Confines, Wards and Dungeons: Some Reflections on Crime and Society in Times of Covid-19

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"Denmark's a prison", says Hamlet in Shakespeare's play. "Then is the world one", Rosencrantz responds. To which Hamlet replies: "A goodly one; in which there are many confines, wards and dungeons."[1] The analogy between a given society – or even the world – and prison has gained new currency during the global Covid-19 pandemic. In the spring of 2020, the new coronavirus SARS-CoV-2 quickly spread across Western Europe, and many of us experienced governmental restrictions of freedom unprecedented in modern history. States shut down entire economies and entire educational systems. They suspended our right to movement, to communal worship and to communal drinking. In many places, people were shut up in their homes with no legal right to leave except for essential travel. Few movements, we soon learned, were deemed essential. Unsurprisingly, the experience of being confined to our homes was often compared to being in prison. Suddenly, we seemed to find ourselves in confines, wards and dungeons everywhere. This article sets out to investigate the parallel between being in lockdown and being in prison. Although we argue that the parallel soon breaks down, we also uncover deeper, more meaningful analogies between our society's response to crime and its response to the Covid-19 pandemic; analogies that should truly give us pause.

LOCKDOWNS, RESTRICTIONS OF FREEDOM AND THE SOCIAL MEANING OF INCARCERATION

It makes sense that people whose freedom was restricted to an unprecedented degree felt imprisoned. In fact, the comparison is so evident that it seems to merit little reflection. All around us, we heard people draw the parallel. And even activists, journalists and academics concerned with criminal justice reform used the comparison in op-eds and other media contributions to engender sympathy for incarcerated people.[2] Such contributions usually ran along the lines of, "Now you can begin to feel what it's like to be locked up, and now you can see for yourself it's no fun, even if you have a television in your room." The idea often was to provoke sympathy for the imprisoned in order to then pitch the specific brand of prison reform of the author in question. It is hard to tell whether these strategies paid off, but for some of us the design was presumably a little too transparent.

Other activists, journalists and academics criticised such use of the parallel.[3] Without denying superficial similarities, they insisted that the restrictions on freedom in society were not like those in prison. Societal deprivations of liberty take place in much better conditions and are far less absolute. The reality of prison, they argued, is so much harsher than being in lockdown that the parallel is simply not appropriate. Such criticisms have a point. If anything, lockdowns were more like an electronic monitoring sanction than like prison. And electronic monitoring is usually deemed a less invasive and restrictive measure than imprisonment. Lockdowns, then, are not quite like imprisonment. But there is another way of considering the parallel between prison and lockdown, which makes it seem even less apposite.

To compare incarceration with being in lockdown in terms of restrictions of freedom implies a continuum on which both can be located. The parallel only breaks down because freedom is restricted so much more severely in prison than when ordered to stay home that drawing the parallel becomes inappropriate (an analogous case would be certain off-hand comparisons between some of today's populist right-wing leaders and Adolf Hitler). But perhaps the idea of a continuum is mistaken. This becomes clear when you look at the parallel not from the angle of restrictions of freedom but from that of the social meaning of detention. To put it bluntly, imprisonment means utter rejection, lockdown means heroic solidarity. Let's start with the latter.

1. William Shakespeare, *Hamlet*, ed. GR Hibbard (Oxford: Oxford University Press, 1987), II.2.

2. See, for example: Jim Duffy, 'Covid Lockdown Is Helping Us to Understand How Hard Prison Actually Is', The Scotman, 30 April 2020, https://www.scotsman.com/news/opinion/columnists/covid-lockdown-helping-us-understand-how-hard-prison-actually-jim-duffy-2595771.

3. Consider the incarcerated author Jerry Metcalf's op-ed: Jerry Metcalf, 'No, Your Coronavirus Quarantine Is Not Just Like Being in Prison', The Marshall Project, 25 March 2020, https://www.themarshallproject.org/2020/03/25/no-your-coronavirus-quarantine-is-not-just-like-being-in-prison. Also, Thomas Ugelvik, Yvonne Jewkes, and Ben Crewe, 'Editorial: Why Incarceration?', *Incarceration* 1, no. 1 (2020): 1–5.

