

Michel Foucault,
- Power - : Essential Works
of Foucault 1954-1984

WHAT IS CALLED "PUNISHING"?*

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Q: Your book *Discipline and Punish*, published in 1974, fell like a meteorite on the terrain of the penal specialists and criminologists. Presenting an analysis of the penal system which focused on political tactics and the technology of power, that work upset the established ideas concerning delinquency and the social function of punishment. It disturbed the penal judges, at least those who reflected on the meaning of their work; it vexed a number of criminologists who were hardly pleased, moreover, to see their discourse called "chatter." Nowadays, criminology books that don't refer to *Discipline and Punish* as a work to be reckoned with are more and more rare. Yet the penal system doesn't change, and the criminological chatter goes on as before. It's as if people were paying homage to the theorist of juridico-penal epistemology without being able to make any use of his teaching, as if a complete imperviousness existed between theory and practice. Of course, it wasn't your intention to do the work of a reformer, but couldn't one imagine a criminal justice policy that would take support from your analyses and would try to draw certain lessons from them?

A: Perhaps I should start by explaining what I intended to do in that book. I didn't aim to do a work of criticism, at least not directly, if what is meant by criticism in this case is denunciation of the negative aspects of the current penal system. And I didn't aim to do the sort of job that a historian of institutions might do, either, in the sense that I didn't mean to recount how the penal and carceral institution had functioned in the course of the nineteenth century.

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I attempted to define another problem. I wanted to uncover the system of thought, the form of rationality that, since the end of the eighteenth century, has supported the notion that prison is really the best means, or one of the most effective and rational means, of punishing offenses in a society. It's quite obvious that in doing this I had certain ideas concerning what was possible at the present time. Indeed, it has often appeared to me that by setting reformism against revolution, as is usually done, one doesn't provide oneself with the means for imagining what might bring about a real, profound, and radical transformation. It seems to me that when it was a question of reforming the penal system the reformers very often accepted, implicitly and sometimes even explicitly, the system of rationality that had been defined and put in place long before, and that they were simply trying to discover what the institutions and practices might be that would enable them to realize that system's scheme and achieve its ends. In bringing out the system of rationality underlying punitive practices, I wanted to indicate what the postulates of thought were that needed to be reexamined if one intended to transform the penal system. I'm not saying that they would necessarily have to be discarded; but I think that when one engages in a project of transformation and renovation, it's very important to know not only what the institutions and their real effects are, but also what type of thought sustains them: What elements of that system of rationality can still be accepted? What is the part, on the other hand, that deserves to be cast aside, abandoned, transformed, and so on? It's the same thing that I had tried to do with respect to the history of psychiatric institutions. It's true that I was a bit surprised, and fairly disappointed, to see that all this didn't lead to any endeavor of reflection and thought that might have brought people together around the same problem—very different people such as magistrates, penal law theorists, penitentiary practitioners, lawyers, social workers, and persons who have experienced prison. It's true that, for cultural or social reasons no doubt, the seventies were extremely disappointing in that regard. Many critiques were leveled more or less in every direction. Often, these ideas had a certain dissemination, and at times they exerted a certain influence; but the questions that were raised rarely crystallized into a collective initiative to determine in any case what transformations would need to be carried out. At any rate, for my part and

in spite of my desire, I certainly never had any opportunity to have working contact with any magistrate or any political party. Thus, the Socialist Party, founded in 1972, which spent nine years preparing for its coming to power, and which to a certain extent echoed in its speeches several themes that were developed during the years 1960-70, never made a serious attempt to define beforehand what its real practice might be when it was in power. It seems that the institutions, groups, and political parties that might have facilitated a work of reflection didn't do anything...

