Karl von Schriltz

FOUCAULT ON THE PRISON: TORTURING HISTORY TO PUNISH CAPITALISM

ABSTRACT: *Michel Foucault has been an academic cause célèbre for some time, spawning untold thesis papers and dissertations illuminating oppression's invisible fingerprints on history, literature, gender, and government. Yet for all his ceutrality in American higher education, Foucault's books are not studied so much for their substantative content as for their underlying insights into the forces shaping society. This paper confronts this paradox through a critique of the apotheosis of Foucaultian analysis,* Discipline and Punish: The Birth of the Prison. Discipline and Punish *can be understood as a masterful harnessing of leftist assumptions about capitalism to reconfigure history. The extent to which Foucault distorts history to support his thesis, however, seriously undermines the practical relevance of his brand of social science.*

Discipline & Punish (subsequently cited by page number alone) is generally regarded to be Michel Foucault's masterpiece, and as such, represents the best vantage-point from which to criticize his idiosyncratic brand of historical analysis (see O'Brien 1989, 37; Sarup 1989, 73). Foucault himself described it as "my first book" (Merquior 1985, 86). Through his history of the prison, Foucault avowedly sought to forge a new approach to the evolution of institutions, values, and norms. Foucault's approach revolves around his theory that "power"—his term for clandestine social forces—shaped history more decisively than the more visible forces of religion, intellectual currents, or individuals. His

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Karl von Schriltz, an independent scholar, may be contacted through the editorial office of *Critical Review*.

genealogical method, borrowed from Nietzsche, illuminates power's ne-
farious influence, and charts its political economy, by cataloguing its ex-
ternal manifestations in institutions, and in the writings of leading
thinkers, over time. Indeed, Foucault arguably owes his continuing
vogue in American academe not to his contributions to penology, or
the study of mental illness or sexuality for that matter, but to his
groundbreaking strategy for harnessing history to the cause of leftist so-
cial criticism.

This paper argues that Foucault's genealogy of the prison, which em-
bodies his subordination of history to his vague conception of power,
can be understood as a scathing critique of capitalism, the glaring inac-
curacies of which draw the integrity of his approach into question.
"Power" bears an uncanny resemblance to the capitalist efficiency im-
perative. Foucault's cryptic discussion of power neatly tracks the sys-
temic forces underlying capitalism; industrialization emerged alongside
the prison. To make this insinuation, Foucault engages in numerous his-
torical distortions. The history Foucault omits—most notably France's
hesitancy to adopt the prison and America's penal experimentation—
contradicts his theoretical template.

Understanding Power as Capitalism

In *Discipline and Punish*, Foucault purports to illuminate the fundamen-
tal, subterranean forces shaping modern society by disclosing how the
evolution of the prison served the changing imperatives of "power":
"The history of this micro-physics of the punitive power would . . . be
a genealogy or an element in a genealogy of the modern soul" (29).
Despite power's centrality, Foucault's elliptical prose does more to ob-
fuscate than clarify its nature: "A soul inhabits [man] and brings him
into existence, which is itself a factor in the mastery that power exer-
cises over the body. The soul is the effect and instrument of political
anatomy; the soul is the prison of the body" (30).

A key to unlocking "power" is given by Foucault's approving cita-
tions (24, 54) to Rusche and Kirkheimer's "great work" *Punishment and
Social Structures*, which argues that methods of punishment reflect
modes of production. As feudalism gave way to industrial production,
this argument goes, modes of punishment came to reflect the need for
freer markets. Though Foucault refers to modes of production only

obliquely, the Marxist framework proposed by Rusche and Kirkheimer arguably represents the analytical foundation of *Discipline & Punish*.

Foucault's preoccupation with docile bodies, the political economy of power, and efficiency all implicitly refer to capitalist imperatives increasingly reflected in society after the Industrial Revolution. Docile bodies (137–38) closely resemble human capital, or bodies whose movements have been disciplined through training and education to respond to market forces. The political economy of power (25) is nearly synonymous with economic competition writ large, or the dynamic process of natural selection that strengthens and undermines social structures according to their economic value. *Efficiency* (145, 148, 152, 163–65) is a term lifted directly from economics—it is capitalism's lifeblood. Market economies are driven by the profit motive towards an efficient deployment of scarce resources—Pareto optimality.

Cast in this light, "power" becomes the invisible hand of market economics. In the pre-industrial era, when trade was sporadic and great wealth was accumulated by force, power was manifested through military might, and military efficiency largely determined a state's wealth. By likening public torture and execution to a military campaign by the king against his enemies (50, 57), Foucault intimates that pre-industrial punishment had an economic value. He indirectly addresses this point by observing that "Rusche and Kirkheimer are right to see [public execution and torture] as the effect of a system of production in which labor power, and therefore the human body, has neither the utility nor the commercial value that are conferred on them in an economy of an industrial type." Thus, the criminal justice system "was not entirely unconnected to the function of war," which was to enrich the king (57).