In many European countries, the beginning of March heralded a quick succession of ever more restrictive measures. The message accompanying these measures was twofold. On the one hand, it was a message of fear. 'These measures are necessary, because this virus is very, very scary'. We all remember the videos from intensive care wards and the testimonies of wheezing patients, even young ones. We might also remember feeling short of breath and tight in the chest in those first weeks, and thinking we had the coronavirus. Well, most of us didn't. Most of us were just afraid. On the other hand, the measures were presented as an opportunity for heroic solidarity. Suddenly the people we usually ignore and defund became heroes. Not only doctors, nurses and teachers, but also bus drivers and refuse collectors were providers of essential services without which society could not go on, who risked their lives on the job to keep us safe and sound. Many people might already have a hard time to recall the sentiment. But it was there, and it was everywhere. Even we were heroes. By staying at home, we were saving lives. In sacrificial solidarity, we gave up our own freedom to keep others safe. Others we didn't even know. Watching Netflix on the couch suddenly equalled heroic virtue. We were suffering, but we did it for humankind.

Something of that sentiment was captured by the Belgian city of Leuven, where we live. The city distributed posters that appeared everywhere behind windows and that read "Even apart, altijd samen"; "Apart for a while, forever together." To evoke the contrast between being in lockdown and being in prison, try to visualise these posters. "Apart for a while, forever together." Now imagine these posters behind the barred windows of your local prison: "Apart for a while, forever together." And now imagine the responses. "Apart for a while? For as long as possible!' 'Forever together? Please no! Not together at all! You can come back to society if you must, but not in my backyard!" Imprisonment, as a state reaction to criminalised behavior, is intended to – and does – convey censure. If you are in prison, you should be ashamed of yourself. We literally do not want to see your face anymore. In modern societies, prison is the ultimate symbol of societal rejection and it is felt that way by the imprisoned.[4] This, of course, is the crucial difference between the social meaning of being in prison and being in lockdown. One is a symbol of solidarity lost. The other of solidarity regained.

4. Gresham Sykes already perceptively pointed this out in his famous study *The Society of Captives*. Gresham M. Sykes, *The Society of Captives* (Princeton, New Jersey: Princeton University Press, 1958), 65–67.

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But this is not yet the whole story. People in society presumably did not think much kindlier of people in prison during the lockdowns. But many people in prison did feel more attuned to society. For one, there was a sense of confronting a common enemy. Covid-19 is dangerous for all, and many people we spoke with in prison felt a bond between themselves and their families, friends and wider society facing that common enemy.[5] People in prison even looked for ways to help out. In Belgium, people in prison sewed loads and loads of face masks, not just for use in the prison, but for outside use as well. Even though work conditions were often poor, and despite disturbingly self-congratulatory communications of the penal administration, the effort shows a desire to make good on the part of people in prison. It illustrates, at the very least, that some people in prison experienced a sense of solidarity with the rest of society, even though such solidarity might not have been reciprocal.

It is clear that the analogy between being in lockdown and being in prison breaks down at crucial points. Although both entail restrictions of freedom, their social meaning is radically opposed, even though many people in prison experience solidarity with society and desire to make good. Still, there is more to reap from the analogy than would appear from this bleak appraisal. Not so much in terms of the experience of individuals, but in terms of society's response to problems. There are uncanny structural similarities between the ways Western societies deal with crime and criminals and how they have dealt with the coronavirus.

COVID-19, CRIME AND THE CULTURE OF RISK

The first of these similarities brings us back to a collective emotion we already mentioned but did not yet explore. Fear. The imprisonment of people who commit a criminal offence is not just about censure and proportional response. In most Western societies, it is increasingly about risk. The assumption is that people who offend are dangerous. High recidivism rates show that many offenders go on to commit further crimes, and this is supposed to justify viewing them primarily as bearers of risk. This image is aggravated by excessive media focus on parole gone wrong. When a formerly incarcerated person commits another heinous crime, all the cases where parole went well are forgotten. As a result of such developments, evaluating and constructing tools for risk assessment has almost become a subfield of criminology; as it

5. The recent Irish Inspector of Prisons' journal project indicates that there was also a feeling of even deeper alienation for some prisoners. See Patricia Gilheaney, Joe Garrihy, and Ian Marder, 'Ameliorating the Impact of Cocooning on People in Custody - a Briefing' (Dublin: Office of the Inspector of Prisons, 20 July 2020), https://www.oip.ie/wp-content/uploads/2020/07/Ameliorating-the-impact-of-cocooning-on-people-in-custody-a-briefing.pdf.

has also become a large and profitable industry. Of course, such tools are fallible, many people are identified as dangerous who are not, but the continued incarceration of such false positives is collateral damage. The security of society is paramount.[6]

