

# **Foucault's seven universal maxims of the good "penitentiary condition" and the warehousing prison in Greece: distancing, deregulation and denial as determinants of the relation between the punitive procedure and the penitentiary technique<sup>1</sup>**

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## **Abstract**

In Foucault's analysis, prison has been conventionally denounced as "the great failure of criminal justice". Its "monotonous critique" on recycling crime is connected to two remedies; the full development of its penitentiary technique and the regaining of its punitive power.

Foucault's seven "universal maxims of the good penitential condition" serve the purpose of the prison and its reform as a correctional tool. The preservation of these principles in penitentiary regulations and the accompanying rhetoric and practices are juxtaposed with the warehousing elements of the prison and its different "less eligibility" levels or thresholds, congruent with the differentiation of custodial regimes.

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### Correctionalist Penalty: Useful Failure or Ineffective Success?

Michel Foucault, in his seminal work on the prison,<sup>2</sup> argues that reformatory punishment is likely to be an ever-present fixture in modern society. From this point of view Foucault accepts that prison in modernity is taken for granted and in a way agrees with a Marxist legal theorist, Evgeny Pashukanis, that payment for a crime by a previously determined amount of abstract freedom, namely the system of terms of incarceration in prison, and industrial capitalism are phenomena of the same historical period.<sup>3</sup> The carceral system, according to Foucault, is part of a disciplinary apparatus, which emerged from the class and economic conflicts of the eighteenth and nineteenth centuries.

Penal detention talk centered on reform is usually expanded on the “prison works” and “prison is a failure” narratives; “prisons do have a role to play” (namely they do work) and, at the same time, “prisons are an expensive way of making bad people worse” (namely they do not work).<sup>4</sup> Penal theorists and other thinkers, political and social support-

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<sup>2</sup> M. Foucault, *Discipline and Punish, The Birth of the Prison*, translated from the French by Alan Sheridan, Pantheon Books, New York, 1977.

<sup>3</sup> See his Marxist theory based “commodity exchange theory of law”, formulated in his 1924 / 1926 work *The General Theory of Law and Marxism*, published with a new introduction by Dragan Milovanovic, Transaction Publishers, New Brunswick and London, second printing 2003.

<sup>4</sup> Former UK Home Secretary and Conservative Party leader Michael Howard defended the “prison works” position in his 6 October 1993 Conservative Party conference speech, claiming that “... (prison) ensures that we are protected from murderers, muggers and rapists- and it makes many who are tempted to commit crime think twice... This may mean that more people will go to prison. I do not flinch from that. We shall no longer judge the success of our system of justice by a fall in our prison population.” (<https://www.theguardian.com/politics/2004/aug/26/conservatives.uk>). On the other hand, the quote that prison is “an expensive way to make bad people worse” comes from a 1990 white paper by former Conservative home secretary David Waddington, written in the aftermath of the Strangeways prison riot, in support of the argument that alternatives to prison were urgently needed (<https://www.theguardian.com/society/2001/feb/05/penal.comment> – see also J. Soering, *An Expensive Way to Make Bad People Worse: An essay on prison*

ers and opponents of this total institution, argue that prison is a reformatory, a site incapacitating the bad and the dangerous, a producer of social cohesion constructing value consensus, a tool for the control of surplus populations and the regulation of labour markets, a self-legitimizing amplifier of delinquency, a useful failure etc.<sup>5</sup> In all these cases, prison is presented as a place of protection. Answers, though, are different when questions such as how prison success is meant and documented and who is protected in more or less massive imprisonment societies are asked. Correctionalist penalty, prevention of crime through rehabilitation, incapacitation and other utilitarian considerations intertwined with retribution, proportionality and desert are the answers given to the question about the goals of punishment in general and prison in particular, as one of its modes.<sup>6</sup> Regarding the protection issue, from one point of view the prison protects society from wrongdoers, delinquents, criminals with its deterrent and expressive functions. From another point of view prison protects inmates from public anger and vengeance, transforming their punishment from a public happening to an invisible event, the physical punishment or the public "spectacle of the scaffold"<sup>7</sup> to the immaterial or psycho-spiritual reformation of inmates. In different terms, prison protects power holders and ruling elites, serving their domination interests, reproducing the main characteristics of the social system, supporting the forces of discipline and enhancing the legitimacy of power.

The insights provided by the Foucauldian perspective of penalty belong to the most influential ones, together with the intellectual traditions Durkheim, Weber and Marx have offered.<sup>8</sup> An important point in

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*reform from an insider's perspective*, Lantern Books, 2004).

<sup>5</sup> T. Mathiesen's, *Prison on Trial*, Waterside Press, 3rd edition 2006, is a critique of prisons and imprisonment where the pros and cons of incarceration are infused.

<sup>6</sup> See B. Hudson, *Understanding Justice. An introduction to ideas, perspectives and controversies in modern penal theory*, 2nd edition, Open University Press, Buckingham/Philadelphia, 2003.

<sup>7</sup> M. Foucault, *Discipline and Punish*, 1977: 32.

