonstrates that educational programmes and spiritual guidance "limit the damage done to men and women through imprisonment."<sup>178</sup> They may also go further and play a significant role in desistance from crime.

## 2. Desistance: the importance of a significant other

According to the criminologist Shadd Maruna, "there is no single desistance theory any more than there can be said to be a single theory of crime or poverty."<sup>179</sup> However, "a significant other believing in the offender's identity transformation"<sup>180</sup> might also play an important part in the desistance process. Thus, the role of chaplains and educators takes its full meaning.

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<sup>172</sup> Ibid p.105

<sup>173</sup> Ibid p. 99

<sup>174</sup> Translated from the French expression "choc carcéral".

<sup>175</sup> France was ranked as the 41th place (out of 47 countries) in OCDE rankings listing the countries with the least amount of suicides in prisons. (Council of Europe Annual Penal Statistics 2015 SPACE 1)

<sup>176</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), *De la religion en prison*, Presses Universitaires de Rennes, p.121

<sup>177</sup> Ibid p.30

<sup>178</sup> Council of Europe, Recommendation No R (89) 12, Rule 15, Strasbourg 1990

<sup>179</sup> MARUNA S., LEBEL P. (2008), *The Desistance Paradigm In Correctional Practice*, p. 72

<sup>180</sup> MARUNA, S. (2001), *Making Good: How Ex-Convicts Reform and Rebuild their Lives*, Washington DC, American Psychological Association, p. 114

Educators can become the significant other a detainee needs to accept to break the cycle of crime. Here a chaplain and a teacher will play different roles with regards to self-forgiveness and self-confidence. Without inner peace and the belief in one's potential, the desisting process might be more difficult or unlikely.

## 2.1. Self-forgiveness

Detainees have a complex relationship with guilt. They might feel guilty, to a greater or lesser extent, although not all do. They might have difficulties acknowledging it. Sometimes it might be easier to blame the system that sentenced them rather than focus on themselves and the actions that led to their sentencing. The frustration they feel behind bars may encourage defiance towards the prison institution and the society it represents. This situation is not conducive to self-introspection. In other words, "the prison experience as such only creates feelings of revenge, sadness and anger."<sup>181</sup> It does not offer fertile ground for self-introspection, acknowledgement of one's offenses and finally self-forgiveness.

Nonetheless many detainees do manage to come to terms with their guilt. On one hand, they have enough time to do so. Time may have a healing effect. Indeed, "prisoners are made to ask themselves the great existential questions that most of us only encounter in moments of great stress and turmoil – who am I, where am I going, what's the point of my existence, what's wrong with the way I live, what do I need to change, what's the point of it all?"<sup>182</sup> Those questions do not have easy answers for anyone, let alone for those who committed offenses or crimes. They "demand a level of self-awareness that evades many people in the general population."<sup>183</sup>

Yet time does not have a healing effect on others who retreat into defense mechanisms and dwell in anger and frustration. Other tools might facilitate this complex and demanding journey upon which not all detainees are willing to embark.

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<sup>181</sup> BECCII I. (2016), *Imprisoned Religion*, Routledge, p.132

<sup>182</sup> SARG R., LAMINE A.S., La religion en prison, Prisons et Religions en Europe, *Archives de sciences sociales des religions*, 153 | janvier-mars 2011, 15 June 2011

<sup>183</sup> KIRK D.S., Residential change as a turning point in the life course of crime: desistance or temporary cessation?, *American Society of Criminology*, 2012, Volume 50, Number 2, 2012, p. 333

Spiritual guidance may prove useful since it "enables dealing with feelings of guilt and offers a framework for interpretation."<sup>184</sup> Furthermore, it puts detainees in direct contact with someone who has the potential to become the significant other that might help them desist from crime.

There is an extensive set of literature on the interrelatedness of religion and the desistance process, most often through Christianity and Islam<sup>185</sup>. In a study led with ex-convicts now rehabilitated, half of the detainees interviewed argued Islam had played an important role in their desistance.<sup>186</sup> "Prisoners can turn to religion for relief, atonement and forgiveness,"<sup>187</sup> as illustrated by their testimonies : "Being a Christian, I can go and ask Jesus Christ to forgive me for my sins and to give me the strength to deal with my problems."<sup>188</sup>

Yet this approach has its downsides. To believe forgiveness will be granted if only one were to ask for it ("God will forgive me anyway"<sup>189</sup>) is counterproductive. Using religion to their own ends can allow detainees to avoid guilt altogether. Detainees might substitute the justice of God to the justice of men and become recalcitrant to prison authority.<sup>190</sup> "It facilitates a type of total replacement."<sup>191</sup> The more guilt one feels, the higher may be the temptation to resort to "born-again" religiosity. No desistance process is likely to be triggered in those circumstances. In other words, religion may serve as a therapeutic tool or as a "superficial relief".<sup>192</sup>

Access to spiritual guidance can prevent these behaviors and the exploitation of religion for superficial purposes.

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<sup>184</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), De la religion en prison, p.132

<sup>185</sup> FARALL S., HUNTER B., SHARPE G., CALVERLEY A., 2014, *Criminal careers in transition; The social context of Desistance from crime (summary)*, Clarendon studies in criminology, Oxford University Press, 2014

<sup>186</sup> MOHAMMED M., La sortie de la délinquance par le religieux: quelle dimension empirique?", 2013

<sup>187</sup> PLACER M., *Spiritual Transformation In Prison*, Wake Forest University, 2009, p.22

<sup>188</sup> CLEAR T.R., STOUT B.D., KELLY L., DAMMER H.R., HARDYMAN P.L., SHAPIRO C. (1992), Does Involvement In Religion Help Prisoners Adjust To Prison?, p. 3

<sup>189</sup> SARG R., LAMINE A.S., La religion en prison, Prisons et Religions en Europe, *Archives de sciences sociales des religions*, para 28

<sup>190</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), De la religion en prison, Presses Universitaires de Rennes p.150

<sup>191</sup> MÜLLER R.B., *Prisons Ministry: Narratives of Faith, Healing and Restoration*, University of South Africa, 2005

<sup>192</sup> SARG R., LAMINE A.S., La religion en prison, Prisons et Religions en Europe, *Archives de sciences sociales des religions*, para 28

First, religious teachings may emphasize individual responsibility and the consequences of one's actions. For instance, "Muslims are expected to be witnesses to their message before people. They have to be cautious about the image they reflect and prevent cheating and corruption when they witness it."<sup>193</sup> Some verses devote major attention to redemption, especially with regards to those who have wronged others. "There will be more joy in heaven over one sinner who repents than over ninety-nine righteous persons who need no repentance."<sup>194</sup> Criminal offenders are often disconnected from their victim's suffering because they never "put themselves in their shoes."<sup>195</sup> This is something chaplains might help them acknowledge. This step linked with consciousness and the development of empathy is crucial in the desistance process. "I was not ashamed of my behaviour before I read the Qur'an, things didn't register properly. Now I understand my faith is about caring and giving."<sup>196</sup> Although there is room for interpretation, chaplains might choose to outline the verses which decedibilize violence, e.g. "turn the other cheek". The point of this process is for the detainee to feel that while they may have wronged others, there is room for improvement and transformation. "The guilt must not be paralyzing" anymore.<sup>197</sup> One may despise the sin while differentiating it from the sinner. Spiritual guidance may help believers make sense of their predicament and understand their motives: "I was able to make sense of some things that I do sometimes. Our discussions made me understand the reality I am living in, I am starting to understand the life I've been living."<sup>198</sup>

Chaplains are ideal interlocutors for believers. First, they are trained to speak about these topics and anticipate detainees' ways to deal with their wrongs. "They decide. If he is willing to speak about it I will address this aspect and if not so be it. Oftentimes, there will be allusions. I will speak about whatever. I make sure they understand forgiveness is not a given and is conditioned to guarantees of good behavior. I am often asked about this matter."<sup>199</sup> Second, unlike prison psychologists,<sup>200</sup> their conversations are kept secret, written communications are sealed and the chaplain has no duty to report his conversations with

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<sup>193</sup> Islam's Role in an Ethical Society, The Guardian, 23 Feb 2010

<sup>194</sup> Luke 15:7

<sup>195</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), De la religion en prison, Presses Universitaires de Rennes, p.148

<sup>196</sup> HM Chief Inspectors of Prison, Muslim's Prisoners Experiences: A Thematic Review, June 2010, p. 24

<sup>197</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), De la religion en prison, Presses Universitaires de Rennes, p.147

<sup>198</sup> SARG R., LAMINE A.S., La religion en prison, Prisons et Religions en Europe, *Archives de sciences sociales des religions*, para 26

<sup>199</sup> Ibid para 39

<sup>200</sup> See chapter III for further precisions about how this might have changed in the recent years.

detainees. Plus, their visits are based on free will while, oftentimes, psychological support is part of a sentence prescribed by a judge. Psychologists might also be mistrusted because they can testify against the detainee while chaplains are perceived as harmless "extrainstitutional figures,"<sup>201</sup> although this does not necessarily correspond to reality.<sup>202</sup> On the rare occasions they do testify, they tend to do so on behalf of detainees, not against them. Hence their visit is judgment-free. "They are the only persons who are here to listen and not try us again."<sup>203</sup> Chaplains will usually "ignore the exact nature of the detainees' offenses"<sup>204</sup> on purpose so as to not let their personal feelings and values taint the relationship they develop with detainees.

Religious beliefs have been presented as "inversely related to delinquency, crime and recidivism" in a number of studies, especially American ones. Faith-based prison reform programs are based on this assumption. In one study,<sup>205</sup> one program was put under the sociologist's microscope. Prisoners in such programs were said to be "50 percent less likely to be re-arrested and 60 percent less likely to be re-incarcerated during a two-year follow-up period" in comparison with detainees in standard jails. The same researchers had conducted an empirical study on the impact of spiritual guidance on "recidivism rates in two matched groups of inmates from four adult male prisons" on the East Coast. Some had taken part in religious programs while others did not. The most invested in Bible studies "were significantly less likely to be rearrested during the follow-up period"<sup>206</sup>. The aforementioned findings suggest spiritual guidance is the forgotten factor in reducing criminal activities for prisoners sensible to the rationale it proposes.

Non-vocational education plays a similar role and has the advantage of targeting a wider audience. The restoration of self-esteem, well tried notably by the time spent behind bars, influences the desisting process. The chaplain takes the role of the significant other and may facilitate the desistance process. Believers might prefer talking to him rather than with a psychologist because they perceive it as safer and redemption is frequently addressed by

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<sup>201</sup> SARG R., LAMINE A.S., La religion en prison, Prisons et Religions en Europe, *Archives de sciences sociales des religions*, para 34

<sup>202</sup> This will also be developed in chapter III.

<sup>203</sup> SARG R., LAMINE A.S., La religion en prison, Prisons et Religions en Europe, *Archives de sciences sociales des religions*, para 31

<sup>204</sup> Interview with David Buick

<sup>205</sup> JOHNSON B.R, LARSON D.B, PITTS T.C., Religious Programs, Institutional Adjustment and Recidivism among Former Inmates in Fellowship Programs, pp.145-166, published online 18 August 2006, *Justice Quarterly*, Volume 14-97, Issue 1

<sup>206</sup> US Department of Health and Human Services, Prisoner Reentry, Religion and Research, p. 4



religious texts. Meanwhile, the teacher has the potential to restore a detainee's self-esteem, a key step in desistance from crime.

