Review Essay
Foucault's *Discipline and Punish*
An Exposition and Critique

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MICHEL FOUCAULT, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan. London: Allen Lane, 1977; New York: Random House, 1979. $6.95.

I. Exposition

Introduction

If the reactions of students, colleagues, and critics are to be believed, then *Discipline and Punish* seems to stand apart from the normal run of monographs which line the library shelves. It has an out-of-the-ordinariness which never fails to provoke comment and discussion, and—if such things can be said to exist—a kind of intellectual charisma which attaches to the book and to its author. This is not so much a recognition of the book's seriousness and originality as an acknowledgment of the special and subversive status that it claims for itself. At once a work of history and sociology, philosophy and penology, legal analysis and cultural criticism, it seems nonetheless to stand outside any of these disciplines, making it difficult to locate the book in any given literature or tradition. If one adds to this the author's determination to evade easy classification (he is not a Marxist, not a structuralist, not a historian . . .), the literary and rhetorical style in which he formulates his arguments, and the unfamiliarity of the new terms and concepts which litter the text, it is hardly surprising that the book's outstanding celebrity in some circles is matched by a certain notoriety in others.

Charismatic phenomena tend to provoke a polarized response, so it is understandable that much of the initial reaction to Foucault's work has had the all or nothing character of uncritical praise on the one hand, and out-of-hand rejection on the other. But a decade has passed since the publication in 1975 of *Surveiller et Punir* (translated as *Discipline and Punish* in 1977),

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and in that time several works of historical research have appeared which develop the field Foucault opened up, as well as an extensive secondary literature which examines his arguments and assumptions. In consequence, it may now be possible to give an account of *Discipline and Punish* which is not particularly "Foucauldian" or "anti-Foucauldian" but which seeks to develop some measure of the book's achievement as a work of scholarship and of its effect upon subsequent studies.

Whether or not he would accept the term, Foucault is, above all, a theorist of paradox. Throughout all of his many studies—on madness, medicine, modern discourse, sexuality[1]—there is a tendency to reverse taken-for-granted understandings and to discover that things are often very far from what they seem. This critical upheaval is most vigorously applied to those historical developments that have done most to shape our modern world, among them the scientific revolution, the Enlightenment, the growth of democracy, the rise of the social sciences and the development of social engineering. Above all, Foucault has undertaken a prolonged assault upon what he regards as the myths of "the Enlightenment." "Reason," "science," "freedom," "justice," and "democracy"—all these shibboleths of Western culture have been reassessed in his determination to leave aside the glorification of the light of Reason and trace instead the oppressive shadows which it throws. In its way Foucault's work is reminiscent of Max Weber on rationalization or Sigmund Freud on civilization, each showing the price that has to be paid for ways of life that are cherished in the modern world—with the important difference that Foucault's tone is that of a subversive who questions the established values as well as their costs.

It is within this wider critical project that *Discipline and Punish* should best be understood. Despite being subtitled "the birth of the prison" and presented, for the most part, in the form of an historical narrative, the book is not so much a history of punishment as a structural[2] analysis of power, or, to be more exact, of the peculiarly modern form of exercising power Foucault calls "discipline." For Foucault, an investigation of the emergence of the prison in the early 19th century is actually a means of exploring the much wider (and more contemporary) theme of how domination is achieved and individuals are socially constructed in the modern world.

Foucault starts from a study of penal history which brings into focus the way in which violent, repressive forms of government, like the execution,

1. M. Foucault, Madness and Civilisation. A History of Insanity in the Age of Reason (New York: Random House, 1965); *id.*, The Birth of the Clinic: An Archaeology of Medical Perception (London: Tavistock, 1973); *id.*, The Order of Things: An Archaeology of the Human Sciences (London: Tavistock, 1970); *id.*, The Archaeology of Knowledge (London: Tavistock, 1972); *id.*, The History of Sexuality, Vol.1, An Introduction (New York: Random House, 1978); Vol.2, The Uses of Pleasure (New York: Viking Press, 1986).

2. Foucault is not a structuralist in the sense of one who strictly follows the methodological rules of structuralist analysis (as set out, for example, in the work of Ferdinand de Saussure or Claude Levi-Strauss). He is, however, concerned to identify the structures that define the shape and limits of discourses and of institutional practices.

gave way at a particular time to the milder reforming techniques represented by the prison. This focus is then broadened out to produce a general picture of the gentler forms of control—inspection, discipline, "normalization,"[3] etc.—which have come to take the place of repressive violence in strategies of law and government. In this way the prison is conceived as epitomizing these wider social forms—not because it is a "typical" institution but rather because it is the place where modern techniques of control are revealed in their full unbridled operation. Consequently a close analysis of the machinery of imprisonment, and of the knowledge on which it is based, can form the basis for a general anatomy[4] of modern forms of power and control.

As we shall see, this perspective has certain consequences for Foucault's account. It results, for example, in an approach to imprisonment which conceives it exclusively as a form of control, and a very effective one at that, thereby neglecting aspects of the prison which are counterproductive in these terms, or else are simply geared to other ends, such as punitiveness. It offers a history which is similarly limited—relating penal institutions to strategies of control and classification but neglecting to show how these institutions have been shaped by changing forms of mentality, sensibility, and culture; giving prominence to the structures of power and knowledge but little attention to the agents and events that produced them. Finally, it gives rise to the rhetorical suggestion—which Foucault finds hard to resist—that the prison is a metaphor or a microcosm of our "disciplinary society" and that the "birth of the prison" which Foucault describes is actually the development of modern society itself. What begins by being seen as an extreme and atypical institution, but one that is nonetheless revealing, thus ends up with a centrality which makes the whole thesis seem alarmist and implausible.

For all its limitations, though, Foucault's method of approaching general and important social themes through a study of detailed events and institutions has all the interest and intellectual excitement of social theory at its best. What follows is an attempt to summarize that achievement and to trace out the impact it has had on the work that has followed.

The Historical Problem and Its Significance

Discipline and Punish is not a "difficult" text in the sense of being overly technical or accessible only to the specialist, but its style of presentation does create certain difficulties. For the most part it adopts an allusive, suggestive, literary form, markedly different from the propositions, arguments,

3. The concept of normalization refers to that form of regulation which works by setting standards or norms for proper conduct and correcting deviations from the norm. In its positive, correctional orientation it is rather different from the simple prohibition and punishment of misconduct. See the discussion later in the present essay.

4. The term "anatomy" is central to Foucault's work. It indicates his concern to identify the forms or structures that characterize his objects of study—a project that is morphological rather than strictly explanatory.

and evidence of conventional scholarship. To those with a taste for it, this stylized presentation can serve to enhance the pleasure of the text, but it also has the effect of submerging its theses below the surface, making them at times difficult to grasp. For all its literariness, though, the exposition is in fact underpinned and organized by a very tightly structured argument that can be unearthed and presented as such. This argument is itself full of surprising twists and turns, sudden shifts in focus, and no small measure of paradox, but here Foucault claims it is the facts themselves that are strange and not just his fictions.

The opening section of *Discipline and Punish* sets up the problem the book will unravel by presenting the reader with a startling opposition between two very different styles of punishment. The first is the execution of a regicide, conducted in a public square in Paris in 1757 before a crowd of spectators: an extended ritual of atrocities in which the body of the condemned man is utterly destroyed beneath a display of authorized violence. The second is an institutional timetable, used in a Paris reformatory some 80 years later, setting out a minutely detailed regime to regulate the daily lives of its inmates. This time the punishment takes place in silence and in private, and proceeds without any overt ceremony or violence.

Foucault takes each of these measures to be definitive of the penal style of its period and—though here he is less explicit—to portray the form in which power is exercised in modern society and in the "classical" society (1550–1750 approximately[5]) which preceded it. The historical problem he sets himself is to explain the disappearance of punishment as a public spectacle of violence against the body and to account for the emergence of the prison as the general form of modern punishment. Linked to this historical inquiry is a more structuralist concern to analyze the techniques and forms of power these punishments involve and to identify the wider framework of social relations in which they operate.

This change in penal styles, which, according to Foucault, took place throughout Europe and the United States between about 1750 and 1820, is to be understood as a qualitative shift rather than a mere decrease in the quantity or intensity of punishment. The "target" of punishment is shifted so that measures are now aimed to affect the "soul" of the offender rather than just to strike his body. At the same time the objective of punishment undergoes a change so that the concern is now less to avenge the crime than to transform the criminal who stands behind it.

This change in penal technology—from the scaffold to the penitentiary— signifies for Foucault a deeper change in the character of justice itself. In particular the new concern—which the prison introduced—to know the

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5. Foucault uses the term "the classical age" to refer to what other historians might call the early modern period, i.e., the late 16th, 17th, and early 18th centuries. He develops this periodization particularly in The Order of Things, *supra* note 1, where he traces out "the classical episteme," i.e., the structures of knowledge and discourse of the classical period.

criminal, to understand the sources of his criminality, and to intervene to correct them wherever possible, had profound implications for the whole system of criminal justice. In this modern system the focus of judgment shifts away from the crime itself towards questions of character, of family background, and of the individual's history and environment. This will ultimately involve the introduction of experts—psychiatrists, criminologists, social workers, etc.—into the judicial process, with the aim of forming a knowledge of the individual, identifying his abnormalities, and bringing about his reformation. The result of these changes is a system of dealing with offenders that is not so much punitive as corrective, more intent on producing normal, conforming individuals than dispensing punishments: a penal system that the Americans named best when they called it, simply, "corrections."

On a wider scale, these developments represent illustrative models of how power operates in modern society. Open, physical force, the apparatus of violence, and the ceremonies of might are more and more replaced by a mode of power based on detailed knowledge, routine intervention, and gentle correction. The idea now is to regulate thoroughly and at all times rather than to repress in fits and starts and, by this means, to improve troublesome individuals rather than to destroy them.