<sup>8</sup> D. Garland, *Punishment and Modern Society: A study in social theory*, Clarendon

Foucault's contribution is found in his prison failure / success relation thesis. He claims: If prison is intended to reduce offences, then it fails. Despite its failure, the institution persists. Perhaps, then, the question we ask should change: what does this failure serve, what is transforming it into success. The answer is that prison is not eliminating crime, it is distinguishing it. It creates a form of illegality amongst others, which it isolates and organizes, making its supervision possible. This is exactly the point of the extreme success of the prison: the production of delinquency, a politically and economically less dangerous form of illegality which can be isolated from other offences.

### **Corrective or Punitive Prison?**

In the present paper I will focus on the monotonous, to use Foucault's vocabulary, mainstream critique of the prison, which takes one of two directions.

The first is based on the assumption that the prison is not sufficiently "corrective", namely that the penitentiary technique is not developed and remains at an embryonic stage. The second is founded on the idea that the "corrective" prison is punitively weak, and a double economic error because of its high cost and its failure to eradicate delinquency.

The conventional answer to both criticisms is the same; it is the prison itself which can cure its deficiencies, penitentiary techniques are the solution to the problem they themselves create. In other words, "the return to the fundamental principles of the prison", "the realization of the corrective project [is] the only method of overcoming the impossibility of implementing it".<sup>9</sup> These fundamental principles, in Foucault's language, are the "universal maxims of the good penitential condition"<sup>10</sup>, which serve the purpose of the prison and its reform as a correctional tool. They are:

1. The principle of correction, or the transformation of the individual

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Press, Oxford, 1990.

<sup>9</sup> M. Foucault, *Discipline and Punish*, 1977: 268.

<sup>10</sup> M. Foucault, *Discipline and Punish*, 1977: 269-270.

- convict's behavior, his / her reformation and social rehabilitation.
2. The principle of classification, or the segregation of convicts and their distribution in prison establishments according to the gravity of the crime they committed, their age, personality, the degree of their perversity, the selected correctional technique, the stages of their character transformation.
  3. The principle of the modulation of penalties, or the individualization and adaptation of the reformed convict's treatment to his / her positive responses to a progressive regime, extending from solitary confinement to partial liberty, gradually leading to conditional release.
  4. The principle of work as obligation and right, or work as a mitigation and not an aggravation of the penalty, which must be an essential element in the transformation and progressive socialization of convicts, providing the prisoner and his / her family with some income; each prisoner should be obliged to work, not to be forced to remain unoccupied.
  5. The principle of penitentiary education, or the use of the prisoner's education as a penitentiary instrument, as his / her obligation and as an indispensable precaution in the interests of society for the authorities.
  6. The principle of the technical supervision of detention, or the supervision and the administration of the prison regime by a specialized social and medico-psychological staff possessing the moral qualities and technical abilities required of educators.
  7. The principle of auxiliary institutions, or the supplement of imprisonment by measures of supervision and assistance, during imprisonment and after release, until the complete rehabilitation of the prisoner or the former prisoner is achieved.

It is not my intention to present the methodological and theoretical strengths and weaknesses of the Foucauldian approach. These have been repeatedly and sufficiently discussed and summarized i.a. by

David Garland<sup>11</sup> and Barbara Hudson.<sup>12</sup> Professor N. Courakis, also, in his thorough closing remarks to the Greek version of “Discipline and Punish”, notes that Foucault’s methodological and documentation deficiencies are counterbalanced by the innovative approaches he introduces and the depth of his critical thinking.<sup>13</sup> My purpose is to project the above mentioned part of his thinking which is based on the assumption that prison is an interventionist institution, aiming to recode the existence of inmates<sup>14</sup> combining deprivation of liberty with the penitentiary technique, to one of the forms of this multifaceted institution, namely the overcrowded place of mere detention, characterized by inadequate physical infrastructure, a general lack of resources, poor living conditions, insufficient health care provision, a limited range of meaningful activities selectively accessible for inmates and a minimal, if any, control of inmates’ violence and intimidation, where many prisoners are physically ill-treated and verbally abused, neglected, abandoned and released for overpopulation management reasons, without supervision and support.<sup>15</sup>

Is the image of this “warehouse-like” prison, a prison where “activities, programming, and mobility have been deemphasized and prisoners are merely stored like objects to serve out their sentences”,<sup>16</sup> compatible with Foucault’s great schemata of the carceral apparatus, namely the politico-moral schema of individual isolation and hierarchy, the economic model of force applied to compulsory work and the

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<sup>11</sup> D. Garland, *Punishment and Modern Society*, 1990: 131 ff, 157 ff.

<sup>12</sup> B. Hudson, *Understanding Justice*, 2003: 132 ff.

<sup>13</sup> N.E. Courakis, ‘The problem of penal repression in the work of Michel Foucault’, in M. Foucault, *Discipline and Punish. The birth of the prison*, translated from the French by K. Chatzidimou and I. Ralli, Rappas 1989: 411-427 (in Greek).

<sup>14</sup> M. Foucault, *Discipline and Punish*, 1977: 236.

<sup>15</sup> E.R. Berthelot, ‘Warehousing prisoners’, *The Encyclopedia of Criminology and Criminal Justice*. 2014: 1–5.

<sup>16</sup> J. Demers, ‘Warehousing Prisoners in Saskatchewan. A public health approach’, *Reports & Studies*, Canadian Centre for Policy Alternatives, Saskatchewan Office, 2014: 11 ff.

technico-medical model of cure and normalization?<sup>17</sup>

### **The Warehousing Prison and Its 'Clientele'**

Before my attempt to answer this question, I will try to present the main elements of the 'warehousing' prison. The case of Greece will be used as an example to test the potency of Foucault's argument. I will derive information using official documents such as reports of various national and international bodies and authorities, such as the CPT, the European Court of Human Rights, the Greek Ombudsperson, the National Committee for Human Rights, the Parliamentary Committee for Prisons and Other Places of Custody.