Q: *One does have the impression that the conceptual system hasn't evolved at all. Although the jurists and the psychiatrists recognize the relevance and the freshness of your analyses, they seem to find it impossible to put them into practice, to employ them in the search for what is called, ambiguously, a "policy concerning criminals."*

A: You've just formulated a problem that is, in fact, very important and difficult. You know, I belong to a generation of people who witnessed the collapse, one after another, of most of the utopias that had been constructed in the nineteenth and at the beginning of the twentieth century, and who also saw the perverse and sometimes disastrous results that could ensue from projects that were extremely generous in their intentions. I've always made a point of not playing the role of the prophetic intellectual, who tells people what they ought to do ahead of time and prescribes conceptual frameworks for them, objectives and means that he has drawn out of his own brain, by working among his books in the confines of his study. It has seemed to me that the work of an intellectual—what I call a "specific intellectual"—is to try and isolate in their power of constraint, but also in the contingency of their historical formation, the systems of thought that have become familiar to us, that appear self-evident and are integral with our perceptions, our attitudes, our behaviors. One would then need to collaborate with practitioners—not only to modify the institutions and practices but to reshape the forms of thought.

Q: *What you have called "criminological chatter"—a phrase that's been misunderstood, no doubt—is precisely the fact of not calling back in question the system of thought in which all those analyses were conducted for a century and a half. Is that what you meant?*

A: Yes, that's right. The phrase was a bit careless perhaps, so let's

retract it. But I do have the impression that the difficulties and contradictions that penal practice has encountered over the last two centuries have never been reexamined in a thorough fashion. And for a hundred and fifty years now, exactly the same notions, the same themes, the same reproaches, the same critical observations, the same demands have been repeated, as if nothing has changed—and, in a sense, nothing *has* changed. In a situation where an institution presenting so many disadvantages and provoking so much criticism gives rise only to an endless repetition of the same discourses, "chatter" is a serious symptom.

Q: *In Discipline and Punish, you analyze the "strategy" that consists in transforming certain illegalities into delinquency, turning the apparent failure of prison into a success. It's as if a certain "group" were more or less deliberately using this means to achieve results that are not declared. One has the impression, perhaps a false one, that this amounts to a ruse of power that subverts the projects and spoils the discourses of the humanist reformers. From this viewpoint, there would appear to be a resemblance between your analysis and the Marxist interpretation of history (I'm thinking of the pages in which you show that a certain type of illegality is singled out for punishment while others are tolerated). But, in contrast to Marxism, it's not clear what "group" or what "class," what interests are at work in this strategy.*

A: One has to distinguish among different things in the analysis of an institution. First, there is what can be called its *rationality*, or its *aim*, that is, the ends it has in view and the means it possesses for attaining those ends. In short, this is the institution's program as it has been defined—for example, Jeremy Bentham's ideas about prison. Second, there is the question of *results*. Obviously, the results very rarely coincide with the aim; thus, the objective of the correctional prison, of imprisonment as a means of improving the individual, has not been achieved. The result has been the opposite on the whole, and prison has tended to give a new impetus to delinquent behaviors. Now, when the result doesn't coincide with the aim, there are several possibilities: either one implements reforms, or one uses those results for something that wasn't envisaged at the start but can very well have a direction and a utility. This is what can be called the *use*. Thus prison, which did not result in any im-

provement, served instead as a mechanism of elimination. The fourth level of analysis is what can be called the "strategic configurations"; that is, on the basis of these unexpected uses, so to speak—which were new, but in spite of everything were deliberate to a certain extent—one can construct new rational courses of action that are different from the initial program but also correspond to its objectives, and in which the interactions among the different social groups can find their place.

Q: *Results that transform themselves into ends...*

A: That's right. They are results that are adapted to different uses, and these uses are rationalized—organized, in any case—in terms of new ends.

Q: *But that is not thought out in advance, of course—there's no hidden Machiavellian scheme underneath...*

A: Not at all. There isn't someone or some group that is controlling this strategy; but, on the basis of different results of the first aims and the usability of those results, a certain number of strategies are constructed.

Q: *Strategies whose finality once again partly eludes those who conceive them.*

A: Yes. Sometimes these strategies are entirely conscious; it can be said that the way in which the police use prison is more or less conscious. It's just that, as a rule, the strategies are not formulated. Unlike what occurs with the program, the institution's first program, the initial finality, is posted in black and white and serves as a justification, whereas the strategic configurations are often not clear even to those who occupy a place and play a role in them. But this game is quite capable of solidifying an institution, and I think that prison has been solidified, in spite of all the criticism that was made, because several strategies belonging to different groups have converged on that particular site.