It is because it contains this wider indicative significance that punishment comes to be of importance for Foucault's work, permitting him to present a general genealogy[6] of power based on the particulars of penal history. This analysis of power-through-punishment is, of course, a very specific interpretive framework for writing penal history, and consequently Foucault's approach to his material is somewhat unconventional. According to the rules of study which he sets out on pages 23-24, punishment is to be understood as "a political tactic," situated within the general field of power relations. It is to be studied with a view to its positive effects, however marginal or indirect, and not simply as a repressive mechanism. It is to be thought of as intimately and internally linked with the development of "the human sciences"[7] (psychology, sociology, criminology, etc.) and the specific ways of knowing which they represent, and not merely influenced by them from the outside. And, finally, the new concern with the individuality of the offender—with his "soul"—is to be conceived as the most recent aspect in a

6. Foucault uses "genealogy" in the Nietzschean sense to describe his method of writing a "history of the present." The point of his history is to cast light on a contemporary issue or institution by investigating those historical conditions that brought it about. It shares this orientation towards the present with what are often (disparagingly) called "Whig" histories, but where they seek to celebrate contemporary achievements by depicting them as the "end" of history, Foucault's genealogy uses history to problematize and destabilize the present.

7. Much of Foucault's work is concerned to analyze the human sciences (or "the sciences of man") and their effects on modern forms of government and regulation. The Order of Things, *supra* note 1, develops an analysis of the discursive conditions on which the human sciences depend. Discipline and Punish and The History of Sexuality, Vol. 1, *supra* note 1, describe the role of the human sciences in disciplinary and social policy practices.

longer history of ways in which "the body" has been dealt with by political policies.

The Fundamental Concepts: "Power," "Knowledge," "the Body"

Foucault's rules for studying punishment are in turn founded on three major and interrelated concepts that he uses to analyze the fundamentals of any structure of domination: namely *power*, *knowledge*, and the *body*.

For Foucault, as for Nietzsche and more recent authors such as Deleuze and Guattari,[8] the human body is the ultimate material that is seized and shaped by all political, economic, and penal institutions. Systems of production, of domination, and of socialization fundamentally depend on the successful subjugation of bodies. More specifically, they require that bodies be mastered and subjected to training so as to render them docile, obedient, and useful to a greater or lesser degree. Some institutions, such as forced labor, master the body from the outside, as it were, using physical force and restraint to make the individual do its bidding. Others, however, aim to have their commands internalized, producing an individual who habitually does what is required without need of further external force. This "self-controlled" body is brought about by exerting an influence on what Foucault calls "the soul"[9] which in turn directs behavior. In this sense, strategies[10] of power have their real, operative impact at the point where they come in contact with the bodies of their subjects: there is "a micro-physics of power" where power has its bodily materiality and effects. The discovery of this "micro-physics," and the claim that it reveals the essence of power more clearly than conventional political analysis, together amount to one of Foucault's most important and original contributions.

"Power," for Foucault, is not to be thought of as the property of particular classes or individuals who "have" it, nor as an instrument they can somehow "use" at will. Power refers instead to the various forms of domination and subordination that operate whenever and wherever social relations exist. These power relationships, like the social relations they invest, display no simple pattern since, for Foucault, social life is to be thought of as taking place not within a single overarching "society," but instead across a multiplicity of fields of forces which are sometimes connected and sometimes not.

8.   See F. Nietzsche, The Genealogy of Morals (New York: Vintage, 1969); G. Deleuze & F. Guattari, Anti-Oedipus (New York: Viking Press, 1977).

9.   Foucault uses the notion of "the soul" to refer to what psychologists variously term the psyche, the self, subjectivity, consciousness, or the personality. He appears to use it for its metaphoric resonance—"the soul is the prison of the body" (at 30)—but also to avoid using a more theoretical term of art that might seem to commit him to a particular psychology of one kind or another. For Foucault it is the soul that is "the seat of the habits" and so is the target of disciplinary techniques.

10.   The concept of "strategy" is important in Foucault's later work. He stresses that it is not to be understood as the game plan of any particular strategist. Rather it is a term that refers to a discernible pattern of institutional practices or political actions. These practices or actions are structured and to some extent calculated, but they are not necessarily coordinated by any single decision maker or agency.

His special focus is always on the way these power relations are organized, the forms they take, and the techniques they depend on, rather than on the groups and individuals who dominate or are dominated as a consequence. His concern is thus with power in the abstract—a matter of structural relationships, institutions, and strategies—rather than with concrete politics and the actual people they involve. In this conception power is a pervasive aspect of social life and is not limited to the sphere of formal politics or of open conflict. It is also to be thought of as productive in effect rather than repressive and as acting "through" individuals rather than "against" them.

This relationship between forms of power and the bodies that are caught up in them involves a third element, that of "knowledge." Foucault uses this again rather abstract noun to describe the "know-how" on which techniques and strategies depend and, especially, the knowledge of their target which this entails. The successful control of an object—whether it is an object in nature or a human object—requires a degree of understanding of its forces, its reactions, its strengths and weaknesses, its possibilities. Conversely, the more it is known, the more controllable it becomes. For Foucault the relationship between knowledge and power is thus an intimate and internal relationship in which each implies and increases the other. His use of the term "power-knowledge" is a kind of conceptual shorthand used to emphasize these interconnections. One major implication of this which is given a prominent place in *Discipline and Punish* is that the "sciences of man" (the social or human sciences) that developed in the 18th and 19th centuries must be thought of not as independent intellectual developments but rather as knowledge forms and techniques of inquiry which are deeply embedded in the history of power-knowledge and its relations with the body.

Taking these concepts as a framework of study, the history of punishment (and behind it, the history of government) is thus conceived of, at base, as a set of developing relationships between power, knowledge, and the body. Although he avoids saying so explicitly, this analytical framework is intended to reveal the irreducible materiality of the historical process: a kind of physical substratum upon which all else is based. The sort of intellectual developments that take place in legal theory or in the programs of penal reformers, and even the wider changes we see as the growth of individualism and the "humanization" of sensibility—all of these provide only a surface history, as far as Foucault is concerned. Rather than being the causes of penal and political change, these are merely the effects of more profound developments at the level of power-knowledge-body relations. In rendering the history of punishment as "a chapter of political anatomy" (at 28), Foucault is not offering one interpretation to be added to others; he is claiming to unearth the elementary structures on which all else is based.

The Meaning of the Scaffold

The narrative proper of *Discipline and Punish* begins with a discussion of "the spectacle of the scaffold" in which Foucault traces the meanings implicit in the Ancien Régime's practice of public torture and execution,[11] setting out the legal and political frameworks within which it operated and the reasons why it was abandoned towards the end of the 18th century. In the course of this exposition he stresses the political rationale which lay behind these penal measures, presenting them as an important element within a coherent strategy of domination. Far from being the arbitrary outburst of unrestrained cruelty which its critics described, torture is shown to be a carefully regulated affair, tied to a set of legal doctrines and ceremonies which controlled its use and gave it a practical meaning.[12]

First of all, it formed part of the process of judicial investigation, being used to elicit the confession of the accused and thus give the mark of truth and "self-evidence" to the findings of the prosecution. The use of judicial torture to elicit evidence from the accused was carefully regulated and allowed only where sufficient written evidence already existed to imply a prima facie degree of guilt. In most European countries, with the notable exception of England, the entire criminal procedure remained secret so that throughout the investigation even the accused was unaware of the evidence against him: as Foucault puts it "knowledge was an absolute privilege of the prosecution" (at 35). In this context the ceremony of public punishment which followed a finding of guilt was also an act of revelation, revealing to the public what had been achieved in secret, repeating the torture of the condemned man and his confession of its justice.

Second, the public execution must also be understood within a specific political framework that accorded it a precise function and significance. According to the political theology of the classical age any crime signified an attack on the sovereign, since the law represented and embodied his will. Punishment is thus an act of vengeance, justified by the sovereign's right to make war on his enemies and conducted in appropriately warlike terms. In keeping with the military sources of this sovereign power, justice is a manifestation of armed violence, an exercise in terror intended to remind the populace of the unrestrained power behind the law. The execution itself is a ritual display of strength and an affirmation of power, conducted like any other great ritual, with the pomp and fastidiousness of public ceremony. Moreover at the center of this ceremony stands the personal power of the sovereign rather than any impersonal conception of justice, a fact that is dramatically reinforced by the practice of last-minute pardons or suspensions of sentence over which the sovereign retained full personal control.

11. "Supplice" is the French term—retained in the English translation—that refers specifically to the public torture and execution of criminals.

12. For a fuller account of the legal use of torture in the Europe of the Ancien Régime, see John Langbein, Torture and the Law of Proof (Chicago: University of Chicago Press, 1977).

Foucault acknowledges that the use and acceptance of public tortures and executions depended on certain external cultural and demographic conditions that produced a particular historical attitude towards the body. The low cost of labor power, the Christian contempt for the body, the high mortality rate, and so on all helped to make death familiar and gave rise to rituals that taught people to cope with it. But he insists that it was, in the end, more specifically political considerations which, in 18th-century France at least, kept this system in place. In the face of uprisings, the threat of civil war, and the rise of the parliaments, the political symbolism and real force displayed at the scaffold made it a central prop of sovereign power.

The 18th-Century Critique of Criminal Justice

Why, then, at the end of the 18th century was this system replaced by one that claimed for itself the virtue of being "humane," a system that suppressed those very elements of open power and violence that had previously formed the heart of punishment? Here again Foucault insists on an answer in terms of politics and the organization of power. He describes how executions could sometimes degenerate into disorderly scenes when, instead of bearing respectful witness, the crowds came to mock the authorities and to transform the condemned man into a popular hero. This tendency apparently became more pronounced towards the end of the century when on more and more occasions the crowd revolted against what it saw to be injustice, class law, or the execution of one of its own. The result of these disorders, Foucault claims, was to bring about "on the part of state power, a political fear of the effects of these ambiguous rituals" (at 65).

This theme is continued when Foucault turns to the critiques of criminal justice that emerged in the pamphlets, tracts, and petitions which were produced in the period prior to the revolution in France. The terms in which the critics put their case proclaimed the principles of "humanity" and the rights of man—principles that were to extend even to the wretched criminal, so as to bring a measure of leniency and restraint to penal law. But for Foucault, as for several other historians of this period,[13] the real force that mobilized this reform movement cannot be attributed to a philosophical system or even to humane concern for the fate of others. It was rather the lower and more familiar principle of self-interest that led to a recognition of political exigency and the need for appropriate change.