Greece is a country of the European capitalist periphery, the centre of a stormy and profound crisis, primarily economic but not limited to the sphere of the economy. The market economy has collapsed in various aspects. The public debt is huge. Austerity measures imposed six years ago in the frame of the neoliberal dogma changed dramatically the everyday life not only of the lower social strata, but even more directly the middle class, which faces the fear of falling and its actual realization<sup>18</sup> with a serious deterioration of living standards. The same measures allowed the open discredit of major institutions and the political system to reach a peak and demolished the weak welfare state, causing high rates of poverty and unemployment. Depression is comparable to a post-war condition. Social cohesion is seriously threatened, as taken-for-granted economic, social and political rights are dismantled and shrink by constitutionally ambiguous politics, in a context of extreme necessity and instability.<sup>19</sup>

In the field of penalty various contradictory penal theory fashions

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<sup>17</sup> M. Foucault, *Discipline and Punish*, 1977: 248.

<sup>18</sup> See J. Young, *The Vertigo of Late Modernity*, Sage Publications, London 2007.

<sup>19</sup> M. Markantonatou, 'The social consequences of the financial crisis in Greece: insecurity, recession and welfare deregulation', *International Journal of Anthropology*, 27 (3) 2012: 183-196, M. Matsaganis, *The Greek Crisis: Social impact and policy responses*, Friedrich Ebert Stiftung Department of Western Europe / North America, Berlin 2013.

co-exist in a pendulum-like regulatory context. Among principles of punishment justification (the why punish issue) and principles of punishment distribution (the how much and what kind of punishment issue) none seems to prevail. Legislation, official documents and governmental speeches are full of humanitarian overtones and assurances for respect of human rights. So, rhetorically, the benevolent State is present. The verb “punish” is used in the Constitution and in criminal legislation, defining what the state response to crime is. In binding, “hard law” instruments of the international community, such as the ratified by law UN International Covenant on Civil and Political Rights, the aim of the treatment of prisoners is reformation and social rehabilitation. In the 1999 penitentiary legislation no declaration of any official aim for the treatment of inmates is declared. According to this law “without a statement of purpose”, custodial legality is an end in itself. Social reintegration of offenders, not accepted as a basic principle, is though present in some rules of the Penitentiary Code, which regard specific issues of inmates’ life, such as social contacts and after care. The 2014 Organization of the Ministry of Justice, Transparency and Human Rights, like its 2000 predecessor, declares that the mission of penitentiary institutions is the social reintegration of inmates. The 2003 and 2005 Prison Rules regulating the internal operation of custodial institutions restrict some prisoners’ rights, re-define and transform some of them into possibilities and privileges, and (re)introduce utilitarianism in the legal framework. The Regulations indicate that the aim of custody is to prepare inmates for a law abiding life. Both regulations repeat that detainees shall cooperate, only if they so wish, in the planning of constructive treatment activities (education, work, vocational training, therapy, etc) so as to limit the further degradation of their legal status and the aggravation of the position of their dependents.<sup>20</sup>

A bifurcatory, tough and soft on crime sentencing policy, is also

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<sup>20</sup> N. Koulouris, *The Social (Re-)Integration of Prison*, Nomiki Vivliothiki, Athens 2009, 101 ff. (in Greek).



found in prisons, where harshness and leniency co-exist.<sup>21</sup> Inmates can reduce their sentences through various, but not available to their majority, activities (work and education), they can apply for furloughs but eligibility is limited and for some categories preconditions are more demanding, even excluding them, they can contact their spouses and relatives but with lots of restrictions, they can attend counseling and therapeutic programmes, but these are offered to a small number of those who apply to participate etc. There is a continuum of "hot 'n cold" or "stick and carrot" measures at the disposal of the prison service (work, leaves, conditional release, disciplinary sanctions) oriented to both, the inmates adjustment to prison and their community re-entry. The disciplinary connotations of this combination are clear. Those who adjust to prison life find themselves conditionally released faster than those who do not. In other words, inmates who cope with the problems of prison life and seem to be more suitable for prison are released conditionally while inmates who cannot afford the pains of imprisonment stay in prison for longer periods.

The prison population consists of the usual clientele of repressive total institutions. The social characteristics of the inmate population have not changed substantially over the last decades. The "natural customer" of the prison system or the typical inmate, is male (approximately 93-94%), young (more than 65.5% under 40 years old), unmarried (almost half of the prisoners) and of low educational level (only 1/4 having completed secondary education and some of them having continued to higher level studies). The change is impressive as regards the national composition of inmates; within two and a half decades

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<sup>21</sup> See V. Karydis and N. Koulouris, Greece: 'Prisons are bad but necessary (and expanding), policies are necessary but bad (and declining)', in V. Ruggiero and M. Ryan (eds.), *Punishment in Europe: A critical anatomy of penal systems*, Palgrave Macmillan, Basingstoke 2013: 263-286 and L. Cheliotis, 'Prisons and parole', in L. Cheliotis and S. Xenakis, *Crime and Punishment in Contemporary Greece. International Comparative Perspectives*, Peter Lang, Oxford 2011: 557-591. See also, N. Koulouris and W. Aloskofis, *Prison Conditions in Greece, European Prison Observatory – Detention Conditions in the European Union*, Antigone Editions, Rome 2013.