## 2.2. Self-agency, self-esteem and self-worth

Prison education can have "a key role in identity renegotiation."<sup>207</sup> Indeed, "the benefits of prison education go beyond lowering recidivism rates and increasing post-release employment. It can also rekindle a sense of purpose and confidence"<sup>208</sup>. A strong positive link is established between education and a detainee's "self-esteem, social competence and self-efficacy although the reason for such an outcome is open to interpretation."<sup>209</sup> A number of detainees need it. Indeed, they "have a history of failure in schools (but also other institutions) and a low level of self-esteem."<sup>210</sup>

First, "higher education leads to internal changes that will steer inmates toward greater success"<sup>211</sup> upon their release. Acquiring basic skills and obtaining diplomas can only be an asset and detainees are repeatedly made aware of it to keep them focused and inspired.<sup>212</sup> This confidence boost comes from the knowledge that they will be better equipped tomorrow thanks to today's efforts. This is reinforced by the advantage of concrete and visible results. Detainees are made aware there is a progression with grades, certificates and diplomas.

Most importantly, the restoration of a sense of agency is made possible with the pursuit of educational activities. Prison as a total institution also has adverse effects in this area, perhaps the most damaging. "The inmate develops a sense of personal inefficacy"<sup>213</sup> that leads him/her to believe he could not survive outside of the institution responsible for the very loss of his sense of agency. In this aspect, it shares similarities with the Stockholm syndrome. Thus, the sociologist Goodstein feels that inmates could "confront the ambiguities of freedom better if they were provided with alternatives to conforming to the dehumanizing prison environment."<sup>214</sup>

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<sup>207</sup> NICHOLS H., *An Inquiry Into Adult Male Prisoners' Experiences of Education*, University of Hull, 2016, p.123

<sup>208</sup> The Power of Pell Grants for Prisoners, Dr Clint Smith, 29 June 2016

<sup>209</sup> PARKER E.A., *The Social Psychological Impact of a College Education On The Prison Inmate*, *Journal of Correctional Education*, Volume 41, Issue 3, September 1990

<sup>210</sup> UNESCO Institut for Education and United Nations Office at Vienna, *Basic Education In Prisons*, 1995, p.19

<sup>211</sup> *Ibid* p.140

<sup>212</sup> Interview with Thierry Gracia, teacher of French as a Foreign Language (FLE) in a prison.

<sup>213</sup> PARKER E.A., *The Social Psychological Impact of a College Education On The Prison Inmate*, *Journal of Correctional Education*, Volume 41, Issue 3, September 1990

<sup>214</sup> *Ibid* p.3

This activity might prove necessary since "crime is linked with low self-esteem, limited skills and few conventional opportunities."<sup>215</sup> The more options there are, the better will be his or her reintegration prospects. The fact that he or she broke free from a cycle of crime will boost his or her confidence too and make it sustainable beyond the prison walls.

There is also the confidence gain that comes from the sense of belonging to a community. Education is a positive marker of identity. There is no known stigma attached with an enrollment into such programmes.

The learning environment may count for a lot. Albert Bandura, an American psychologist, argues that confidence growth depends on three sources of information: "past performances, comparison with others' performance and the learning environment".<sup>216</sup> Although mediocre performances in the traditional educational system can be discouraging, detainees are in a more homogeneous classroom in prison education programs. The gap between each other's performance may not be as wide as in other settings. This demonstrates the importance of a safe learning environment. If the student feels encouraged to try and persevere regardless of his mistakes, he might feel recognized in his potential and not afraid of to fail. From this perspective, trial and error should remain a source of learning. Some detainees perceive prison education as better than traditional settings because of the special attention they receive.<sup>217</sup>

Last but not least, detainees can earn the respect of their loved ones through this newfound activity. In their testimonies, the fact that they can be part of their children's education or earn the respect of their parents is a source of boasting.<sup>218</sup> It has added benefits. Indeed, the children of college graduates are more likely to graduate themselves, disrupting the pattern of poverty and incarceration.

Thus, both activities have the potential to facilitate one's desistance from crime. They "give you an opportunity to evaluate not only whether you did wrong but more importantly how to do what is right."<sup>219</sup>, as will be observed in following sub-chapter.

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<sup>215</sup> SCHEFF T.J, Crime, Violence, and Self-Esteem: Review and Proposals, p. 166

<sup>216</sup> BANDURA. A., Autoefficacité, *Le sentiment d'efficacité personnelle*, De Boeck, 2002.

<sup>217</sup> The Prison Reform Trust, Time To Learn, p.41

<sup>218</sup> MILLY B., La prison, école de quoi?, *Pouvoirs*, 2010/4, No. 135, p. 135

<sup>219</sup> NICHOLS H., An Inquiry Into Adult Male Prisoners' Experiences of Education, University of Hull, 2016, p.71

### 3. Reintegration: unlocking the door to new thinking

After a long time spent behind bars, detainees tend to lose contact with the outside world. The language employed by detainees is often revelatory: after a few years of incarceration, some detainees replace the word "rehabilitation" with "resurrection."<sup>220</sup> This impression is reinforced by the constant state of uncertainty that characterises the life of detainees. Indeed, they are unaware of the exact amount of time they will spend behind bars due to early release opportunities or the impact of disciplinary sanctions. Yet, however long it takes, education and spiritual guidance might help keep the prospect of release an attainable and desirable reality.

#### 3.1. Education

Education creates a link between the outside world and the prison.

First, when detainees consciously prepare their release and try to obtain certificates and diplomas, they consciously project themselves into the future. Prison becomes an opportunity, not a deadlock. The idea of having better chances for sustaining employment paints the future in a positive way and gives them strength to survive prison life. One would think of this first when thinking about the concrete benefits of prison education.

There are other more subtle benefits. The American sociologist Walter R. Gove,<sup>221</sup> links the probabilities of successful rehabilitation with the development of the following qualities: "a shift from self-absorption to concern for others and increasing acceptance of societal values." Those qualities are encouraged with prison education. Indeed, it is by giving prisoners a stake in our society that they will "feel a sense of obligation to mutual rights, dignity and respect. They will not if we do not afford that to them."<sup>222</sup> Thus, detainees are encouraged to develop interest and concern for the world around them and keep themselves informed because it will have concrete outcomes tomorrow. Indeed, "the right to learn is inclusive of the right to question and analyse, imagine and create, read about one's own world, to write history and to develop individual and collective skills".<sup>223</sup> Consequently, upon learning about history,

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<sup>220</sup> Marchetti A.M., *Perpétuités*, Paris, Plon, Collection Terres Humaines, 2001, p.439

<sup>221</sup> 1985 Walter R.Gove

<sup>222</sup> This statement is attributed to Kate Green (former Labour parliamentary at the House of Commons) who would have pronounced those words during a debate on prisoners' right to vote at the House of Commons in 2011 (source: VORHAUS J., Prisoner's right to education: a philosophical survey, *London Review of Education*, Volume 12, Number 2, July 2014, p. 171)

<sup>223</sup> NICHOLS H., *An Inquiry Into Adult Male Prisoners' Experiences of Education*, University of Hull, 2016, p.94

literature, political science, sociology, philosophy and law, one might better integrate the concept of citizenship and understand "through critical reflection the frame of reference in which one thinks, feels, and acts, becoming aware of its genesis in one's individual history and/or culture."<sup>224</sup> "To learn is to understand" and most importantly to learn is to care. One needs to have a better understanding of one's society to want to be part of its improvement. Education might give them another perspective on the society they took part in before prison. If knowledge is power, they might have the chance to become powerful actors of tomorrow's society. This "ability to make good sense of the world" will allow them to "operate better in it".<sup>225</sup> Thus the impact on prison education on the detainee's life tomorrow is unquantifiable.

### 3.2. Spiritual guidance

Chaplaincy appears as the other main institution where "the idea of rehabilitation becomes a tangible reality."<sup>226</sup>

#### 3.2.1. Confronting obstacles without resorting to violence

Detainees often need to find new ways to adjust to problems, when resorting to violence has become an instinct. Spiritual guidance seems to be helpful in that regard, according to their testimonies: "He may be angry but he controls his anger. He may start to say something with a bad tongue, but he will catch it"<sup>227</sup>." For instance, there have been for over twenty years a number of anger management seminaries organized in American prisons to teach detainees new ways to come to terms with violent urges.<sup>228</sup> Ministers of faith played a significant role for those sensible to religious arguments. Indeed, in the Islamic tradition, "a strong man is not a man who puts his adversary to the ground. A strong man is someone who controls his anger."<sup>229</sup> In the same tradition, the "nass" is the inner demon one must conquer to live free<sup>230</sup>. Symbolically, detainees confess their "nass" used to be their anger urges. Self-control makes

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<sup>224</sup> BEHAN C., Learning to Escape: Prison Education, Rehabilitation and the Potential for Transformation, Centre for Criminological Research, University of Sheffield, England, Behan / Journal of Prison Education and Reentry 1(1), p.6

<sup>225</sup> UNESCO Institute for Education and United Nations Office at Vienna, Basic Education In Prisons, 1995, pp. 88

<sup>226</sup> BECCI I. (2016), Imprisoned Religion, Routledge, p. 114

<sup>227</sup> SARG R., LAMINE A.S., La religion en prison, Prisons et Religions en Europe, *Archives de sciences sociales des religions*, para 28

<sup>228</sup> *Using Religion To Reform Criminals*, Gustav Niehbur, *The New York Times*, 18 Jan 1998

<sup>229</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), De la religion en prison, p.16

<sup>230</sup> Ibid p. 143

them feel "stronger."<sup>231</sup> Violence is delegitimized as a way to solve one's problems. Detainees "may be less likely to demonstrate overt masculinity in the form of violence and excessively dominant behaviour".<sup>232</sup>

### 3.2.2. Spaces of privileged sociability

Furthermore, participation in religious activities may foster pro-social attitudes. Those are "spaces of privileged sociability."<sup>233</sup> Believers are marked as "brothers." When believers are looking for sources of warmth and a feeling of togetherness, they might turn more easily towards this community. Religious services on Sundays and Friday collective prayers play a bonding role. Those ceremonies are long-awaited, especially in overcrowded French remand prisons where there are few opportunities to leave one's cell. Detainees describe it as "an opportunity to meet detainees from other floors."

This is crucial for for sexual offenders.<sup>234 235</sup> They are heavily stigmatized within carceral institutions by other detainees. It is often complicated for them to join classrooms or prison labour on a daily basis. Religious ceremonies and individual visits from ministers of faith might be their only respite and opportunity to bond with other people without being stigmatized. Thus the intervention of chaplains is crucial for such detainees who may have turned to religion because of social deprivation. In this context, chaplains take the role of "a brother in faith or merely a friend."<sup>236</sup> It should be noted that it might be easier for chaplains to act as such figures since they enjoy special relations with detainees while teachers are responsible for whole classes.