In this period there appears to have been a change in the predominant pattern of criminal behavior, which became more property-oriented and professionalized, and hence more threatening, at a time when the growth of

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13. Foucault's analysis of 18th-century criminal justice draws explicitly on the French historiographical work of P. Chaunu and E. Le Roy-Ladurie, but it is also striking how closely it parallels the arguments of D. Hay et al., Albion's Fatal Tree (London: Allen Lane, 1975), and E. P. Thompson, Whigs and Hunters (London: Allen Lane, 1975). Foucault's interpretation of the political meaning of public executions is also similar to that set out in E. Durkheim, Deux lois de l'evolution penale, Année sociologique IV, 1899-1900 (translated as Two Laws of Penal Evolution *in* S. Lukes & A. Scull eds., Durkheim, and the Law (Oxford: Martin Robertson, 1983)).

ports, warehouses, and large workshops put more and more movable property at risk. More generally the development of a capitalist economy brought about new and stricter attitudes towards the nonobservance of law on the part of the rising middle classes. Thus various illegalities, such as tax and rent avoidance, smuggling, poaching and gleaning, which had been widespread and customarily accepted in the landed economy of the Ancien Régime, now took on the less tolerable appearance of property violations. In the face of these concerns, the irregular terrorism of 18th-century criminal justice—with its multiplicity of courts, its competing jurisdictions, its lack of a systematic police, its innumerable loopholes—appeared at once oversevere and ineffective. What the critics demanded was a more rational and more certain system of justice: one based on an extensive and detailed policing, a uniform and systematic penal procedure, and punishments that were carefully moderated to fit the crime. What was wanted was neither excess nor leniency but instead a certainty and comprehensiveness of application which would operate "down to the finest grain of the social body" (at 80). This framework was thus designed to deter the incipient criminality of the lower classes in a new and efficient manner but also to limit the arbitrary power of the sovereign at the same time. When the great criminal law reforms swept Europe at the turn of the 19th century, setting up codes, defining offenses and scales of penalties, reorganizing procedure and jurisdiction, it was to these dual ends that they were oriented.

The Penal Theories of the Reformers

Against this background of political change and criminal law reform, *Discipline and Punish* then turns to the particulars of the penal reforms that were proposed by Beccaria and the "Ideologues" in the late 18th century. These reformers advocated what Foucault calls "the gentle way in punishment"—a whole system of sanctions which was starkly opposed to the excesses of the Ancien Régime. They declared that punishment must not be arbitrary, the capricious expression of a sovereign's will, but instead should be a reflection of the crime itself, as when work is used against idleness, shame against vanity, pain against violence, and so on. This kind of "analogical" punishment, where penalties echo the crimes they punish, would establish an apparently "natural" link, thus representing punishment as an effect of the law of nature instead of a display of political power. At the same time, these derivative penalties would attack the source of crime by punishing precisely those interests and desires that prompted the offense in the first place.

The reformers also insisted that these punishments and their implicit messages should be publicly displayed for all to see, since punishment was at once an example to everyone and in the interests of everyone. But if punishment still aimed to influence others, it was now addressed to the calculating, reasoning mind of the citizen and not to the trembling bodies of cowed onlookers, a matter of gentle didacticism, and not of terror. Punish-

ment is now to be a lesson, a sign, a representation of public morality which is openly displayed to all: "In the penalty, rather than seeing the presence of the Sovereign, one will read the laws themselves" (at 110).

For this to happen, a whole diverse repertoire of suitable public punishments would be necessary, reflecting the different crimes, reversing the various interests, revealing their warning signs for all to see. It is therefore a central historical paradox that what in fact developed at this time was not the diversified public theater of punishment the reformers had outlined but instead a system of imprisonment in which the prison became the standard sanction for virtually the whole range of offenses. As Foucault makes clear, the generalized use of the prison, with its characteristic secrecy, isolation, and monotony, was largely at odds with the theories of the reformers. And this development is all the more surprising when one realizes that, prior to this time, imprisonment had only a limited and marginal position within most penal systems, functioning merely as a place to secure offenders awaiting trial or punishment, rather than as a penalty in itself. This being the case, how could imprisonment so quickly become the general mode of legal punishment?

The "Disciplinary" Origins of the Prison

The usual explanation for the rise of the prison points to the prior existence of several great models of punitive confinement—the Rasphuis of Amsterdam, the *maison de force* at Ghent, the Gloucester Penitentiary in England and the Walnut Street Prison in Philadelphia. These institutions, with their emphasis on work and reformation, had developed regimes which to some extent converged with the reformers' programs, insofar as they were correctionalist rather than punitive in design. But if both programs aimed to reform the individual they went about this in quite different ways, each using a quite different technology to get hold of the individual and transform him, each developing its own specific techniques for addressing "the body" and gaining access to "the soul." The reformers approached the matter at the level of ideas—proposing signs, lessons, and representations as forms of persuasion or aids to calculation. In contrast the prison seizes the body of the inmate, exercising it, training it, organizing its time and movement in order ultimately to transform the soul, "the seat of the habits." It takes hold of the individual, manipulating him and molding him in a behavioristic mode, rather than just attempting to influence his moral thinking from the outside. There is thus a major difference between the reformers' model and the one that came to be established, a difference that is primarily technological rather than legal or theoretical.

The major problem, then, around which the whole of *Discipline and Punish* actually turns, is why did the prison succeed in displacing the demands of the reformers and the logic of penal theory? Where did it come from and how did it come to be so quickly and universally accepted? At this point the text undergoes a sudden and rather disconcerting shift of focus, moving

away from penal ideas and legal theory to examine a much wider, nondiscursive series of developments: the evolution of what Foucault calls the disciplinary techniques. This turns out to be the most original and interesting aspect of Foucault's historical argument. Where conventional accounts of penal history—and even the "revisionist" accounts of Rothman and Ignatieff[14]—give a central place to the "ideological" genesis of modern punishment, locating it within the history of ideas and intellectual movements, Foucault shifts attention to the role of political technology in penal development. In doing so he allows us to come to terms with the physical materiality of the prison—and its political significance—in a way that has never previously been done.

Setting aside the historical narrative pursued in the first section of the book, the three central chapters of *Discipline and Punish* adopt a more structuralist mode in order to map out the techniques and principles of disciplinary power. They aim to produce a diagram of disciplinary technology reduced to its ideal form, the idea being to show the logic and operating principles rather than to give a history of its actual development and use.

a) Training the body. Discipline, for Foucault, is "an art of the human body" (at 137) and its mastery, and as such has a very long history. However, it was in the classical age that the body came to be conceived as an object and target of power that could be controlled and improved without the costly use of violence. The techniques that provided these means of control and improvement were first generated in a variety of institutions— in the army, the monasteries, and in schools, hospitals, and workshops— but from the 16th century onwards these began to be consolidated and reproduced whenever and wherever they seemed applicable.

Foucault sets out a kind of blueprint of the general methods and principles of discipline, abstracting these from the practices and texts of the period. In his description, discipline is above all a "political anatomy of detail" (at 139). It operates on the smallest scale of control, paying attention not to the whole body but to its individual movements and gestures. It aims to increase the efficiency of each movement and develop its coordination with others, exercising different forces and building them up together. It does this by bringing to bear a constant, uninterrupted supervision that is alert to the slightest deviation, thereby allowing a meticulous control of the body being disciplined.

In order to facilitate this kind of control, certain organizational principles were developed, adapted to particular institutions at first, but later generalized to suit other circumstances. Thus it was the army that did most to

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14. D. Rothman, The Discovery of the Asylum (Boston: Little, Brown, 1971); and Conscience and Convenience: The Asylum and Its Alternatives in Progressive America (Boston: Little, Brown, 1980). M. Ignatieff, A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850 (New York: Pantheon, 1978). For a discussion of how these "revisionist" texts revised the orthodoxies of penal history, see the essay by D. Philips in S. Cohen & A. Scull eds., Social Control and the State (Oxford: Martin Robertson, 1983).

develop the art of distributing individuals in space—its ranks and files introducing a set orderliness into a mass of individuals, separating them one by one so that they could be individually viewed, supervised, and assessed. This same form of distribution was quickly adopted in the schoolroom, the workshops, the hospital, and so on. Similarly the monastery developed the timetable—a means of imposing set rhythms that organize time and movement, specify a series of occupations, and regulate the cycle of repetition. On a smaller scale, the concept of "the manoeuvre" derives from both the barracks and the workshop. In this repeated routine the exact posture of the body, the positioning of the limbs, and the smallest of bodily movements are programmed to increase their efficiency and link them to the use of a weapon or the operation of a machine. By these means, bodies were to be put through their paces until they became docile, efficient, useful machines that carried out the functions to which they had been trained.

b) Normalizing deviance. Individuals are by nature recalcitrant, and so dealing with disobedience is a central problem for any method of control. Significantly, these disciplinary methods did not simply punish their troublesome cases, but instead developed a whole new method of sanctioning which Foucault calls "normalization." This method is essentially corrective rather than punitive in orientation, concerned to induce conformity rather than to exact retribution or expiation. It involves, first of all, a means of assessing the individual in relation to a desired standard of conduct: a means of knowing how the individual performs, watching his movements, assessing his behavior, and measuring it against the rule. Surveillance arrangements and examination procedures provide this knowledge, allowing incidents of nonconformity or departures from set standards to be recognized and dealt with. And since the object is to correct rather than punish, the actual sanctions used tend to involve exercises and training, measures that in themselves help bring conduct "into line."

"The examination" is, for this system, a central method of control, allowing close observation, differentiation, assessment of standards, and the identification of failure to conform. So, too, is the dossier or case record, which allows the characteristics of the individual to be assessed over time and in comparison with others. From this time onwards, writing about individuals ceases to be a form of worship fit only for notables, kings, and heroes and becomes instead a form of domination to which the powerless are more and more subjected. Out of these practices emerges a detailed and systematic knowledge of individuals, a knowledge that gave rise, in turn, to the various "human sciences" of criminology, psychology, sociology, and so on. But, as Foucault is at pains to point out, the procedures of observation, examination, and measurement that allow this knowledge to develop, are at the same time exercising power and control over the individuals within their gaze.

c) *Bentham's Panopticon.* The "Panopticon" or "Inspection House" which Jeremy Bentham designed in 1791 is the very epitome of these power-knowledge principles. It took the form of a circular building, with individual cells around its perimeter whose windows and lighting were arranged so as to make their occupants clearly visible to the central inspection tower, though it remained opaque to them. It is thus an architectural form designed to render individuals constantly subject to the knowledge and power of the central authorities. In time, this constant visibility and vulnerability induces self-control on the part of the inmates of the cells. Power no longer needs to unleash its sanctions, and instead its objects take it upon themselves to behave in the desired manner. Any remnant of physical repression is thus gradually replaced by a gentle but effective structure of domination. Moreover, the power relations involved are, in a sense, automated and objective. They are an effect of the distribution of places and visibility and do not depend on the strength or intentions of those who occupy these positions: "the perfection of power should tend to render its actual exercise unnecessary . . . this architectural apparatus should be a machine for creating and sustaining a power relation independent of the person who exercises it; in short, . . . the inmates should be caught up in a power situation of which they are themselves the bearers" (at 201).