foreign inmates, from a neglected, not even registered, category in the early 1990's, nowadays is an overrepresented population, increased to approximately 2/3 of all inmates, the great majority of them coming from Asia, Africa and the Balkan countries. The structural economic and social inequalities that make prisons "to detain those whom penal institutions have always confined, namely the poor and dispossessed"<sup>22</sup> are present and stronger. Next to the penal management of poverty and marginalization, it should be noted, though, that recently a small section of the prison population is formed of people from the middle and upper classes. This development is in line with the current de-structuring of the economy and its repercussions.<sup>23</sup>

### 1. *Distancing, deregulation and denial*

The long standing dominant characteristic of the Greek "prison" or "correctional" or "penitentiary" system (no matter how one calls it, although words generally are an influential factor in thinking about penalty and acting accordingly) is *inmates' warehousing, consisting of three basic elements, namely distancing* of the prison service from inmates, *deregulation* with informal controls and codes of conduct prevailing over formal prison rules, and *denial* of accountability. Trying to define or sketch this system and its constituent elements, I will try to explain what is meant by the terms I just used. I do not intend to produce definitions of these terms. I will simply use them and their descriptions as "collectors" of rhetoric, laws and practices which form the mutually influenced social reality and the context of the Greek prison system, without avoiding overlapping in some issues.

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<sup>22</sup> J. Sim, V. Ruggiero and M. Ryan, 'Punishment in Europe. Perceptions and commonalities', in V. Ruggiero, M. Ryan, J. Sim (eds.), *Western European Penal Systems. A critical anatomy*, Sage Publications, London 1995: 17. See also, L. Wacquant, *Punishing the Poor: The neoliberal government of social insecurity*, Duke University Press, Durham 2009.

<sup>23</sup> S. Vidali, 'New "special" categories of inmates; dimensions of counseling in prison', in S. Vidali and P. Zagoura (eds.), *Counseling and Prison*, A.N. Sakkoulas, Athens/Komotini 2008: 53.

*Distancing* of the prison administration and staff from inmates and their needs and indifference for their future is the convenient mentality and actuality of locking up inmates and just holding them until their release date. In such a case prisons exist and operate by momentum, as an end in themselves, or as a means without ends. Planned and targeted interventions of assistance, motivation and guidance are not included in this situation. Prisoners affected by various personal and social problems, many times inert, passive or detached, are left to their own devices. It may be the alibi of the Greek penitentiary system, understood as either distortion or outcome of its very philosophy. According to this philosophy, opportunities for constructive and productive use of time in custody are simply offered to inmates as part of public social policy. The acceptance of these opportunities is totally dependent upon inmates themselves. The reason given for this is that compulsory treatment is a violation of inmates' personal dignity. So, it is neither acceptable nor allowed to the prison service to interfere with inmates' personality against their will.<sup>24</sup>

The legislator's choice to adopt neutrality considerations for custody and the perceptions of the prison administration and the inmates emanating from this choice, have a twofold result:

- (a) they minimize the prison service initiative and interest to organize purposeful activities and to produce custody plans for inmates,
- (b) they discourage inmates to take advantage of limited and controversial opportunities to live lawfully after their release.

All parts of the prison mechanism are influenced by the mentality of the least possible effort: inmates know that just doing time and staying unnoticed is all that they are asked for; prison staff, especially members of the custodial personnel, know that the duty they are expected to perform is to observe inmates from a distance.

*Deregulation* is a situation where informal controls and codes of

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<sup>24</sup> See Ch. Nikolaou, 'The "least successful" citizen', in N. Koulouris (ed.), *On Standby. Korydallos Prison: function, condition, and inmates' treatment*, A.N. Sakkoulas, Athens/Komotini 2009: 122 ff.

conduct prevail over formal prison rules and roles and replace them. Staff – inmates power relations are reversed and the prison system does not provide safe and secure custody for inmates and respective working conditions for staff members. Strongly connected with distancing, as well as the inadequate staffing levels and the absence of dynamic security techniques, it is the -intentional or not but anyway conscious- shift of control from the prison personnel to strong groups of influential inmates. In their daily interactions they exploit, intimidate, attack and corrupt other inmates and prison officers, somehow undertaking the roles of their guards and using them for their own purposes.<sup>25</sup>

*Denial* of accountability, which blocks disturbing information and neutralizes its consequences, is a variety of processes by which the prison bureaucracy and other authorities refuse responsibilities and reject allegations for negative facts and situations within their competence. Instances of this reality are prison violence, deaths in custody, prisoners' rights violations and degrading living conditions, escapes etc. In such situations authorities try to persuade social and legal audiences and inspection and monitoring bodies that nothing worth to mention is happening or that everything is handled according to rules and formal procedures; they either present a situation which amounts to an isoelectric line, or they insist that problems and institutional wrong-doing are sporadic and dealt with properly.<sup>26</sup> Denial can also be

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<sup>25</sup> This is the dull picture of Greek prisons drawn by the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in their successive reports and the 2011 public statement concerning Greece, where they conclude that "a regulated prison system, as aspired to in law, has given way to the practice of warehousing prisoners" (<http://www.cpt.coe.int/en/states/grc.htm>).