In any case, institutionalization will have severe consequences on detainees who do not evolve in "spaces of privileged sociability" and will impact their reintegration into society. "At the very least, prison is painful, and incarcerated persons often suffer long-term consequences from having been subjected to pain, deprivation, and extremely atypical patterns and norms of living and interacting with others."<sup>237</sup> On the contrary, detainees taking

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<sup>231</sup> Ibid 144

<sup>232</sup> NICHOLS H., *An Inquiry Into Adult Male Prisoners' Experiences of Education*, University of Hull, 2016, p.95

<sup>233</sup> Ibid p.250

<sup>234</sup> SARG R., LAMINE A.S., *La religion en prison, Prisons et Religions en Europe*, *Archives de sciences sociales des religions*, para 40

<sup>235</sup> It has negative effects too: some detainees admit avoiding religious ceremonies because of their sole presence. (ibid)

<sup>236</sup> BERAUD C., GALEMBERT C., ROSTAING C. (2016), *De la religion en prison*, p.51

<sup>237</sup> HANEY C., *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*, University of California, p.79

part in such activities will retain pro-social attitudes that will be an asset once they are released.

### 3.3.3. An alternative normative reference

Detainees make links between what they read in religious texts and their own life experience: "You start reading the texts and you see that it's true. If you do not do that, you go to prison!"<sup>238</sup> Non-believers may also approach ethics through the religious prism: "I went to church when I was in prison. Even if you do not believe, everything that is said can prove useful. It doesn't matter who pronounced or imagined those words. I just know it's about charity, it's about humanity."<sup>239</sup> Thus, religion, "through its moral and ethical commitment, the values it upholds, its critical approach and its cultural expression"<sup>240</sup> can serve the same purpose as ethics classes. The Council of Europe has outlined this contribution: "if we leave aside extremist and fanatical excesses, religion may make an extremely important ethical and moral contribution to democracy. Religions have contributed many ideas to democratic thinking and standards, as well as human values relating to solidarity, human dignity and the behaviour of the individual in society."<sup>241</sup> Plus, by promoting values such as charity, forgiveness, tolerance and redemption, religions "demonstrate their universal concern for the good as a whole."<sup>242</sup> In some cases, "the voice of religion may even buttress the most reasonable arguments on offer concerning human rights and dignity."<sup>243</sup> In this study, the author cites the struggles of "moral paragons" such as Gandhi and Martin Luther King to illustrate the power of leadership based on religious ideals to raise attention for universal causes.

Similarly, though on a smaller scale, chaplains can make a difference in combating prejudice, through their role as informal educators and their influence on believers.

Further, if "religious ideals are important to religious people"<sup>244</sup> and if those ideals can serve the overall goals of democracies, competent chaplains should be hired to promote an enlightened framework of interpretation to those more responsive to their arguments. It might

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<sup>238</sup> Ibid p. 32

<sup>239</sup> Ibid p. 43

<sup>240</sup> Council of Europe, Report on Religion and Democracy, 27 November 1988, Article 5

<sup>241</sup> Ibid

<sup>242</sup> BECCI I., *Imprisoned Religion*, Routledge, p. 114

<sup>243</sup> DE RUYTER D.J, MERRY M., Why Education in Public Schools Include Religious Ideals, *Studies in Philosophy and Education*, July 2009, Volume 28, Issue 4

<sup>244</sup> Ibid

merely be a matter of efficiency for the prison administration. Indeed, "if one knows what personal myths seem most appealing to desisting persons, one can better direct the narrative reconstruction implicit in the rehabilitative efforts"<sup>245</sup>. Thus, "the accommodation of fundamental religious freedoms can greatly contribute to ultimately achieving the very objectives pursued by this institution."<sup>246</sup>

Although teachers and chaplains should not be placed on the same level, for one targets a restricted audience and requires a strict adherence to its message, there is no "destructive antagonism"<sup>247</sup> between the two. Both share common values and most importantly common goals. They have the potential to facilitate institutional adjustment, desistance from crime and reintegration prospects, if only they are enabled to do so. This last point in particular will be examined in the last chapter of this study

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<sup>245</sup> MARUNA, S. (2001), *Making Good: How Ex-Convicts Reform and Rebuild their Lives*, Washington DC, American Psychological Association, p. 114

<sup>246</sup> BOOTHBY L., 'Protecting Freedom of Religion or Belief in Restricted or Institutional Settings', in Tore Lindholm et al. (eds.) *Facilitating Freedom of Religion or Belief: A Deskbook* (Leiden: Martinus Nijhoff Publishers, 2004), 407–423, p. 408

<sup>247</sup> Both "facilitate transformation" according to BERAUD C., GALEMBERT C., ROSTAING C. (2016), *De la religion en prison*, p.245

## IV. RIGHTS OR PRIVILEGES: CASE STUDY

In this chapter, the state of non-vocational education and access to spiritual guidance will be assessed one at a time. Their implementation is made problematic in a number of ways in France and their potential, demonstrated earlier, may be insufficiently tapped.

### 1. NON-VOCATIONAL EDUCATION

As previously cited, the four basic standards of General Comment 13 drafted by the UN Committee on Economic, Social, and Cultural are availability, accessibility, acceptability and adaptability. These criteria will serve as a basis to evaluate the state of prison education in France. Certain obstacles negatively impact the accessibility and quality of prison education. They are not necessarily first-degree violations of human rights, but their existence has a significant impact on the right to education in prisons.

First, access to education will be assessed (it encompasses the standards of availability and accessibility). At a later stage the quality of such programmes will be evaluated with a reasoning based on the standards of acceptability and adaptability.

#### 1.1. Issues with access to classes

There are issues with the standards of availability and accessibility.

##### 1.1.1. Availability

Education must be made available. In short, it must take place in adequate settings, classrooms should be fully equipped with teaching and educational material and there must be a sufficient amount of competent teachers employed in educational facilities.

Teachers in prisons, apart from having passed the exam to become a teacher in the first and secondary degree of education (meant for students aged 3 to 18), are also trained for three additional weeks prior to their first day of school in a prison<sup>248</sup>. There was also no mention of a lack of classrooms in prisons.

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<sup>248</sup> This awareness training deals with the characteristics of detainees and presents fitting pedagogies for this specific audience.



Yet, the existence of waiting lists and the lack of educational material in classrooms and in detainees' cells limit the availability of prison education.

### Waiting lists

The combination of overcrowding, the high number of short-term contracts amongst prison teachers and the strict quotas per classroom render the existence of waiting lists inevitable.

First, French prisons are overcrowded. According to the latest statistics (January 2018), the median density for all structures was 117%.<sup>249</sup>

Second, there are less and less persons willing to become elementary and secondary schools teachers<sup>250</sup> and not enough information<sup>251</sup> for those who might be fearful to work in prisons. As a rule, most prison teachers work there on part-time contracts, a few hours per week<sup>252</sup>. They have very little time to spend in prisons because they are usually in high demand and they would much rather work in middle schools or high schools. Although they might appreciate their role in prisons and understand their importance, they simply do not have to abide by restrictive security measures in standard schools.

Although only a small portion of detainees choose prison education as their obligatory activity, waiting lists are still highly common<sup>253</sup>. The demand is still too high for the current supply of teachers.

In the French overseas territories, this situation is aggravated by the precarious economic situation. In a remand prison in Majicavo there is "no productive workshop within the

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<sup>249</sup> Contrôleur Général des Lieux de Privation de Liberté, Les droits fondamentaux à l'épreuve de la surpopulation carcérale, Thematic Report, February 2018, p. 5

<sup>250</sup> The competitive exam to become a primary school teacher is organized on a departmental basis. Like every year, the shortage of candidates mainly concerns the departments of Versailles and Créteil located in the surroundings of Paris (in the so-called "banlieues"). In Créteil and Versailles, respectively 350 and 300 posts will remain vacant. In the secondary degree, the competitive exam is the same for all candidates only those with the least "points" will usually be affected in the parisian region. The deficit of candidates mainly concerns the teaching of mathematics and French, two very important topics in prison education. (Premier et second degré: la crise ne s'arrange pas, Le Café Pédagogique, 18 May 2018)

<sup>251</sup> The indemnity is around 175 euros per month. (Ministry of Justice)

<sup>252</sup> Ministère de la Justice, L'Enseignement en Prison, 2016

<sup>253</sup> Contrôleur Général des Lieux de Privation de Liberté (CGLPL), Les droits fondamentaux à l'épreuve de la surpopulation carcérale, Thematic Report, February 2018, p. 5

establishment and very little professional activity available to inmates".<sup>254</sup> Because of inflation, rising security issues<sup>255</sup>, and lack of incentives, French teachers may be less and less prone to expatriation in Mayotte, let alone working in its prisons.

Thirdly, the fixed quota of prison classrooms might have an additional impact. Although this is only a tentative rule, the interviewees mentioned a limit of 13 students per classroom<sup>256</sup>. They were not able to justify this quota but thought it might be a matter of security.

Thus, waiting lists might impede detainees from choosing this activity, especially in short-term structures where there is little time to serve and sports looked less demanding in the first place. In addition, short-term prisons are overcrowded. The median density is 139%, and these prisons host 27% of the prison population<sup>257</sup>. This situation "has an impact on the access to quality educational programmes" in those facilities.<sup>258</sup> This particular topic was mentioned as a concern in all interviews. Although they were not teaching in short-term prisons, all interviewees were well aware of this challenge.

#### The lack of access to teaching and educational material

There seems to exist an implicit agreement, a "moral contract"<sup>259</sup> between wardens and detainees pursuing educational activities where the latter benefit from favors from a few wardens (more minutes for family visits, less searching) if they accept to behave and show complete obedience. Stocking books were said to be part of this system as illustrated in this study's interview: "If you can't get a hold of yourself in here, you'll have no books ! Those are the rules, better get used to it".<sup>260</sup> Detainees are made aware of that quite soon after imprisonment and integrate it, for lack of other choice. If they do not abide by it, the wardens in question have the means to make their lives more difficult through humiliation, solitary

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<sup>254</sup> Contrôleur Général des Lieux de Privation de Liberté, Recommendations of the remand prison in Majicavo, in Opinions and Recommendations 2008-2014

<sup>255</sup> 84% of Mayotte's population lives under the poverty line. In March, a general strike to protest against insecurity lasted one month. (*Extirper Mayotte de son voisin comorien et africain*, Le Monde, 20 March 2018)

<sup>256</sup> Interviews with Thierry GRACIA and Younes RACHIDI

<sup>257</sup> Contrôleur Général des Lieux de Privation de Liberté (CGLPL), Rapport Annuel, 2015, p. 5

<sup>258</sup> Ibid p.5

<sup>259</sup> MILLY B., L'enseignement en prison: du poids des contraintes pénitentiaires à l'éclatement des logiques professionnelles, *Déviance et Société*, Vol. 28, No 1, 2004, p.62

<sup>260</sup> SALANE F., Les études en prison: les paradoxes de l'institution carcérale, *Connexions*, 2013/1, No.99, 2013, p. 50

confinement, or even sudden transfers in extreme cases.<sup>261</sup> This is the consequence of a "moral contract" in which detainees must participate.

Although one can understand to some extent why it is necessary for wardens to find ways to enhance cooperation with the detainees to maintain harmony in such an unstable and dangerous environment, one cannot fathom why books would be part of this organization. As stated earlier, access to educational material is a human right<sup>262</sup>, not a privilege. The withdrawal of educational material as a punitive measure is hard to justify.

Furthermore, it appears that dictionaries are strictly forbidden within prisons. Because of their hard cover, they could serve as weapons.<sup>263</sup> They can be authorized on special circumstances (when the detainee has to pass an exam in French for instance) after a formal request, which means a certain amount of waiting time is expected until authorization is granted. If it is, this "privilege" can be easily revoked and the book confiscated.

The existence of this "moral contract", apart from violating Rule 5 of the Mandela Rules,<sup>264</sup> has far-reaching consequences by impacting the access of detainees to classrooms altogether.