This increased focus on risk and security in the field of criminal justice is mirrored in the recent response to the Covid-19 pandemic. Suddenly we all learned to view each other as bearers of risk. Something of the fear that grasps people when they think of crime and criminals grasped us all in those first months of lockdown. Everyone around us might carry this potentially lethal disease. What happened, in short, is that we began to identify other people primarily, or even solely, by the danger they pose. We even began to identify ourselves as bearers of risk – a tendency that is observable in prisons as well. So, we kept distant from one another, because we feared to be infected, or feared to infect. Often, of course, for no reason. False positives abounded. But security trumps all. Better safe than sorry. Here too, media played a questionable role. Just as in the cases of parole gone wrong, many media outlets focused on extreme cases – deaths of young people or even children, which are very rare with Covid-19, but also quite spectacular. Just as with reports on high profile crime cases, the subtext of such messages is: be afraid, be very afraid.

Viewing people as bearers of risk is a dangerous business. It inevitably entails objectivation, depersonification or dehumanisation – however you want to call it. It is the process of no longer seeing persons for who they are but only seeing a single feature that dominates all others: potential coronavirus bearer, potential criminal. The same logic that keeps people in prison indefinitely, keeps the elderly from seeing their kin or dying in their company. Still, risk is no chimera. People do reoffend, and people do spread the coronavirus. Risk can justify restrictive measures, but the ways in which such measures impinge on fundamental rights are easily overlooked.

6. For an accessible explanation of risk assessment practices and helpful visuals, see Anna Maria Barry-Jester, Ben Casselman, and Dana Goldstein, 'Should Prison Sentences Be Based On Crimes That Haven't Been Committed Yet?', FiveThirtyEight, 4 August 2015, https://fivethirtyeight.com/features/prison-reform-risk-assessment/.

SAFETY, HUMAN RIGHTS AND STATES OF EXCEPTION

The insight that risk or danger are a primary driver of societal responses to crime and Covid-19 reveals something about the status of human rights in liberal democracies. In liberal societies citizens are supposed to be protected against coercion. In cases where the government itself needs to take coercive measures governmental power has to be kept in check by the law. Human rights play an important role here, in that they delineate a domain of the life of the citizen that is legally protected. This is, of course, very relevant in the context of detention. Our liberal societies pride themselves on their ability to guarantee the basic rights of even its incarcerated citizens. This concern for the rights of offenders might seem to be engrained in the development of modern prison systems and their abandonment of cruel corporal punishments expressive of unbridled sovereign state power. But on closer inspection, the rise of the modern prison was primarily the outcome of a naïve utilitarianism that sought to reform the offender and thus protect society, rather than of a genuine concern for prisoners' rights. It is only when the harmful effects of "well-intended" incarceration on the life of inmates gradually came to light that the urgency of the protection of prisoners' rights became fully manifest.

In Belgium, the rights of prisoners are spelled out in the 2005 Prison Act. The law was written in the full awareness that the prison, as a total institution has detrimental effects on inmates. The final report of the drafting committee declares that the law seeks to reduce the totalitarian character of prisons, to minimalise their harmful consequences and to make prison life resemble life in the free world as closely as possible. Still, persistent problems in the Belgian prison system, exemplified by countless negative reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, show the impotence of human rights discourse vis-à-vis prison's rigid institutional logic. This powerlessness of rights-talk (and of its incarnation in law and international monitoring systems) can indeed be explained in sociological terms by referring to the internal processes

of total institutions.[7] But there is also a more extrinsic reason why the prison system tends to disregard human rights. Even though rehabilitative understandings of imprisonment have lost some of their credibility, prison is still considered a useful instrument to keep large groups of "dangerous" people off the streets. In this logic of incapacitation, the old utilitarian approach to prison is still seen to be alive and kicking. Incapacitation is no less naïve than the older idea that totalitarian institutions would breed morally better persons. Perhaps it is even more naïve, in its off-hand assumption that the sheer (temporary) expulsion of offenders from society – even without expensive "rehabilitative" interventions – will contribute to a safer world.

The weakness of human rights claims is inscribed in the text of the 2005 Belgian Prison Act. Time and again, prisoners' rights are asserted with the provision that exceptions can be made for the sake of order and security. Whether this concern for safety relates to life within the prison or to society at large, the basic message is that concrete arrangements made to guarantee fundamental rights and liberties in prisons can be suspended whenever order and security are at stake. If human rights are trump cards, as some philosophers would have it, then the prison system makes it clear that rights can be overtrumped at any time by security considerations. Rights are fine, but they are no match for social utility.

