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Re-Thinking the Political Economy of Punishment

Perspectives on Post-Fordism and Penal Politics

Alessandro De Giorgi

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Introduction

Paris, 1657

We expressly prohibit and forbid all persons of either sex, of any locality and of any age, of whatever breeding and birth, and in whatever condition they may be, able-bodied or invalid, sick or convalescent, curable or incurable, to beg in the city and suburbs of Paris, neither in the churches, nor at the doors of such, nor at the doors of houses nor in the streets, nor anywhere else in public, nor in secret, by day or night ... under pain of being whipped for the first offence, and for the second condemned to the galleys if men and boys, banished if women and girls.[1]

New York, 1997

... Subway stations became shantytowns for the homeless and aggressive begging increased, exacerbating a climate of fear, compounded by a significant and notorious decline in the quality of life as a whole ... Then as you entered Manhattan, you met the unofficial greeter of the city of New York, the squeegee pest. Welcome to New York City. This guy had a dirty rag or squeegee and would wash your window with some dirty liquid and ask for or demand money. Proceeding down Fifth Avenue, the mile of designer stores and famous buildings, unlicensed street peddlers and beggars were everywhere ... This was a city that had stopped caring about itself. There was a sense of a permissive society allowing certain things that would not have been permitted many years ago. The City had lost control.[2]

At first sight, it would seem that very little has changed in the three centuries separating the Paris of the *Hôpital Général* from the New York of *Zero Tolerance*. In fact, the legislators of the seventeenth-century edict and the former chief of New York Police Department, William Bratton, seem to share a common philosophy. That is, a logic of contempt for the extreme poverty that shows itself overtly, thus contaminating the urban environment; a logic combining moral motives to eugenic allusions; a logic of hostility against whatever can disturb the quiet and orderly flux of metropolitan productive life, injecting into it the infections of non-work, economic parasitism, and urban nomadism. Above all, an identical object of discourse emerges here: the implicit equation between social marginality and criminality, between poor classes and dangerous classes.

However, a deeper analysis would show that this analogy is only apparent. The cited edict belongs to the historical period that witnessed the transition from a regime of power which Michel Foucault defined 'sovereign', toward a 'disciplinary' paradigm

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1 French edict establishing the creation of the *Hôpital Général*, quoted in Michel Foucault, *Madness and Civilization. A History of Insanity in the Age of Reason* (London, 1967), pp. 48–49.

2 William Bratton, 'Crime is Down in New York City: Blame the Police', in Norman Dennis (ed.), *Zero Tolerance. Policing a Free Society* (London, 1997), pp. 33–34.

of control. Confronted by the spectacle of vagrancy, material poverty and moral dissolution of the European poor, between the seventeenth and the eighteenth centuries the strategies of power started to change, shifting gradually from a negative function of destruction and physical elimination of deviance, toward a positive function of discipline and normalisation of the 'other'.

It is here that the age of the 'Great Confinement' started. No longer would the poor, vagrants, prostitutes, alcoholics and criminals of any sort be tortured, quartered, executed and symbolically eliminated through a spectacular destruction of their bodies. Much more discretely, silently and efficiently, they would be confined. Reclusion emerged as an alternative to the destruction of the body because it became clear that these 'outsiders' constituted a mass whom the emerging technologies of discipline could forge, normalise, transform into productive individuals: into a labour-force. From the 'right of death' to the 'power over life'; from the brutal neutralisation of 'infamous individuals' to the productive regulation of the populations inhabiting the urban territories: what the edict foresaw, and at the same time invoked vigorously, was the birth of *bio-politics*.[3]

By intersecting the discipline of the body and the regulation of human groups, bio-politics organised an efficient power over life; it assembled a complex of technologies of government which replaced the dissipation of bodies, energies, resources and power with a rational management of productive forces. Following Foucault, again:

> The adjustment of the accumulation of men to that of capital, the joining of the growth of human groups to the expansion of productive forces and the differential allocation of profit, were made possible, in part, by the exercise of bio-power in its many forms and modes of application. The investment of the body, its valorisation, and the distributive management of its forces were at the time indispensable.[4]

This is the emergence of that model of disciplinary control which would affect the age of expansion of the 'industrial society', reaching its apogee in the period of Fordist capitalism. In fact, it is particularly in the first half of the twentieth century that the project of a perfect articulation between the discipline of the body and the regulation of whole populations came to completion, embodied as it was in the economic regime of the factory, in the social model of the *welfare state* and in the penal paradigm of the 'correctional' prison.