### 1.1.2. Accessibility

Education must be accessible. There should be no financial, administrative or legal barriers and it should be fully inclusive<sup>265</sup>.

The main obstacles to accessibility are as follows: administrative barriers to prison education due to the "moral contract" prevent access to proper literature; the competition of prison labour and non-vocational training limits the number of individuals who can obtain an education; the difficult access to university studies as a result of financial and administrative barriers discourages the pursuit of higher studies; the lack of advocacy on the merits of prison

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<sup>261</sup> Ibid p.45

<sup>262</sup> UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*: note by the Secretariat, 29 September 2015, A/C.3/70/L.3, Rule 64

<sup>263</sup> Interview Thierry Garcia

<sup>264</sup> "The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings"<sup>264</sup>.

<sup>265</sup> TOMASEVSKI K., Human Rights Obligations: Make Education Accessible, Available, Adaptable and Acceptable, Human Rights Primers No.3, 18 January 2001, p.14

education and detainees' hostile perceptions on education undermine prison education's appeal.

### Administrative barriers

#### A lack of advocacy

Prison education, unlike prison labour, has never been obligatory in French prisons<sup>266</sup>. The French prison administration seems to be of the opinion that "compulsory education in prison may fail to have a significant rehabilitative effect if prisoners resent being forced to attend or if any motivation to learn is thereby undermined."<sup>267</sup> The prison administration is only legally required to provide opportunities. Encouraging higher levels of participation and advocating for prison education benefits is not explicitly recommended in legal benchmarks.<sup>268</sup> Usually, the prison administration informs detainees of this opportunity<sup>269</sup> and automatically enrolls those who failed the literacy tests. There is no further initiative. A no at this stage might be a permanent no. Consequently, non-vocational education is not the most popular activity in corrective institutions. In France, less than a quarter of prisoners participate to prison education<sup>270</sup>. It is partly due to the competition of remunerated activities but perhaps not only.

Indeed some detainees might be potentially interested although they might need to be slightly convinced. One may wonder if they are exposed to convincing arguments, whether the administration stops at this stage. There may therefore be a damaging lack of advocacy for prison education.

Inmates might have a negative relationship with the educational system because of their lack of educational achievements<sup>271</sup>. This hostility might be maintained in prisons, even when it is one of the rare activities offered and the only way to exit one's cell. Interviews<sup>272</sup> and studies have shown that prison inmates have felt that education is regarded as a likely cause of further failure. It is not that they are unaware of their problems, but that in fact, they are too aware<sup>273</sup>.

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<sup>266</sup> Prison labour was compulsory in France until 1987.

<sup>267</sup> VORHAUS J. (2014), Prisoner's Right to Education: A Philosophical Survey, Centre for Education in the Criminal Justice System, Institute of Education, London Review of Education, Volume 12, Number 2, pp. 1-13

<sup>268</sup> Ibid p.167

<sup>269</sup> MILLY B., L'enseignement en prison: du poids des contraintes pénitentiaires à l'éclatement des logiques professionnelles, *Déviance et Société*, Vol. 28, No 1, 2004, p.62

<sup>270</sup> Ministère de la Justice, *L'Enseignement en Prison*

<sup>271</sup> See chapter II 1.

<sup>272</sup> Interviews with Thierry Gracia and Younes Rachidi

<sup>273</sup> UNESCO Institut for Education and United Nations Office at Vienna, *Basic Education In Prisons*, 1995, p.63

They are extremely embarrassed at the thought of revealing their inadequacies to a total stranger and, in any case, would probably see the schemes running in the community as some kind of extension of school and have no desire to repeat the experience." This may also result in "a lack of confidence in the value of education".<sup>274</sup> Linked to this is the fact that they could be disillusioned with social mobility. This is understandable in a country where, although education is compulsory until 16 and free, social upward mobility has become the exception rather than the norm<sup>275</sup>.

The prison administration's task should be to convince recalcitrant students to give a chance to educational programmes through numerous meaningful orientation sessions, not only at the beginning of their stay in prison. "In some States, mechanisms exist for prisoners who participate in education to receive some form of remuneration, or other benefits"<sup>276</sup>. The Ministry of Justice is well aware of this need as it appears in the recommendation of some of its reports.<sup>277</sup> However, if waiting lists continue to increase as they have been, there is no interest for the administration to intensify its efforts.

#### A precarious status

The "moral contract"<sup>278</sup> previously mentioned earlier might have further implications. According to Bruno Milly<sup>279</sup>, adult education, especially in prisons, appears "like a second chance at best or more likely as a privilege." Thus, according to this perspective, most of the French penal population, composed of 99% adult prisoners according to the latest statistics, is not entitled to this right but has access to educational opportunities solely as a privilege awarded by the prison administration.<sup>280</sup> Following this reasoning, the right to education only concerns minors under 16 for whom education is compulsory. Past the age of 16, it becomes a privilege for which adult students must prove their "merit"<sup>281</sup> and education becomes a

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<sup>274</sup> NICHOLS H., *An Inquiry Into Adult Male Prisoners' Experiences of Education*, University of Hull, 2016, pp. 157

<sup>275</sup> *Nés sous la même étoile?*, France Stratégies

<sup>276</sup> United Nations Office on Drug and Crime, *Roadmap for The Development of Prison-Based Rehabilitation Programmes*, Criminal Justice Handbook Series, 2017, p.29

<sup>277</sup> Ministère de la Justice, *L'Enseignement en Prison*

<sup>278</sup> MILLY B., *L'enseignement en prison: du poids des contraintes pénitentiaires à l'éclatement des logiques professionnelles*, *Déviance et Société*, Vol. 28, No 1, 2004, p.63

<sup>279</sup> *Ibid* p.61

<sup>280</sup> MILLY B., *L'enseignement en prison: du poids des contraintes pénitentiaires à l'éclatement des logiques professionnelles*, *Déviance et Société*, Vol. 28, No 1, 2004, p.62

<sup>281</sup> *Ibid* p.61

"transaction". This representation "is particularly prominent in prison".<sup>282</sup>

In practice, this means that detainees can lose this privilege if they work too little, miss classes or receive unrelated disciplinary faults (which can be very minor things unrelated to prison education such as dirty cells or unauthorized games).<sup>283</sup> The prison administration decides if they deserve prison education, not teachers, who might decide to report unjustified behavior or not. The penitentiary acts as "a disciplinary supplement"<sup>284</sup> compared to the judiciary. Here, rehabilitative tools are directly impacted by the first cornerstone of prison – punishment – which takes priority to constructive rehabilitation. There is a visible hierarchy.

### Financial barriers

#### Distance learning

The first financial barrier is a consequence of the administrative barriers formerly presented. The students who have been banned from prison classes must resort to distance learning, if they wish to continue their studies<sup>285</sup>. Symbolically, the prison administration disregards its responsibility by relying on other actors. Most importantly, the CNED, the main provider of distance learning classes in France, does not provide free teachings for inmates, despite its status as a public entity.

This also automatically concerns detainees wishing to pursue university studies (1,6% of them<sup>286</sup>). They have no possibility whatsoever to be in direct contact with university teachers. In France, another Ministry is in charge of university studies: the Ministry of Higher Education, who is not part of the established partnership between the Ministry of Justice and the Ministry of Education. Consequently, detainees willing to pursue university studies will resort to distance learning. Distance learning requires the payment of tuition fees. However, detainees are not eligible to governmental scholarships on social criteria due to their criminal record.<sup>287</sup> Thus, some detainees will use funds acquired through illicit activities to finance their university studies. Some will use funds obtained through illegal activities.<sup>288</sup> Others will

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<sup>282</sup> Ibid

<sup>283</sup> Ibid p.64

<sup>284</sup> FOUCAULT M. (1975), *Surveiller et Punir*, Editions Gallimard, p. 248

<sup>285</sup> MILLY B., *L'enseignement en prison: du poids des contraintes pénitentiaires à l'éclatement des logiques professionnelles, Déviance et Société*, Vol. 28, No 1, 2004, p.65

<sup>286</sup> Ministère de la Justice, *Bilan annuel de l'enseignement en milieu pénitentiaire*

<sup>287</sup> SALANE F., *Les études en prison: les paradoxes de l'institution carcérale*, *Connexions*, 2013/1, No.99, p. 45

<sup>288</sup> Ibid p.45

try to contract a bank loan, which could also be difficult with a criminal record. Thus, the prison administration asks detainees to prove their willingness to reintegrate into society as improved versions of themselves, but does not give them the financial means to do so. There are a number of scholarships available, but few initiatives of this sort.<sup>289</sup> This goes directly against the principle of accessibility, which implies the absence of financial barriers. Furthermore, detainees who choose to pursue university studies have difficulties establishing and maintaining links with their universities of choice. The classes are sent via mail and it takes time to send assignments and receive feedback. Since the studies are usually highly demanding, such as law and political science undergraduate degrees, it is quite difficult to keep up with the intense pace and memorize so much in so little time. A significant proportion of detainees might lose patience and give up quite rapidly due to administrative hurdles<sup>290</sup>. In addition, taking into account the fact that 60% of French students fail their first year of university studies<sup>291</sup> in better conditions, detainees pursuing university studies have even less chances to obtain a Bachelor's or Master's degree.

#### The competition of remunerated activities

Furthermore, there is competition of prison labour. The question of opportunity costs arises. The European Prison Rules state that "education shall have no less a status than work within the prison regime and prisoners shall not be disadvantaged financially or otherwise by taking part in education."<sup>292</sup> Yet, today, in French prisons, this is not the case. Although prison administrators are required to provide an individual schedule for each prisoner (for him/her to work and study as well as leaving time for sports, cultural activities or family visits), it is difficult for them to do so in practice. Although prison labour has not been obligatory in French prisons since 1987<sup>293</sup> and despite the fact that incarcerated individuals are not eligible to receive labour protection in this environment<sup>294</sup>, many detainees will prefer working. The money they receive, however small<sup>295</sup>, can help make a difference for them<sup>296</sup>, for their

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<sup>289</sup> Etudes en Prison: un chantier en friche, Agence Erasmus, p.19

<sup>290</sup> NICHOLS H., An Inquiry Into Adult Male Prisoners' Experiences of Education, University of Hull, 2016, p.71

<sup>291</sup> One third of students fail their first year of university studies, L'Etudiant, 2015

<sup>292</sup> Council of Europe: Committee of Ministers, *Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules*, 11 January 2006, Rule 28

<sup>293</sup> Ligue des droits de l'Homme, Travail et formation des détenus,

<sup>294</sup> There are double standards applied here: while detainees have no contract or protection against unfair employment termination, no possibility of sick leave, no labor union or right to strike, they are still required to pay their social contribution. (ibid)

<sup>295</sup> In this case, detainees receive between 178 and 489 euros pr month. (ibid)

<sup>296</sup> Detainees can rent a television for 200 euros a month. (ibid)

families outside, or for their victims when financial reparations are requested by the judge. As a result, only a small proportion of inmates will choose to devote their time to studying for free. It is an easy choice to make, especially when short-term thinking prevails; were economically disadvantaged and had difficulties making ends meet at some point in their life, survival skills required them to think short-term) or when education is not deemed important. Rule 105.4 of the European Prison Rules proposes a solution to the issue of competition programmes: "When sentenced prisoners take part in education or other programmes during working hours as part of their planned regime they shall be remunerated as if they had been working."<sup>297</sup> However, that would mean remunerating scholar- detainees, an idea that could prove unpopular in public opinion.

