

## THE BIRTH OF THE PRISON

“Morality is in itself a complete code.” (Napoleon Bonaparte, *Napoleon in His Own Words*, p. 23)

“A perfect society has not a government, but an administration.” (Wilhelm Weiling, *Guarantees of Harmony and Freedom*, 1842)

“ .. disciplinary power .. functions permanently and largely in silence. Discipline makes possible the operation of a relational power that sustains itself by its own mechanism and which, for the spectacle of public events, substitutes the uninterrupted play of calculated gazes. Thanks to the techniques of surveillance, the ‘physics’ of power, the hold over the body, operate according to the laws of optics and mechanics, according to a whole play of spaces, lines, screens, beams, degrees and without recourse, in principle at least, to excess, force or violence. It is a power that seems all the less ‘corporal’ in that it is more subtly ‘physical’.” (Michel Foucault, *Discipline and Punish*, p. 177)

“As Reich remarks<sup>1</sup>, the astonishing thing is not that some people steal or that others occasionally go out on strike, but rather that all those that are starving do not steal as a regular practice, and all those who are exploited are not continually out on strike: after centuries of exploitation, why do people still tolerate being humiliated and enslaved, to such a point, indeed, that they *actually want* humiliation and slavery not only for others but for themselves? .. no, the masses were not innocent dupes; at a certain point, under a certain set of conditions, they *wanted* fascism .. ” (Gilles Deleuze & Felix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia*, p. 29)

“*Morals reformed - health preserved - industry invigorated - instruction diffused - public burdens lightened - Economy seated, as it were, upon a rock - the gordian knot of the Poor-Laws are not cut, but untied - all by a simple idea of architecture!*” (Jeremy Bentham, in Miran Bozovic (ed.) *Jeremy Bentham: The Panopticon Writings*, p. 31)

“In its function, the power to punish is not essentially different from that of curing or educating.” (Michel Foucault)

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<sup>1</sup> Wilhem Reich, *The Mass Psychology of Fascism* (London, 1970).

## **Introduction/statement of problem**

- *From universal theology to the early modern state*
- *From of the spectacle of the scaffold to the museum of order*
- *from the 'accumulation' to the assimilation of men*
- *the management of life; discipline and the gaze*
- *Carceral 'society'*
- *Social regimentation; the end of History*

This week our aim is to think about illegality; everything that exists beyond the world of rational writing, heavy inscription, careful notation - the passing of life into history that dominated the Classical age. We must begin with the zero-point in the perception of man (surely a genealogy that will stretch far beyond modernity), and yet follow this through to the birth of the state. For yet again - in the domain of punishment and humiliation (the training of souls) we find a threshold in the age of reason, where that long genealogy transforms its own nature, becoming some quite 'other' from what till then it had been. Most obvious is its institutionalization - begun first in the hospital, as *Folie et deraison* describes, and appropriate next in the workhouse, the almshouse, the reformatory, and finally inscribed in the dark cage of responsibility, of stone and of marble, that makes up the prison in its design and technology.

This is no minor concern; for in our societies people are continually imprisoned - taken out of the chain that is their social existence, and away from others to whom it is deemed they pose a danger or bad example. Not so much a police function - in the 18thC use of the term - as the result of the failure of the police: a collection of those whom the police failed to affect.

As the prison is, in many senses the complementary ego of the societies within which we find ourselves, we have something of a right to know what happens there. In the words of Michel Foucault:

“There is very little information published about prisons; it is one of the hidden regions of our social system, one of the dark compartments of our existence. It is our right to know. We want to know. We propose to let people know what prisons are: who goes there, and how and why they go; what happens there; what the existence of prisoners is like, and the existence of those providing surveillance; what the buildings, food hygiene are like; how the inside rules, medical supervision and workshops function; how one gets out and what it is like in our society to be someone who does get out.” (Michel Foucault, anonymous document announcing the birth of Groupe d'Information sure les Prisons, 1971)

In the words of Thomas Hobbes: “Man is not fitted for society by nature, but by discipline.” (*De Cive*: 1.1, in *Man and Citizen*) Might we question - for one moment - the historical truth of such a statement?