According to Foucault, the usefulness of these panoptic, disciplinary principles was such that they were soon imitated in society's major institutions and eventually came to be generalized throughout the entire social body. However, the precise nature of this "generalized panopticism" is not precisely detailed in Foucault's text. Sometimes the claim is relatively modest—that all modern forms of power have been affected by the development of disciplinary principles. At other times a more inflated rhetoric takes over and describes modern society as "the disciplinary society" (at 209, 216), a "society of surveillance" (at 217), in which we are all subjected to "infinite examination" (at 189), in "the panoptic machine" (at 217).

d) *Discipline and democracy.* Whatever the exact extent of these large claims, a number of points are clearly made regarding the genesis of the disciplines and their subsequent effects. First of all, although it was within the context of early European capitalism that the disciplines achieved their rapid development, their techniques and principles are transferable and may be operated elsewhere and under different regimes. However, they do have a special and interesting relationship to the development of democracy in the West, summed up in typically Foucauldian style in his statement that "the 'Enlightenment' which discovered the liberties, also invented the disciplines" (at 222). According to Foucault, it was ultimately the generalization of discipline that underpinned and made possible the generalization of democratic constitutions and the expansion of liberal forms of freedom. Without this vast infrastructure of power relations that subjected the masses to an orderly, disciplined existence, the extension of "freedom"

could never have taken place. This echoes the Hobbesian argument that freedom under the law implies a prior process of subjugation, and it constitutes the meaning of Foucault's suggestion that discipline is "the dark side" of democracy and its egalitarian laws (at 222).[15] Foucault argues that the effect of disciplinary relations is to undercut the fairness of exchange and the equalities of status provided for in law and legal doctrine, an effect which operates in an invisible and extra-legal fashion. The disciplines ensure that real constraints and controls are introduced into relationships which the law deems to be voluntary or contractual, thus permitting the coexistence of legal freedom and habitual domination. It is in this sense that the disciplines are said to be "a sort of counter-law" (at 222).

Returning now, after this long but crucial detour, to the problem of penal history, we are now able to view the rise of the prison in a rather different light. Given the context in which Foucault has located it, the prison now appears as an aspect of that wider historical phenomenon, the development and generalization of the disciplines. And indeed, if one thinks of the specifically modern developments in penology that have been associated with the prison—the investigation of "the criminal" behind the crime, the concern with correction and adjustment, the involvement of experts whose task it is to observe, to assess, and to cure—then one can see the extent to which disciplinary and normalizing concerns have indeed penetrated the judicial framework of the criminal justice system.

This genealogical argument—that the disciplines are the ancestors of the prison—is presented by Foucault in its strongest version when he argues that the "general form" of the prison institution was prefigured in these wider disciplinary developments, and was simply imported into the legal system from outside. To this extent, 19th-century penal history should not be seen as part of the history of moral ideas but rather as a chapter in the history of the body and its investment by power-knowledge techniques. Within these terms, the great model prisons of Ghent, Gloucester, Walnut Street, etc., must be seen as the first points of transition or imitation, not as innovations as such. This genealogy also serves as an explanation for the rapid acceptance of the prison as an "obvious" or "natural" institution; in a society already thoroughly inured to the operation of disciplinary mechanisms, the prison could immediately appear to be self-evident.

A further consequence of this genealogical argument is that it changes the way we must think about the character and function of the prison. If it is conceived, from the start, as being a disciplinary institution, then its function of confinement and deprivation of liberty must always have been supplemented by a second, disciplinary function, namely, the transformation of individuals. Foucault asserts that this is in fact the case; that the "peniten-

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15. Here Foucault's argument closely parallels Marx's famous distinction between "the two spheres" of capitalist society—the sphere of consumption or exchange, which is the realm of freedom and equality, contrasted with the sphere of production where despotism and exploitation are the order of the day. See on this B. Fine et al., Capitalism and the Rule of Law (London: Hutchison, 1979).

tiary techniques" of isolation, work, individualized treatment, and adjust-
ment of sentence to reflect reformatory progress are all hallmarks of the
disciplinary process. Indeed he points out that one ironic consequence of
the prison's disciplinary function is that it invovles giving the prison author-
ities a degree of autonomy and discretion to carry out this task, thus recre-
ating in a new form all of the arbitrariness and despotism that was so much
criticized in the old penal systems.

   e) *The discovery of "the criminal" and "criminology."* The operation of
the disciplinary prison also gave rise to a new body of information and
knowledge about the criminal not previously available. Prison practices of
isolation, observation, and individual assessment ensured that offenders
were no longer thought of in the abstract but were instead studied as indi-
viduals with their own characteristics, peculiarities, and differences.
Whereas the law viewed the offender as being no different from anyone else,
except insofar as he happened to have committed an offense, the prison
aimed to individualize the offender, to find out what kind of person he was,
and to determine the relationship between his character and his criminality.
In this sense, the prison led to the discovery of "the delinquent"—of the
criminal type whose biography, character, and environment mark him off
as different from the nondelinquent. And from this point we can trace the
rise of a science of criminology, which takes up the task of investigating this
criminal entity and describing it in all its aspects.

   But here in respect of this "delinquent" and the "criminology" to which
it gives rise, Foucault makes a point of major importance. He argues that
the prison did not "discover" the delinquent, but rather it *fabricated* him,
and it did so in two distinct senses. First of all, it "made" delinquents in a
literal sense by creating the conditions for recidivism: offenders were so
stigmatized, demoralized, and de-skilled in prison that after their release
they tended to re-offend, to be reconvicted and eventually transformed into
career criminals. Second, the prison produced the delinquent in a categori-
cal or epistemological sense, by creating in the course of its practices, the
category of "the individual criminal": it was in the prison that the individ-
ual criminal first became a visible, isolated object of intense study and con-
trol. One implication of this is that criminology—that systematic
knowledge of the delinquent suggested by and developed within the
prison—owes its existence to a system of power and its hold over individual
bodies. Criminology is founded on a particular regime, not an undeniable
truth.

The "Failure" of the Prison

   The final sections of *Discipline and Punish* return to the historical narra-
tive and trace, rather too hurriedly, the actual impact of the prison and its
position within the contemporary network of social control. In many ways
this is the least satisfactory part of the book, but it does state a thesis that is
clear and of considerable interest: namely, that the prison has always been

a failure in penological terms but that it successfully achieves important political effects at a wider social level, which is why it has never been abandoned.

Foucault shows that the defects of the prison—its failure to reduce crime, its tendency to produce recidivists, to organize a criminal milieu, to render prisoners' families destitute, etc.—have all been recognized and criticized from as early as the 1820s up to the present day. Moreover, each time this critique is restated, the official response has always been to reassert the maxims of good penitentiary practice rather than to dispense with the institution itself. This historical pattern of constant failure and constant resistance to change leads Foucault to raise forcefully a question that is in many ways central to a contemporary penal politics, namely, Why does the prison persist? As usual the answer he gives to this familiar question is not at all the familiar one. Instead he offers explanations that are what one might call "depth explanations" insofar as they refer to decisions and rationales that are neither apparent nor easily demonstrable. He suggests two such reasons; the first is that the prison is "deeply rooted" (at 271), by which he means that it is embedded in the wider disciplinary practices he deems to be characteristic of modern society. This, of course, refers back to his wider genealogical argument. The second is that the prison persists because it carries out "certain very precise functions" (at 271). This functional argument is pursued by reversing the problem of failure and asking if it can instead be understood as a covert form of success. In other words, he asks what interests could be served by the production of delinquency, recidivism, and a criminal milieu, and could these "interests" so act as to perpetuate these apparent defects?

The answer he outlines here is placed not on a penological level but in the wider, political sphere and against the background of French politics in the 1840s and 1850s. What it amounts to is an argument that the creation of delinquency is useful in a strategy of political domination because it works to separate crime from politics, to divide the working classes against themselves, to enhance the fear of prison, and to guarantee the authority and powers of the police. He argues that in a system of domination which depends on respect for law and for property, it is essential to ensure that illegalities and law-breaking attitudes do not become widespread or popular and above all, that they do not become linked with political objectives. In this context, the unintended creation of a delinquent class may be turned to advantage in a number of ways. Delinquency in itself is no great political danger—its attacks on property or authority are individualized and often petty; moreover, its victims are usually from the lower classes—and it can therefore be tolerated by the authorities, at least to some extent. What is more, it can be used to curb other kinds of illegalities in a number of ways. First, the police measures and supervision which it necessitates can be used for wider political purposes. Second, the predatory nature of delinquency

makes it unpopular with other members of the working classes, who tend to call on the law as a protection and increasingly to shun lawbreaking in itself. The myths of dangerousness that grow up around the criminal element add to this process of distancing and division. Finally, an awareness that imprisonment tends to bring about a subsequent identification with the criminal ranks gives people added reason to avoid taking any risks with the law and to distrust those who do. On this account then, the prison does not control the criminal so much as control the working class by creating the criminal, and for Foucault, this is the unspoken rationale for its persistence. Clearly this is not a policy that is ever declared as such in public, but Foucault insists that it does in fact amount to a deliberate strategy. Consequences of imprisonment that were unintended and thought of as detrimental at first were later recognized to be of some use. Consequently they were reinforced and deliberately employed in what might be termed a regrouped strategy.[16] The prison is thus retained for its failures and not in spite of them.