Q: *You explain very clearly how the penalty of imprisonment was denounced, from the beginning of the twentieth century, as the great failure of the penal justice system, and it is denounced in the same terms as today. There isn't a single penal specialist who believes that prison achieves the goals assigned to it. The crime rate doesn't go down, and far from "rehabilitating" delinquents, prison manufactures*

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them; it increases the repetition of offenses, and it doesn't make society any safer. The penitentiary establishments are always full, and one doesn't see the beginning of a change in this respect under the Socialist government in France.

At the same time, though, you've turned the question around. Instead of looking for the reasons for a perpetually renewed failure, you ask yourself what purpose is served by that failure and who benefits from it. You discover that prison is an instrument for the differential management and control of illegalities. In that sense, far from constituting a failure, prison has succeeded very well in specifying a category of delinquency, that of the popular strata, in producing a particular category of delinquents, in drawing a line around them the better to disassociate them from other categories of offenders, especially those arising from the bourgeoisie.

Finally, you note that the carceral system manages to give a natural and legitimate stamp to the legal authority to punish, that it "naturalizes" the latter. This idea is connected with the old question of legitimacy and the justification for punishment, because the exercise of disciplinary power does not exhaust the power of punishing, even if that's its major function, as you have shown.

A: Let's clear up some misunderstandings, if you don't mind. First of all, in this book about prison, it's obvious that I didn't mean to raise the question of the basis of the right to punish. What I tried to show is the fact that, starting from a certain conception of the basis of the right to punish which can be found in the penal theorists or the philosophers of the eighteenth century, different means of punishment were perfectly conceivable. Indeed, in the reform movement of the second half of the eighteenth century, one finds a whole range of means of punishing that are suggested, and it turns out finally that prison was the one that was privileged, and it speak. It wasn't the only means of punishing, but it nevertheless became one of the principal means. My problem was to find out why this means was chosen, and how this means of punishment rather fundamental practice but even a certain number of given to the psychological, or psychopathological, aspects of the criminal personality—an importance that is affirmed throughout the nineteenth century—was, to a certain extent, induced by a punitive practice whose declared aim was correction, and which only

ran up against the impossibility of correcting. So I left aside the problem of the basis of the right to punish in order to foreground another problem that was, I believe, more often overlooked by historians—the means of punishing and their rationality. But that doesn't mean the question of the justification for punishment is not important. On that point I think one must be modest and radical at once, radically modest, recalling what Nietzsche said more than a century ago, namely, that in our contemporary societies we don't know any longer exactly what is being done when one punishes or what can justify punishment, truly and fundamentally. It's as if we were applying a punishment while basing ourselves on a certain number of heterogeneous ideas that were deposited on top of one another to an extent, ideas that derive from different histories, separate time periods, divergent rationalities.

Thus, if I didn't speak of this basis of the right to punish, it's not because I consider it unimportant; I think it would definitely be one of the most fundamental tasks to reconsider the meaning that can be given to legal punishment, in light of the connection between law, ethics, and the institution.

Q: *The problem of defining punishment is all the more complex because not only do we not really know what it means to punish, but it seems there is a reluctance to punish. Indeed, judges increasingly refrain from punishment: they intend to treat, to reeducate, to cure, almost as if they were trying to exonerate themselves of administering repression. Further, you write in Discipline and Punish: "Penal discourse and psychiatric discourse cross each other's frontiers" (p. 256). And: "With the multiplicity of scientific discourses, a difficult, infinite relation was forged that penal justice is still unable to control. The master of justice is no longer the master of its truth" (p. 98). Nowadays, recourse to the psychiatrist, the psychologist, the social worker, is a matter of judicial routine, penal as much as civil. You've analyzed this phenomenon, which no doubt indicates an epistemological change in the juridico-penal sphere. Penal justice seems to have changed directions. The judge applies the penal code to the author of an infraction less and less, more and more, he treats pathologies and disturbances of the personality.*

A: I think you're completely right. Why did penal justice establish these relations with psychiatry, relations that should be very cum-

bersome to it? Because, obviously, between the problematic of psychiatry and what is required by the very practice of penal law in view of the responsibility it has, I wouldn't say there is a contradiction—there's a heterogeneity. They are two forms of thought that aren't on the same plane, and so one doesn't see according to what rule they might use one another. But it's certain—and this has been a striking phenomenon since the nineteenth century—that penal justice seems to have been fascinated by that psychiatric, psychological, or medical thought, whereas one would have imagined on the contrary that it would be extremely wary of it.