FORERUNNERS	St. Augustine (354-430)	<i>The City of God</i> , 1610, divine justice
	St. Thomas Aquinas (1225-1274)	Aristotelian: ‘the state is natural to man’
	Niccolò Machiavelli (1469-1527)	<i>The Prince</i> , 1532, executive right
	Thomas Hobbes (1588-1679)	<i>Leviathan</i> , : ‘men must be pampered or killed’
	John Locke (1632-1704)	<i>Two Treatises of Government</i> , 1690
INNOVATORS	Melchior von Osse (1506-1556)	civic theoretician/early cameralist
	Georg Obrecht (1547-1612)	Professor of Law/early cameralist
	Viet Ludwig von Seckendorff (1626-1692)	state administrator/early cameralist
	Johann Joachim Becher (1635-1682)	mercantilist/cameralist
	Julius Albert von Rohr (1688-1742)	economist/cameralist
	Justus Christoph Dithmar (1677-1737)	Professor of History/cameralist
	Baron de Montesquieu (1689-1755)	<i>Spirit of the Laws</i> , 1748
	Joachim Georg Darjes (1714-1791)	patronized by Frederick the Great cameralist, jurist
	Johann Heinrich Gottlob von Justi (1717-1768?)	intellectual fathers of ‘police science’
	Joseph von Sonnenfels (1733-1817)	
	Cesare Baccaria <sup>2</sup> (1738-1794)	<i>An Essay on Crimes and Punishment</i> , 1764,
	Francois-Marie Arouet de Voltaire (1694-1778)	<i>The Century of Louis XIV</i> , 1750
	John Howard <sup>3</sup> (1726-1790)	<i>The State of Prisons in England and Wales</i> , 1777

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<sup>2</sup> social contractarian

<sup>3</sup> Howard (high sheriff of Bedfordshire, 1773) traveled Europe studying methods of penal treatment. He was mostly appalled by what he saw. Idleness, squalid living conditions, and immorality abound. He particularly reacted against the huddling of masses together, dreaming of a penitentiary where all would remain separate, coming together only to work.

Paul Johann Anselm von Feuerbach <sup>4</sup> (1775-1833)	judicial reformer
Jeremy Bentham <sup>5</sup> (1748-1831)	architect of the ‘panopticon’
Napoleon Bonaparte <sup>6</sup>	author of the Civil Code

### From universal theology to the early modern state

- The destruction of universal theology in the ‘Reformation’ was followed by the secularization of the European state (including the administration of punishment). Punishment was no longer ‘divine’, but based upon the institution of government (states). Increasingly - in the context of religious upheaval - the infliction of punishment through courts was affected by the pragmatic necessity of maintaining social order.
- The world of Aquinas (order according to divine plan) had already been transformed by the time of Hobbes (voluntary subjection to sovereign authority to avoid the ‘state of nature’)
- As we move toward the ‘Enlightenment’ we see yet another shift, as the philosophes express discomfort with the arbitrary and cruel nature of punishment enacted in the name of the modern state. Against political tyranny and judicial corruption a new ‘social contractarianism’ emerges, drawing on the works of Locke and Rousseau
- Representative of the shift is *Beccaria* who argues that law should be legislated, rather than left to the interpretation of the judiciary. Secrecy should be combated, visibility would ensure against judicial tyranny. He was one of the first to argue for a ‘scale’ of crimes, ranging from acts that would bring about a dissolution of the state, to acts that inflicted the smallest harms on individuals. Punishment should not be seen as revenge (to make the offender suffer), but, per contra, as a deterrent. Punishment should be certain, speedy and uniform according to crime. Laws should be known to citizens (the penal code should be clear and unambiguous)

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<sup>4</sup> Feuerbach is fascinating. He was a reformer of criminal law in Germany. He achieved recognition for the formulation: “no crime and no punishment unless provided by [statutory] law”. Although he protested against vindictive punishment (and secrecy in the penal system), he promulgated a ‘psychological-coercive’, or intimidation theory of penal law. His penal code for the kingdom of Bavaria served as a model throughout Europe for decades.