Zero Tolerance and its practice of discourse, on the other hand, emerge in a radically different context, and illustrate the crisis and gradual abandonment of the disciplinary project of capitalist modernity. No longer will technologies of discipline offer themselves as efficient instruments for the control and the government of the dissipation and waste of labour-force: perhaps precisely because dissipation and waste no longer exist. The poor, the unemployed, the immigrants: these are the new dangerous classes, the 'wretched of the metropolis' against whom new technologies of control are deployed in contemporary Western societies.[5]

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3 'One might say that the ancient right to take life or let live was replaced by a power to foster life or disallow it to the point of death', Michel Foucault, *The Will to Knowledge. The History of Sexuality, vol. 1* (New York, 1990), p. 138.

4 Ibid., p. 141.

5 I am paraphrasing here Frantz Fanon, *The Wretched of the Earth* (New York, 1963).

However, the strategies of power set in motion here seem quite different from the disciplinary ones. The first object of these strategies is to identify the new *dangerous classes* and to separate them from the *labourious classes*. This task is becoming increasingly problematic. In the post-industrial metropolis, the growing precarisation of work, the flexibilisation of employment and the constant overlapping between the 'legal' economy and the many hidden, informal and illegal economies is producing a gradual fusion of work and non-work, mixing the labouring and the dangerous classes together and making any rigid distinction between the two almost impossible. A paradigmatic example is offered by the migrant labour force. At the same time 'dangerous' and 'necessary', non-Western immigrants stand at the core of this process, and their condition (both as privileged targets for new social control strategies and as objects of a renewed economic over-exploitation) symbolises its intrinsic paradoxes.

The second object seems to be the neutralisation of these new dangerous classes through the development of risk based technologies, articulated mainly in the forms of surveillance, urban seclusion and mass confinement.

If we look at the technologies of control emerging at the dawn of the third millennium, we could argue that a second 'Great Confinement' is in fact taking place. Urban confinement, through the new ghettos (or hyper-ghettos, following Loic Wacquant's definition). Penal confinement through the explosion of mass imprisonment. Global confinement, through the many 'immigration detention centres' which mark the borders of the Empire.[6] However, far from representing a plain reproduction of the Foucauldian 'Great Confinement', this contemporary version does not seem to cultivate any disciplinary utopia. Instead, confinement appears today as an attempt to define a new space of containment and to draw material and immaterial borders around those 'surplus' populations 'inassimilable' by the contemporary system of production and its post-welfarist model of social regulation.

Perhaps we could say that we witness here a dramatic dissociation between bio-political rationality and disciplinary strategies. As a paradox, bio-political imperatives are fulfilled through a refusal of disciplinary technologies. In other words, we can still see a bio-political power regulating the productivity of populations and controlling the fluxes of labour force in the global economy. However, what seems to be disappearing is the 'anatomo-politics of the human body' described by Foucault, the productive 'fostering of life' which complemented, at the level of individuals, the regulation of whole populations in the disciplinary era. This can be described also as the disappearance of those technologies of subjectivation whose aim was to transform the subjects through individualised control.

The aim of contemporary power technologies (in the broadest sense) seems no longer to be 'to foster life *or* disallow it' but 'to foster life *by* disallowing it'. It is precisely the 'disallowance' of life imposed today to an increasing fraction of the global labour force, that is becoming the main requisite for the 'fostering' of life in post-Fordist economy.

A new right of death emerges here. I refer to the 'death' imposed to some 'undeserving' categories of people by the strategies of control which sustain the capitalist organisation of society: this death bears upon the affective, social and

6 On the concept of Empire see Michael Hardt and Antonio Negri, *Empire* (Cambridge MA, 2000).

economic existence of individuals and appears as a brutal limitation of individual expectations, as an expropriation of possibilities, as a systematic violation of the freedom of movement. I conceive of 'death' as a biographic experience of the contemporary labour force, rather than as a biological event. This death is exemplified by the biographies of the hundreds of migrants who constantly die at the borders of the 'Fortress Europe' while attempting to exercise a 'right to escape';[7] it is exemplified by the biographies of the millions of prisoners confined in the 'American gulag', or of those social groups – ethnic minorities, the unemployed, immigrants, refugees, and many other 'collateral effects' of neo-liberal economy – whose life-horizon is defined by the borders of a local or global ghetto.