There is another kind of "competition", namely non-vocational training.<sup>298</sup> First, this activity is also compensated. In addition, it has a practical dimension that is less visible in non-vocational education. Detainees are trained for low-skilled jobs. Their tasks are often repetitive and related to manual work. Vocational training has a specific purpose: employability. Detainees will prefer vocational education, if given a chance between the two, because of its immediate practicability, its remuneration and because most French detainees receive short sentences. Vocational training teaches skills that can be immediately put into practice. The thought of being released and finding a job they have already been training for in prison is reassuring and will encourage incarcerated individuals to choose this option, if they remain unaware of the long term benefits of non-vocational education.

### The lack of inclusiveness

Teachers are divided in France over whether prison education should be selective or open to all<sup>299</sup>. The advocates of selectivity very much believe in the sanctity of exams and diplomas. They believe that, while inclusiveness is a noble concept, there is a gap between theory and practice. Thus, prison education should target detainees who are already well aware of the merits of education and will most likely study regularly to achieve the higher results. Following this perspective, the potential and merit of detainees are pre-requisites. They

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<sup>297</sup> Council of Europe: Committee of Ministers, *Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules*, 11 January 2006, Rule 105-4

<sup>298</sup> It concerns 13% of working detainees and 4,5% of the carceral population.<sup>298</sup> (Ligue des droits de l'Homme, Travail et formation des détenus)

<sup>299</sup> MILLY B., *L'enseignement en prison: du poids des contraintes pénitentiaires à l'éclatement des logiques professionnelles*, *Déviance et Société*, Vol. 28, No 1, 2004, p.70



consider themselves as teachers, not as educators. The advocates of inclusiveness would more likely focus on bringing students to the classroom, despite their internalized prejudice and hostility. Exams are not perceived as necessary and they disapprove of the fact that too many detainees are solely interested in obtaining certificates. This debate on inclusiveness is linked to the debate on prison pedagogies, which is also divisive amongst prison teachers. The market-driven pedagogy fits the "umbrella of employability"<sup>300</sup>. Teachers focus on combating illiteracy and providing pragmatic basic skills that will facilitate the detainees' entry into the workforce. After all this is the message that is being delivered by reference texts with the compulsory requirement of basic education. Another type of pedagogy focuses on the process, the inner transformation facilitated by the learning experience and the development of critical thinking.

The advocates of selectivity may play into the prison administration strategy: motivated detainees have better chances at passing exams and this might be interesting for the prison's image. This goes against the principle of inclusiveness but brings better results. However, precious moments between the teachers and the detainees will be lost. Indeed, selective teachers would much rather teach the whole programme rather than encourage critical thinking and develop meaningful relationships with their audience.

Thus, there is a gap between the legitimization of prison education in public discourse and reality, at least in terms of access to prison education.

Is this only an issue of accessibility or also a matter of accessibility and adaptability? Is the situation improving for enrolled students?

## **1.2. Lack of quality**

In this part, we will analyze quality education through the acceptability and adaptability criteria.

### **2.1.1. Acceptability**

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<sup>300</sup> NICHOLS H., *An Inquiry Into Adult Male Prisoners' Experiences of Education*, University of Hull, 2016, p.159

Education must be acceptable and meet strict quality standards, "relevant to the student's context, needs and evolving capacities"<sup>301</sup>. Based on this quality standard, it appears that some efforts ought to be made in French prisons on the acknowledgement of the student's context, needs and evolving capacities.

### The student's context

"There is a complex dynamic not just in meeting the needs of the learner group, but also creating a learning environment in a coercive environment."<sup>302</sup>

There are inherent constraints for which the prison administration is not responsible, but should acknowledge to provide alternative methods to create an adequate learning environment in a place that was not primarily thought as one. First, this is a noisy environment. One has to adapt to the sounds of detainees talking loudly to bother wardens, cooking (if this is permitted), fighting each other at times, the sound of televisions and radios during the day, the calls to prayers... Those are the sounds of a prison environment. They are quite difficult to escape and bothersome for everybody, especially students-detainees. Yet, an essential part of prison education is linked with "the possibility of inmates' continuing their reading, learning and creative activities outside the education centre, library, workshop or other specialist areas."<sup>303</sup> Going to the library is a solution, but libraries follow a rather restrictive schedule and are only open during the day.

Most of the time, a detainee is to stay in his cell. In long-term jails, detainees can benefit from individual cells but in short-term structures, due to overcrowding, detainees can share the space with up to 4 other inmates.<sup>304</sup> Students-detainees sometimes try to obtain highly sought-after individual cells, or at the very least share their cell with other students-detainees, but this is highly dependent on the will of the prison administration.

Additionally, there is a big turnover caused by prison life that inevitably impacts the quality

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<sup>301</sup> Stated in Rule 28-1, Council of Europe: Committee of Ministers, *Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules*, 11 January 2006, Rec (2006) 2

<sup>302</sup> BEHAN C., Learning To Escape: Prison Education, Rehabilitation and the Potential for Transformation, Centre for Criminological Research, University of Sheffield, England, *Journal of Prison Education & Reentry*, Vol. 1 No. 1, October 2014, p. 13

<sup>303</sup> UNESCO Institut for Education and United Nations Office at Vienna, *Basic Education In Prisons*, 1995, pp. 90

<sup>304</sup> France is repeatedly condemned by the European Court of Human Rights on the basis of Article 3 ("degrading treatment").

of prison education. Detainees "frequently have to miss classes because of family visits, counseling sessions with their lawyer, trials, medical visits, or isolation".<sup>305</sup> On occasions, wardens are not available to accompany a detainee to the classroom and ultimately bring him/her late. According to this study, wardens often perceive prison education as an "occupation rather than an investment, especially if they are themselves low-skilled".<sup>306</sup> The "moral contract" previously mentioned impacts the quality of education with something as simple as the amount of time prisoners spend in the classroom. In some cases, detainees are transferred to a new prison altogether and have to start their education process again. Teachers are only made aware of transfers a posteriori and their opposing perspectives seem to bear little weight.<sup>307</sup>

### The student's needs

Nearly a third of French detainees pass the CFG (Certificat de Formation Générale)<sup>308</sup>, whose target audience is young students with specific needs and adults who left school prematurely. This is not a professional diploma. It is a substitute to the Junior Certificate, the first national exam which occurs at the end of middle school. The CFG plays an important role, not on its own, but as a gateway to further studies, generally the CAP (Certificat d'Aptitudes Professionnelles) or BEP (Brevet d'Etudes Professionnelles) which are professionalizing formations for jobs that require less training. 11% of detainees follow these formations.<sup>309</sup> Due to the high amount of detainees who received short sentences, many of them leave the prison education system with only the CFG. Many of them will not pursue further studies due to a lack of time or resources,<sup>310</sup> and this diploma, while of course not detrimental to their future, will have counted for little on its own.

Furthermore, of those who have the opportunity to enter professionalizing trainings during their time in prison, only half of them succeed<sup>311</sup>, compared to 74% outside.<sup>312</sup>

Thus, many enroll in prison education but cannot put their new skills to use because the CFG

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<sup>305</sup> Prof en prison, une forte motivation pour apprendre, L'e-mag de l'éducation, 13 July 2016

<sup>306</sup> SALANE F., Les études en prison: les paradoxes de l'institution carcérale, Connexions, 2013/1, No.99, p. 45

<sup>307</sup> MILLY B. (2004), L'enseignement en prison: du poids des contraintes pénitentiaires à l'éclatement des logiques professionnelles, Déviance et Société, Vol. 28, No 1, p.62

<sup>308</sup> Ministère de la Justice, Bilan annuel de l'enseignement en milieu pénitentiaire, p.22

<sup>309</sup> Ibid p.22

<sup>310</sup> MILLY B. (2004), L'enseignement en prison: du poids des contraintes pénitentiaires à l'éclatement des logiques professionnelles, Déviance et Société, Vol. 28, No 1, p.50

<sup>311</sup> Ministère de la Justice, Bilan annuel de l'enseignement en milieu pénitentiaire, p.22

<sup>312</sup> Ministère de l'Education Nationale, La réussite au CAP et au BEP en fonction du sexe et de l'âge

counts for little on its own and there are high rates of failure for highly demanded professionalizing formations (60% are enrolled in basic education and 29.4% of them pursue CAP-BEP studies).

### The student's evolving capacities

According to the Ministry of Justice's latest yearly report on prison education, there is at best 6 hours of schooling per week for literate detainees<sup>313</sup>. This corresponds to the minimum amount of teaching hours cited in decrees. First, one can wonder how much one can learn in 6 hours per week. It is very much debatable. However, detainees may need this time to engage with other prison activities, as recommended. Yet, those willing to engage further with the material should have the opportunity to follow more classes and benefit from as many hours of education as illiterate detainees. They follow 15 hours of schooling a week as part of their compulsory studies<sup>314</sup>. Such models should be encouraged since education should adapt to the motivation of every learner. It is possible in standard schools, but not an option in prisons. Thus, there is a dichotomy between standard students and detainees who do not receive the same treatment.

Last but not least, there is the challenge of adaptability of education.

#### **2.1.2. Adaptability**

Education must adapt to the student and be "flexible enough to respond to changing societies and the need of students within diverse social and cultural settings".<sup>315</sup>

Prison systems are not adaptable to changing societies. This results from strict security measures. First, there is limited or no access to the Internet for detainees.<sup>316</sup> Detainees are not only physically separated from the free community but also left behind by becoming outdated in technological lifestyle and cultural advances".<sup>317</sup>

It also applies to teachers who can only enter the prison premises with a USB stick and cannot bring their personal laptop or hard drive. It impacts distance learning as detainees cannot access forums to communicate with their university teachers and colleagues. Due to a lack of

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<sup>313</sup> Ministère de la Justice, Bilan annuel de l'enseignement en milieu pénitentiaire, p.13

<sup>314</sup> Ibid

<sup>315</sup> The Right to Education, ESCR.Net, available from: <https://www.escr-net.org/rights/education>

<sup>316</sup> Ministère de la Justice, Suivi des recommandations du CGLPL pour l'année 2014, p. 265

<sup>317</sup> NICHOLS H., An Inquiry Into Adult Male Prisoners' Experiences of Education, University of Hull, 2016, p.68

alternative options, they rely solely on books and their own memory. Thus, it can be difficult at times to engage with the material. Additionally, they will not grow accustomed to online platforms, which is a tool that could serve them once released when looking for relevant information.

Security measures can also slow original and inspiring initiatives. A prison teacher had the idea to create a platform that would feature poems from all of his classes, taught in prison facilities and in a standard middle school. In the end, detainees could not join the project on a permanent basis because every poem had to be checked numerous times by the prison administration and also on a regional level. The whole process lasted 5 months and some poems were refused without explanation. The blog had to be authorized by 6 different people because it featured detainees' pieces.<sup>318</sup> This complex approval process may have discouraged further initiatives. Inmates may have also considered many of those rules as disproportionate or unjustified. Formal requests can be perceived as humiliating. Detainees will spare themselves by avoiding this kind of situation.