<sup>26</sup> In previous years, especially between 2004 and 2009, the Greek prison administration adopted a conflictual policy of non-transparency, refusing to the Ombudsperson access to prisons (V. Karydis and E. Fytrakis, 'Prison and freedoms. Dangerous liaisons', in V. Karydis and E. Fytrakis (eds.), *Penal Confinement and Rights. The Ombudsperson's point of view*, Athens, Nomiki Vivliothiki, 2011 (in

understood as the lack of appreciation on the part of the competent authorities of the actual situation in prisons.<sup>27</sup> In Cohen's terms, authorities either block, shut out, repress or cover up certain forms of disturbing information or else evade, avoid or neutralize the consequences of devaluated facts and situations. Lack of transparency and impunity strongly facilitate a way of thinking and acting to make uncomfortable realities "disappear".<sup>28</sup>

Consequently, *warehousing* is meant as locking inmates up in unsuitable material conditions of severe overcrowding and "throwing away the key". It is leaving people in custody to "just do their time" in an inappropriate, potentially or actually violent and unsafe regime, non-transparent and unmonitored. It is a situation which approximates or meets the threshold of the so-called "passive infliction of ill-treatment" or, in other terms, inhuman or degrading treatment or punishment.<sup>29</sup> In such a situation basic rights and needs of inmates (bed-

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Greek)). The Ombudsperson is an independent monitoring authority, currently acting as the National Prevention Mechanism against torture and other cruel, inhuman or degrading treatment or punishment, competent to visit all detention establishments with unrestricted access. Contrary to the secrecy approach of the previous decade, a programmatic cooperation agreement was signed on 19 May 2016 between the Ministry of Justice, Transparency and Human Rights and the Ombudsperson, showing a shift of policy in this area of state action.

<sup>27</sup> Greek authorities are blamed by the CPT for their inaction in addressing the very serious concerns raised by the Committee and "lack of appreciation on their part of the actual situation in the country's prison establishments". This approach is obvious in the Greek Government's responses to the reports of the CPT. Remarkably, in their last report, published on 1 March 2016, the CPT "acknowledges the recent steps taken by the Greek authorities which have resulted in a noticeable reduction in the prison population" and "welcomes the Ministry of Justice's commitment to devise a strategic plan for the prison system". They add, though, that "further efforts need to be made to promote alternatives to imprisonment and to move away from the current situation whereby prisons in Greece are merely acting as warehouses (<http://www.cpt.coe.int/documents/grc/2016-04-inf-eng.pdf>).

<sup>28</sup> See S. Cohen, *States of Denial: Knowing about atrocities and suffering*, Polity Press, Cambridge 2001.

<sup>29</sup> J. Murdoch, *The Treatment of Prisoners. European standards*, Council of Europe

ding, clothing, hygiene, privacy, access to hot water and open air etc) are not satisfactorily -to use a mild term- met.

According to repeated criticisms,<sup>30</sup> penal repression in Greek prisons is an abandoned sector of state activity,

- expanding in numbers of inmates and establishments despite of legitimacy and identity problems,
- overcrowded,
- understaffed and underfunded,
- lacking mission, planning, guidance and standards,
- flooded by a culturally heterogeneous, young, male, poor, low educated and fragmented population, consisting especially of migrants and drug dealers and users, who serve gradually longer, even life sentences (which are often imposed to persons found guilty for organized criminal activities, including violent and drug trafficking crimes),
- lacking meaningful activities,
- lacking transparency, accountability, and monitoring and
- lacking the will and commitment to change.

The Greek Ombudsperson in their capacity as the National Preventive Mechanism (NPM) provided for in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT),note in their 2015 report that

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Publishing, Strasbourg 2006: 122-123.

<sup>30</sup> Reported i.e. by the National Commission for Human Rights (<http://www.nchr.gr/index.php/2013-04-03-10-23-48/2013-04-03-10-46-55>), the Ombudsperson (<http://www.synigoros.gr/?i=stp.el.search&q=%CE%BA%CE%B1%CF%84%CE%B1%CF%83%CF%84%CE%AE%CE%BC%CE%B1%CF%84%CE%B1+%CE%BA%CF%81%CE%AC%CF%84%CE%B7%CF%83%CE%B7%CF%82>) and the Parliamentary Committee for Prisons and Other Places of Custody ([http://www.hellenicparliament.gr/UserFiles/510129c4-d278-40e7-8009-e77fc230adef/%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97\\_%CF%84%CE%B5%CE%BB%CE%B9%CE%BA%CF%8C%20%CE%BA%CE%B5%CE%AF%CE%BC%CE%B5%CE%BD%CE%BF%20%CE%A3%CE%9F%CE%A6%CE%A1%CE%A9%CE%9D%CE%99%CE%A3%CE%A4%CE%99%CE%9A%CE%9F.pdf](http://www.hellenicparliament.gr/UserFiles/510129c4-d278-40e7-8009-e77fc230adef/%CE%95%CE%A4%CE%97%CE%A3%CE%99%CE%91%20%CE%95%CE%9A%CE%98%CE%95%CE%A3%CE%97_%CF%84%CE%B5%CE%BB%CE%B9%CE%BA%CF%8C%20%CE%BA%CE%B5%CE%AF%CE%BC%CE%B5%CE%BD%CE%BF%20%CE%A3%CE%9F%CE%A6%CE%A1%CE%A9%CE%9D%CE%99%CE%A3%CE%A4%CE%99%CE%9A%CE%9F.pdf)).