Foucault next asserts that the efficiency long displayed by the military was increasingly demanded from all of society, because the locus of wealth accumulation shifted from force to enterprise, and the target of crime shifted from bodies to goods. The chapter titled "Docile Bodies" argues that in the name of efficiency, the principles of training and regimentation that long enhanced military efficiency came to be applied in schools, factories, and hospitals (135–36, 138–40). Foucault's "efficiency" is repeatedly related to the sort of efficiency attained on an assembly line by the division of labor: higher labor productivity resulting in higher profits (145,163). Training and education are said to result in workers exhibiting "greater efficiency and speed" (152, 164). The system of justice itself is said to have been shaped in part by a desire to increase its economic productivity (80–81, 87). In this regard, Panopticism is

nothing more than a metaphor for techniques of increasing human capital that incidentally resemble Bentham's model prison.

By euphemistically referring to capitalism as "power," Foucault is able to launch a backdoor leftist critique of social institutions without recourse to empirical rigor, which has been Marxism's Achilles' heel.[1] Foucault's suggestion that history can be explained in terms of the insinuation of power into people's lives merely reconfigures Marx's assertion that "the history of all hitherto existing society is the history of class struggles" (Marx and Engels 1975, 32). In Foucault's account, however, class appears by proxy: capitalists are the natural beneficiaries and masters of power, while "docile bodies" represent the hapless proletariat who serve it.

Foucault's strategy of scrupulously avoiding the positivist scrutiny invited by Marxism was made apparent when an interviewer asked Foucault "who wields power against whom in a Panoptic system?" to which he responded "This is preoccupying me. . . . This is just a hypothesis, but I would say it is all against all" (89–90). Yet when Foucault is engaged in historiography, he describes not so much a war of all against all as the deployment of power by bourgeois capitalists, who use the state to shape society so as better to exploit the proletariat. Foucault verifies this interpretation in an unusually lucid passage towards the end of *Discipline and Punish*: "Historically, the process by which the bourgeoisie became in the course of the eighteenth century the politically dominant class was masked by the establishment of an explicit code and formally egalitarian juridical framework, made possible by the organization of a parliamentary, representative regime. But the development and generalization of disciplinary mechanisms constituted the other, darker side of these processes" (Foucault, 222).

Discovering History in a Theory

To substantiate his thesis, Foucault strives to show that penalogical developments traditionally attributed to a confluence of disparate factors—religious conviction, scientific inquiries into the nature of punishment and the root causes of crime, and the political influence of reform advocates—actually reflected the changing requirements of power as capitalism blossomed.

Foucault's historical argument can be broken into four parts. First, he asserts that prior to the eighteenth century, public torture and death

were the primary methods of punishing law-breakers, enforcing law and order by advertising the sovereign's infinite power over bodies. Second, he claims that during the eighteenth century, prison suddenly became the primary mode of punishment, as the focus of criminal justice shifted from physical violence to theft. Execution became counterproductive, Foucault argues, because destitute peasants could too easily commiserate with the condemned. Third, he maintains that throughout the eighteenth and nineteenth centuries, prisons came to reflect the relentless surveillance, rigid regimentation, and silent introspection of Panopticism. Law and order came to be enforced from within the individual, as prisons burned a sense of the state's omniscience into the "soul." Finally, Foucault opines that the prison's failure to rehabilitate, borne out by high recidivism, conveniently acted to transform economically deleterious, but sympathetic, criminals into publicly detested, but useful, delinquents. Each of these four claims will be considered for its historical accuracy in turn.

The Spectacle of the Scaffold

Foucault asserts that prior to the French Revolution, criminal punishments were largely corporal: torture, death, flogging, and banishment (57). While the judicial process itself was secret, torture and execution were public, conditioning subjects to obey their sovereign (35, 47, 57). In this way, torture and execution acted as both visible judicial rituals—creating the illusion of justice—and political ones—asserting the sovereign's infinite power over bodies.

Torture and execution were chosen, Foucault posits, because human bodies were relatively expendable in pre-industrial Europe: they did not make the significant economic contribution they later would in industrial economies (54). Moreover, execution raised few eyebrows, given death's prevalence in pre-industrial quotidian life. (55) Thus, torture and death strengthened the sovereign's hold on society in dramatic fashion at little cost. The reality, however, is that Foucault's historical account greatly exaggerates the frequency of torture and execution and understates the economic value of pre-industrial human bodies.

As a preliminary matter, Foucault admits that the majority of pre-industrial punishments were *not* capital, as judicial discretion resulted in most capital crimes being punished with fines, banishment, or flogging (33). His argument, however, proceeds as though this admission were

never made: "crime and the punishment were related and bound up in the form of atrocity. . . . It was the effect . . . of a certain mechanism of power . . . [that] was exalted and strengthened by its visible manifestations" (57). Foucault implies that the spectacle of torture and execution was widely disseminated throughout society and burned into the public consciousness (63). This is at odds with the historical record.

By all accounts, public tortures and executions were not very common in pre-Revolutionary France (Wright 1983, 5). One study of punishment in Old-Regime France, based on records maintained in two representative districts between 1696 and 1789, found that only 21.9 percent of guilty verdicts resulted in the death penalty, including only 7 percent of those convicted of aggravated theft (Ruff 1984, 61, 116). More importantly, only six of the 30 recorded executions involved pre-death torture (ibid., 61). Throughout pre-Revolutionary eighteenth-century France, less than 10 percent of convictions resulted in death sentences (Wright 1983, 6). Moreover, there is no reason to believe that more than a smattering of citizens were directly exposed to the spectacle of torture and execution, given the dearth of public transportation.