The Carceral Continuum

The closing section of the book is entitled, simply "The Carceral." It describes how the frontiers between judicial punishment and the other institutions of social life, such as the school, the family, the workshop, and the poor law, became increasingly blurred by the development of similar disciplinary techniques in all of them and the frequent transfers that take place from one institution to another. (Foucault cites the example of a reformatory for youth, which receives problem cases from families, schools, and prisons, and deals in the same disciplinary way with offenders and nonoffenders alike.) According to Foucault, there exists a kind of carceral continuum that covers the whole social body, linked by the pervasive concern to identify deviance, anomalies, and departures from the relevant norm.[17] This framework of surveillance and correction stretches from the least irregularity to the greatest crime and brings the same principles to bear on each. The idea of the "continuum" is important here, not just to describe the relations of one institution to another, but also to suggest the similarities that exist between societies. Foucault's description of Western liberal democracy as a society of surveillance, disciplined from end to end, is deliberately reminiscent of the totalitarianism we ascribe to others. And in case anyone should miss this implied reference to the Gulag and its confine-

16. Perhaps a contemporary example of the unintended consequences of the prison being used in just this way would be the "Scared Straight" juvenile program developed in New Jersey in the early 1980s. This used the facts of intraprisoner violence, rape, and brutality to try to deter young offenders from becoming involved in crimes that might lead to imprisonment—and thus put them at the mercy of those (illegal but officially acknowledged) abuses.

17. The term "norm" is used here to mean a standard of conduct specified and policed by a formal agency (such as a school, health authorities, social work agencies, etc.) rather than simply a cultural or moral norm. Cf. note 3 above.

ments, he coins the phrase "carceral archipelago" to describe the chain of institutions that stretches out from the prison.

To return, finally, to punishment once more, all of this has some very specific consequences for the way we think about penal practice. Within this overall framework, the process of punishing is not essentially different from that of educating or curing, and it tends to be represented as merely an extension of these less coercive processes. This has two important results. First, legal punishments come to be regarded as more legitimate and less in need of justification than when they were previously seen as forms of harm or coercion. Second, the legal restriction and limitations that once surrounded the power to punish—tying it to specific crimes, determining its duration, guaranteeing the rights of those accused, etc.—tend to disappear. Penal law in effect becomes a hybrid system combining the principles of legality with the principles of normalization. Its jurisdiction is thus extended so that it now sanctions not just "violations of the law" but also "deviations from the norm." In this system there are many areas where the traditional protections of "the rule of law" and "due process" are no longer operative, or even appropriate, but so far no new framework of review and limitation has been developed to deal with these new forms through which modern administrative power actually operates.

II. Critique

Introduction

The arguments of *Discipline and Punish* have had an enormous impact in and across a whole range of intellectual specialisms. Indeed, to try to trace this in any detail would require a fairly extensive history of contemporary intellectual culture. Its theses about the nature and location of power have been taken up as a corrective to the orthodoxies of liberalism and Marxism alike, helping to shift them both away from the grand conceptions inherited from 19th-century political culture (the state vs. the individual; capital vs. labor, etc.). At a time when "politics" is increasingly conducted in terms of marginal, small-scale, and single-issue struggles, Foucault's more dispersed and localized conception of power has made his work attractive to many. In particular, his idea of power as positive and productive has made it easier to develop political analyses of the various agencies of health, insurance, social security, education, psychiatry, etc., that increasingly regulate our lives, though they do so in a way that can hardly be described as "repressive." Similarly, his demonstration of how the conceptual systems of an age define its patterns of domination—summed up in the power-knowledge formula—has led to a more sophisticated understanding of the various human sciences and also of those "normalizing" institutions in which these knowledges operate.[18] Finally the importance that Foucault gives to the

18. The following studies take up and apply Foucault's ideas in this respect: J. Donzelot, The Policing of Families (London: Hutchison, 1980); D. Garland, Punishment and Welfare: A History of Penal

body as a target of social policy and a focus of power has opened up research in an area that has been surprisingly neglected in modern social theory, despite its obvious importance.[19] It has also, incidentally, served to reintroduce the work of Nietzsche into the ambit of social theory, to some extent displacing Marx from his position at the center of radical thought.

The present essay will focus its criticism mainly on the account of criminal justice *Discipline and Punish* provides, showing the impact this has had on subsequent studies and the problems that seem to be inherent within it. But as with the book itself, this focus on punishment will lead on to a wider discussion of the concepts of power and social control, and here again I will be offering a critique of the approach Foucault adopts.

The Impact of "Discipline and Punish" and Its "Power-Perspective"

Discipline and Punish has quite fundamentally changed the way in which intellectuals think about punishment and penal institutions. For many people it was this book that first brought to their attention the fact that "penality" might have a serious political significance in the modern age. For others—whether penologists, sociologists, or historians—for whom punishment had long been a subject of deep concern, Foucault completely recast the terms in which it might be understood. As Stanley Cohen puts it, "to write today about punishment and classification without Foucault is like talking about the unconscious without Freud."[20]

In the space of a single decade, the concepts of *Discipline and Punish* have taken over the language in which social control is characteristically discussed, and Foucault's questions and categories have been taken up—by and large uncritically—as a starting point for research in dozens of books and articles. Virtually by itself it has transformed a field of inquiry that was narrow, technically focused, and of little intellectual consequence into a flourishing, interdisciplinary area that has become a central concern for sociologists, historians, and criminologists.[21]

The primary factor in all of this was Foucault's demonstration that the institutions of punishment play an important role within wider social and political strategies, and that, however much it may be denied or concealed, there is an ineradicable political significance in the act of punishment. A central thesis of *Discipline and Punish* is that power operates and is literally "materialized" at the crucial level of techniques, apparatuses, and institu-

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Strategies (Aldershot: Gower, 1985); F. Castel et al., The Psychiatric Society (New York: Columbia University Press, 1982); P. Miller & N. Rose, eds., The Power of Psychiatry (Cambridge: Polity Press, 1986); J. Minson, The Genealogy of Morals (London: Macmillan, 1985). See also the journal *Ideology and Consciousness.*

    19.   See F. Guattari & G. Deleuze, *supra* note 8; B. S. Turner, Body and Society (Oxford: Basil Blackwell, 1985). See also the feminist journal *m/f.*

    20.   Stanley Cohen, Visions of Social Control, at 10 (Cambridge: Polity Press, 1985).

    21.   See the works cited in *supra* note 18 and the essays collected in D. Garland & P. Young, eds., The Power to Punish (London: Heinemann, 1983); S. Cohen & A. Scull, *supra* note 14; and B. Fine et al., *supra* note 15.

tions, and therefore can best be understood by a detailed examination of this technology in action. Consequently, the "technical" and avowedly "apolitical" concerns of conventional penology now became precisely the areas of most interest to anyone wishing to discover how power operates (and disguises itself) within institutional routines. Theoretical penology thus rediscovered its relationship to power.

At the same time more practical concerns were leading in a similar direction. In the 1970s when *Discipline and Punish* was published, the policies of "treatment" and "rehabilitation" were being subjected to a sustained political attack throughout Europe, Scandinavia, and North America, as were the individualizing, "positivistic" criminologies on which these policies were based.[22] In this context, *Discipline and Punish* seemed to offer a trenchant theoretical account of structures and institutions that were being directly experienced as oppressive by those who were caught up in them. Despite its abstruse and philosophical character, there is a real sense in which *Discipline and Punish* is dedicated to making sense of the frustrations that lay behind the prison riots of the 1970s[23]—to making us fully conscious of the power-knowledge machinery that the bodies of prisoners were instinctively resisting.

As a consequence of its timing, its conjunction with real events, and the disturbing power of the text itself, *Discipline and Punish* was able effectively to reinvent the field of penology. It provided a conceptual and historical basis for subsequent research and gave to penal studies a specific direction and a critical ambition. In these circumstances it was perhaps predictable that the approach which Foucault set out in *Discipline and Punish*—which might be termed the "power-perspective"—has come to be seen as a general theory of punishment, on a par with the theories proposed by Emile Durkheim or by the Marxist writers Rusche and Kirchheimer.[24] The idea of a general theory of punishment—or of anything else for that matter—is something Foucault is careful to disavow, claiming to be concerned with specific practices and concrete details rather than any grand theory. But, as was suggested earlier, behind this modest denial lies the very clear affirmation that the power-perspective which he develops is in fact a fundamental one, undermining and enveloping all competing explanations.[25]

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22. For critiques of treatment and rehabilitation, see American Friends Service Committee, Struggle for Justice (Philadelphia: Hill & Wang, 1971); N. Kittrie, The Right To Be Different (Baltimore: Penguin Books, 1972); and F. Allen, The Decline of the Rehabilitative Ideal (New Haven, Conn.: Yale University Press, 1981). On the critique of positivist, correctionalist criminology, see I. Taylor et al., The New Criminology (London: Routledge & Kegan Paul, 1975).

23. See M. Foucault, On Attica, 19 Telos, (Spring 1974).

24. See E. Durkheim, The Division of Labor in Society (New York: Free Press, 1964); Two Laws of Penal Evolution *in* S. Lukes & A. Scull, *supra* note 13; and G. Rusche & O. Kirchheimer, Punishment and Social Structure (New York: Russell & Russell, 1968).

25. The arguments of *Discipline and Punish* are not presented as complementary to others, and no attempt is made to link its theses into the penological literature and historical studies already in existence. On page 25 Foucault says, "It is certainly legitimate to write a history of punishment against the

It has been this implicit claim that, in essence, punishment is a "power-knowledge" mechanism which has been taken up by subsequent writers.[26] The rules of study and methods of analysis which *Discipline and Punish* sets out have led not to one perspective among others but to a new way of conceiving punishment which has shaped much subsequent work in this area.

While I consider this power-perspective to be of great value in analysis, I want to insist that it can only ever be a partial and limited basis on which to study punishment or any other social institution. In particular I will argue that neither punishment nor penal history can be wholly understood in terms of power or politics and that the attempt to analyze them in these terms has led to a number of serious errors in *Discipline and Punish*. The critique which I will develop will not deny the validity of the perspective Foucault sets out, but rather its capacity to stand on its own as an explanatory framework for the analysis of punishment and penal change. Against the singularity of this analysis in terms of power, I will argue that a wider, more pluralistic vision is necessary.