Last but not least, another challenge ought to be discussed for its very negative impact on prison education as a whole. Indeed, a negative public discourse affects the overall quality of education, as well as its access. Voters are very much divided when it comes to prisoners' rights. "The idea that tax dollars would provide a free college education for inmates struck many as unfair"<sup>319</sup>. The sentiment that offenders deserve little from the society they have wronged persists. One easily forgets that the consequences "of what does or does not happen to those who experience detention will also be felt by the community to which the majority of prisoners are released."<sup>320</sup> Rates of recidivism may also play a role; there is an assumption that prison education has done little to rehabilitate detainees. Prisoners' rights are not widely discussed in the media<sup>321</sup> and the lack of debate has not provided counter-narratives to voters.

The media plays an important role. Whenever prisons are mentioned, the focus is on prison radicalization or unrepresentative violent events, such as mutinies.<sup>322</sup> In their quality of watchdogs of democracy, the media ought to shed a light on obstacles impending the

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<sup>318</sup> Liberté pédagogique en milieu carcéral: un paradoxe?, Monique Royer. The blog can be found on: <https://www.weblettres.net/blogs/index.php?w=Ecrireetlire>

<sup>319</sup> College For Criminals, Bill Keller, The New York Times, 9 April 2014

<sup>320</sup> Prisoner's Right to Education, Special Rapporteur Vernon Munoz, OHCHR, 28 July 2009

<sup>321</sup> <sup>321</sup> See DECARPES P., Topologie d'une prison médiatique, Champ Pénal, Volume 1:2014

<sup>322</sup> Ibid

prisoners' right of education to make sure international conventions and treaties are being respected. Instead, oftentimes, they adapt to a growing conservative audience, broadcasting prison violence, which is only one of the multiple realities of prison.<sup>323</sup>

This growing public conservativeness might affect legislators, who reflect public fears in penal policy. It has happened before in other countries. It was particularly obvious in the United States with the "tough on crime" mandate. Prison education programs were largely dismantled "when Congress stripped inmates of the right to get the federal Pell grants that were used to pay tuition"<sup>324</sup> with the support of President Bill Clinton, in enforcement of the Violent Crime Control and Law Enforcement Act. The New York Times found that "the decision bankrupted many prison education programs across the country and left private donors and foundations to foot the bill for those that survived."<sup>325</sup> Thus, the US failed on its obligation to provide prison education and put "ideology ahead of the public interest".<sup>326</sup>

There is a division between "those who see this increased punitiveness being driven from below by an anxious and angry general public and those who see it as a top-down process in which ambitious and manipulative politicians play on public fears and anxieties to get tough on crime and increase electoral support".<sup>327</sup> In any case this trend has had far-lasting consequences that would necessarily apply to the French context, especially since prison education is free (except for distance learning programmes). However, there are more subtle ways to please conservative voters and underfunding prison education programmes is one of them. If less money is allocated to prison education, structures become more and more derelict and teachers are unwilling to work in such environments on a permanent basis. This affects the state of the infrastructure dedicated to educational activities and the recruitment of full-time teachers, both aspects that are problematic today in French prisons<sup>328</sup>.

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<sup>323</sup> Ibid

<sup>324</sup> Let Prisoners Learn While They Serve, The New York Times, 16 August 2017

<sup>325</sup> Ibid

<sup>326</sup> Ibid

<sup>327</sup> NICHOLS H., An Inquiry Into Adult Male Prisoners' Experiences of Education, University of Hull, 2016, p.41

<sup>328</sup> This will be examined thereafter.

This policy is visible in France today: prison education programmes have become "an utilitarian add-on should resources allow it."<sup>329</sup> This policy is co-funded by the Ministry of Justice and the Ministry of Education since 1995<sup>330</sup>. Up until recently, the Ministry of Justice was chronically underfunded and looked over in finance bills voted by the National Assembly and the Senate. This changed in 2018 under President Macron's government, with a raise of "6,9% over the period 2018-2020" to the benefit of the Ministry of Justice.<sup>331</sup> Yet, it will be used to fund the construction of more prisons and the recruiting of wardens and probation officers<sup>332</sup>. Although the latter are priorities, prison education is not cited in this report. The Ministry of Education is historically better resourced<sup>333</sup>, but does not seem to consider prison education as a priority either, judging from the lack of reference to prison education in this report.<sup>334</sup> However, in the world of the previous Special Rapporteur on Education Vernon Muñoz, "as education is uniquely and pre-eminently concerned with learning, fulfilling potential and development, education in detention should be a fundamental concern, not simply a utilitarian add-on should resources allow it"<sup>335</sup>. Yet, it seems that in France, education opportunities are highly dependent on prison management.

Ultimately, these obstacles undermine the importance of prison education as a fundamental human right. "In the penitentiary system, where any human right to education must take its place alongside competing duties and rights, the scope for variable interpretation and implementation is significant". This theory is confirmed, at least with regards to France. Prison administrators must remember that prison education is an economic and social right, as well as an inherently positive right they are responsible for implementing. If this policy fails, they will ultimately be pointed as the guilty ones. Furthermore, we can observe a majority of detainees are enrolled in basic education (57% of students-detainees in 2015). Only one fourth were enrolled at the second degree level and 1% of detainees were able to pursue university degrees. In total, only 22% of detainees are enrolled in prison education<sup>336</sup>.

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<sup>329</sup> The budget for prison education in 2015 was 1 154 372 euros. The 2015 yearly budget of the Ministry of Justice was slightly over E 7,94 billion. (Ministry of Justice, Bilan annuel de l'enseignement en milieu pénitentiaire, Chiffres Clés 2015)

<sup>330</sup> Ministère de la Justice, Synthèse de l'Enseignement en Prison, 2007

<sup>331</sup> Assemblée Nationale, Projet de loi de finances pour 2018: Mission Justice, 14 November 2017, p.5

<sup>332</sup> Ibid p.5

<sup>333</sup> Year after year, it is the best endowed Ministry in France. In 2018, the overall budget for the Ministry of Education was 50,6 billion euros. (Projet de loi de finances 2018: Mission Education)

<sup>334</sup> Ibid

<sup>335</sup> VORHAUS J. (2014), Prisoner's Right to Education: A Philosophical Survey, Centre for Education in the Criminal Justice System, Institute of Education, London Review of Education, Volume 12, Number 2, p.170

<sup>336</sup> Ministère de la Justice, Bilan annuel de l'enseignement en milieu pénitentiaire, 2015

Prison education might be perceived as a much more important tool for rehabilitation and yet there are shortcomings with regards to each of those four key principles. One can wonder if spiritual guidance can be guaranteed in those conditions.

## 2. SPIRITUAL GUIDANCE

Although their mission has taken "increased importance" throughout the years<sup>337</sup>, Muslim chaplains may not have the means to accomplish their mission. In addition, they may not always feel backed by the administration or trusted by the detainees. This has an impact on the quality of spiritual guidance as a whole.

### 2.1. An increasingly difficult task for chaplains

Are Muslim chaplains in capacity to accomplish their mission? The shortage of volunteers, the lack of status and of formal training and their relationship with the administration might have a negative impact, as elaborated below.

#### 2.1.1. A problematic lack of formation

Muslim chaplains are not specifically trained to carry out their obligations. This has been brought to light as a concern since it might impact the quality of their mission. In her study on Swiss prisons, Mallory Schneuwly Purdie writes about her surprise when she realized Muslim chaplains refuse to be called "chaplain" or "prison imam" because they felt this necessarily implied a level of theological expertise they felt that they lacked.<sup>338</sup> French Muslim chaplains are also self-educated. This is a learning-by-doing process, occasionally mentored by other chaplains well settled in prison chaplaincies and from other confessions.<sup>339</sup>

This is in stark contrast with the long formation of Christian chaplains in theology faculties, youth organizations and seminaries.<sup>340</sup> In 2014, the prefect of Paris introduced a formation

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<sup>337</sup> There are increasingly more administrative notes on the matter since 1990. There have only been 13 notes on this topic between 1945 and 1990 and 33 in comparison between 1990 and 2010, especially between 2005 and 2010. (BERAUD C., DE GALEMBERT C., ROSTAING C., *De la religion en prison*, Presses Universitaires de Rennes, p.57)

<sup>338</sup> SCHNEUWLY Purdie M., VUILLE J., 2010, *Égalitaire ou discriminatoire? Regards croisés sur l'exercice de la liberté religieuse dans les prisons suisses*, *Revue internationale de criminologie et de police technique et scientifique*, p.4

<sup>339</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., *De la religion en prison*, Presses Universitaires de Rennes, p.215

<sup>340</sup> *Ibid* p.234



meant at Muslim chaplains with "2 hours of classes per week for two years, at the Paris mosque for volunteers based in the region Île de France"<sup>341</sup> although this formation is private. There was another initiative of this kind in the faculty of theology in Strasbourg.<sup>342</sup> However, they remain rather isolated.

Muslim prison chaplains must often travel to countries in the MENA region such as Morocco or Saudi Arabia to benefit from paid trainings. Loueslati's new recruits all shared this particularity. Sometimes, they also come from such countries since one does not have to be French to take part in this profession. According to M. Loueslati, countries such as Morocco, Egypt or Saudi Arabia are not well accustomed to the concept of secularism and might be unaware of French Republican values<sup>343</sup>. It is only logical since the formations are initially organized for their imams. However, upon their return to France, Muslim chaplains formed in foreign universities tend to not be entirely independent. They might respond to foreign countries' political agendas, as M. Loueslati seems to suggest. Oftentimes, it is because they are paid from foreign States to compensate their modest indemnization in France if they are counted among the rare beneficiaries. Their monthly salary might amount to 3000 euros. But there might be something they must do in exchange. They might have to respond to political agendas that are not in accordance with the French secularist perspective.<sup>344</sup>

To make sure those chaplains are formed according to the rules of the French public service, the authorities ought to make sure adequate formations are made available in order to train "competent and well educated"<sup>345</sup> chaplains mindful of the values of the environment they work in. They are "collaborators of the public service" for a reason. Other religions have organized themselves but the lack of clergy poses problem in this specific case. There was an attempt to create a clergy for French Muslims when the Conseil Français du Culte Musulman (CFCM) was founded. Its authority was not accepted by the majority of the community because of numerous accusations of corruption.<sup>346</sup> Since then, new initiatives have been slowed down and the lack of formation remains problematic.

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<sup>341</sup> Ibid p.81

<sup>342</sup> In the department of Alsace-Moselle, the principle of secularism is derogatory, as stated in the 1905 law.

<sup>343</sup> LOUESLATI M., *L'Islam en Prison*, Bayard Culture, 26 March 2015, p.119

<sup>344</sup> Ibid p.86

<sup>345</sup> Ibid p.18

<sup>346</sup> Ibid p.102

### 2.1.2. The shortage of Muslim chaplains and its implications on Muslim detainees

The exact number of Muslim inmates remains unclear as ethnic and religious statistics are prohibited in France. There are approximations on which researchers appear very much divided. While Islam is believed to be the "second most widespread religion" in France<sup>347</sup>, it has been oftentimes presented as the "first carceral religion". Imams such as M. Loueslati, sociologists such as F. Khosrokhavar<sup>348</sup> and the National Preventive Mechanism through Jean Marie Delarue<sup>349</sup>, the former head of this mechanism have confirmed this possibility. They believe between 30 to 40% of detainees might identify as Muslims (for reference purposes, 20% would identify as Christians<sup>350</sup>). Yet, they provide little empirical evidence. M. Loueslati and F. Khosrokhavar's reasoning is based on the amount of detainees whose father or mother comes from countries where the majority of the population is Muslim (approximately 50% of French detainees while they scarcely represent 8% of the French population)<sup>351</sup>. This argumentation appears flawed since this characteristic alone does not prove they are Muslims. In 2012, the National Prevention Mechanism and the prison administration based relied on the amount of inmates who fast during Ramadan periods. Yet, there are other reasons one might abide to a specific diet that are not explained by their belief.