If public torture and execution were rare in Old-Regime France, they were rarer still elsewhere in Europe. In England, fines, not torture and execution, were the predominant form of punishment between 700 and 1189 (Moynahan and Stewart 1980, 11–14). Moreover, the subsequent era of torture and execution was short-lived, for by 1553, an unprecedented crime wave had underscored the failure of disproportionately cruel punishments to deter crime, and Parliament began experimenting with imprisonment (17–22). German-speaking countries began replacing corporal punishment with imprisonment in the late seventeenth century (Rusche and Kirckheimer 1991, 48). In America, William Penn's Great Law of Pennsylvania abolished the death penalty altogether in Pennsylvania between 1682 and 1718 (Lewis 1922, 10, 13).

Foucault's assertion that the low economic value of citizens in pre-Revolutionary France dictated corporal punishment is similarly unfounded. Most European states began reducing capital punishment long before industrialization, in the seventeenth century, to ease the burden on government (not private) coffers (Lewis 1992, 51). For example, the primary motivation behind the German shift from execution to prison was to defray the cost of administering justice though prison labor. Prisons only later came to be regarded as punitive (Lewis 1922, 51; Melossi 1991, 65). In pre-industrial France, subjects were valued as soldiers and as taxpayers, albeit not as assembly-line workers. As military

strength depended on manpower, however, most male thieves in seventeenth-century France were not executed but pressed into service as oarsmen on military vessels (Ruff 1984, 60). France's expansive bureaucracy, flamboyant aristocratic lifestyles, and military misadventures were all financed through crushing taxes levied on the peasantry, aided by one of Europe's earliest centralized bureaucracies (Mansel and Winks 1980, 51–52).

Given their rarity, public execution and torture did not likely bolster sovereign power in the minds of the populace in the way Foucault suggests. It is more plausible that such grizzly punishments were meant to create an effective deterrent in an era when most crimes passed undetected and unpunished. Thoughts of execution may have preoccupied would-be offenders, but law-abiding citizens—the target audience of execution and torture, by Foucault's account—probably concerned themselves more with avoiding criminals.

Foucault exaggerates the importance and popular salience of torture and execution to create a pre-industrial benchmark from which to criticize modernity. The bourgeoisie had yet to "rise to dominate the political system," so the proletariat's oppression by capitalism had yet to begin. As the economic value of manipulating bodies had yet to be discovered, Foucault implies, kings derived satisfaction from the exercise of "surplus power" over their subjects' bodies through torture and execution, just as the bourgeoisie would later derive satisfaction from the accumulation of surplus wealth on the backs of the proletariat (29, 49, 53–54). The earlier modality of power is implicitly judged preferable to the latter because it affected human freedom on only a superficial level—by altering behavior—whereas the more recent modality eroded human freedom at a deep level by manipulating the human "soul" (9, 16).

Foucault cannot reconcile the pre-industrial prevalence of exploitative noncorporal punishments with power because it blurs the break between pre-industrial and industrial society, and suggests that pre-industrial freedom was diminished in ways that went far beyond the psychic impact of torture and execution. To the extent that other, far more prevalent punishments suggest that human bodies have always possessed an economic value (to the state, if not the bourgeoisie), they weaken Foucault's assertion that prisons sprang from the advent of capitalist exploitation. Foucault intimates that feudal populations were freer for not being reduced to cogs in a capitalist machine, but pre-industrial penal systems, too, often wrung economic value from convicts.

The Advent of the Prison

To strengthen the causal relationship between industrialization and the prison, Foucault asserts that France's transition from corporal punishment to prison "occurred almost instantaneously" and "within a short span of time" (115–16). He concedes that the concept of imprisonment goes back as far as 1596 in the Netherlands, and had developed as a form of punishment in eighteenth-century England, but argues that the adoption of imprisonment in France had been slowed by its association with regal tyranny. French hesitation, he argues, was overcome "instantaneously" by two interrelated factors: public sympathy for those executed for crimes against property, and the proliferation of such crimes relative to crimes of physical violence, which curried less public sympathy (62). Both trends coincided with, and are implicitly attributed to, industrialization.

Even a cursory reading of the historical record reveals that Foucault is wrong about both the timing and the speed of the adoption of imprisonment. Prisons were well established long before the Industrial Revolution, and even with industrialization, prisons spread through France not suddenly, but glacially. The first prison sentence was prescribed by English law in 1275: two years imprisonment for rape (Moynahan and Stewart 1980, 13). In medieval England, criminal fines, with imprisonment pending their payment, became a profitable state enterprise (ibid., 46). After 1557, "Bridewell houses" were constructed throughout England, and widely imitated throughout Europe, for imprisoning petty criminals and vagrants and putting them to hard labor (Roberts 1997, 6). At the same time, Germanic countries had begun adopting prisons and prison labor in the sixteenth century as a means of defraying judicial expenses (Melossi 1991, 65). In seventeenth- and eighteenth-century France, 60 percent of convictions resulted in imprisonment or banishment, not death (Ruff 1984, 60). For example, the punishment for most crimes against property was imprisonment—on military galleys as oarsmen for men, and in *maisons de force* for women (ibid., 60, 113–16). In 1690, William Penn made prison the sole means of punishment in Pennsylvania, until the Queen restored English penal law in 1718 (Lewis 1922, 11, 13). When American independence restored prison as the principal form of punishment 50 years later, it was hardly a sudden development, given the Great Law of Pennsylvania a century earlier.