In his works, Michel Foucault traced a genealogy of disciplinary power firmly inscribed in the formation of the capitalist system of production and in the consolidation of a Fordist industrial society. Disciplinary power cannot be separated (both theoretically and historically) from the process of constitution of the industrial economy. Conversely, the development of industrial capitalism is structurally linked to the strategies for the production of subjectivity and labour-force embodied in the disciplinary techniques. However, what we are facing now seems to be precisely the overcoming of the system of capitalist production to which these disciplinary technologies have been connected for a long time.[8]

We perceive clear signs of this process. There are several descriptions, analyses, definitions and critiques of the transition from Fordism to post-Fordism, and a growing economic and sociological literature is concentrating on the consequences of this transition.[9] 'Post-Fordism' is a definition that is becoming increasingly popular in the sociological, political and economic discourse as well as in the common language, and points to a paradigmatic change that is reconfiguring our experience of social life. At the same time, we witness the emergence of analyses pointing to the transformations which take place in the field of social control and penality. Terms like 'society of control'[10] and 'surveillance society',[11] just to give two examples among the many possible, indicate the epilogue and the overcoming of the disciplinary regime: a process of transition whose dynamic is rooted in the crisis of the Fordist system of production.

However, if the work of Michel Foucault inscribed the genealogy of disciplinary control directly in the materiality of capitalist relations of production – that is, in those processes which led to the constitution of an industrial proletariat and to the formation of a Fordist labour force – contemporary analyses of social control seem reluctant to take this fundamental step. Although we are in the condition to say that disciplinary control appears more and more inadequate to the new forms of production and to the new labour force, we are still unable to connect this inadequacy to the processes of transformation affecting the economy.

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7 The concept of migration as the exercise of the 'right to escape' is borrowed from Sandro Mezzadra, *Diritto di fuga. Migrazioni, globalizzazione, cittadinanza* (Verona, 2001).

8 See Luciano Ferrari Bravo, 'Sovranità', in Adelino Zanini and Ubaldo Fadini (eds), *Lessico Postfordista. Dizionario di idee della mutazione* (Milan, 2001), pp. 278–284.

9 The transition from Fordism to post-Fordism will be analysed in Chapter 2.

10 Gilles Deleuze, 'Postscript on the Societies of Control', *October*, 59 (1992): 3–7.

11 David Lyon, *Surveillance Society. Monitoring Everyday Life* (Buckingham, 2001).

Thus I come to the object of this work: an attempt to find some new hypotheses which could help to fill this apparent gap. The aim is to describe some significant transformations taking place in the field of social control, starting from the emergence of a new system of production, and to investigate in which ways these new control strategies can be connected to the emergence of a post-Fordist economy. However, this means that the analysis of contemporary social control has to be complemented with a description of some significant features of the contemporary labour force. It is here, when we turn to the analysis of the post-Fordist labour force, that the concept of *multitude* becomes central.[12]

The term 'multitude' is useful because it describes the rhizomatic, nomadic and composite character of the post-Fordist labour force: a labour force for which a series of distinctions and descriptions referring to the traditional 'Fordist working class' seem to lose much of their meaning. Thus, multitude refers to the extreme flexibilisation of the labour force, to the blurring of times of work and non-work experienced by large sectors of the labour force, to the fragmentation and diffusion of the production process in the society and beyond the walls of the industrial factory, to the crisis of the idea of a 'working life' and to the 'corrosion of character' which follows it.[13] But multitude refers also to the increasing mobility of the labour force, to the diffusion of multi-skilled productive roles, to the end of the 'assembly-line' with its repetitive tasks and the emergence of creativity, inventiveness, communication as the main productive tools of the post-Fordist labour-force, to the crisis of the Taylorist 'time-motion-oriented' management and the diffusion of innovative, just in time, lean production systems.

However, I should make clear that the concept of multitude does not refer to any definite subjectivity, nor to the emergence of a paradigmatic identity of the labour force, as was the case with the industrial workforce: the multitude is not simply what comes after the industrial working class in a post-industrial economy. Instead, the term defines a *process* of subjectivation, a 'becoming multiple' (in Deleuze and Guattari's terms) of the new forms of work, to which post-disciplinary strategies of social control are directed. Hence, multitude refers primarily to the impossibility of any *reductio ad unum* of the diverse productive subjectivities, comparable to that which allowed sociologists and economists to conceive the industrial working class as the hegemonic subject of the Fordist age.

Thus, starting from the concept of multitude, we will see that what at first sight appears as the inadequacy of the disciplinary techniques to exercise control over the contemporary productive system, can also be described (taking the point of view of the post-Fordist labour force) as a surplus expressed by the object of control (the new social labour force) toward the disciplinary dispositives: a new dimension of work irreducible to the processes of normalisation and subjectivation imposed by disciplinary technologies of power.

But before approaching these conclusions, it is necessary to situate these transformations within a broader theoretical framework. The political economy of

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12 This concept has been adopted by Hardt and Negri in *Empire*, to describe the contemporary labour force.