overcrowding of the Greek prisons remains a critical issue for ensuring the hard core of the fundamental rights, in particular with regard to the unsuitability of the largest part of the building infrastructures, the insufficiency of medical care and the lack of specialised staff. This issue must be addressed not only with emergency measures for the immediate decongestion of the detention facilities but also with the adoption of corrective – remedial mechanisms for the beneficial calculation of the penalty.<sup>31</sup>

In such circumstances, prison everyday life is the undemanding, in terms of what inmates are called or obliged to achieve, but meaningless containment of inert and irregularly allocated inmates. The situation matches the frame of internationally observed changes in the social organisation of prisons, which result in penal austerity. The combination of the three "d"s discussed above describe in many aspects the way prisoners are dealt with in Greek "bricks of shame"<sup>32</sup> in an "unproductive slavery"-like regime.<sup>33</sup> It can be understood as producing passive violations of inmates' rights closely related to poor living conditions. This is what the CPT describes as inhuman and degrading treatment, the "soft" version of torture.

### **Warehousing at its Extreme Form: The Maximum Security Prison**

The most important development in the shape of prison regimes in the 21st century is the temporary transformation of custodial institutions from "regular" places for the deprivation of liberty of offenders to "exceptional" loci designated for the elimination of "enemies" of the

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<sup>31</sup> The Greek Ombudsman, 'Prevention of torture and ill-treatment', Special Report 2015, [http://www.synigoros.gr/resources/docs/npm\\_2015\\_en.pdf](http://www.synigoros.gr/resources/docs/npm_2015_en.pdf).

<sup>32</sup> Wording inspired by Vivien Stern's book, *Bricks of Shame: Britain's prisons*, Penguin Books, Harmondsworth, second updated edition 1993.

<sup>33</sup> See A. Davis, *Are Prisons Obsolete?*, Seven Stories Press, New York 2003, where the author discusses the relation between slavery and imprisonment.

state and society.<sup>34</sup> After decades of inconsistencies, moving from the social reintegration to the social exclusion side of the penitentiary continuum, in 2014 it was obvious that the priorities of the Greek state were directed to the latter. In 2002, when a group of perpetrators of organized violent acts, claiming that their action was politically motivated and defined as terrorists, entered prisons, the “prison within the prison” was invented, in the sense that a de facto special regime was created for them, restricting all aspects of their communication, association and activity in custody, approaching or assimilating solitary confinement. Since then this regime has been revised repeatedly, converging gradually to the common custodial status of other inmates. In 2014, though, when one of these inmates “failed” to return to prison after his seventh home leave, the time had come for the exclusionary, maximum security prison to appear. Maximum security prisons were designated to incapacitate persons convicted or remanded for a wide range of offences as well as inmates considered violent and threatening for the smooth running of custodial institutions. They operated under a regime where crucial re-integrative penitentiary institutions were abolished or seriously restricted; inmates’ social contacts, work opportunities and other activities were limited even more, home leaves and semi-liberty were forbidden, transfers for inmates’ personal and social needs were not allowed and prison life in general focused exclusively on order and discipline considerations and priorities. In all cases, no upper limit was set as regards the inmates’ length of stay in maximum security prisons, which could last until the day of their release. The underlying idea was to manage prison time and inmates’ conduct based on dangerousness considerations with abstract and uncertain criteria.

In a few words, the ordinary version of the prison gave birth to the exceptional one, after the creation of an intermediate form, the prison

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<sup>34</sup> See N. Koulouris, ‘The amputation of penitentiary institutions and the return to prison “Normality”: the short life of “maximum security prisons” in Greece’, in M. Gasparinatou (ed.), *Crime and Penal Repression in Times of Crisis. Essays in honor of Professor Dr N. Courakis*, A.N. Sakkoulas, Athens/Komotini 2016: 2468-2495 (in Greek).



within the prison. With this version of the concentration / dispersal dilemma in the allocation of specific categories of inmates,<sup>35</sup> different "less eligibility" levels emerged as the concept of the inmate, the typical criminal, changed.<sup>36</sup> The conventional prisoner of the late 20th century is the traditional captive of the normal prison system, the usual pains of imprisonment sufferer, in a regime based on punitive and disciplinary restraints, but not excluding socializing opportunities and benefits, a coexistence of rights and obligations, a "there is better and there is worse" mentality, a benevolent, "treatment and reintegration" rhetoric. The maximum security prison outcast is the "dangerous" and unwanted prisoner, the disobedient, the undisciplined and enemy-like treated captive of an excluding, harshly punishing and warehousing institution, a kind of human waste, a victim of state indifference, left without rights, the client of an incapacitating regime absolutely based on restraint principles with a punitive rhetoric, without any re-integrative alibis.

### **Return to Prison Normality**

The life of maximum security prisons in Greece was very short, though. In 2015, nine months after their introduction in law, four months of operation and three months after the January 2015 governmental change, they were abolished, as being incompatible with the policy of a left wing government. It can be said then that when the

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<sup>35</sup> See D. Drake, *Prisons, Punishment and the Pursuit of Security*, Palgrave Macmillan, Basingstoke 2014.