While the prison's incubation had ended in most states by the end of the eighteenth century, France only came to embrace imprisonment fully in the twentieth century—not the early nineteenth, as Foucault asserts. True, legalized torture ended abruptly between 1780 and 1788, but the debate surrounding prisons raged on for another century. (Wright 1983, 15) It is fair to say that after 1788, only in France was the development of the prison tortured.

After the French revolution, French penology followed a pattern of debate, reform, revolution, and regression. In 1789, the Estates-General enacted a new penal code that would have made prison the primary form of punishment, but the Jacoban Terror of 1794 aborted its implementation, and public executions blossomed as never before (Wright 1983, 31, 34). Napoleon's coup d'état restored order in 1799, and penal reform ensued, but the reforms expanded the death penalty and corporal punishment, and punished lesser crimes with deportation, not imprisonment—which was considered too expensive (ibid., 39–40).

Napoleon's exile and the establishment of the First Republic unleashed an explosion in public debate over the prison. The debate very nearly bore fruit in a plan for the construction of a new prison based on the American Walnut Street model, but this scheme was scuttled by Napoleon's hundred-day return from exile (ibid., 54, 56).

The subsequent restoration of King Louis-Philip saw the resumption of the prison-reform debate, and the slow replacement of deportation by imprisonment. This wave of reform crescendoed in the Assembly's adoption of the American Cherry Hill model prison in 1848 (as advocated by Alexis de Toqueville after his fact-finding mission to the United States) in which prisoners slept and worked in the solitude of their own cells (Wright 1983, 78). Yet again, revolution aborted the reforms, and the new government of the Second Republic began paring back the nascent prison system—consisting of a mere 20 cellular prisons—by eliminating most prison labor (78, 85).

The 1852 coup d'etat by Napoleon II further reversed prison reform, replacing imprisonment—still considered too expensive—with deportation for more serious crimes. (Wright 1983, 92; Perrot 1978, 234). By 1875, only two new prisons had been added to France's total, as the debate between advocates of the prison and advocates of deportation raged on during the Third Republic (Wright 1983, 130).

In 1885, the National Assembly finally succeeded in implementing what King Louis-Philip had attempted 50 years earlier, enacting a law that made prison the primary form of punishment and that mandated

the construction of a cellular prison system (Wright 1983, 136). Most localities refused to comply with the law, however, diverting monies earmarked for prison construction to deportation and penal colonies (ibid., 138). The largest and most modern cellular prison in Paris was demolished in 1898, in an important symbolic defeat for prison advocates, and 20 years after the law's passage, the number of cellular prisons had only doubled to 41 (ibid.). In fact, deportation was to remain France's primary form of punishment—with roughly 11,000 convicts deported annually—until the 1930s, when prisons finally came into their own (ibid., 138, 150).

The historical record clearly indicates that the French adoption of the prison was anything but instantaneous, and certainly belies Foucault's assertion that the French carceral system was complete on January 22, 1840, with the construction of Mettray (293). Further, the countries that had adopted the prison as their primary means of punishment by the end of the eighteenth century—most notably the United States—did not do so suddenly. The adoption of imprisonment as punishment was everywhere steeped in precedents, from thirteenth-century England to William Penn's Pennsylvania law in 1682.

Foucault times the prison's sudden arrival to coincide with industrialization, the concurrent rise in crimes against property, and the groundswell of popular sympathy for thieves (61–63, 75–77). He enthusiastically recounts how the emergent proletariat came to identify with criminals, elevating them to the status of folk heroes as industrialization drove people from the land and thrust multitudes into poverty (67). The idea is that public torture and execution became a flashpoint for public dissatisfaction and a recipe for proletarian revolution—a risk the emergent bourgeoisie sought to mitigate by cloaking the penal process behind prison walls (77). This notion is culled directly from the traditional Marxist account of the appearance of prisons in France, but this account has been weakened by evidence that most advocates of the prison sprang from the proletariat, not the bourgeoisie (Wright 1983, 20–21). Foucault adroitly circumvents this Marxist shortcoming by shifting the analytical focus from class to capitalism itself.

The fact that the establishment of the prison did not coincide with the Industrial Revolution, but rather stretched over much of the eighteenth and nineteenth centuries, greatly weakens the causal relationship Foucault seeks to establish between industrialization and imprisonment. The pre-industrial use of the prison, and its irregular use within and across countries after the Industrial Revolution, seem consistent with a

more complex evolution of penology than Foucault provides. For example, the hesitancy of the French in adopting the prison, and their preference for transportation, suggests relatively less interest in discipline than in incapacitation: once transported, convicts seldom returned. Foucault ignores all of this, redacting history as demanded by his theory.