Foucault's Historical Claims

Before taking up this critique, it is useful to note how historians have dealt with *Discipline and Punish* and the numerous historical claims which it makes. Although my main concern will be to question Foucault's general perspective rather than the historical details of his account, in the end the theoretical generalities and the historical particulars of *Discipline and Punish* are heavily interdependent. As with all historical work, it is the implicit theory that supplies the criteria on which evidence is selected, given its significance, and fitted into the overall picture, so any criticism of Foucault's "sociology" will have implications for this "history" and vice versa.

Characteristically, while sociologists have tended to generalize from Foucault's work, taking up its concepts, developing its logic, and applying it to other materials, historians have been much more hesitant and circumspect.[27] Those who have addressed his substantive work rather than his philosophy or method have tended to modify his theses, presenting alternative, less general interpretations they claim are more in keeping with the evidence. One thesis that has come under sustained attack has been Foucault's interpretation of when and why the practice of public torture and

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background of moral ideas or legal structures" but the rhetorical force of the rest of the book tends to undercut this.

26. See, e.g., S. Cohen, Visions of Social Control (Cambridge: Polity Press, 1985); D. Garland, Punishment and Welfare, *supra* note 18; T. Mathiesen, The Future of Control Systems *in* D. Garland & P. Young, *supra* note 21; P. Carlen, Women's Imprisonment: A Study in Social Control (London: Routledge & Kegan Paul, 1983).

27. For sociologists influenced by *Discipline and Punish* see *supra* note 26. For historians, see M. Perrot, ed., L'Impossible Prison (Paris: Editions du Seuil, 1980); G. Wright, Between the Guillotine and Liberty (New York: Oxford University Press, 1983); P. O'Brien, The Promise of Punishment: Prisons in Nineteenth Century France (Princeton, N.J.: Princeton University Press, 1982); P. Spierenburg, The Spectacle of Suffering: Executions and the Evolution of Repression (Cambridge: Cambridge University Press, 1984).

execution was abandoned in Europe. As we saw, *Discipline and Punish* lo-
cates this historical development between about 1750 and 1820 and ac-
counts for it primarily in terms of a strategic shift in the mode of exercising
power. This explanation and periodization has been challenged on a
number of counts by the work of Pieter Spierenburg,[28] which argues that
the abolition of the public execution should not be viewed as an independ-
ent event but instead as one stage in an extended process of change which
brought about the privatization of punishment and a reduction in the dis-
play of suffering. This series of events began about 1600 when there was a
sharp decline in the judicial use of mutilation and maiming in the European
countries and proceeded in gradual stages (the removal of permanent scaf-
folds, the ending of the routine exposure of corpses, etc.) until by the 19th
and 20th centuries most of these nations had altogether abandoned corporal
and capital punishments. Viewed in these terms, the changes Foucault de-
scribes were already well under way during the Ancien Régime and appear
to have been bound up with developments which were not entirely to do
with power or politics. In this respect, Spierenburg sets out a strong case
arguing that the decline in penal suffering and publicity was linked to gen-
eral changes in sensibility and attitudes towards violence which can be
traced over the same extended period—these cultural changes being in turn
linked to the formation of states and their internal pacification.[29] More re-
cent work by John Beattie on criminal justice in England between 1660 and
1800 also questions the periodization set out by Foucault in this respect.[30]

Foucault's identification of political exigencies (such as the fear of scaf-
fold disorders) as the primary cause of change are also cast into doubt by
alternative accounts. John Langbein's research suggests that changes in the
law of evidence probably formed the proximate cause of the abandonment
of torture,[31] while Robert Brown argues that the whole confessional system
in which torture was grounded depended on a set of religious and psycho-
logical beliefs that had to be altered before any change in penal practice
could take place.[32] There were thus determinants of penal reform that had
distinctively legal and cultural roots and need to be considered alongside
the political forces Foucault describes: they cannot be ignored or simply

28. P. Spierenburg, *supra* note 27.
29. Spierenburg is here relying upon the general theses developed by Norbert Elias in his classic
work, The Civilising Process: Vol.1, The History of Manners (New York: Urizen, 1978) and Vol.2, State
Formation and Civilisation (Oxford: Blackwell, 1982). For a discussion of Spierenburg's argument and
its relation to other interpretations, including Foucault's, see D. Garland, The Punitive Mentality: Its
Sociohistorical Development and Decline, 10 Contemp. Crises (1987).
30. John M. Beattie, Crime and Courts in England, 1660–1800 (Princeton, N.J.: Princeton Univer-
sity Press, 1986).
31. J. Langbein, *supra* note 12. Langbein argues that judicial torture could be abolished in the 18th
century because prior changes in the law of proof had rendered it unnecessary. It was the growing
authority of the legal profession within increasingly stabilized nation states—and the availability of new
punishments other than blood sanctions—which made it possible from the 17th century onwards for
jurists to develop a new system involving the judicial evaluation of evidence, and to gradually replace the
old Roman-canon law of statutory proofs.
32. Robert Brown, The Idea of Imprisonment, Times Literary Supp., 16 June 1978.

reduced to questions of power. Equally relevant is Spierenburg's observation that the evidence of scaffold riots and disorders is much less widespread than Foucault suggests and that, in any case, the risk of disorder had always accompanied executions and could not, in itself, have been sufficient reason to abandon the practice.[33]

Historians have also taken exception to Foucault's account of the role of the reformers in the development of the prison in the late 19th century. According to *Discipline and Punish* the reformers were, for all their talk of "humanity" and the "rights of man," primarily concerned to "insert the power to punish more deeply into the social body" (at 82). Indeed, it was only their desire for more efficient control and not their detailed programs that was ever really taken up in practice—ironically enough in the shape of an institution they had never particularly favored. In contrast to this version of events, writers such as David Rothman and Michael Ignatieff give a more central place to the efforts of reformers in shaping the precise details of prison regimes. Many of the reformers they discuss were strong advocates of the prison and were instrumental in designing and legislating for the new institutions, and their concerns extended to matters of sanitation and health, the introduction of religious instruction, the proper feeding and clothing of prisoners, and the ending of their brutal exploitation by warders and other inmates.[34] Whereas for Foucault leniency in punishment is understood as a ruse of power, allowing a more extensive form of control to take hold, for these other accounts it is viewed as a genuine end that was sought after, along with others, for reasons of genuine benevolence or religious conviction. That such intentions sometimes resulted in the kind of outcomes that Foucault describes is not denied by these accounts. Indeed it is precisely this problem of distorted, unintended outcomes that they focus on, showing how the dictates of "conscience" can in practice become routines of "convenience" for other purposes. But they stress nonetheless that these motivational patterns and ideologies did have real effects and are therefore an important factor in understanding penal institutions and the process of penal change. Moreover, as Spierenburg points out, it is perfectly possible to combine a desire for more humane treatment with a demand for greater control, and there is no reason why one should be reduced to the other.[35]

Foucault's historical account can also be criticized for failing to supply the kind of evidence that is required for the arguments it makes. This is particularly true of the period at the turn of the 19th century when imprisonment first became a general policy and also at the unspecified point later in the century when the penal strategy was revised in order to turn the

33. P. Spierenburg, *supra* note 27, at 108.
34. See D. Rothman, The Discovery of the Asylum, and Conscience and Convenience, both in note 14 *supra*, and also M. Ignatieff, *supra* note 14, and his State, Civil Society and Total Institutions: A Critique of Recent Social Histories of Punishment *in* S. Cohen & A. Scull, *supra* note 14.
35. P. Spierenburg, *supra* note 27, at 184.

failures of the prison to good political use. In the first case we are told that the "prison form" found its way into legislation as a result of a society-wide disciplinary strategy, rather than as an outcome of particular penal theories. However, as Paul Patton points out,[36] one would expect a thesis such as this to be supported by evidence drawn from the actual legislative process, showing how "disciplinary" considerations entered the discussions and shaped policy decisions. No such evidence is offered.

The same point can be made with even greater force against the second argument, since we are asked to accept that the creation of a criminal class became a deliberate feature in a political strategy. The terms used by Foucault to characterize this development—terms like "strategy" and "efforts"—imply that definite elements of intention and calculation lie behind it. He is not claiming merely that events turned out as they did in some unintended functional process; it is rather a matter of strategic calculation, a policy designed and operated in order to work that way. Now there has been much discussion of what exactly Foucault means by the term "strategy," and it can be accepted that it does not necessarily imply some kind of omniscient strategist who directs operations in line with a plan of operation. But whether he has in mind an individual, an institution, or even a dispersed pattern of decisions which somehow add up, he must produce evidence of these strategic decisions actually taking place. Again, no evidence of this kind is presented.

As we saw, Foucault uses this covert strategy argument to explain why the prison has survived despite its failures and the clear implication is that it is this strategy which keeps the prison in place today. However, his account shows only that such a strategy may have made political sense in the particular circumstances of France in the 1840s and 1850s. It says nothing about the basis for its existence in the late 20th century unless Foucault believes that the same political circumstances prevail today. Whether or not there is evidence to support any part of Foucault's claim, it should be clear that a quite different argument would be necessary to explain the use of the prison in two quite different periods, a century apart.[37]

Finally, *Discipline and Punish* claims that a new, normalizing, disciplinary approach became dominant in the penal system with the emergence of generalized imprisonment in the 19th century. However, aside from a few examples and illustrations (the Paris Reformatory, Mettray, etc.) he presents no extensive or quantitative evidence to substantiate this characterization of modern penal practice. Instead he simply lists what he takes to be the individualizing, disciplinary characteristics of "modern punishment"

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36. Paul Patton, Of Power and Prisons, *in* M. Morris and P. Patton, eds., Michel Foucault, Power, Truth, Strategy (Sydney: Feral Publications, 1979).

37. R. Brown, *supra* note 32, makes a related point when he points out that in the 19th century societies with widely different traditions, levels of industrialization, and kinds of political system all adopted the prison, a fact that casts doubt upon the generalizability of the specific links between the prison and class domination which Foucault identifies in 19th-century France.

and implies that these have all been in place, more or less, since the beginning of "the carceral era" nearly 200 years ago. Subsequent research has shown, however, that the spread of these normalizing methods only really took off in the early 20th century and that even now they have not yet succeeded in displacing other nondisciplinary sanctions—such as the fine— from the central position in penal practice.[38] Furthermore, if the development of discipline was actually slower and more limited in penal practice than *Discipline and Punish* makes out, then this must in turn throw doubt on its more general claims about the extension of disciplinary mechanisms "throughout the social body." If we are not altogether justified in characterizing modern penal systems as "disciplinary" or "panoptic," where does this leave the notion of "the disciplinary society"?

There are other points of detail which could be taken up in this way, as well as more general ones such as Clifford Geertz's observation that *Discipline and Punish* is rather like a Whig history in reverse, tracing the Rise of Unfreedom and the inexorable regress of liberty.[39] But the major critical theme which emerges, and is independently made by many different critics, concerns Foucault's overestimation of the political dimension. *Discipline and Punish* consistently proposes an explanation in terms of power—sometimes in the absence of any supporting evidence—where other historians would see a need for other factors and considerations to be brought into account. In the remainder of this essay, I will argue that the reason for this one-sided history is in fact a similarly one-sided understanding of punishment and penal institutions, and that neither do justice to the phenomena they describe.

Foucault's Conception of Punishment

Despite its extensive use of historical sources and materials, it is arguable that *Discipline and Punish* is not primarily an historical text. Rather it should be viewed as a work of social theory and cultural criticism which proposes a new way of thinking about social institutions and illustrates this by means of an historical account. The real core of *Discipline and Punish* is in fact the power-perspective it sets out, and it is this perspective rather than any specific historical claims that has been most influential.

As we have seen, *Discipline and Punish* interprets punishment in terms of power: as a form of power in itself—"a political technology" (at 24)—and also as one instrument among others in a wider field of power relations—"a political tactic" (at 23). What is meant by "power" here is the idea of controlling behavior, whether directly through the disciplinary training of offenders or, more indirectly, by way of deterrent threat and example to the general population. Punishment is thus thought of as a means of control

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38. See D. Garland, *supra* note 18, and A. E. Bottoms, Neglected Features of Contemporary Penal Systems *in* D. Garland & P. Young, *supra* note 21.
39. Clifford Geertz, Stir Crazy, N.Y. Rev. Books, 26 Jan. 1978.

that administers the bodies of individuals and, through them, the body politic.

It is important to realize that this relationship between punishment and power is not proposed as a hypothesis to be investigated, nor as one aspect among others, but rather as the basis on which punishment is to be understood. We are invited to approach the study of penal institutions on the assumption that everything that occurs there is fundamentally oriented to the enhancement of control and the maximization of regulatory power. Moreover, this punishment-as-control conception refers not just to the intentions of reformers or the aims of administrators; it is taken to be the way in which the system actually works. We are first to assume that penal practice is explicable in terms of power and then to explore in what sense this is true.

The force of this theoretical preconception is such that Foucault refuses to accept that there are elements of the penal system which malfunction and so are not effective as forms of control or else are simply not designed to function as control measures in the first place. When such phenomena do seem to occur, Foucault's reaction is to look more closely, to examine them from every angle, to keep searching until he uncovers their hidden utility for power. The most startling example of this is when the apparent failures of the prison are reconceptualized to emerge as successful moves within a wider strategy of political control, but it is a tendency which is general in his work.

This radical perspective is often revealing and insightful as I have tried to show above, and when used with the inventiveness and subtlety of its author, it can lead to brilliant results. However, like any thoroughgoing scepticism it operates best as a heuristic device, producing questions and interpretations that can later be balanced against the weight of evidence and alternative explanations. It does not work well as a general theory or interpretation. Unfortunately, it has been in this more general and dogmatic mode that the power-perspective has been used, both in *Discipline and Punish* itself and in much of the subsequent work written in this style.

Foucault's emphatic depiction of punishment as a technology of power-knowledge and his primarily political account of its historical development have produced an instrumental and functionalist conception of punishment in which penal practice is always shaped exclusively by the requirements of social control and in which its design is always calculated to maximize its control effects. This notion of punishment, devoid of irrational or counterproductive features, and directed exclusively to the task of behavior control, seems to come very close to the utilitarian ideal set out by Jeremy Bentham in *An Introduction to the Principles of Morals and Legislation*.[40] There is, however, a curious difference between the two. Whereas Bentham set out his rationalistic control framework as an ideal to aim for, and deplored the

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40. J. Bentham, An Introduction to the Principles of Morals and Legislation (1823).

ritualistic, nonutilitarian actualities of punishment he observed in practice, Foucault seems to assert that "Benthamism" is, in fact a deep description of the actual nature of modern punishment. Bentham's vision turns out to be a reflection of the very nature of things—we live in a perfectly calculated, controlled, panoptic world—and Foucault urges us to recognize it as such.

There can, of course, be no doubt that penal policy is the subject of strategic planning and rational administration, nor that the control of the behavior of offenders and potential offenders is one of its central aims. But as even Bentham was forced to acknowledge, these are by no means the only factors involved. Then, as now, penal policy was shaped by a variety of ends—such as justice, economy, vengeance, forgiveness, charity, evangelism, and so on—and had to find a way of combining rational strategies with the demands of popular sentiment and ritualistic tradition. For these reasons, punishment always ends up being rather different from control, pure and simple. Moreover, as Spierenburg's work makes clear, the instrumental use of penal measures for control purposes is always in tension with social and psychological forces that place clear limits on the types and extent of punishment that will be acceptable in any specific situation. The principles of discipline and power-knowledge techniques may provide a technology of control with a given logic and potential, but the extent to which it is used, and the purposes to which it is put, will depend on wider social and cultural forces.

Cultural traits and sensibilities can be seen to influence the penal system in a variety of ways. Most obviously modern sensibilities and notions of justice place strict limits on the forms of punishment that are tolerable, thus prohibiting forms of penal control which could be highly effective—such as intensive forms of behavior modification, brain-washing, etc., not to mention old-fashioned blood sanctions. But contemporary mores also contain more punitive elements that find expression in penal systems to some degree, whether in the symbolic denunciations of the sentencing process or in the petty humiliations of institutional regimes. These punitive aspects are often seen as reinforcing the control elements of the system, but there is psychological and penological evidence to show that punitiveness is actually a very inefficient and temporary form of control.[41] It may even be that part of the reason why our penal institutions are poor at exerting control and modifying the conduct of offenders is precisely because they are punitive in form. Advocates of rehabilitation have long argued this position, but have found it difficult to replace traditional punitiveness by more "rational" forms of control.

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41. See Richard H. Walters et al., eds., Punishment (Harmondsworth: Penguin Books, 1972), for a discussion of the psychological evidence.

A Different Perspective

If one returns to the analyses of *Discipline and Punish* bearing this point in mind, some quite different interpretations suggest themselves. Take, for example, the argument that the prison has been retained, despite its apparent defects, because these "failures" are useful in exerting political control. As we have seen, Foucault is led to make this argument because he has presupposed that imprisonment is to be understood as "a political tactic." According to his functionalist logic, an institution which is truly counterproductive could not survive for long, and certainly not for two centuries, so there must be some hidden sense in which it succeeds as an instrument of control. Having put the question thus, he produces an answer of sorts—the prison does not control the criminal, it controls the working class by creating criminals—and this, he claims, is its real function and the reason for its retention.

This answer seems unlikely and is not supported by much in the way of evidence, although it or something like it is necessitated by the logic of Foucault's approach. It may well be that the prison's tendency to produce demoralized, recidivist delinquents has some effect in leading others to avoid lawbreaking or any contact with lawbreakers (though deterrence research leads one to doubt even this).[42] But any value this might have for the authorities must be weighed against the constant source of embarrassment, criticism, and expense caused by high recidivism rates and the escalating costs of imprisonment. In the absence of any hard evidence that a strategy with these objectives does really exist, it would appear that Foucault is simply taking the (unintended) consequences of the prison to be its (intended) raison d'être—a form of invalid reasoning often associated with this kind of functionalism.

If we leave aside Foucault's assumptions, plenty of better explanations can be found to account for the prison's survival. It may be, as Durkheim suggests, that it satisfies a popular (or a judicial) desire to inflict punishment upon lawbreakers and to have them dismissed from normal social life, whatever the long-term costs or consequences.[43] It also may be that any penal system needs an ultimate sanction that can forcibly incapacitate the recalcitrant and take dangerous individuals out of circulation. Following the decline of the death penalty and transportation, the prison represents the only available and culturally accepted means of doing this. Equally, it may simply be that once it was actually built, the massive infrastructure of imprisonment represents an investment (in terms of buildings, administrative structures, and professional careers) that is too costly to give up but is sufficiently flexible to adapt itself to the various penal policies which have

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42. On deterrence see the review of research by D. Beyleveld, A Bibliography on General Deterrence Research (Westmead: Saxon House, 1980).

43. See E. Durkheim, Two Laws of Penal Evolution, *supra* note 24. On the ambivalent place of vengeance in contemporary culture, see S. Jacoby, Wild Justice: The Evolution of Revenge (New York: Harper & Row, 1983).

come into vogue. The prison may thus be retained for all sorts of reasons—
punitiveness, economy, or a plain lack of any functional alternative—which
have little to do with effective control or political strategy.

This example suggests that, contrary to *Discipline and Punish*, there is no
reason to suppose that either "control" or "power" is the exclusive motiva-
tion of penal practice, nor that penal policy is always organized according
to rational, strategic considerations. Indeed, if we think of the practicalities
of the criminal justice system, it is clear that no matter how hard adminis-
trators strive to develop rational policies, they are always in the end the
servants of other, independent decision makers (the judiciary, the legisla-
ture, the public) whose demands are often at cross-purposes. Within this
complex system, control is likely to be a major goal, but one which is al-
ways compromised by other considerations; just as power is likely to be
divided and internally contested by the different agencies involved. Rather
than approaching punishment from the point of view of power alone, our
framework of study should be geared towards the interpretation of the con-
flicting social forces, values, and sentiments which find expression in penal
practice.

Foucault's reluctance to acknowledge the role of any values other than
power and control in the development of punishment has other conse-
quences in *Discipline and Punish*. In particular, it leads him to neglect the
political and ideological forces that put up a principled opposition to the
introduction and extension of disciplinary practices. As was noted above,
disciplinary strategies have only ever been partly implemented in most
modern penal systems and, in practice, they exist within what is still a
predominantly legalistic, judicial framework. These limits of implementa-
tion—which make disciplinary practice far less extensive than Foucault im-
plies—are largely the result of a sustained opposition on the part of the
liberal political establishment, particularly by the legal profession and the
judiciary. And this resistance stemmed, at least in part, from a refusal to
accept the violations of legal and liberal principles which a full-scale disci-
plinary programme would entail. These principles—of due process, the rule
of law, the rights of the individual, equality of treatment, and so on—have
formed an historical counterpoint to the demands of power, and have been
used to oppose "discipline" not just by its working-class targets but also by
important sections of the dominant class. No doubt, part of what is at issue
in these conflicts is a disagreement on how best to exercise power—just as it
was in the debates of the 18th-century reformers. But other values also play
a part, sometimes as absolute ends in themselves, and they act to limit
power, rather than to conceal or extend it.

Foucault's tendency to discuss the spread of discipline as if it were politi-
cally unopposed is a serious deficiency in his account. Although he never
states this explicitly, his use of terms like "the disciplinary society" or "the
society of surveillance" give the definite impression that the disciplinary

program has become a reality in a process of unopposed and uncompromised implementation. Having reconstructed a kind of blueprint or ideal type showing what a totalized discipline would look like, one would have expected him to go on to show the divergences between the real world and this heuristic figure of the "ideal." Instead, he writes as if the two were identical. This produces a thoroughly alarming depiction of the social world precisely because it ignores all the forces that operate to restrain the disciplinary impulse and to protect liberties. What is in fact a description of the control *potential* possessed by modern power-knowledge technologies is presented as if it were the reality of their present-day *operation*. It is a worst-case scenario that ignores the strength of countervailing forces.

Power and Values

These criticisms of Foucault's conception of punishment can be extended to refer to the more general conception of power that runs through *Discipline and Punish*. As we have seen, the scepticism of Foucault's power-perspective points to the persistent "will to power" that is alleged to lie behind the language of penal reform and the events of penal history, producing a kind of penological version of Nietzsche's *Genealogy of Morals*. In both books, systems of morality, ethics, and sensibility are broken down to reveal the more basic questions of power that motivate them and give them their real meaning. This critique of morals in the name of power does more than simply set *Discipline and Punish* apart from more conventional histories of punishment. Insofar as these other histories are written in terms of changing morality and social sentiment, it actually subverts them, criticizing their terms as superficial and unanalyzed. The ethical values and compassionate concern that others present as the causes of penal change are, for Foucault, at best the "incidental music"[44] which accompanies change, at worst, a euphemistic covering device for new forms of power.

It is certainly necessary to investigate the circumstances in which social values exist and are transformed, rather than accepting them as basic, unconditional facts. And *Discipline and Punish* gives a classic demonstration of how effective such an approach can be. But it is, however, a mistake to suppose that values and ethics are somehow reducible to the will to power. It is a mistake not because people are necessarily principled moral agents who will uphold ethical values and renounce the pursuit of power. Rather it is a mistake because it is simply untenable to suppose that "power" can be so completely separated from "value": the two always coexist.

Power is not a thing in itself, despite Foucault's tendency to use the term "power" as if it were a proper noun. Power is instead a relational concept. It is the name we give to the capacity to realize a desired goal in a particular situation, and in human cultures the goals that may be valued and sought after are many and varied. If we wish to abstract our analysis away from

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44. The phrase is from C. Geertz, *supra* note 39.

real situations, it is possible to discuss technologies of power without reference to values. In that case we are discussing power as a set of means or capacities that may be put to a variety of uses, and so it is reasonable to leave aside questions of value or objective. But once we move on from there to analyze the actual operation of forms of power in society, then a crucial question will always be: What values does this power serve? When he engages in this form of analysis, Foucault writes as if the only possible ends of power are power and more power, control and more control. Yet, as we have seen, this view is untenable even with respect to punishment, which is perhaps the nearest thing we have to a control institution: it would hardly make sense in other fields such as health care, education, or welfare where similar technologies of power are put to use.

By focusing his study upon the prison and penal institutions, Foucault gives the impression that the aims of power—the norms that the disciplines impose—are always those of conformity, obedience, and behavior control. By extension, power in the wider society appears to be concerned solely with this kind of domination, albeit in ways which make bodies useful as well as docile. We are thus left with the distinct impression that society's practices of normalization—its imposition of standards on conduct—are oppressive in all their aspects. But this sweeping cultural critique is only rhetorically possible because *Discipline and Punish* focuses on the norm of obedience. Had it focused on some of the other norms which social and even penal agencies try to inculcate—such as literacy, cleanliness, health, responsibility, independence, stability, etc.—its critique would not have been so easily made. I mention these other norms—which are sometimes enforced using a measure of force or even oppression—because they will probably strike the reader as intrinsically more acceptable than the kind of thought control that Foucault dwells on. My point here is that even the forceable imposition of norms is not always reprehensible—it depends on the circumstances. The essential point of political analysis must be to distinguish and separately evaluate the various objectives our institutions seek and the means they use to achieve them. Foucault's work refuses to make discerning judgments about the different purposes to which "power" can be put and, in so doing, implies that one is no better than any other.

Power and Politics

If *Discipline and Punish* fails to investigate the *objectives* of power, it is no better at describing its *agents*. Of course Foucault rejects the idea that power is a thing that is "held" by someone, but even if we accept his structural or relational approach to power we still need to know who are the people in positions of power and how they came to be there. On these crucial questions, Foucault is notoriously reticent. Sometimes he uses the abstractions of Marxist terminology ("the dominant class," "the State," "the bourgeoisie"), occasionally he mentions "the judges" or "the administration," but more often he simply avoids the issue altogether by using passive

constructions which do not name subjects. This failure to identify agents and decision makers—or even any recognizable process of policymaking—makes it difficult to accept his use of terms like "strategy" and "tactics," even though these terms are crucial to his argument.

In the absence of any identifying data or descriptions, what emerges is a rather simple conflict between a dominating class and those who are dominated and next to nothing about the forces that are operative in day-to-day penal politics. Ideological conflicts amongst ruling groups and their implications for penal policy, institutionalized tensions between different agencies in the penal process, popular support for certain measures and the cross-class alliances that they produce—these feature hardly at all in *Discipline and Punish*. In this sense, Foucault's conception of power is strangely apolitical. It appears as a kind of empty structure, stripped of any agents, interests, or grounding, reduced to a bare technological scaffolding. It is thus no accident that so much attention is given to the *design* of Bentham's Panopticon, and so little to its actual use.

Foucault's use of the Panopticon image to sum up modernity is no doubt intended to evoke echoes of the "iron cage" of rationality that Max Weber described.[45] But it is also particularly appropriate as a Foucauldian metaphor, because, despite his disclaimers, Foucault understands power as an apparatus of constraint. In the end, power is a kind of total confinement that envelops the individual, molding the body and soul into patterns of conformity. Power is at once socialization and social control.[46] It constructs the individual as a subject, but it is always an individual who is "subjected" or subjugated in the same process.

Beneath this oppressive burden it is "the body" that somehow represents the individual's instinctive source of freedom. It is the body that resists, the body that has to be dominated, and ultimately the body that comes to be "the prisoner of the soul" (once the soul has been fabricated by society's discipline). This time the theoretical echoes stretch back to Freud and to Nietzsche, and suggest that at the bottom of things lies the old opposition between nature (the body) and culture (the power of social discipline). But we receive nothing more than hints in this regard, and so the basis of Foucault's theory remains unargued.

Foucault's vision of power may be a positive *conception* in the sense that power molds, trains, builds up, and creates subjects, but it also involves a thoroughly negative *evaluation*. Foucault writes as someone who is absolutely "against" power. His critique is not of one form of power in favor of another but is rather an attack on power itself. This is why the critical tone of *Discipline and Punish* is never transformed into a truly critical argument

45. M. Weber, The Protestant Ethic and the Spirit of Capitalism at 181 (London: Unwin Paperbacks, 1985 reprint).

46. For a discussion of this point, see Lawrence Stone, Madness, N.Y. Rev. Books, 16 Dec. 1982, and An Exchange with Michel Foucault, N.Y. Rev. Books, 31 Mar. 1983.

that points to alternative forms of regulation which are possible and preferable to those it decries. It never even declares from what position it mounts its critique, since to do so would be to accept the necessity of power and choose between its forms. Instead, it is written as if its author were "outside" of power and therefore outside of society as well.

There is a sense in which discipline can create freedom as well as control. As Foucault's subsequent work shows,[47] discipline is necessary to the development of self-control and therefore to subjectivity. Equally it can form the basis for a regulatory network through which the norms of health, security, and welfare can be systematically provided for whole populations—providing a freedom from want, illness, and ignorance that would otherwise be impossible. The ultimate questions that need to be faced, whether in penal policy or in social policy, are not about power or no power but instead about the precise way in which power should be exercised and the precise objectives to be pursued. Foucault carefully avoids such questions, seeing them as a matter for policymakers and not for intellectuals. Policymakers and politicians have to choose between evils, but, for Foucault, the intellectual has a different role—that of the critic who must refuse to endorse any form of power in order to be free to point to the dangers inherent in any and every power mechanism: "Under no circumstances should one pay attention to those who tell you: 'Don't criticise, since you're not capable of carrying out a reform.' That's ministerial cabinet talk. Critique doesn't have to be the premise of a deduction which concludes: this then is what needs to be done. It should be an instrument for those who fight, those who resist and refuse what is."[48] It is this critical posture, deliberately adopted, which gives *Discipline and Punish* its manifest political weaknesses, but also its profoundly radical force.

47. In *The History of Sexuality*, Vol.1, *supra* note 1, the study which followed *Discipline and Punish*, Foucault turns his attention to the way in which social discourses and practices work to bring about the "subjectification" of individuals, i.e., to create them as persons with a particular kind of subjectivity. Although some of *Discipline and Punish*'s arguments allude to this process, *Discipline and Punish* is more explicitly concerned with what might be termed the "objectification" of individuals. See Colin Gordon, The Birth of the Subject, *in* Radical Philosophy, No. 17 (Summer 1977). This later work also develops an important conception Foucault terms "bio-politics." This refers to those strategies of government that concern themselves with the life, health, efficiency, and security of whole populations. Bio-political regulation is seen as a form of regulation that accompanies and complements the individually oriented "disciplines."

48. M. Foucault, Questions of Method: An Interview, Ideology and Consciousness, No.8, Spring 1981, at 13.