<sup>5</sup> the design of the panopticon is included below. It was never built in England, but its influence can be seen in the maximum security institutions at Breda, Holland and at Joliet, Illinois, USA.

<sup>6</sup> “To compel every citizen to render all that he is capable of rendering of social usefulness, to drag from men, in spite of themselves and by an iron compulsion, all that they possess of moral wealth and influence, to watch unceasingly the play of institutions and their machinery, from their simplest to their most intricate mechanism, that nothing fail of the particular work assigned to it - that was his constant purpose.” (Jules Bertaut, on Napoleon Bonaparte, in *Napoleon in His Own Words*, p. xi).

- Bentham is the writer who takes forward Beccaria's ideas. First let us fill in the broad detail of the shift from the early-modern world to the classical epoch, and from the classical epoch to modernity proper;

### From the 'spectacle of the scaffold' to 'the museum of order'

“As soon as power gave itself the function of administering life, its reason for being and the logic of its exercise .. made it more and more difficult to apply the death penalty. How could power exercise its highest prerogatives by putting people to death, when its main role was to ensure, sustain, and multiply life, to put this life in order?”  
(Michel Foucault, *The History of Sexuality, Vol I*, p. 138)

Again we come to the theme of the technology of security. In the early modern period it was violence, and raw physical control (the three Inquisitions are indicative). As we pass into the modern age, however; along with the innovations in governmentality (the mentality of governing) we find the birth and ascendance of a modality of power appropriate to the rise of the commercial economy and the new and generalized productionism of these newly *kinetic* states (the state that will not so much exist as thrust itself into history, a grand history and destiny - what would become in the 19thC the roots of national sentiment and national identity).

The new form of power appropriate to the demographic explosion and the necessities of social order in the context of newly emerging autonomous masses and societies, is - as we have tried to establish - **biopower**: the power over life in all of its detail, specificity and generality.

This implies the formation of a general technology of organizing men, and indeed - if one looks in the archive (the actual history, in various domains, of what happened in these formative years), one finds precisely such a technology of “**accumulating men**”. As Nietzsche has written, this technology was necessary as soon as the ‘imaginary horizon’ (the historical and geographical horizons) of man are expanded<sup>7</sup>,

“In order to have that degree of control over the future, man must first have learnt to distinguish between what happens by accident and what by design, to think causally, to view the future as the present, and anticipate it, to grasp with certainty what is end and what is means, in all, to be able to calculate, compute - and before he can do this, man himself will really have become *reliable, regular, automatic* .. so that he, as someone making a promise is answerable for his own *future!* .. That is precisely what constitutes the long history of the origins of *responsibility*. That particular task of breeding an animal which has the right to make promises includes, as we have already understood, as precondition and preparation, the more immediate task of first *making* man to a certain degree undeviating, uniform, a peer among peers, orderly and consequently predictable .. ‘How do you give a memory to the animal, man? How do you impress something

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<sup>7</sup> during the birth of the modern period, which we understand roughly to be between 1600 and 1900.

upon this partly dull, partly idiotic, inattentive mind, this personification of forgetfulness, so that it will stick?' .. 'A thing must be burnt in so that it stays in the memory: only something that continues *to hurt* stays in the memory' .. The worse man's memory has been, the more dreadful his customs have appeared; in particular, the harshness of the penal law gives a measure of how much trouble it had in conquering forgetfulness, and *preserving* a few primitive requirements of social life in the minds of these slaves of the mood and desire of the moment. We Germans certainly do not regard ourselves as particularly cruel or hard-hearted people, still less as particularly irresponsible and happy-go-lucky; but you only have to look at our old penal code in order to see how difficult it was on this earth to breed a 'nation of thinkers' (by which I mean: *the* nation in Europe which still contains the maximum of reliability, solemnity, tastelessness and sobriety, qualities which give it the right to breed all sorts of European mandarin). These Germans made a memory for themselves with dreadful methods, in order to master their basic plebeian instincts and the brutal crudeness of the same: think of old German punishments such as stoning (- even the legend drops the milestone on the guilty person's head), breaking on the wheel (a unique invention and specialty of German genius in the field of punishment!), impaling, ripping apart and trampling to death by horses ('quartering'), boiling of the criminal in oil or wine (still in the fourteenth and fifteenth centuries), the popular flaying ('cutting strips'), cutting out flesh from the breast; and, of course, coating the wrong-doer with honey and leaving him to the flies in the scorching sun. With the aid of such images and procedures, man was eventually able to retain five or six 'I-don't-want-to's' in his memory, in connection with which a *promise* had been made, in order to enjoy the advantages of society - and there you are! With the aid of this sort of memory, people finally came to 'reason'! - Ah, reason, solemnity, mastering of emotions, this really dismal thing called reflection, all these privileges and splendors man has; what price had to be paid for them! how much blood and horror lies at the heart of all 'good things'! .. " (Friedrich Nietzsche, *The Genealogy of Morality*, 'Second Essay', §1-3)