<sup>36</sup>The principle of "less eligibility", stemming from the English Poor Laws of the 19th century and the writings of Jeremy Bentham and examined in its historical context by G. Rusche and O. Kirchheimer, implies that the living standards of prisoners and of the lowest stratum of the working class are parallel (see G. Rusche and O. Kirchheimer, *Punishment and Social Structure*, Columbia University Press, New York 1939). It dictates that to deter from crime, prison conditions should not be superior to the living standards "enjoyed" by the members of the lowest significant social class in the free society. From this aspect, less eligibility is the "setter" of the upper limits of penal policy (E.W. Sieh, 'Less eligibility: the upper limits of penal policy', *Criminal Justice Policy Review*, 1989, 3:159-183).

perpetual tension that characterizes the penitentiary system reached a breaking point, the “wild” nature of prison won its “civilized” version and was soundly confirmed with the apotheosis of security. This victory was temporary. The Ministry of Justice, Transparency and Human Rights recently adopts a reductionist, social reintegration oriented policy, promoting educational and rehabilitation interventions, which are expanding in prisons, to the limited extent current economic recession, funding restrictions and staff shortages allow. The reduction of the inmates’ population with a policy of early release schemes is the most important of their achievements, which is followed by under way structural reforms aiming at the improvement of the social reality of life in custody.<sup>37</sup>This policy is implemented without sufficient supplementary measures to facilitate the ex-inmates return to the community, as the aftercare system was and still is very weak. It is interesting to note that the reasons given to justify this Ministry of Justice, Transparency and Human Rights policy initiative to release inmates were the inability of the prison to provide inmates, especially the most vulnerable ones, the sick, the disabled, the elderly, the care they need and a barrage of European Court of Human Rights judgments condemning Greece for violations of human rights in prisons.<sup>38</sup>

This policy is not a sufficient reason for opponents of the prison to be satisfied; on the contrary, they should be anxious. The abolition of maximum security prison and the reorientation of the overall penitentiary system towards the humane containment of inmates do not mean

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<sup>37</sup><http://www.ministryofjustice.gr/site/el/%CE%91%CE%A1%CE%A7%CE%99%CE%9A%CE%97/tabid/64/ctl/details/itemid/2392/mid/797.aspx>.

<sup>38</sup> See, indicatively: *Lavrentiadis v. Greece*, 29896/13, 22.9.2015, *Lutanyk v. Greece* 60362/13, 25.6.2015, *Niazai and Others v. Greece*, 36673/13, 29.10.2015, *Kalamiotis and Others v. Greece*, 53098/13, 29.10.2015, *Bouros and Others v. Greece*, 51653/12, 12.3.2015, *Koutsospyros v Greece*, 36688/13, 12.11.2015, *Karambelas v Greece*, 50369/14, 15.10.2015, *Filipopoulos v. Greece*, 41800/13, 12.11.2015, *Kartelis and Others v. Greece*, 53077/13, 7.1.2016, *Patrikis and Others v. Greece*, 50622/13, 28.1.2016, *Alexopoulos and Others v. Greece*, 41804/13, 6.10.2016, *Kalandia v Greece*, 48684/15, 6.10.2016.

that the fight between deprivations and restrictions in the name of security, on the one hand, and benefits and rights in the name of legality and social reintegration, on the other hand, is over. It is true that the attempted classification of inmates on the basis of the seriousness of their crimes and their dangerousness has not been implemented and inmates are still roughly allocated in less crowded prisons, but the fingerprints of maximum security prisons are present. So are the ideas which dictated their introduction, especially in the era of the loftiness of inmates' (de-) radicalisation and (dis-)engagement concerns.<sup>39</sup>

### **Suspension of Rights, Infliction of Pain, Less Eligibility and Normalisation**

Foucault's analysis is original, fascinating, thought provoking and unique in that he highlights "the internal workings of the apparatus" of penal power technologies and their mode of operation. Contrary to Durkheimian and Marxist thinking, he departs from institutional details, driving to wider social pattern.<sup>40</sup> His bottom-up<sup>41</sup> account on punishment and imprisonment focuses on the production of obedient and useful individuals. The objective of punishment is to turn rebellious bodies into productive and subjugated ones, to combine discipline with surveillance, to provide strict timetables of improving activities, under constant observation.<sup>42</sup> The client of the correctional prison is the "least successful citizen"<sup>43</sup> who should be treated to (re)gain his / her citizenship. The warehousing prison, in all its forms, normal and ex-

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<sup>39</sup> P.R. Neumann, *Prisons and Terrorism. Radicalisation and De-radicalisation in 15 Countries*, International Centre for the Study of Radicalisation and Political Violence (ICSR), London 2010; Radicalisation Awareness Network, *Preventing Radicalisation to Terrorism and Violent Extremism*, RAN Collection of Approaches and Practices, 2016 ([http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/radicalisation\\_awareness\\_network/ran-best-practices/docs/ran\\_collection-approaches\\_and\\_practices\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/radicalisation_awareness_network/ran-best-practices/docs/ran_collection-approaches_and_practices_en.pdf)).

<sup>40</sup> D. Garland, *Punishment and Modern Society*, 1990: 131.