There were resistances, of course; there were conflicts, and these shouldn't be underestimated. But again, when one looks at a longer time period, a century and half, it does appear that penal justice was very hospitable, and increasingly so, to those forms of thought. It may be true that the psychiatric problematic sometimes got in the way of penal practice, but these days it seems to facilitate the latter by allowing it to leave vague the question of what one does when one punishes.

Q: *In the last pages of Discipline and Punish, you point out that disciplinary techniques have become one of the major functions of our society, a power that reaches its greatest intensity in the penitentiary institution. You say, further, that prison doesn't necessarily remain indispensable to a society like ours because it loses much of its reason for being in the midst of a growing number of mechanisms of normalization. Does this mean that a prisonless society is conceivable, then? That utopia is beginning to be taken seriously by certain criminologists. For example, Louk Hulsman, a professor of criminal law at the University of Rotterdam and an adviser to the United Nations, argues for the abolition of the penal system. The reasoning that supports his theory lies in with parts of your analysis: the penal system creates the delinquent; it shows itself to be fundamentally incapable of realizing the social ends it's supposed to pursue; all reform is illusory; the only coherent solution is its abolition. Hulsman notes that a majority of violations escape the penal system without imperting society. So he proposes that we systematically decriminalize most acts and behaviors that the law transmutes into crimes or offenses, and replace the concept of crime with that of "problem situations." Instead of punishing and stigmatizing, we should try to settle conflicts through non-*

judicial arbitration and reconciliation procedures. We should regard violations as social risks, the main concern being the indemnification of victims. Intervention by the judicial apparatus would be reserved for serious cases or, as a last resort, for failures of attempts at reconciliation or at reaching civil law solutions. Hulsman's theory is one that assumes a cultural revolution.

What do you think of this abolitionist idea as I have outlined it? Can it be seen as containing some of the possible developments that would derive from Discipline and Punish?

A: I think there are many interesting things in Hulsman's argument. The challenge he poses concerning the right to punish, saying there is no longer any justification for punishment, is striking in itself.

I also find it very interesting that he raises the question of the basis for punishment while, at the same time, considering the means by which the system responds to something regarded as an offense. That is, the question of means is not just a consequence of what might be presented with respect to the basis of the right to punish, but, in Hulsman's view, reflection on the basis of the right to punish must be done in conjunction with reflection on the ways of reacting to an offense. All that is very refreshing, very important, in my opinion. Perhaps I'm not well enough acquainted with his work, but I wonder about the following points. Won't the notion of "problem situations" lead to a psychologizing of both the question and the reaction? Doesn't such a practice run the risk, even if this is not what he wishes to see happen, of bringing about a kind of dissociation between, on the one hand, the social, collective, institutional reactions to the crime, which will be regarded as an accident and will need to be dealt with in the same way, and, on the other, a hyperpsychologization around the criminal himself that will constitute him as an object of psychiatric or medical interventions, with therapeutic aims?

Q: *And won't this conception of crime lead, moreover, to the abolition of the notions of responsibility and culpability? Given that evil exists in our societies, doesn't the awareness of culpability—which, according to Paul Ricoeur, originated in ancient Greece—perform a necessary social function? Can we imagine a society that would be relieved of any sense of guilt?*

A: I think it's not a question of determining whether a society can function without guilt but whether society can make guilt function as an organizing principle and a basis for law. And that is where the question becomes difficult.