- from the transparency of the sovereign, power migrates, and disappears .. into the souls, gestures, aptitudes (and norms) of individuals, and whole societies
- Spectacular punishment wrested upon a logic of public involvement in which the values that had been violated were reaffirmed. Alternatively, it demonstrated the power of the political authority and the price to be paid for disobedience.
- 'An eye for an eye': spectacular punishment was more faithful to this (theological) doctrine than present day society<sup>8</sup>, with the offender suffering in proportion to the

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<sup>8</sup> though the impulse certainly survives, and perhaps it could be argued to have deepened. This seems to be one of the questions with which Foucault struggles in *Discipline and Punish* - the idea that carceral/psychological punishment may be *more* destructive - over the long run - than corporal punishment. An excellent - indeed

wickedness of the offense.<sup>9</sup>

- the difficulty arose, however, in matching the punishment to the crime; especially in relation to criminal insanity, and those crimes that horrify society, and yet are not as clear as murder (rape, sexual murder, paedophilia)
- *a whole lexicon of criminality was necessary;*
  - “ .. a power whose task is to take charge of life needs continuous regulatory and corrective mechanisms. It is no longer a matter of bring death into play in the field of sovereignty, but of distributing the living in the domain of value and utility. Such a power has to qualify, measure, appraise, and hierarchize, rather than display itself in its murderous splendor; it does not have to draw the line that separates the enemies of the sovereign from his obedient subjects; it effects distributions around the norm.” (Michel Foucault, ‘The Right of Death and Power over Life’, *The History of Sexuality, Vol I*, p. 144)
- economic necessity demanded a reformulation in the political economy of punitive power;
  - “The use of such devices as the knout, the cat-o’-nine-tails, the sweatbox, and deprivation of food and water were abandoned partly because of an increasing value attached to the individual and his person ..” (*The New Encyclopædia Britannica, Vol XIV*, 1975, p. 1098)
- ‘cruel punishments performed in public produce cruel people’ (English jurist/reformer, Sir Samuel Romily)

### **The birth of the prison**

The prison is a recent invention that must be seen as part of a larger pattern of penal practices that have undergone a number of transformations over time. Imprisonment is nothing new, still less punishment. But we have to ask what changed to produce societies where the main (if not universal) form of punishment is incarceration.

The changes that led to this situation are complex, taking in economic, philosophical and secular transformations. Whatever the philosophical justifications (rehabilitation, humanitarian outlook, facilitation) we should not mistake the disappearance of the scaffold with the equivalent disappearance of the punitive tone of authority: prisons are simply different means to public executions of organising the *political economy of power*.

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fascinating/bizarre - example of this logic at work is the campaign to ‘speed-up’ Death Row! The argument is that it is more humane to kill offenders quickly than it is to keep them waiting for the big day.

<sup>9</sup> has society tipped the balance? Can we say that carceral punishment is in proportion to the crimes it is designed to address?

