

CAPITAL PUNISHMENT RESEARCH, POLICY, AND ETHICS: DEFINING MURDER AND PLACING MURDERERS

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When nation-states make "peace offensives," when wage slavery is perceived as "freedom," and when ignorance is looked upon as strength, discussion of public policy is fraught with difficulties. Nevertheless, an attempt to explore public policy, especially penal policy, is mandatory, for such policies are techniques which disclose the operation of power in social life, and at the same time are procedures of knowledge which define "truth" and social "reality." Consequently, capital punishment as penal policy can more clearly be understood² when it is related to other state power-exercise stratagems and explored within a power-knowledge analysis.

In this context criminological research is inseparable from penal policy. Such research is a procedure which may indicate whether certain specific penal sanctions are effective maneuvers in state power-exercise—for example, whether or not capital punishment is an effective response to murder. Moreover, criminological research is simultaneously a procedure of knowledge which strategically defines and reifies the meanings of crime/criminal, terrorism/terrorist, and murder/murderer.

In his recent power-knowledge analysis, Michel Foucault has clearly conceptualized how power³ and knowledge⁴ are interrelated:

... (W)e should abandon a whole tradition that allows us to imagine that knowledge can exist only where the power relations are suspended and that knowledge can develop only outside its injunctions, its demands and its interests. Perhaps we should abandon the belief that power makes mad and that, by the same token, the renunciation of power is one of the conditions of knowledge. We should admit rather that power produces knowledge (and not simply by encouraging it because it serves power or by applying it because it is useful); that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power

relations. These "power-knowledge relations" are to be analyzed, therefore, not on the basis of a subject of knowledge who is or is not free in relation to the power system, but, on the contrary, the subject who knows, the objects to be known and the modalities of knowledge must be regarded as so many effects of these fundamental implications of power-knowledge and their historical transformations. In short, it is not the activity of the subject of knowledge that produces a corpus of knowledge, useful or resistant to power, but power-knowledge, the processes and struggles that traverse it and of which it is made up, that determines the forms and possible domains of knowledge (Foucault, 1978: 272).

Furthermore, Foucault has insightfully applied this power-knowledge framework in assessing the "failure-success" of the prison as penal policy:

... (T)he prison, and no doubt punishment in general, is not intended to eliminate offences, but rather to distinguish them, to distribute them, to use them; it is not so much that they render docile those who are liable to transgress the law, but that they tend to assimilate the transgression of the laws in a general tactics of subjection. Penalty would then appear to be a way of handling illegalities, of laying down the limits of tolerance, of giving free rein to some, of putting pressure on others, of excluding a particular section, of making another useful, of neutralizing certain individuals and of profiting from others. In short, penalty does not simply "check" illegalities; it "differentiates" them, it provides them with a general "economy." And, if one can speak of justice, it is not only because the law itself or the way of applying it serves the interests of a class, it is also because the differential administration of illegalities through the mediation of penalty forms part of those mechanisms of domination. Legal punishments are to be resituated in an overall strategy of illegalities. The "failure" of the prison may be understood on this basis (ibid.: 27-28).

Clearly then, criminological research forms part of the operation of the penal apparatus.

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ANALYTICAL FRAMEWORK AND ILLUSTRATIONS

Following Foucault, power-knowledge relations distort and conceal "reality" while producing a "regime of truth." While creating the belief and the documentation that nation-state foreign policy is dedicated either to human rights and dignity or to democracy and protection from other nation-states, agents of state have organized an array of client states ruled by administrative torture and state terrorism (Chomsky and Herman, 1979). The documentation defines terrorism while ignoring state policy and reproducing the belief in the necessity of the nation-state. Freedom fighters are separated from guerrillas or terrorists, yet members of the same religious group in Afghanistan and Iran are alternately designated freedom fighters and terrorists by nation-state superpowers. Each state's power-exercise is defined as legitimate, necessary, and, thus, expanded.

While creating the belief and the documentation that state domestic policy is dedicated to reducing criminal victimization, agents of state have organized an array of crime control maneuvers which produce and legitimate social harms, create and define criminals and increase the expansion of state power-exercise. Therefore the criminal, like the terrorist, comes to belong to our imagery—an artistic creation which demands intellectual discourse, an array of criminological research, and an array of crime/criminal control stratagems. If the imagined criminal cannot ordinarily be seen among us, a crime control discourse which locates him is essential. Like finding the student in the school and the worker in the factory, one finds the criminal in the criminal justice process and in the prison.