A similar mechanism is at work in the management of the Covid-19 crisis. None of us would have expected in January 2020 that within a few months you could find yourself being stopped at a police roadblock during the daytime having to answer the question where you are heading. Everybody can see the rationale behind the measures that are taken by our governments. At the same time, there is something frightening about the smoothness and swiftness of the suspension of rights and liberties that we had always considered inalienable. The Dutch author Ilja Leonard Pfeijffer, who lives in Italy and regularly wrote for the Belgian newspaper *De Standaard* during lockdown, expressed it like this: "There are good reasons to suspend fundamental liberties such as the freedom of movement and of assembly. I can see that, but I also realize that every totalitarian regime in the past could only have dreamt of such good reasons."[8] These words seem to reiterate the analysis of the Italian philosopher Giorgio Agamben who wrote a piece in *Il Manifesto* in the early days of local Italian lockdowns in which he warned that the measures taken by the government exemplify an extended "state of exception".[9] According to Agamben, the recurring reference to exceptional situations of crisis (terrorism, pandemic) is the typical way governments nowadays attempt to exercise sovereign power. Undoubtedly, Agamben underestimated the seriousness of the pandemic at the time of his article and his analysis clearly has paranoid overtones. Still, it is not inappropriate to be troubled by the ease with which large parts of society could be convinced (with a little help from the media) of the exceptional danger of the situation and of the corresponding necessity to give up basic rights. It underlines the vulnerability of these rights and the fact that whenever we can be convinced of the urgency of some threat, we will gladly sacrifice them for the sake of order and security.

LIFE, THE CONTINUATION OF LIFE AND THE MEANING OF LIFE

Recently, the province of Antwerp introduced a curfew in response to the rising number of Covid-19 infections in that part of Belgium. It was the first curfew in Belgium since the end of the Second World War. Antwerp governor Cathy Berx defended the seemingly disproportionate decision by stating that "You have only one fundamental right that is absolute: the right to live."[10] There is more to this statement than the point that was already made, namely that the right to security (and so

7. For what is still the best treatment on the internal dynamics of total institutions, see Erving Goffman, 'On the Characteristics of Total Institutions', in *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Garden City, NY: Anchor Books, 1961), 1–125. On the precariousness of rights in such contexts, see Dirk Van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy: Penology and Human Rights* (Oxford: Oxford University Press, 2009).

8. Ilja Leonard Pfeijffer, 'Gezondheidsdictatuur', De Standaard, 14 April 2020, https://www.standaard.be/cnt/dmf20200413_04921480.

9. For an English translation, see Giorgio Agamben at the *Positions* website: Giorgio Agamben, 'The State of Exception Provoked by an Unmotivated Emergency', Positions, 26 February 2020, http://positionspolitics.org/giorgio-agamben-the-state-of-exception-provoked-by-an-unmotivated-emergency/.

10. Stijn Cools and Bart Brinckman, 'Cathy Berx: "De avondklok ondemocratisch? Je hebt maar één absoluut grondrecht: het recht op leven"', De Standaard, 1 August 2020, https://www.standaard.be/cnt/dmf20200731_97311771.

to the protection of life) will always overrule all other rights when the chips are down. On a more fundamental level, the words of the governor raise the question what we as a society consider valuable. What in life is so significant that we are willing to make sacrifices for it? There is a widespread political theory that says that in our liberal societies it is not up to the government to answer this question. People should decide for themselves what they value most in their own lives and which sacrifices they are willing to make for those values. Governments are only there to provide the basic conditions for a meaningful life and to protect citizens against internal and external sources of harm. The Covid-19 crisis reveals that this theory is flawed. Cleary, there is a central value that is supposed to govern our lives collectively and serve as guideline and justification for state interventions and even for the propagation of a collective morality. This central value seems to be *life itself*, in the very basic sense of the continuation of physical existence. When the prolongation of biological life is threatened, people are called or forced to abstain from the very things that make their lives meaningful (mostly things that involve the physical proximity of others) and to consider these things as mere embellishments of the one and only essential thing: that life goes on, whatever it takes.

One could argue that this continuation-of-life morality is a very reasonable thing. After all, life's meaningfulness does presuppose biological existence. Hence, if the latter is endangered, it seems fair to partly or temporarily suspend, for the sake of survival, some of the activities that give meaning to our lives. Although this argument has a commonsense ring to it, it may, in fact, bear witness to a profound spiritual crisis in our society. It is in any case a dramatic break with nearly all the spiritual and moral traditions that have hitherto spoken about the meaning of human existence. In the vast majority of these traditions, the meaning of life is constituted by a relation to something that is more important than one's own physical survival. One concrete implication of this conviction is that when push comes to shove, someone would be prepared to put his or her life at stake for what is of ultimate value in life. Every individual with children or some other all-embracing vocation in life intuitively understands what is meant.