*why punish?*

**revenge** (enacted by the state to circumvent private retaliation)

**expiation/atonement** (bringing balance back to the moral account with God)

**deterrence** (presumes rationality on the part of the possible offender to be dissuaded)<sup>10</sup>

**protection of the public** (the isolation of the criminal from the lawful)<sup>11</sup>

**rehabilitation of the criminal** (transformation, targeting of the *will* to commit crime)<sup>12</sup>

*forms of punishment*

**corporal punishment** (flogging, burning, branding, mutilation)

**psychological punishment** (ostracism, ridicule, confinement)

**capital punishment** (drowning, disemboweling, beheading, hanging, electrocution, gas chamber, mass extermination)<sup>13</sup>

**transportation** (prison hulks, deportation, exile, banishment)<sup>14</sup>

**finer** (blood money, socio-economically unequal)

**imprisonment** (dungeons, jails)

**community supervision** (by far the most frequently used form of sanction in modern society)<sup>15</sup>

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<sup>10</sup> functions both for the criminal and the law-abiding and conforming.

<sup>11</sup> so that honest men may avoid him. Dilemma of the social cost of incarceration versus that of the crimes he may have committed if let loose into society.

<sup>12</sup> including job training, education, therapeutic intervention.

<sup>13</sup> I still find it amazing that advocates usually argue in favour of capital punishment on the rationale that scientific/technological advance has made it almost, if not completely, painless. That makes it OK (obviously) to deprive another human being of life. On a second count, contrast this thinking to the Middle Ages where salvation before God could not be achieved in the absence of a measure of physical pain. The whole question revolves around the subjection of the 'will' to rational limitation. The penalty of death is no deterrent for crimes in which the will operates outside the parameters of rational society. How does one punish violence enacted by an individual deemed to be beyond the parameters of a form of reasoning which delimits violence. As there are no *biological* restraints to human violence (with the exception of infanticide which would seem contrary to the will to reproduce), how does one punish those who by emotion or sudden instinct step outside the codes that society (not God, or biology) set up?

<sup>14</sup> the practice of banishing offender beyond the national boundaries did not appear until the 17thC when England began shipping offenders to America (and later to Australia). France established penal colonies in Africa, New Caledonia, and French Guiana. Siberian gulags is a famous Russian practice. This practice has fallen into disuse for a number of reasons, principally the decline of 'empires'. For the most part labour colonies (examples including those established in Finland and Russia) have also disappeared.

<sup>15</sup> the very phrase (community super-vision) is telling! The recent campaigns to snitch on criminals (Crimestoppers/Crimewatch UK, America's Most Wanted, USA), social security frauds, and aggressive begging are representative of a million minor practices by which the order of things is upheld.

Although institutions akin to prison existed at an early date (e.g., the Della Stinche, in Florence), the first modern prison is thought to have been the Walnut Street Jail built in Philadelphia in 1790. Antecedents are to be found in the ‘workhouses’ and ‘houses of correction’ in London (1557), Amsterdam (1596), Rome (1704), and Ghent (1773).<sup>16</sup>

Having become established, in the 19th century there was a wide debate about how to organize the modern penitentiary. Two systems were put forward:

**separate system** (complete isolation, in all things; work, eating, sleeping)

**silent system** (limited isolation, silent working)

The former (the separate system<sup>17</sup>) was embodied in a prison architecture of rows of cells emanating from a central administrative centre (like the spokes on a bicycle wheel). An enclosed exercise yard was attached to each cell. The inmate saw no-one but his captors.<sup>18</sup> The latter (the silent system) gave rise to prisons built around the cell block.<sup>19</sup> This system was claimed to be advantageous as prisoners could work together on industrial projects, rather than solitary handicrafts such as weaving or shoemaking. Communications was forbidden.

Elsewhere (Norfolk Island, Australia, and in France<sup>20</sup>), systems of parole for hard work and good behaviour were being developed as essential tools in ‘reformation’ of deviancy. These innovations were brought together in Ireland by Sir Walter Crofton in what he called the ‘intermediate system’, to stress that the prison was a middle ground between the free community and strict confinement. Depending on the inmate’s response, he could move between greater freedom or greater restraint. This notion of the prison as a reformatory - responsive in its use of coercion to the behaviour of the internees - was enshrined in the US National Prison Association, established in 1870.<sup>21</sup>

‘Correctional facilities’ are mostly modeled on the reforming, rather than the punitive, institution rationale.<sup>22</sup>

The alternative ‘short sharp shock’ treatment has emerged only in the post-WWII period.<sup>23</sup>

### *penal practices*

**custody** (highest priority, based upon differentiated levels of ‘security’)<sup>24</sup>

**work** (not to get in the way of the private economy outside; limited to ‘state-use’ industries, e.g., highway signs, mailbags, license plates)

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<sup>16</sup> houses of correction usually survived on the profits of the labour of the internees. Hard work, then, was the rule.