In any case, the amount of ministers of faith must be proportional to the number of believers who might request their guidance to ensure every chaplain has the means and time on his hands to develop deep relationships with those inmates and have a positive influence. Yet despite what had been announced as significant efforts on the matter, there seems to be a shortage of Muslim chaplains in French prisons, as suggested by the government policies on the matter.

In 2012, there were 900 Christian chaplains and 150 Muslim chaplains. This number was deemed insufficient by the National Prevention Mechanism.<sup>352</sup> The same year, terrorist attacks in Toulouse were perpetrated by a former inmate who had been radicalized in prison. Consequently, the government announced the creation of 30 new posts in the next two years.

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<sup>347</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., *De la religion en prison*, Presses Universitaires de Rennes, p.53

<sup>348</sup> Khosrokhavar F. (2015), *Radicalisation*, Paris, Maison des Sciences de l'Homme, p.20, 191p.

<sup>349</sup> Contrôleur Général des Lieux de Privation de Liberté, Avis du 24 février 2011 relatif à l'exercice du culte dans les lieux de privation de liberté

<sup>350</sup> Ibid

<sup>351</sup> LOUESLATI M., *L'Islam en Prison*, Bayard Culture, 26 March 2015, p.24

<sup>352</sup> Contrôleur Général des Lieux de Privation de Liberté, Avis du 24 février 2011 relatif à l'exercice du culte dans les lieux de privation de liberté

Early 2015, soon after another wave of terrorist attacks in Paris, 30 additional Muslim chaplains were recruited<sup>353</sup> although 60 had been initially announced.<sup>354</sup>

As a result, today, in the Fresnes prison known as one of the largest prisons in France, one Muslim chaplain is requested to divide his time between 2200 inmates "of whom 60% are reportedly Muslim" according to the National Preventive Mechanism.<sup>355</sup> M. Loueslati argues those measures did not sufficiently compensate the lack of Muslim chaplains who divide their time between "67 000 Muslim inmates".<sup>356</sup> Today, there are 1312 chaplains of whom 186 work for the Muslim community.

Those numbers are approximative and provide little empirical evidence with regards to the exact amount of Muslim detainees in French prisons (and among those only a proportion will request spiritual guidance). Yet, the multiplication of testimonies of Muslim chaplains in the recent years and the report of the National Prevention Mechanism give credit to those claims.

The authorities argue they are not under any obligation to assume responsibility for the fact that it has become increasingly difficult to find volunteers on account of the lack of suitable candidates. If the competent religious authorities fail to propose new candidates, the administration cannot act as a substitute. This article is at the crux of the administration's argumentation whenever this issue is discussed.<sup>357</sup> Yet, the authorities responsible for custodial establishments must also "be able to meet the requirements of the religious, moral or spiritual life"<sup>358</sup> of the persons for whom it is responsible. They are caught in a deadlock.

Consequently, prison authorities can be accused of failing to uphold this principle and implicitly discriminating against Muslim detainees, even if unwittingly<sup>359</sup>. This undermines the religious neutrality of the State.<sup>360</sup>

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<sup>353</sup> LOUESLATI M., *L'Islam en Prison*, Bayard Culture, 26 March 2015, p.115

<sup>354</sup> *Ibid* p.118

<sup>355</sup> Contrôleur Générale des Lieux de privation de liberté, Avis du 30 juin 2015 sur la prise en charge de la radicalisation islamique en milieu carcéral, <http://www.cglpl.fr/wp-content/uploads/2015/06/Journal-officiel-de-la-République-française-N°-149-du-30-juin-2015.pdf>

<sup>356</sup> LOUESLATI M., *L'Islam en Prison*, Bayard Culture, 26 March 2015, p.80

<sup>357</sup> Réponse du ministère de la Justice à la question No. 15481 de M. Antoine Léfèvre, Nombre d'imam dans les prisons, Sénat, 14e législature

<sup>358</sup> Code de Procédure Pénale, Article R. 57-9-3

<sup>359</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., *De la religion en prison*, p.75

<sup>360</sup> Contrôleur Général des Lieux de Privation de Liberté, Opinion on the practice of worship in places of deprivation of liberty

In any case, whether this is the responsibility of the prison or the religious authorities, Muslim detainees can only be negatively impacted from the lack of volunteers. The recruitment crisis<sup>361</sup> is heavily linked with the precarious status granted to chaplains. One ought to address those two issues together.

### 2.1.2. A specific and precarious status

According to the French legislative framework, ministers of faith can be remunerated by the State. This is an option, not an obligation. Prison authorities may also choose to reimburse operating and transport costs. It is left at their discretion and heavily depends on their budget priorities.<sup>362</sup> However, the majority of chaplains are not compensated. Indeed, "7 chaplains out of 10 work voluntary".<sup>363</sup>

Thus, the government praises the importance of chaplains in the prevention of radicalization and deradicalization policies but remunerates its main partners very little or not at all. A Belgian or an English chaplain receives between 1200 and 1600 euros per month. French Muslim chaplains, if they are remunerated<sup>364</sup>, receive between 175 and 450 euros per month. M. Loueslati receives 800 euros because he is the focal point for the Western part of France and can cover up to 12 departments. Most chaplains work on a part-time basis because of this situation. They are considered as "collaborators of the penitentiary public service"<sup>365</sup>, not as public officials. As Army or hospitals chaplains, they would receive a monthly salary of 1800 euros.<sup>366</sup> Plus, since the indemnity they receive cannot be considered as a salary, they do not have access to sick leave or retirement rights<sup>367</sup>. Thus many of them desert the penitentiary public service.

Christian chaplains organized as a community to counteract this rather precarious status. They contribute to a common budget shared with all contributors, according to their needs and

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<sup>361</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., *De la religion en prison*, p.45

<sup>362</sup> LOUESLATI M., *L'Islam en Prison*, Bayard Culture, 26 March 2015, p.82

<sup>363</sup> Réponse du ministère de la Justice à la question No. 15481 de M. Antoine Léfèvre, *Nombre d'imams dans les prisons*, Sénat, 14e législature

<sup>364</sup> In 2016, this was the case for 80 Muslim chaplains out of 730 (BERAUD C., DE GALEMBERT C., ROSTAING C., *De la religion en prison*, Presses Universitaires de Rennes, p.45)

<sup>365</sup> *Ibid* p.45

<sup>366</sup> LOUESLATI M., *L'Islam en Prison*, Bayard Culture, 26 March 2015, p.116

<sup>367</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., *De la religion en prison*, Presses Universitaires de Rennes, p.45

involvement in the chaplaincy.<sup>368</sup> However, Muslim chaplains cannot proceed this way since they do not respond to a clergy.

The Ministry of Justice is well aware of this issue and "conscious of the necessity to engage a debate on the status and remuneration of prison chaplains"<sup>369</sup>. However that debate has not yet been launched although it has been called for in recent years. Christian chaplains argue this status should be maintained for it "preserves their independence" towards the State and "money should not be mixed with vocation".<sup>370</sup> The demographics of each chaplaincy could play a role as Catholic chaplains are more likely to be retired and from the middle class while Muslim chaplains tend to be younger and have no choice but to work part-time.<sup>371</sup>

To conclude, this situation has severe implications for the Muslim community whose chaplains cannot answer every request. There are those who focus on Friday prayers and give up on individual visits altogether and vice-versa<sup>372</sup>. This has caused disciplinary hearings when detainees took upon themselves to organize Friday prayers on unauthorized locations in the prison<sup>373</sup>. Full-time chaplains might work up to 2000 hours per year<sup>374</sup>. Indeed, the relationships they form with detainees can only grow over time and consistency<sup>375</sup>. This may lead to burn outs, as illustrated by this testimony: "I couldn't sleep at night, I lost my health with this job."<sup>376</sup>: Those factors (the lack of adequate training, the precarious status, the low compensations if there are any, the scale of the task coupled with the lack of time, and) appear interrelated and might act as a repellent for potential candidates. This has direct implications on the quality of the relationship chaplains develop with inmates. When it is tainted, this considerably reduces their influence. Detainees are not necessarily well aware of those difficulties but might judge chaplains harshly when they have to shorten their meeting.

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<sup>368</sup> Ibid p.225

<sup>369</sup> Réponse du Ministère de la Justice à la question No. 15481 de M. Antoine Lefèvre, Nombre d'imams dans les prisons, Sénat, 14e législature

<sup>370</sup> Interview with David Buick; LOUESLATI M., *L'Islam en Prison*, Bayard Culture, 2015, p.50 ;

<sup>371</sup> Ibid p. 51

<sup>372</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., *De la religion en prison*, Presses Universitaires de Rennes, p.99

<sup>373</sup> SARG R., LAMINE A.S., *La religion en prison, Prisons et Religions en Europe*, *Archives de sciences sociales des religions*, 153 | janvier-mars 2011, 15 June 2011

<sup>374</sup> The State initially plans for 1000 hours per year (LOUESLATI M., *L'Islam en Prison*, Bayard Culture, 2015, p.82)

<sup>375</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., *De la religion en prison*, Presses Universitaires de Rennes, p.105

<sup>376</sup> Ibid p. 229

## 2.2. Perceptions of detainees undermining the chaplain's mission

Three factors undermine the quality relationship between a Muslim detainee and his minister of faith.

Firstly, in the context of the combat against radicalism, some detainees feel spied on and express outright hostility towards chaplains. They tend to identify him with the prison administration."<sup>377</sup> If they feel like the chaplains have relationships with prison administrators even on occasional instances, this might tarnish their relationship. Indeed, they believe prison authorities will use chaplains since they are better placed to find out whether an inmate is a risk for him/herself or for others because he is on the path to radicalization. Because they offer a judgment-free space to inmates and develop a relation of trust with them, they may also have the means to gain information from them about the identity of radicalized inmates. Instead of driving them away from this path, they would have to report them. According to this study, prison authorities are indeed tempted to use this connection to their advantage.<sup>378</sup> Confidentiality means little when national security is believed to be at stake. There is a thin line between a collaborator and a confidant, and chaplains and detainees are well aware of their ambiguous position in the prison system. When their relationship is at its best though, detainees perceive chaplains as extrainstitutional figures.<sup>379</sup> However, convincing detainees they are to be trusted takes increasingly more time "in this context of paranoia."<sup>380</sup>

This research<sup>381</sup> classifies chaplains into 4 categories that seem to correspond to the narrative of the chaplains that were interviewed during this study. There are those who stay at a reasonable distance from the administration to keep the detainees' trust, those who consider themselves as "partners" of the administration and aim to satisfy the detainees and the administration, the "agents" who gave up on their prerogatives to please the administration and the "activists" who take the side of the detainee against the administration.

The relationship between ministers of faith and prison administrators is not mentioned in legal documents. This gap might need to be addressed to reassure key protagonists.