The Prison as Capitalist Mind Control

In the third and most important part of his argument, Foucault considers how the structure of the prison came to reflect the imperatives of power, which were roughly coextensive with the goals of Panopticism. The aim of the prison, Foucault opines, ultimately became the transformation of inmates into compliant, law-abiding, economically productive automatons, reflecting the efficiency demands of emerging market economies (163–64). To this end, prisons came to embody the coercive principles of Jeremy Bentham's Panopticon, as did the school, the hospital, and the factory. Panopticism disciplined its subjects through a program of constant surveillance coupled with strict regimentation according to detailed instructions. Constant surveillance forced subjects to internalize the gaze of authority—enabling them to regulate themselves—while regimentation molded their physical movements to maximize productivity.

Foucault identifies five ways in which prisons incorporated Panopticism. First, cellular isolation forced the inmates into greater self-reflection, pushing them to internalize authority (236). Second, constant surveillance achieved the same end (249–50). Third, remunerated prison labor was adopted as a means of regimenting the habits and movements of inmates, while impressing upon them the centrality of wages as the incentive to work (240, 243). Fourth, flexible prison sentences were meted out, reflecting the requirements of psychological rehabilitation rather than the seriousness of the infraction—though Foucault admits that flexible sentencing was practiced only sporadically (244). The final, similar expression of Panopticism in the prison, Foucault asserts, was the cognitive shift from viewing inmates as "law breakers" to viewing them as "delinquents" (255). Prison administrators regarded their inmates no longer in terms of the crimes they had committed, but rather in terms of their lifelong social pathologies, as reflected by their "biographies." The prisoners were seen as, and made to feel alienated from, society.

This portion of Foucault's argument is the one that is the most abstracted from reality, and is therefore the most difficult to relate to the historical record; but the actual evolution of the prison during the nineteenth century, and the explicit motivations behind its evolution, seem to diverge markedly from Foucault's account. Industrialization undoubtedly brought an unprecedented awareness of the importance of productivity to economic life, and the emergence of surveillance and hierarchy in schools, factories, and hospitals probably reflected this concern. Foucault is also credible in suggesting that the enhancement of efficiency through discipline initially appeared in the military—where the importance of efficiency was first recognized—long before the Industrial Revolution brought the same concern to other institutions. For this reason, efficiency concerns may have unconsciously undergirded the pronouncements of prison reformers—there is no way of ever verifying their true motivations (Wright 1983, 22). However, the actual extent to which ideas other than Panopticism were reflected in the structure of prisons suggests otherwise.

The lukewarm reception of imprisonment in France was reflected in the disorganized state of the French prison system, which consisted of two levels. Roughly 400 local prisons housed half the prison population, including those waiting for trial and petty criminals serving brief sentences (Wright 1983, 133–34). These squalid facilities were described by shocked prison inspectors as "filled with stupor and horror"; the lack of segregation according to age, sex, or degree of criminality rendered them veritable "crime factories" (ibid., 134). These prisons remained untouched by the philosophical speculation about incarceration, and certainly exhibited no trace of Panopticism—there was no cellular isolation, no work, and no organized surveillance of any kind.

Despite the vigorous political debate surrounding them, France's national prisons—the *maisons centrales*—reflected few Panoptic principles, as their development was stunted by inadequate financial and political support. The first French prison to modestly reflect Panopticism was La Petite Roquette, opened in 1836 to considerable controversy (Wright 1983, 68). Though Roquette adopted prison labor and a rule of silence, it fundamentally diverged from Panopticism in that prisoners slept and worked communally, rather than in cells. Cellular incarceration was to be continuously resisted in France, as too cruel, expensive, and un-French (ibid., 75, 92).

Moreover, prison labor, the linchpin of Panopticism, was implemented unevenly and against great resistance. At first, productive work

was expected of all inmates, and usually organized by private entrepreneurs, but relentless political pressure from artisans and unions against unfair prison competition ultimately limited the types of goods produced to trifles for public agencies (Wright 1983, 162–64). And high French unemployment after the 1850s often made prison labor less competitive than free labor, further restricting the work available to inmates (Rusche and Kirkheimer 1991, 58–59). Tocqueville himself argued that prison labor was better suited to the United States, where labor was scarce, than to France, where labor was plentiful (ibid., 60).

Apart from solitary confinement and steady work, the Panoptic element most sorely lacking in French prisons was order. Horrible overcrowding, and the use of racketeers to compensate for a shortage of guards, made prison discipline impossible to maintain (Wright 1983, 135). Thus, the prevalence of drunken revelry among prisoners was one of the prime motivations behind King Louis-Philippe's reform efforts in the 1830s (ibid., 69). Charles Lucas, a nineteenth-century French penal scholar, even suggested that the factory prepared the lawbreaker for the rigors of prison labor, not vice versa, as prisons were too undisciplined (Perrot 1978, 230). Thus, the French prison system of the nineteenth century bore little relation to Panopticism: half of it consisted of chaotic local prisons, and the other half imposed little solitary confinement, ineffective surveillance, and no steady work with which to render inmates disciplined, docile bodies.