<sup>17</sup> or ‘Pennsylvania system’.

<sup>18</sup> e.g., Eastern State Penitentiary, Cherry Hill, Philadelphia (1829).

<sup>19</sup> e.g., Auburn, New York (1825).

<sup>20</sup> Captain Alexander Maconochie and Bonneville de Marsangy respectively.

<sup>21</sup> professional training for prison administrators was advocated, as was industrial training for inmates, a reward system for good conduct, and changes in prison architecture.

<sup>22</sup> examples in Europe include the Herstedvester Detention Centre at Albertslund, Denmark, which provides therapeutic help for 200 men with long criminal records/serious problems of social adjustment.

<sup>23</sup> e.g., Kidlington, England and Hammargarded, Sweden.

<sup>24</sup> does this make surveillance a necessity, or does surveillance have a private existence?

**education** (infrequent, usually low quality)

**reduction of sentence** (at times, based upon a ‘points system’)

**self-government** (limited democratic/social organization)

**familial visits** (sometimes behind glass, sometimes as far as conjugal or sexual visits<sup>25</sup>)

**rehabilitation** (often supplemented with psychological therapy/torture)

**institutional design** (the fortress is giving way to the camp<sup>26</sup>)

*penal rationale*

**deprivation** (material goods and services, sex, individuality, security against danger, self-worth/good standing in society)

**The management of life; discipline and the normalizing gaze**

- the ‘gaze’ whereby life itself would be managed developed first in the early-modern houses of correction. From there it developed (via medicine, and scientific observation) in a whole series of institutions that emerged in the Classical period, many surviving with us still:

professional associations  
trade unions  
prisons  
hospitals  
workhouses  
universities  
military academies  
borstal

family  
factories  
courts  
schools  
asylums  
shopping pavilions & arcades  
charity houses/almshouses

- the ‘gaze’ is most clearly seen in the case of the ex-offender. Certainly it is no exaggeration to say that certain ‘known’ offenders (rape, child sexual abuse, murder, armed robbery, serious fraud) will, after release, be continually supervised.<sup>27</sup> In the UK, “sightings” are recorded on the ‘Criminal Information System’.<sup>28</sup> These ‘sightings’ are perhaps less a form of overt surveillance, but rather a record of ‘movements’. All of this is discretionary to the police officer. Suspicions alone are enough to warrant surveillance. ‘Undesirables’, ‘scumballs’, ‘piss artists’ - the

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<sup>25</sup> e.g., Latin America, Scandinavia, Eastern Europe, some countries in Asia. Has been tried in Oregon, Mississippi, and California (though usually as a means to tackle homosexuality in prison).

<sup>26</sup> e.g., the decommissioning of Alcatraz.

<sup>27</sup> disqualified drivers are constantly surveilled - partly because of the nature of the offense and punishment. Police forces are always informed when a serious ex-offender moves into the area.

<sup>28</sup> UK: computerized system to which the public have no right of access.

language itself, as common to local policeman, sets up an economy of constant inspection.

It is worth noting that in the UK a ‘Criminal Record Office number’ is yours for life: allocated on the first arrestable offense. (Unfortunately, I have one).

- above all the police hold the power to decide what is normal/unusual. Especially at night (thus to define when night is becomes important). How far from the dreams of the 18th century reformers of having visible, unambiguous law!