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<sup>377</sup> Interview with David Buick

<sup>378</sup> SARG R., LAMINE A.S., La religion en prison, Prisons et Religions en Europe, *Archives de sciences sociales des religions*

<sup>379</sup> Ibid

<sup>380</sup> Interview with David Buick

<sup>381</sup> SARG R., LAMINE A.S., La religion en prison, Prisons et Religions en Europe, *Archives de sciences sociales des religions*

It is to be borne in mind that self-radicalized preachers might also have a negative influence and encourage detainees not to rely on spiritual guidance. They seem to argue that "imams are hand picked by the government and talks are westernised."<sup>382</sup> This is as valid in the English and Welsh context than in France: M. Loueslati also mentions this difficulty with regards to a number of believers who eventually stop requesting his guidance because of this<sup>383</sup>. This would undermine the benefits of spiritual guidance if those who are under risk of radicalisation refuse to speak to ministers of their faith because they fear a collusion with the prison administration.

Secondly, there is a culturally unadapted generic treatment of detainees. Indeed, there is no possibility of age-targeted chaplaincy like there is in the outside world. Chaplains cannot come more than once a week in most cases, let alone plan different sorts of activities for different kind of detainees. This cultural diversity cannot be taken into account since chaplaincy is based on "the lowest common denominator."<sup>384</sup>

Thirdly, the apparent lack of time is a prominent issue for Muslim detainees. According to this report of the National Preventive Mechanism, "a significant number of inmates felt that chaplains had too little time to see them".<sup>385</sup>

## 2.3. Acts of discrimination on the part of the prison administration

### 2.3.1. Towards chaplains

At times, Muslim chaplains reported feeling stigmatized by the wardens with whom they have frequent necessary contacts to carry out their duties. M. Loueslati begins his book with an anecdote about his first day in a prison at the beginning of his career as a chaplain when a warden asked him if he was coming "for a voluntary surrender."<sup>386</sup> "He recalls that as a Muslim chaplain he is stigmatized on account of him "working in a prison, with offenders, that are Muslim" and on account of "being Muslim".<sup>387</sup>

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<sup>382</sup> HM Chief Inspector of Prisons, Muslim prisoners' experiences: A thematic review, June 2010, p.26

<sup>383</sup> LOUESLATI M., L'Islam en Prison, Bayard Culture, 26 March 2015, p.116

<sup>384</sup> BECKFORD J.A., Prisons and Religions in Europe, 153, January-March 2011, p.17

<sup>385</sup> Contrôleur Général des Lieux de Privation de Liberté, Opinion on the practice of worship in places of deprivation of liberty

<sup>386</sup> LOUESLATI M., L'Islam en Prison, Bayard Culture, 26 March 2015, p.11

<sup>387</sup> Ibid p.108

Wardens might envy the relationship chaplains develop with detainees. Although they both serve society, one is believed to serve "noble aims", the rehabilitation purpose, while the mission of wardens is at times a thankless task.<sup>388</sup>

Indeed, chaplains are supposed to possess a set of keys in order to move around the prison more freely<sup>389</sup> and visit detainees in their cells. In practice, that is not left to the discretion of prison administrators who might refuse without further justification. That requires wardens to accompany them as long as they are in the prison. Thus, their mission might be perceived as "bothersome"<sup>390</sup>, as a "source of further complication".<sup>391</sup> By contrast, when chaplains are allocated keys, they might feel "dispossessed" as they are usually the only ones to own the keys.<sup>392</sup> Finally, chaplains might be seen as a "threat", because they could encourage detainees to ally and contest rules as a group.<sup>393</sup> Finally, a number of wardens might be anti-religious according to the findings of this study or consider spiritual guidance as unimportant hence the behaviour of a number of them.<sup>394</sup>

There are a number of small hindrances that might complicate the work of the chaplain if put together. They are similar to the ones pointed on in the chapter on the challenges of prison education. Most commonly, they will bring detainees late to the Friday prayers or forget them in the cells with detainees<sup>395</sup> if they are not in possession of keys. Furthermore, there is not always a specific room for religious services, although it is enshrined in the "Code de Procédure Pénale".<sup>396</sup>

### 2.3.2. Towards believers

Detainees must request to join the religious ceremonies as mentioned in the first chapter of this study<sup>397</sup>. Yet, a number of those requests have been left unanswered or were answered after a very long delay. Once enrolled, the wardens sometimes forget to call them and

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<sup>388</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., De la religion en prison, Presses Universitaires de Rennes, p.259

<sup>389</sup> Note du 16 juillet 2014 relative à la pratique du culte en détention; Contrôleur Général des Lieux de Privation de Liberté, Opinion of the practice of worship in places of deprivation of liberty

<sup>390</sup> Ibid p.85

<sup>391</sup> Ibid p.89

<sup>392</sup> Ibid p.85

<sup>393</sup> Ibid p.89; See chapter II 2

<sup>394</sup> Ibid p.85

<sup>395</sup> Ibid p.257

<sup>396</sup> Ibid p. 245; See chapter I

<sup>397</sup> Ibid p. 300



accompany them to the services.<sup>398</sup> That is a clear violation. Otherwise they are brought late to ceremonies although chaplains must wait until everybody is present.

"Ordinary despotism"<sup>399</sup> also takes the form of disrespect towards religious objects (namely prayers carpets or holy books). Indeed, "although it has been unable to check whether such allegations are true, the Contrôleur Général des Lieux de Liberté has received a number of complaints relating to the disappearance of or deliberate damage to such objects, or behaviour that clearly demonstrates contempt", for instance when the personnel walks on the mosque carpet with shoes on.

Tendentious comments were also repeatedly denounced by inmates<sup>400</sup>. The position of the Contrôleur Général des Lieux de Privation de Liberté is clear on this matter: tendentious comments "never serve any useful purpose and are usually prejudicial".<sup>401</sup>

Policies deemed as "unfair" by detainees and not necessarily justified by security requirements are also enforced by the prison administrators. Religious books can be banned in prison libraries<sup>402</sup>. In certain prisons, the families of detainees and their chaplains could not bring prayer carpets and the detainee had not other mean to secure one.<sup>403</sup> This kind of policies may undermine equal treatment between Muslims incarcerated in different institutions and between Muslim detainees and the others within those prisons.

In a report of the Contrôleur Général des Lieux des Privations de Liberté, it is stated that nearly all chaplains felt that the staff had "negative conceptions or a lack of understanding on Islam and needed a formation on Islamic beliefs and culture"<sup>404</sup>. This study on perceptions on Islam focuses on Welsh and English prisons but the same effects could be occurring in France. Indeed, a focus on security risks was quite common in France. It is visible in both countries with the "excessive number of staff for Friday prayers"<sup>405</sup>, which was also confirmed by the chaplains that were interviewed.

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<sup>398</sup> Contrôleur Général des Lieux de Privation de Liberté, Rapport sur les Unités Dédiées à la Radicalisation, 2016

<sup>399</sup> CHAUVENET A., Le despotisme ordinaire en prison, 2006 *Déviance et Société*, 2006/3 (Vol. 30), p. 373

<sup>400</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., De la religion en prison, Presses Universitaires de Rennes, p.60

<sup>401</sup> Contrôleur Général des Lieux de Privation de Liberté, Avis relatif à l'exercice du culte dans les prisons, 2011

<sup>402</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., De la religion en prison, Presses Universitaires de Rennes, p.100

<sup>403</sup> SARG R., LAMINE A.S., La religion en prison, Prisons et Religions en Europe, *Archives de sciences sociales des religions*

<sup>404</sup> Contrôleur Général des Lieux de Privation de Liberté, Avis relatif à l'exercice du culte dans les prisons, 2011

<sup>405</sup> HM Chief Inspector of Prisons, Muslim prisoners' experiences: A thematic review, June 2010, p.26

To conclude, it seems that the gap between demand and supply must be reduced with regards to the shortage of Muslim chaplains. The authorities should keep the number of approved chaplains "proportionate to the number of believers of each religious denomination"<sup>406</sup> ever since "every detainee must have the possibility to meet the requirements of his religious, moral and spiritual life".<sup>407</sup> Second, detainees must be able to develop quality relationships with their ministers of faith. Those require time, investment and mutual trust. Third, the personnel must be better formed with regards to its understanding of Islam and Muslim detainees.

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<sup>406</sup> As recommended by Rule 29 of the European Prison Rules.

<sup>407</sup> Article R. 57-9-3, Code de Procédure Pénale du 2 mars 1959

## Conclusion

To conclude this study, we have seen that the rights to education and spiritual guidance in prisons are protected by a wide array of instruments. Their implementation is of utmost importance because they play key roles within the prison environment. Without the Prison to School Pipeline, prison would merely be the school of crime. Meanwhile, without a counternarrative offered to believers who might struggle to properly interpret religious teachings on their own, in a context where preachers aim to strengthen their ranks and play on the detainees' frustration and longing for a sense of purpose, hate speech would become the norm. Thus, there is nothing to be gained by not addressing the detainees' need for education and the believers' need for spiritual guidance. Without this offer, the rehabilitative aim of the penitentiary system cannot be secured.

Furthermore, although teachers and chaplains should not be placed on the same level, for one targets a restricted audience and requires a strict adherence to its message, there is no destructive antagonism between the two. Both share common values and most importantly common goals. They are different means to the same ends, namely institutional adjustment, desistance from crime and reintegration prospects, if only they are enabled to do so.

Instead, voluntary or unaddressed obstacles "directly and intimately affect the rights and lives of human beings who may have particularly acute needs for the support that those activities provide."<sup>408</sup> Instead of acknowledging access to spiritual guidance as the lifesaver it can be, the prison administration in France seems to perceive it too often as a tool in the combat against radicalisation and terrorism, rather than a human right<sup>409</sup>. The gap between demand and supply must be reduced with regards to the shortage of Muslim chaplains and the personnel must be better formed with regards to its understanding of Muslim detainees. Meanwhile, prison education is too often included in the "moral contract" wardens conclude with detainees to maintain order in prison. Thus neither prison education nor spiritual guidance are yet perceived as "imperatives in their own right", in the words of the former

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<sup>408</sup> BOOTHBY L., 'Protecting Freedom of Religion or Belief in Restricted or Institutional Settings', in Tore Lindholm et al. (eds.) *Facilitating Freedom of Religion or Belief: A Deskbook* (Leiden: Martinus Nijhoff Publishers, 2004), 407–423, at 408.

<sup>409</sup> BERAUD C., DE GALEMBERT C., ROSTAING C., *De la religion en prison*, Presses Universitaires de Rennes, p.29

Special Rapporteur on Education Vernon Munoz.<sup>410</sup> Plus it is a wasted opportunity considering their enormous potential as a turning point for detainees.

There are too many forces working against inmates in prison as it is. The least that can be done to counterbalance this inherent constraint is to adequately implement rehabilitative tools such as prison education and spiritual guidance to counterbalance the inevitable " corrosive and deadening impact"<sup>411</sup> of living in a total institution.

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<sup>410</sup> Human Rights Council, Rapporteur spécial sur le droit à l'éducation M. Vernor Muñoz, Le droit à l'éducation des personnes en détention, A/HRC/11/8, 2 avril 2009

<sup>411</sup> Ibid

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## INTERVIEWS' QUESTIONS

How long have you worked as a prison chaplain / teacher?

Why did you choose to work in this this environment?

What would you say are the most common problems you encounter during your workday?

Do you sometimes face resistance from detainees? How did you develop a trustful relationship with them?

How many detainees attend classes / services? Is there a quota?

What motivated detainees to choose this activity according to you?

Did you ever notice acts of discrimination towards detainees?

What is your relationship with the prison administration?