13 See Richard Sennett, *The Corrosion of Character. The Personal Consequences of Work in the New Capitalism* (New York and London, 1998).

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punishment seems to offer such a framework. This is a critical orientation – inspired by Marxian and Foucauldian analyses – which emerged within the sociology of punishment in the 1970s, with the aim of investigating the relationships between the economy and penal control.[14] As we shall see, this critical tradition has concentrated mainly on the relationship between the prison and the factory and between unemployment and imprisonment, describing in particular the connections between the labour market and penal policies in a Fordist scenario. In this respect, some of its assumptions seem to be outdated, given the recent transformations of the economy and social control. However, the critical tools forged by the political economy of punishment – both through the historical reconstruction of the birth of the prison and through the analysis of the contemporary relationships connecting the economy and punishment – are an important starting point, from which we can move in order to identify some new directions for a critique of post-Fordist social control.

In Chapter 1 I illustrate the main positions which emerged within the political economy of punishment, and describe their theoretical assumptions, both in a historical and contemporary perspective. This will allow me to identify some limits of this perspective, due mainly to the transformations taking place in the field of the economy. In Chapter 2 I turn to these transformations, attempting to identify their tendencies and to describe their effects on the labour force. At that point I can start my analysis of the new strategies of social control. In Chapter 3 I offer some preliminary incursions in this field, arguing that the new strategies articulate themselves around three main technologies: generalised surveillance, selectivity of access and mass confinement. In Chapter 4 I examine mass incarceration as a post-disciplinary strategy of control, and describe how a new conception of 'categorial risk' is giving birth to actuarial technologies. I will argue that the 'new penology' should be understood as a technology for the punitive management of the 'surplus populations' produced by the post-Fordist economy. Finally, in Chapter 5 I take Western immigration policies as a clear example of the emergence of a post-disciplinary and risk-based philosophy of social control. The condition of immigrants in Western societies is in fact paradigmatic for the arguments presented here: at the same time a vital part of the post-Fordist labour force and a typical example of 'dangerous class', their condition intersects the new economy with the new strategies of social control.

[14] The classic text is Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York, 1968).

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Chapter 1

The Political Economy of Penality and the Sociology of Punishment – Past and Present

Introduction

Toward the end of the 1960s, the criminological field saw the emergence of some critical perspectives which in fact revolutionised the theoretical coordinates of this discipline. At its origins, 'criminology' was the study of the problem of crime, more than the study of the problem of punishment. That is to say, criminology considered punishments, criminal policies and strategies of social control only under the point of view of their impact on crime. For a long time criminology has been a *savoir* whose object was the production of effective strategies for the government of deviance and criminality. Thus, it is easy to understand why the study of social and individual causes of crime played such an important role within the priorities of criminological research.

A result of what Michel Foucault defined as the 'inquisitorial society', criminology emerged as a knowledge inseparable from the technologies of power built around the field of deviance. Its history is part of the process of 'governamentalisation' of the State which took place between the eighteenth and nineteenth centuries. In that period, the science of government (and police science) became more specialised, giving birth to different forms of knowledge about the population: social statistics, urban studies, social psychiatry and criminology itself.[1] The 'inquisitorial' attitude of criminology produced a set of new discourses around the *homo criminalis*, the recidivist, the criminogenic environment and the dangerous class.[2]

Before the 1960s, criminological research did not question the rigid epistemological structure of its own origins: the influence of positivism was perhaps still so strong to make it virtually impossible for different perspectives to emerge. Nor had criminology ever dealt with an analysis of social reactions to deviance, separating these (at least methodologically) from their object (i.e. deviants). It was only with the development of the labelling approach that social reactions to crime emerged within criminology as a separate field of inquiry. In the political context of the 1960s, with their radical critique of repressive power in its diverse expressions (the family, the church and

1 Michel Foucault, 'Governmentality', in Graham Burchell, Colin Gordon and Peter Miller (eds), *The Foucault Effect. Studies in Governmentality* (Hemel Hempstead, 1991), p. 104.

2 On the relationship between criminology, disciplinary society and governmentality, see Pasquale Pasquino, 'Criminology: the Birth of a Special Saviour', *Ideology and Consciousness*, 7 (1980): 17–33.

total institutions), some space was opened for a sociological perspective in criminology. The growing awareness of the failure of the prison stimulated critical criminologists to question the role of this institution and to try to uncover the reasons for its persistence in the present.

Labelling theorists had already started a revision of criminological knowledge, but confined their research within the boundaries of a micro-sociological perspective. They were 'empowering' the deviant against the structures of power, but without developing a deeper analysis of the social power to label. On the one hand, the deviant world described by labelling theorists seemed incapable of any resistance except at an individual level. On the other hand, power was never analysed beyond those face-to-face interactions taking place in the microcosm of total institutions. These aspects of American liberal sociology were in fact the targets of Alvin Gouldner's famous critiques:

> The attitude of these zookeepers of deviance is to create a comfortable and human Indian Reservation, a protected social space, within which these colourful specimens may be exhibited, unmolested and unchanged. The very empirical sensitivity to fine detail, characterising this school, is both born of and limited by the connoisseur's fascination with the rare object: its empirical richness is inspired by a collector's aesthetic.[3]

These critiques pointed to the importance of a materialistic analysis of social control. According to Gouldner, the main difference between *liberal* and *radical* sociology lies in the willingness to focus critical attention on the labellers (power institutions) as well as on the labelled (their victims):

> ... I think that radical sociologists differ from liberals in that, while they take the standpoint of the underdog, they apply it to the study of overdogs. Radical sociologists want to study 'power elites', or the masters of men; liberal sociologists focus their efforts upon underdogs and victims and their immediate bureaucratic caretakers.[4]

This political and intellectual position announced the irruption of Marxism in the sociology of deviance that would take place between the end of the 1960s and the beginning of the 1970s.[5] In this context a new critical direction emerged in criminology, investigating on the one hand the historical trajectory through which the prison came to replace older forms of punishment and, on the other hand, the reasons for its persistence in the present, given its apparent failure. The aim became that of looking beyond the rhetorical legitimation of imprisonment, to unveil its latent functions. We see in this period the development of two main directions of analysis: the first is an ensemble of historically oriented works about the role of punitive

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3 Alvin Gouldner, 'The Sociologist as Partisan: Sociology and the Welfare State', in *For Sociology* (Harmondsworth, 1975), p. 38.

4 Ibid., p. 51.

5 It would be a mistake to reduce to Marxism the many directions that emerged in this period in critical criminology (feminism, anarchism, black studies, etc.). But the object of this work is the political economy of punishment, an orientation that owes much to Marxist theory. Thus, I will focus more on this theoretical perspective. For an exhaustive reconstruction of the history of critical criminology (though limited to the European context) from its origins up to the 1990s, see René Van Swaaningen, *Critical Criminology. Visions from Europe* (London, 1997).

systems in the consolidation and reproduction of a capitalist economy. These works deconstructed the mainstream histories of punishment. Until that period this history had been represented as a continuous process towards more humane punishments: it was now rethought as a sequence of strategies whose main object was the imposition of class subordination.

The second direction of research focused on the present functions of social control and the prison: here the analysis concentrated itself on the impact of social control on contemporary capitalism and especially on the capitalist labour market. What these different perspectives had in common was the idea that punitive institutions could only be analysed under the point of view of the relations of production: a critical sociology of punishment had to uncover the role played by penality in the reproduction of these relations.

In the following pages I will offer a reconstruction of this 'materialist criminology', both in its historical and contemporary directions. First, it is necessary to introduce some theoretical assumptions of the political economy of punishment: this is why I start with an analysis of Rusche and Kirchheimer's works. Then, I review some recent works on the history of punishment and the prison in particular. This section is followed by an analysis of some contemporary perspectives within the political economy of punishment: that is, those works which investigated the relation between the economy and punishment in contemporary society. In the last section I will submit some critiques to this perspective, anticipating some arguments that will be developed in subsequent chapters. I suggest in particular that the contemporary materialist perspective appears inadequate to capture the deep transformations of the economy in contemporary societies: namely, the transition from a 'Fordist' to a 'post-Fordist' model of production and its implications for social control.

Penality and the Critique of Political Economy

The main assumption of the political economy of punishment is that it is possible to understand the evolution in the forms of punishment only if one separates them from the functions that have been historically assigned to them. Penality plays a role that is different from the control of criminality and from social defence: this role can be explained only if we put the evolution of social control strategies in the context of the economic dynamics of society and the corresponding contradictions. Both the historical emergence of peculiar punitive practices and their persistence in contemporary society should be connected to the relations of production and to the organisation of labour. The theoretical landscape in which the political economy of punishment can be situated is historical materialism as Marx presented it in the famous 'Preface' of 1859:

> In the social production which men carry on they enter into definite relations that are indispensable and independent of their will; these relations of production correspond to a definite stage of development of their material powers of production. The totality of these relations of production constitutes the economic structure of society – the real foundation, on which legal and political superstructures arise and to which definite forms of

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