- *beyond the police, many organizations ‘survey’ the population;*

credit companies/banks  
advertising groups  
private security companies

private corporations  
neighborhood watch  
consumer agencies

- For Foucault, a revolution occurred in *political technology* - in particular in relation to the power to ‘envision’ (which is also, of course, the power to capture, and captivate). The prison, in this sense, operates as something altogether more than simply a location for offenders. It is a node within a newly emerging matrix of surveillance .. increasingly inward, covert .. unseen, *disappeared* ..

- *the eye of power;*

“ .. architecture begins at the end of the eighteenth century to become involved in problems of population, health and the urban question. Previously, the art of building corresponded to the need to make power, divinity and might manifest. The palace and the church were the great architectural forms, along with the stronghold .. Then, late in the eighteenth century, new problems emerge: it becomes a question of using the disposition of space for economico-political ends.” (Michel Foucault, ‘The Eye of Power’, in Colin Gordon (ed.) *Power/Knowledge*, p. 148)

“I will single out one of the most untoward of the prisoners. I will keep an unintermitted watch upon him. I will watch until I observe a transgression. I will minute it down. I will wait for another: I will note that down too. I will lie by for a whole day: he shall do as he pleases that day, so long as he does not venture at something too serious to be endured. The next day I produce the list to him. - *You thought yourself undiscovered: you abused my indulgence: see how you were mistaken. Another time, you may have rope for two days, ten days: the longer it is, the heavier it will fall upon you. Learn from this, all of you, that in this house transgression never can be safe.*” (Jeremy Bentham, in Miran Bozovic (ed.) *Jeremy Bentham: The Panopticon Writings*, p. 16)

- what Foucault is describing - with some urgency - is the ways in which power became almost *automatic* .. it lifted itself out of the realm of absolute intervention (the Prince), and into the realm of continual effect (the Panoptic society). As Foucault notes - and this is an amazing reversal;

“ .. it does not matter who exercises power. Any individual, taken almost at random, can operate the machine: in the absence of the director, his family, his friends, his visitors, even his servants (Bentham, 45).” (Michel Foucault, *Discipline and Punish*, p. 202)

“The body of the king, with its strange material and physical presence, with the force that he himself deploys to transmits to some few others, is at the opposite extreme of this new physics of power represented by panopticism; the domain of panopticism is, on the contrary, that whole lower region, that religion of irregular bodies, with their details, their multiple movements, their heterogeneous forces, their spatial relations; what are required are mechanisms that analyses distributions, gaps, series, combinations, and which use instruments that render visible, record, differentiate and compare: a physics of a relational and multiple power, which has its maximum intensity not in the person, of the king, but in the bodies that can be individualized by these relations” (Michel Foucault, *Discipline and Punish*, p. 208)

### Carceral society <sup>29</sup>

- *confining society?*

“The panoptic schema, without disappearing as such or losing any of its properties, was destined to spread throughout the social body; its vocation was to become a generalized function.” (Michel Foucault, *Discipline and Punish*, p. 207)

“ .. what are the elements of modernity which might help us to understand the emergence and consolidation of the system of punishment by imprisonment? We should not endeavour to explain modern society by way of the prison, but should attempt instead to see what ways the prison is consistent with modern society, without then reducing this consistency to an identity. We need, in fact, to find our way out of the labyrinth of mirrors .. ” (Pasquale Pasquino, ‘Michel Foucault (1926-84): The Will to Knowledge’ in, Mike Gane and Terry Johnson (Eds) *Foucault’s New Domains*, p. 36)

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<sup>29</sup> beyond the writings of Foucault see the accounts of Franz Kafka (especially ‘The Penal Colony’), Alexander Solzhenitsyn (*Cancer Ward, Gulag Archipelago*), and Fyodor Dostoevsky (*Crime and Punishment*). Also Arthur Koestler, Oscar Wilde, Miguel de Cervantes, Brendan Behan, and Jean Genet, among others.