The American prison system of the early nineteenth century better approximated Panopticism, though the resemblance faded over the course of the century. The actual floor plan of the Panopticon was a crushing failure: the first prison that used Bentham's architecture—Western State Prison, built in 1818 in Pittsburgh—was demolished and rebuilt along more conventional lines 15 years later (Lewis 1922, 118–19). Still, U.S. prisons quickly adopted all the other trappings of Panopticism: rigid discipline, with complete silence imposed through corporal punishment; Orwellian surveillance techniques, such as the "lockstep" and striped uniforms; and solitary confinement in cells by night, with communal work by day (ibid., 17–18). The state-by-state experimentation encouraged by America's federalist system of governance, however, made American prison structure highly variable and dynamic, ultimately resulting in the demise of Panopticism (McKelvey 1968, 28)

The first, post-Revolutionary prison—Walnut Street prison in Philadelphia, built in 1790—incorporated cells for the first time so as

to prevent the transmission of criminality through fraternization, which was endemic in communal prisons (Lewis 1922, 25). A similar rationale motivated the concurrent elimination of chain gangs: not because they were currying public sympathy, but because they were engaging in lively conversation with young, impressionable boys, who frequently took their lessons to heart (ibid., 17–18). Walnut Street ultimately failed due to overcrowding, which stymied prison labor and revived the disorder cells were supposed to alleviate.

By the 1820s, new prisons opened in Pennsylvania, at Cherry Hill, and in New York, at Auburn, offering different solutions to Walnut Street's perceived shortcomings. The Cherry Hill solitary system prescribed total isolation, with each inmate working and sleeping in the confines of his own cell, only later to be joined by a cellmate as space limitations demanded. Auburn's congregate system opted for communal work by day, with solitary confinement at night. Given the threat of fraternization, prison discipline depended on Draconian enforcement of the "rule of silence," typically by threat of lashings. The Auburn system ultimately prevailed for three reasons: the larger cells required by the Cherry Hill model were too expensive; total isolation was considered inhumane; and Auburn's communal work was more productive and profitable than Cherry Hill's solitary work (Lewis 1922, 132; Roberts 1997, 34, 39). Accordingly, most new U.S. prisons built in the early nineteenth century adopted the Auburn model.

While the Auburn prisons began as a means of disciplining prisoners, their transformation into profit centers by avaricious entrepreneurs and prison administrators quickly unraveled discipline. Prisoners gradually enjoyed more perks in return for higher productivity, and by the 1860s, all but two states had dropped the rule of silence. (McKelvey 1968, 40) The Auburn profit machine was too successful for its own good, however, and protests from unions and companies competing with prison labor resulted in laws greatly constraining, and in some cases forbidding, the use of prison labor for commercial purposes (Roberts 1997, 64; Lewis 1922, 140, 145).

Further, exploitative prison labor, and the brutal enforcement of the rule of silence, galvanized prison reformers in the 1850s, who felt that prisons should serve a more rehabilitative function—a sentiment reflected in a widely publicized poll of prison wardens (McKelvey 1968, 39). To this end, the National Prisons Association—the nation's leading penalogical society—adopted its famous Declaration of Principles in 1870, which advocated the more rigorous segregation of criminals ac-

cording to age and pathology; rewards and indeterminate sentencing to encourage reformation; and the establishment of prison schools and hospitals (Roberts 1997, 60). The Declaration, coupled with strong religious convictions, inspired the establishment of the Elmira System in 1876 at the Elmira prison in New York (ibid., 63). Gone was corporal punishment, the rule of silence, striped uniforms, the lockstep, and prison labor for profit. In place of naked coercion, Elmira substituted prison schooling, prison labor for vocational training purposes only, rigid segregation—separating prisoners according to three grades of criminality—and extracurricular activities, such as marching bands and athletics (ibid., 64). By 1900, 17 states had adopted the Elmira model, including the Auburn prison itself, and the modern prison had arrived.

What had begun at Auburn as Panopticism ended at Elvira as humanist rehabilitation. Prison labor had shifted its emphasis from discipline to profit, before being snuffed out by disgruntled unions and businesses. The harsh punishment and rigid surveillance required by the rule of silence had been replaced by rewards for good behavior and benevolent career counseling. Panopticism had been repudiated.

Foucault's counterintuitive focus on backward French prisons to the exclusion of the more Panoptic U.S. prisons is itself highly misleading. The United States led the world in penalogical developments throughout the eighteenth and nineteenth centuries, serving as a hotbed of both debate and experimentation (McKelvey 1968, 16, 23). Had Foucault dealt with U.S. penology beyond the Auburn versus Cherry Hill debate carried on in France, he would have had to square his theory of power with a vast array of contradictory developments. French prisons were far less dynamic and varied than those in the United States (though French penalogical debate was just as lively), and thus far easier to squeeze into Foucaultian templates. Even limiting his analysis to France, however, Foucault has to ignore penal reality to focus on Panoptic theories and principles that were debated but never successfully implemented. These omissions are especially glaring given the unconscious motivations Foucault ascribes to prison reformers; such motivations should, at the very least, be reflected in the institutions they purportedly shaped. The fact that they were not is the weakest link in Foucault's four-part historical argument. Accordingly, Foucault's central claim that capitalist efficiency imperatives dictated a Panoptic prison structure unravels when confronted by the reality of nineteenth-century prisons in America and France.