The prison is justified as protecting us from criminal victimization, as reestablishing our rights to person and property, as specifically incapacitating and generally deterring, and as seldom changing, yet producing knowledge about criminals. Mythical imagery is concretized, objectified, realized—the criminal exists!

Criminological surveys tell us that criminals evoke the fear of being raped, murdered, and mugged. Criminological research thus reproduces the current legal, class-based definition of crime. We should fear these most directly experienced harms, currently defined as crimes. We should fear those acts to which we can rationally respond with dead-bolt locks, Dobermans, neighborhood patrols, determinate sentencing, prison construction, and capital punishment. Criminological research thus ignores the fear of nuclear war, starvation, cost-effective workplace death, and the carcinogenic economy—fears of social harms toward which we cannot rationally respond within current power-exercise and knowledge relations. Is it not frightening that we do not find it as hard to live in a world with the capacity to murder each person thousands of times over, and which daily murders thousands, as we do to confront the enormity of death when only one person is dying, as in an execution (Mailer, 1981)?

The defined criminal and criminological research not only teach us what to fear but, as well, locate and define our moral, ethical categories. We do not kill or murder! We export nuclear warheads and fighter bombers, produce

napalm, restrict food distribution, poison the earth, and execute criminals. We do not kidnap! We incarcerate, require school attendance, and restrict inter-nation-state travel. We do not steal! We extract profit, appropriate, exploit and objectify others, while claiming property rights to the land, sea, air, and other persons. We do not disobey! But in our obedience we become incompetent and spiritually traitorous.

Ironically, criminological research shows that crime control maneuvers have no effect on rates of legally defined crime; they appear to produce a net increase in career criminality, reinforce the legitimacy of the exercise of power over others, and are, as well, quite costly. Why then are these unsuccessful crime control stratagems so successfully maintained?

To understand this we must see that these tactics (as well as those of the novel, mass media, film, and news discourse) create the criminal and that the created criminal is in his/her exercise of power minimally dangerous or disruptive of the political economy, and of the basic beliefs which most persons in this society hold. The pictured criminal is a hierarchically based focus which blurs the maneuvers of power-exercise, the "illegalities" or social harms of persons in higher strata. Moreover, persons subjected to higher-strata power-exercise can be utilized as mechanisms of power-exercise (e.g., as informers, infiltrators, agents provocateurs, drug and gun runners, mercenaries, and state warriors) (Foucault, 1978: 272).

Just as significantly, the fear of the criminal who is not *in place* authorizes perpetual surveillance both of specific populations (males, "racial" minorities, lower-strata persons) and of all in the society. Potential criminals are everywhere, no one is to be trusted, all are to be feared, and thus, increased measures of crime control are legitimated.

Perhaps two different power-knowledge illustrations will clarify the framework before we turn to an analysis of capital punishment.

"Scared Straight," An Illustration

Many persons saw the Oscar-winning film, "Scared Straight," wherein the Lifer's Group at Rahway Prison attempted to scare the crime out of juveniles. Despite the facts of questionable deterrent effect and selection bias (Finkenauer, 1979), the film and the lifer's program seem to have had some significant consequences:

1) The film serves to legitimate not only prisons but horrible prison conditions. The clear message is that prison conditions are necessarily horrible, or else no one would be deterred (Mullaney, 1979). The image and reality of prison dangerousness and dehumanization must be maintained.

2) Though the program was a rare opportunity for members of the Lifer's Group to do something meaningful, the major impact the program had was to reduce the social control problems (fights, tickets, etc.) these prisoners would otherwise have caused and to increase their morale.

3) Though screaming at, bullying, and intimidating young persons was certainly not the totality of the lifer's

CAPITAL PUNISHMENT RESEARCH

What do capital punishment research and ethical dialogue tell us and what are the policy implications?