<sup>41</sup> B. Hudson, *Understanding Justice*, 2003: 133.

<sup>42</sup> B. Hudson, *Understanding Justice*, 2003: 136.

<sup>43</sup> See Ch. Nikolaou, *The 'Least Successful' Citizen*, 2009: 111 ff.

ceptional, is unconcerned in pursuing and achieving such aims, even if it adopts a rehabilitative vocabulary and offers corresponding interventions. Its main concern is to incapacitate the unwanted, intransigent enemies of society and to deal with them as a social and political waste, preventing the contamination of others.

Despite the restrictions imposed on the imprisoned individuals described by Foucault as “suspension of rights”, which in modern penality replaced the infliction of corporal pain of the ancient regime, imprisonment is still painful. Despite the pains of imprisonment dictated or originated by less eligibility considerations to make prison an instrument with strong deterrent potential, prison is still an attractive place for the excluded, a refuge for the homeless, the unemployed, the depraved and deprived, recycling a population not welcome in any other institution. Human rights considerations challenge less eligibility, obliging prison authorities to adopt specific minimum standards, sometimes well above “the worse than anything offenders are likely to encounter outside prisons”.<sup>44</sup> Nevertheless, changes in the composition of the inmates’ population and the social organization of prisons and in the needs of the weak state and the strong market, merging into the “penal state”<sup>45</sup> make the introduction of different less eligibility levels necessary. This is pursued with the creation of more or less demanding and restricting custodial regimes, designated for different groups of inmates or individual prisoners, assessed according to security based mentalities.

Foucault’s seven universal maxims for the good penitential condition are still here, sometimes original, other times varied or distorted. Prison rules and regulations, statements of purpose and specific initiatives and activities in the penitentiaries are their reflection. The prison realities of the late 20th and the early 21st century though, are not necessarily determined and driven by these, sometimes influential, other

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<sup>44</sup> B. Hudson, *Understanding Justice*, 2003: 116.

<sup>45</sup> L. Wacquant, *Prisons of Poverty*, Minneapolis, University of Minnesota Press, expanded edition 2009: 55 ff.

times marginal correctional principles, simply because the prisons of the present are not and do not claim that they are always or mainly correctional and rehabilitative. A small part of the prison population is well socialized, with strong community bonds. No particular interventions based on the "penitential condition maxims" are needed in their cases. The traditional prison clientele, around whom the idea of the penitentiary has been developed, are not normally exploitable as a working force in the present stage of the capitalist development even if they are eager to co-operate with their punishers, so the punitive power is indifferent to use, educate and reintegrate them, unless socio-political considerations expressing and promoting rights-based and egalitarian, inclusionary policies are prioritized over economic determinants of penalty.<sup>46</sup> The maladjusted, trouble makers and enemies of the state and society, who refuse to enter into a dialogue with their punishers, are not suitable for correctional treatment. After all, the universal maxims are present but weak where the penitentiary technique loses ground and punitive procedures emerge and prevail, even though trends and directions to both poles are changing.

Prison regimes which take into account the rights of offenders and enhance their social encounters are relatively humane and relaxed. Prison systems facilitating the maintenance and the development of inmates' social bonds and taking into account third parties needs, interests and rights, are consistent with the principle of normalization, set in the 2006 Council of Europe Prison Rules<sup>47</sup> and the 2015 United

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<sup>46</sup> See N.E. Courakis (editing collaborator N. Koulouris), *Penal Repression Between Past and Future*, Sakkoula Publ., Athens/Thessaloniki, 5th edition 2009: 20 ff, where political structures, economic forces, cultural values, ideological and religious beliefs etc., determining penal means and methods are presented. For a typology of penal tendencies in different political economies see M. Cavadino and J. Dignan, *Penal Systems. A comparative approach*, London, Sage Publications, 2006: p. 14 ff.

<sup>47</sup> Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules ([http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules\\_978-92-871-5982-3.pdf](http://www.coe.int/t/dgi/criminallawcoop/Presentation/Documents/European-Prison-Rules_978-92-871-5982-3.pdf)).

Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).<sup>48</sup> In such cases the pains of imprisonment are relieved to a certain extent. Standard setting, namely agreements on minima acceptable and desirable in human rights respect terms, is an endeavour penal reformers are eager to be engaged with and to support. The difficult task is to initiate and implement serious and concerted activities for the agreed principles and standards to be materialised. Standards are often set but rarely met, implementation suffers from various deficiencies (lack of will, lack of resources, lack of inspiration and expertise...) and sometimes is cancelled by counter forces favouring strict, punitive custodial regimes. Normalization, in the sense of the convergence of life in prison with the positive aspects of life in the community or the minimization of the differences between life in custody and life at liberty that tend to develop the responsibility of the prisoners or the respect of their human dignity, is competing with “less eligibility” inspired demands and warehousing operations of custodial institutions. If we do not want to live in exclusive societies of change and division created by market forces, the civil society and the activities of the criminal justice system,<sup>49</sup> the books we write, the rules we legislate and the action we take should be consistent parts of the same word, not separated in two different spheres, imagination and reality.

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<sup>48</sup> A/RES/70/175 Resolution adopted by the General Assembly on 17 December 2015 (<https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>).

<sup>49</sup> J. Young, *The Exclusive Society. Social Exclusion, Crime and Difference in Late Modernity*, Sage Publications, London 1999.