Foucault's focus on Panopticism obscures the visible forces driving

the nineteenth-century development of prisons, which had more to do with trial and error, expediency, and the work of impassioned reformers than with a desire to mold passive proletarians. Capitalism was far from the minds of the Quakers who founded the first modern prison at Walnut Street. Rather, Walnut Street was conceived as the very embodiment of Quaker values, with solitary confinement encouraging introspection, labor forging good habits, and religious instruction facilitating spiritual growth. Within 20 years, however, the prison was in shambles, as overcrowding had unraveled solitary confinement, work, and discipline. Western State Prison, which did indeed test Bentham's Panopticon, was an even more spectacular failure. Cherry Hill fared little better, as the relentless cellular isolation reportedly drove prisoners mad.

The shortcomings of imprisonment were even more pronounced in France. Deportation was the preferred punishment: a cheaper, more effective attack on recidivism (and one that advanced French imperialism) than prisons, which were largely overcrowded, communal, and undisciplined. Prison labor was initially embraced, only to disintegrate with rising French unemployment. Numerous attempts at prison reform were thwarted by an endless succession of social upheavals.

Panopticism achieved brief success in America with the congregate system begun at Auburn, but it contained the seeds of its own destruction. The system's heavy-handed discipline, coupled with its blatant exploitation of prison labor, drew fire from the national press and from prominent religious figures such as Louis Dwight. The crusade for replacing prison labor with rehabilitation, spearheaded by a coalition of the National Prison Association, self-interested unions and businesses, and penal crusaders, ultimately spawned the Elmira System of vocational training in a congenial environment.

How the overarching imperatives of a capitalist economy—as opposed to the income of particular capitalists—could have been served by Auburn's dysfunctional brand of Panopticism is far from obvious. Perhaps these prisons initially strove to discipline their inmates through a combination of cellular isolation, silence, and work; but all too quickly, prison labor became a route to profit, not rehabilitation. In 1852, nine Auburn-style prisons reported a massive combined profit of $23,000 (McKelvey 1968, 40). The profit motive was even more explicit in the South, where poorer states washed their hands of prisoners entirely, leasing them to private factories and farms that housed them under atrocious conditions (Roberts 1997, 51). In this way, American prisons served the marketplace far more directly than Panopticism, but

without touching the prisoners' souls so as to make them efficient workers. Greed and administrative expediency had effectively trumped the high-minded words of Bentham, Eddy (father of the Auburn system), Montesquieu, and Beccaria.

If the state prison sector evolved slowly in the United States, and glacially in France, the local prison system was a shambles in both countries (Wright 1983, 134; McKelvey 1968, 20). There, petty criminals serving short sentences were herded into communal cells with the bare minimum of heat, comfort, and food, and often without regard for guilt or innocence, age, or gender (McKelvey 1968, 35). There was no work, no recreation, and more importantly, no method whatsoever, just punishment and incapacitation.

Foucault's insistence that Panopticism was the leitmotif of nineteenth-century imprisonment is belied at every turn, then, by the historical record. Most glaringly, the French state penal system on which he chooses to focus was far less Panoptic than its American counterpart. Transportation, not prison, was the preferred punishment in France. The actual French prison system was largely communal, undisciplined, and sedentary. And the American prisons that Foucault neglects developed away from, not towards, Panopticism.

The Prison's Convenient Failure

After recounting his dubious history of the prison, Foucault reveals that incarceration failed to achieve its lofty aspirations, failing to reduce crime, increasing recidivism, intensifying popular resentment against the system of justice, and spawning a community of irredeemable delinquents (265–68). He deftly recharacterizes this failure, however, as an integral part of the unconscious capitalist plot. Foucault explains that by transforming criminals into delinquents, thereby branding them as bad people, prisons generated useful deviants and helped increase the gulf between law-abiding citizens and lawbreakers. For want of gainful employment, the newly created deviants were pressed into service by the bourgeoisie, running brothels, casinos, and other criminal enterprises; spying on the proletariat; and justifying employment in the carceral system (277, 285).

The "useful delinquency" argument fundamentally fails by mischaracterizing recidivism as the result of prison reform, rather than as its catalyst. For example, high recidivism rates spurred the adoption of

transportation in France and the Auburn system in America. As the Auburn system self-destructed, the Elmira system was proposed as a superior means of transforming prisoners into law-abiding citizens, thereby reducing recidivism. Post-release guidance counselors and small payments were provided in several American jurisdictions to facilitate the reintegration of ex-cons into the workforce (McKelvey 1968, 43). By ignoring the dynamic, heterogeneous nature of penalogical development in favor of a monodimensional theory, Foucault mistakes cause for effect.