There is no discernible statistical association between the existence of the death penalty and the willful homicide rate. States that have abolished the death penalty have not shown a statistically significant increase in their willful homicide rates. States that once abolished the death penalty and then reintroduced it show no statistically significant decrease in their willful homicide rates. Comparisons of contiguous states, one with and one without the death penalty, show no variation in the willful homicide rates that can be attributed to the existence of the death penalty. In sum, the existence of the death penalty shows no significant deterrent superiority/inferiority compared to other punishments (Lehtinen, 1977). However, this research generally fails to measure the impact of types of homicides which could be possible capital cases (ibid.: 239), fails to demonstrate that homicides as measured by vital statistics are in a generally constant ratio to criminal homicides which would be subject to capital punishment (Bailey, 1976), reduces lives to statistical variance units by utilizing insensitive statistical techniques (Lehtinen, 1977: 239), and fails to distinguish executions and rates of execution from the mere presence of the death penalty.

Moreover, deterrent effects are most difficult to assess when certainty of apprehension, prosecution, conviction, and execution are socially constructed and in practice have had small probabilities. Yet in this severely limited context Ehrlich has concluded that "an additional execution per year . . . may have resulted, on average, in 7 or 8 fewer murders" (Ehrlich, 1975). However, Bowers and Pierce (1975), among many others, assert that Ehrlich provides no reliable evidence that the death penalty deters murder.⁸

In a recent article, Phillips asserts that he has discovered "the first compelling statistical evidence that capital punishment does deter homicide for a short time" (Phillips, 1980). Phillips found that homicides decreased in the week of and the week after highly publicized executions. However, following this two-week decline, Phillips found that the drop in homicides was canceled by an equally large rise in homicides. Bowers and Pierce's comment on these findings is: "all that has been seen is displacement" or lag effect.⁹ Phillips's research, despite the claim to compelling evidence, is most severely flawed: the data baseline is challengeable; celerity is not analyzed; seasonal effects were not controlled; the use of weekly data conceals whether or not execution week homicides were actually before or after the execution; population base changes, yearly execution rates and yearly homicide rates, as well as trends are not controlled; selection bias is obvious; mediating economic factors are not controlled; and numerous additional executions occurred during the execution weeks (13), in the weeks before (16) and after (28); thus, Phillips's data do not measure the isolated effects of these highly publicized executions. Furthermore, Phillips's research is quite typical in not counting the execution deaths as homicides.¹⁰ When this is

program, this violent aspect of the methodology of the program as shown in the film surely teaches violence to those subjected to it.

4) The film tells us that the lifers wish to do something constructive, but the method filmed also suggests that these are persons who still intimidate, and consequently need to be imprisoned. There is certainly a mixed message given.⁵

5) The film and the program suggest that delinquent acts are personalistic conscious choices and that they can be deterred (Mullaney, 1979: 2).

6) The film, while promoting one type of crime control stratagem, also bolstered the adoption of others. The film was released and hyped in the crime control context of proposals for massive federal and state funding for new prison construction, pending federal criminal code codification legislation, and state determinate, get-tough sentencing proposals.

7) Most significantly, this film tells us what crime is: the lifers are in place for rape and murder; and who are criminals: intimidating young black and/or lower-strata men. "Scared Straight" serves to differentiate power-exercise divisions and to invigorate state tactics in subjugation.

"Jackson Prison: Armed and Dangerous," An Illustration

A second illustration comes from a 1981 Pulitzer Prize winning photographic essay, "Jackson Prison: Armed and Dangerous."⁶ The photographer was assigned to do a story on prison overcrowding, but learned the following cruel irony: "They broke the law, and for their punishment, are forced to live without its protection in an all-pervading atmosphere of violence, fear, anger and hatred." One prisoner is quoted as saying, "So much tension in here you can never relax, you learn to watch your back, you can't trust anyone. If you want to survive in here you have to constantly prove that you're tougher, meaner than the other guy." Shanks, guns, knives, knuckles, staying alive, dope, idleness, contracts, mental escapes, the man, rape, predators, robbery—these are the key visions. The essay pictures predators among predators—prison is necessary and horrible primarily because of these horrible persons, in place. The essay elicited a diversity of reader response: sympathy for those prisoners who have to live in such conditions; outrage at such misplaced sympathy which righteously ought to be given to the victims of these prisoners' crimes ("the real victims"); and hope that knowing these prison horrors might have a deterrent effect.

The context of this photo essay was a governor's attempt to generate acceptance for general fund expenditures⁷ for a new regional prison construction program. Eight new, small, "humane," regionally located prisons would house those most subject to Michigan's economic depression. Certainly this was a crime control program both liberals and conservatives could accept. