

Presentation on Foucault, *Discipline and Punish*, Part 2 Chapter 2: “The Gentle Way in Punishment”

PHIL 449, Spring 2014

What this chapter is about

- the evolution of the penal system in the second half of the 18th century
- specifically, the shift between the models of the punitive city and the prison system

Three technologies of power and their respective power-holders

- “technology”: a mechanism of power and also the development of knowledge that underlies the mechanism
- In each technology there is a power to punish that lies with a particular person or group:
 1. The sovereign of the monarchical regime
 2. The social body in the punitive city
 3. The administrative apparatus of the prison

the main problem

The emergence of the prison system is incompatible with the principles out of which it developed—these emphasized the importance of the publicity and transparency of punishment.

Characteristics of the first technology of punishment: practiced by the sovereign monarch

- public torture and execution
- spectacle
- arbitrary and despotic
- control of the body

The punitive city

- *operates through “obstacle-signs”*
 - this means that should instill in the mind of criminals and the social body that the penalty is more undesirable than crime is desirable
 - “Obstacle-signs must constitute the new arsenal of penalties” (104).
 - “These obstacle-signs that are gradually engraved in the representation of the condemned man must therefore circulate rapidly and widely; they must be accepted and redistributed by all; they must shape the discourse that each individual has with others and by which crime is forbidden to all.” (108)
 - punishment must be visible, public
 - the social body should have power over the mind, not just of the criminal, but of all members of the social body
- *punishments should be “useful”*
 - penalties should both serve to rehabilitate the criminal and deter others
 - for example, make criminals do public works to contribute to society
 - there were economic, not humanitarian reasons for this change in punishment: “The ideal would be for the convict to appear as a sort of rentable property: a slave at the service of all. Why would society eliminate a life and a body that it could appropriate?” (109)

- “In the old system, the body of the condemned man became the king’s property, on which the sovereign left his mark and brought down the effects of his power. Now he will be rather the property of society, the object of a collective and useful appropriation.” (109)
- *influence of the French revolution*: shift in punishment occurred during time of Fr. revolution
- 1787-1799
- Characterized by major political and social reform: fight for freedom and equality of all citizens
- Dissolution of the *ancien régime* (wealth and power lay in hands of nobility and clergy) and establishment of a democratic republic
- This political shift from monarchy to a democratic republic in France is closely reflected in the shift from the sovereign as the power that punishes (torture) to society as the power that punishes (punitive city) that occurred around the same time in history.
- The shift in punishment that occurs between the spectacle of torture and the punitive city can be seen as a kind of democratization of it

The prison, the third technology of punishment

- the power to punish moves from the social body to the prison apparatus: the prison administration is autonomous, so the prisoner is completely dominated by the punisher
- the prison is a means to control the body and mind, to create an “obedient subject”
- knowledge is gained in the prisons about the prisoners’ character, behaviour, so that it is easier to reform him/her
- *Prison models and reformist propositions are similar on a theoretical level, but contradictory when put into practice*
- similarities: both forward-looking, focused on rehabilitation and deterrence; both engaged in “individualizing correction”
- “The difference is to be found in the procedure of access to the individual, the way in which the punishing power gets control over him, the instruments that it uses in order to achieve this transformation; it is in the *technology of the penalty*, not in its theoretical foundation; in the relation that it establishes with the body and with the soul, and not in the way that it is inserted within the legal system.” (127)
- It is the technology of the penalty, not the theoretical foundations, that differs between what the reformers were looking for when they suggested the punitive city and what ended up happening with the prison system
- Secrecy and autonomy in prisons: different from the punitive city, which was to be read like an open book: “These two consequences – secrecy and autonomy in the exercise of the power to punish – are unacceptable for a theory and a policy of penalty that has two aims in view: to get all citizens to participate in the punishment of the social enemy and to render the exercise of the power to punish entirely adequate and transparent to the laws that publicly define it.” (129)

Back to the main problem, above

How/why did imprisonment become one of the most general forms of legal punishment, when it differed so much from what the reformers had suggested with the punitive city?

- In the past, imprisonment was associated with the arbitrary and despotic exercise of sovereign power.

-- "How then could detention, so evidently bound up with an illegality that was denounced even in the power of the prince, become in so short a time one of the most general forms of legal punishment?" (120)

- That there were obstacles for imprisonment to overcome to be a general form of punishment shows its contingency: it wasn't the result of a necessary causal history, a teleological movement towards the prison

A separate thing that came up for me in this chapter: is Foucault's writing more descriptive or prescriptive?

- There does seem to be normative language in this chapter: 'must', 'should'; how might we read this normative language?
- perhaps we could read Foucault as assuming the role of a proponent of the particular model of punishment he is describing
- but this doesn't seem entirely consistent throughout this text, so hard to tell if this is the case or if he's speaking in his own voice
- or perhaps we could read the normative language as him having a discussion with himself, asking and answering questions

Questions for the group to discuss

1. What can be said in support of or against the argument that there is little or no significant difference between the punitive city and the prison system?
- If this were true, would it compromise Foucault's project in any way?

We didn't get to the following two questions

2. To what extent is the restructuring of social power relations the cause of the shift between modes of punishment, the effect, or some combination of the two?
3. Foucault refrains from making explicit normative judgments about any of the three technologies of power. However, he seems to favour the technology of representation. Do you agree? Why or why not? If yes, does this change the way we read this chapter?

Group discussion notes on question #1

- The prison does try to tailor punishment to the individual criminal in some senses, but in others it is just the same punishment
- There is a major similarity between the punitive city and the prison: in both systems the body is committed to the state. The main difference seems to be that one focuses on rehabilitation and the other doesn't
- [response by presenter] But both systems do actually seem to focus on rehabilitation, on instilling a desire to be a better person, to change one's morals, etc.

- In the punitive city, there is a social branding as a criminal through being in public; in the prison, you get branded more after you get out—you're always a convict. You have to put this down on applications for jobs, etc.
- Is it really the case that the prison is closed, not public? E.g., we can watch documentaries about what goes on in prisons. Also, we still have the idea from the punitive city that if we commit a crime, we'll go to prison—the association of ideas in the mind is still there.
- [response from another student] But the prison is still locked down in the sense that we can't really change the system. For example, even criticizing the court or the judge is considered a crime, contempt of court.
- All of this is occurring around the time of the Enlightenment, which says that through reason we can drag everyone to a high point of humanity, turning people into productive members of society. This is not just a humanitarian effort, but a matter of turning people into what they *should be*, a particular model or paradigm of a human. This paradigm is purported to be an objective truth about what humans should be like, but it's controlled by those in power (the church, educational institutions, prisons, poverty relief, etc.).