The useful delinquency argument also fails on its own terms. History suggests that bourgeois citizens continued to show concern for prisoners, delinquency or no. Beginning in the late eighteenth century, American Quakers began visiting prisons to ensure humane conditions, and they tried to help rehabilitate convicts through such organizations as the Philadelphia Society for Alleviation of the Miseries of Public Prisons (Lewis 1922, 13, 28). In France, analogous organizations of aristocrats monitored prison conditions and fought for their improvement (Wright 1983, 14, 56). Throughout the nineteenth century, numerous prison-reform gadflies in the United States and Europe succeeded in galvanizing public indignation over appalling prison conditions, often yielding substantial results. Even apart from single-minded reform advocates, at least one historian (Melossi 1991, 71) opines that most nineteenth-century civil protests held in England and America were intended to improve prisons, and that the storming of the Bastille had as much to do with anger over mean prison conditions as with any desire to overthrow the monarchy.

Nor was tolerance for criminality as class-specific as Foucault suggests. There was no pocket of tolerated bourgeois illegality such as gambling that benefited from a willing pool of delinquents who were barred from gainful employment by their prison records (279). Indeed, the most important new criminal laws to emerge in nineteenth-century France came at the expense of the bourgeoisie, as white-collar crime was increasingly penalized (Wright 1983, 220). So-called "crimes of cunning" were increasingly recognized and prosecuted in the 1860s, and "the depraved crook of the industrialized areas" was officially deemed more contemptible than the "illiterate inhabitant of [the] Southern provinces who . . . kills his adversary in a fight" (ibid., 224–25, quoting *Compte*, France's crime statistics annual).

Foucault's related charge that employees of the justice system advanced their own institutional interests by encouraging recidivism is

made less convincing by the fact that elected officials and advocates from outside the penal system ultimately determined penal law and the structure of prisons. For example, transportation in France, and the Elvira system in America, were long-term strategies to combat recidivism that arguably reduced employment in the penal system, and at least replaced old employees with new ones. The rapidly changing penal environment throughout the nineteenth century suggests that penal employees were not very adept at protecting their jobs by maintaining the status quo.

Foucault's deviancy argument puts a positive spin on the prison's seeming failure as a disciplinary device. Describing this failure in dry statistical terms (265–68). Foucault manages to obscure the real reason prisons failed to produce self-disciplined workers: namely, that they failed to adopt Panopticism or any other policy that could have reduced inmates to mindless cogs in the capitalist machine. Cut loose from real historical moorings, Foucault's deviancy argument overlooks the possibility that recidivism and undiminished crime rates were catalysts for further prison reform, not bourgeois rationales for perpetuating a malfunctioning Panoptic juggernaut.

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By systematically butchering the history of the prison, Foucault is able to forge the four links in his argumentative chain. First, public torture and execution served as operant conditioning in disorganized, pre-industrial societies. Second, prisons instantaneously materialized as industrialization brought a surge both in theft and in public sympathy for thieves born of a growing class awareness. Third, Panopticism permeated prisons—as well as schools, factories, and hospitals—as a means of fashioning the mindless automatons required by an efficient capitalist economy. Fourth, recidivism made criminals widely reviled and economically useful.

While Foucault's history of the prison neatly tracks his conception of penology as capitalist conspiracy, it diverges markedly from the historical record. Public torture and execution were not nearly as prevalent as Foucault suggests; they were common enough to publicize the punishment for certain crimes, but not so common as to cow citizens in the face of the sovereign's limitless power. Nor did prisons appear suddenly: imprisonment was intermittently utilized in various guises for centuries prior to 1840, and France was especially slow in adopting it. Panopticism was the exception, not the rule, only briefly implemented in

American prisons in the first half of the nineteenth century. Recidivism, far from being tacitly encouraged, was constantly attacked by changes in penal strategy.

A more complete history of the prison suggests that many forces beyond "power" were at work. Economic and bureaucratic shortcomings played a prominent role in the development of French prisons, and certainly rendered Panoptic discipline and punishment a practical impossibility for most convicts. Humanitarian and religious convictions played a prominent role in the evolution of the American prison, as did federalist experimentation. More generally, industrialization did not force the modalities of power into the shadows—shifting from a visible dominion over the body to an insidious influence on the soul—but, rather, forced them into the light as never before. The political revolutions that accompanied the Industrial Revolution forced governments to justify penology on utilitarian grounds, which were constantly subject to public debate and state experimentation. While the disciplinary requirements of capitalism were undoubtedly factored into penal debate, and were sometimes incorporated into prisons themselves, they were not always decisive, and often lost out to the competing values of fairness, compassion, and pragmatism.

Foucault denies any allegiance to Marxism and rejects class or proletarian revolution. Yet it should not be forgotten that the tale he tells in *Discipline and Punish* is a tale of the triumphant imposition of false consciousness by capitalist "power." Nor should it be forgotten that this tale is, in virtually every major detail, wrong.

NOTES

1. Foucault disparaged Karl Marx as an extension of David Ricardo, and Marxism as a theory that "can only breathe in a positivist pond" (Sarup 1989, 78). He found Marxists too eager to transform Marxism into a science, where science is merely a fiction wielded to reify the distopian status quo (ibid., 77, 88). More fundamentally, Foucault felt Marxists were too class-obsessed, arguing that the true source of oppression is "power," which transcends class. The fact that power operates above the state makes proletarian revolution futile, as its ill effects would be undiminished by a change in government (ibid., 86).

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