Ricoeur is perfectly justified in posing the problem of moral conscience; he poses it as a philosopher or a historian of philosophy. It's completely legitimate to say that culpability exists, that is has existed for a certain time. It's debatable whether the sense of guilt comes from the Greeks or has another origin. In any case, it exists and it's hard to see how a society like ours, still firmly rooted in a tradition which is also that of the Greeks, could do without guilt. For a long time, people were able to believe that a system of law and a judicial institution could be directly linked together by a notion like that of culpability. But for us the question is open.

Q: *Currently, when an individual appears before some penal justice authority, he has to account not only for the prohibited act he has committed but also for his very life.*

A: That's true. For example, in the United States there has been a lot of discussion about indeterminate sentences. I think the practice has been abandoned almost everywhere, but it involved a certain tendency, a certain temptation, that seems not to have disappeared: a tendency to bring penal judgment to bear much more on a qualitative ensemble characterizing an existence, a way of being, than on a specific act. There's also the measure that was taken recently in France concerning sentencing judges. The idea—and it's a good one—was to strengthen the power and control of the judicial apparatus over the punishment process. Which is a good way of diminishing the de facto independence of the penitentiary institution. But there is a problem: now there will be a tribunal, composed of three judges, I believe, who will decide whether or not a prisoner can be granted parole; and this decision will be made by considering various factors, the first being the original violation, which will be reactualized in effect, since the plaintiff claiming damages and the victim's representatives will be present and able to intervene. And then factors having to do with the individual's conduct in his prison, as it was observed, evaluated, interpreted, and judged by the guards, by administrators, by psychologists, and by doctors. It is this magma of unrelated elements that will be grappled with

in order to make a judicial type of decision. Even if this is juridically acceptable, one still needs to know what actual consequences it will produce. And, at the same time, what dangerous model it may present for criminal justice in its ordinary application, if in fact we make a habit of making penal decisions on the basis of good or bad conduct.

Q: *The medicalization of justice is leading to a gradual expulsion of penal law from judicial practices. The legal subject is giving way to the neurotic or psychopath who is not responsible, or not fully so, and whose behavior would be determined by psychological factors. Reacting against this conception, certain penalists envisage a return to the idea of a punishment that is more consonant with respect for the freedom and dignity of the individual. It's not a matter of going back to a system of brutal and mechanical punishment that would bear no relation to the socio-economic regime in which it functions, that would disregard the social and political dimension of justice, but, rather, of regaining a conceptual coherence and of differentiating between the province of law and that of medicine. One thinks of Hegel's statement: "In so far as the punishment is seen as embodying the criminal's own right, the criminal is honored as a rational being."*

A: I do think that penal law is part of the social game in a society like ours, and this fact shouldn't be concealed. This means that the individuals belonging to this society need to acknowledge themselves as being legal subjects who, as such, are liable to punishment if they violate this or that rule. There is nothing shocking in that, I believe. But it is society's duty to make it possible for concrete individuals to acknowledge themselves as being legal subjects. That is difficult when the penal system employed is archaic, arbitrary, and incapable of dealing with the problems that confront a society. Just consider, for example, the area of economic delinquency. The real groundwork to be done is not to inject more and more medicine or psychiatry in order to modulate that system and make it more acceptable; what's needed is to rethink the penal system in itself. I'm not suggesting that we return to the severity of the Penal Code of 1810; I am suggesting that we return to the serious idea of a penal law that would clearly define what can be considered, in a society like ours, as requiring punishment or as not requiring it. Let's return to the very idea of a system's defining the

rules of the social game. I'm distrustful of those who would return to the system of 1810 on the pretext that medicine and psychiatry are eroding the meaning of penal justice; but I'm equally distrustful of people who basically accept that system of 1810, and who would merely adjust it, improve it, soften it through psychiatric and psychological modulations.

NOTES

* Conducted by F. Runggheheim in 1983, this interview was published in the *University of Brussels Review* in 1984. [eds.]

1. L. Hulsman, *Le Système pénal en question* (Paris: Centurion, 1982).

2. G. W. F. Hegel, *Elements of the Philosophy of Right*, trans. H. B. Nisbet (Cambridge, Eng.: Cambridge University Press, 1991), p. 126.