In the current Covid-19 crisis, something remarkable is happening to this traditional 'self-sacrificial' structure of human meaningfulness. For some people, it is the crisis itself, along with the governmental response to it, that becomes a source of meaning. Such people are convinced – and announce this on Facebook – that it is eminently meaningful to make all the small, but slightly heroic sacrifices (wearing face masks, enduring decreased mobility, attending energy-draining Zoom meetings) that are needed to flatten the curve. In a secularised version of the view that suffering may bring one closer to God, people declare that the crisis has taught them so much about what is really important and valuable in life. What hasn't killed them has clearly made them stronger.

But this is a mere prosperity gospel. In most cases, the experience of finding meaning in the crisis presupposes strong social bonds, a fairly stable financial situation (so that self-sacrifice does not really cut to the quick), an acquired capability to find purpose in abstract things (such as medical statistics) and, usually, a sufficiently large garden. For a considerable part of society – whose dimensions still have to become clear – the crisis means that they are simply deprived of meaning and reduced to bare existence (without the resources of the more fortunate to turn this deprivation into a new source of meaning). People in homes for the elderly are, of course, the most striking examples. If they do not experience the physical horror of a local corona-outbreak, they suffer the spiritual horror of a life stripped of all that makes it worth living.

The analogy with prison is obvious. Prison guarantees life as continued physical existence – leaving aside, that is, the cases where prison does bring death upon its inmates through neglect, blatant medical errors and poor suicide prevention – but it is a brutal assault on everything that makes life meaningful: work, family, social life, autonomy and public recognition. The modern cellular prison was designed with a certain type of person in mind: the monk-like, introspective individualist for whom forced seclusion and all that comes with it would be the source of new meaning in life. We know now that for the vast majority of detainees, prison is not the cradle of a new, crime-free and fulfilling life, but rather a place where they are buried alive and where they experience the horror of sheer physical existence deprived of all meaning. What does not kill them instantly, kills them slowly.

WHAT CAN WE HOPE?

Did we paint too grim a picture both of life in prison and of the well-intended attempts of governments to manage the Covid-19 crisis? Are we too like Hamlet, with his confines, wards and dungeons? Perhaps we are. But we are so for a reason. We are deeply convinced that an excessive concern for security will always have destructive effects on other crucial imperatives: treating humans as persons, respecting their rights, allowing them to have a meaningful existence. The apparent pessimism of our story stems, in part, from a recognition that far-reaching security measures are inevitable, both in the criminal justice system and in attempts to control a pandemic. Such indispensable and legitimate measures necessarily clash with human dignity. We do not share the naïve optimism that more sophisticated institutional procedures and more advanced technologies will allow us to overcome this tragic situation in which one set of essential moral goals can only be achieved at the expense of another. And yet, there is hope.

Hope in times of Covid-19 appears to reside in the expectation that together we will flatten the curve so that soon all this will be over. Together, we engage in ascetic practice awaiting the triumphant arrival vaccine or cure. We might well be deceived in this expectation, for it is far from clear whether a final solution for this pandemic is within our reach. We may just as well have entered a new and enduring era of virus-control, where things that once were normal, such as shaking hands, will never be normal again. The expectation of rooting out this new coronavirus may be as dangerously illusory as the vain dreams about a crime-free society. In both cases the chimera of a risk-free world inspires society to ruthlessly blot out the last remnants of the thing that threatens its security. In order to avoid this latter-day violence of purification, we would do well to follow Ivan Illich's sharp distinctions between expectation and hope. "Hope", he argues, "centers desire on a person from whom we await a gift. Expectation looks forward to satisfaction from a predictable process which will produce what we have the right to claim."[11] Hope dwells in personal encounters between people. We await gifts from each other. Therefore, these encounters can go horribly wrong, for we may not get what we had hoped for, or we may get what we had feared (a virus). Some gifts are poisoned gifts. Still, our only sources of hope are those ever-risky personal encounters and our indestructible desire for them. It is true that all ills can come out of Pandora's box. But Illich reminds us that *Pan-dora*, means "All-giver"; the giver of all. If we keep her box closed, wanting to avoid all ills, we end up getting nothing – not even hope. A closed box is very like a prison indeed.

11. Ivan Illich, *Deschooling Society* (London: Marion Boyer, 1972), 105.