- *yet none of this had anything to do with repression; it was aimed to facilitate life - to increase efficiency, to strengthen social forces, to increase production, spread education, raise the level of public morality .. etc.,*

### **Social regimentation; the end of History**

- the question is whether the birth of this new modality of power - biopower (biopolitics) - has incarcerated the whole of society in the process. It is clear here (especially in his study of the panopticon) that Foucault is in sympathy with Nietzsche's critique of the 'herd-like mentality'; he clearly establishes the equivalence between the transformation from the Classical to the Modern period of the modality of power and the 'genealogy of responsibility/guilt' that fascinated Nietzsche.
- Perhaps though - and inevitably, one could argue - Foucault is more subtle in hiding his finger that points not only at 'power', but also ourselves, as 'bearers'.

“We are much less Greeks than we believe. We are neither in the amphitheater, nor on the stage, but in the panoptic machine, invested by its effects of power, which we bring to ourselves since we are part of its mechanism.” (Michel Foucault, *Discipline and Punish*, p. 217)

- above all, Foucault was concerned to understand the practices that have subsumed us; the particular configuration of power (coercion, facilitation), and knowledge (human sciences, the mapping of man), that have constituted a positive and negative realm of freedom - the social codes and norms that surround us imposing order/regularity on the movements of men ..
- From here, the task was to follow the ways in which regular permissions were defined in society (of how regularized movements were 'kept in motion'), for example - the 'dangerous individual';

the evolution of the 'dangerous individual' was, as we have seen, largely the result of the 'psychologization of crime'. Yet beyond simply the rise of psychiatry, the dangerous individual was also a function of the institutionalization - within the humanities - of social scientific method. Atavism was a direct descendant of sociological positivism.<sup>30</sup>

The idea, however, of the 'dangerous individual' is also related to the rise of social contractarism. It is no surprise then that along with this rise would emerge a generalized effort to 'assimilate' offenders (to retrain to the codes of society; to make 'safe', either through medicine, or punishment/debasement)

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<sup>30</sup> 'Atavism' emerges in the work of Cesare Lombroso, Italian surgeon who argues that certain biological/physical characteristics could be identified in the bodies of criminals. Criminology emerged as a body of social-scientific/medical study. Lombroso was heavily influenced by the work of sociologist Auguste Comte, as well as evolutionist Charles Darwin. For Lombroso, punishment should take into account the 'dangerousness' of the offender to society.

incarceration emerged in the context of the ‘dangerous individual’ as the universal solution: preventative ostracism<sup>31</sup>

- expressed best perhaps in a passage from Orwell .. worth reading carefully:

“The first thing for you to understand is that in this place there are no martyrdoms. You have read of the religious persecutions of the past. In the Middle Ages there was the Inquisition. It was a failure. It set out to eradicate heresy, and ended up perpetuating it. For every heretic it burned to the stake, thousands of others rose up. Why was that? Because the Inquisition killed its enemies in the open, and killed them while they were still unrepentant: in fact, it killed them because they were unrepentant. Men were dying because they would not abandon their true beliefs. Naturally all the glory belonged to the victim and all the shame to the Inquisitor who burned him. Later, in the twentieth century, there were the totalitarians, as they were called. There were the German Nazis and the Russian Communists. The Russians persecuted heresy more cruelly than the Inquisition had done. And they imagined that they had learned from the mistakes of the past; they knew, at any rate, that one must not make martyrs. Before they exposed their victims to public trial, they deliberately set themselves to destroy their dignity. They wore them down by torture and solitude until they were despicable cringing wretches, confessing whatever was put into their mouths, covering themselves with abuse, accusing and sheltering behind one another, whimpering for mercy. And yet after only a few years the same thing had happened over again. The dead men had become martyrs and their degradation forgotten. Once again, why was it? In the first place, because the confessions they had made were obviously extorted and untrue.

We do not make mistakes of that kind. All the confessions that are uttered here are true. We make them true. And above all we do not allow the dead to rise up against us. You must stop imagining that posterity will vindicate you, Winston. Posterity will never hear of you. You will be lifted clean out of the stream of history. We shall turn you into gas and pour you into the stratosphere. Nothing will remain of you; not a name in a register, not a memory in a living brain. You will be annihilated in the past as well as in the future. You will never have existed.” (George Orwell, *Nineteen Eighty Four*, p. 203-4.)

- *strike you as familiar?*

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<sup>31</sup> ‘three strikes and you’re out’ is a variant on this theme.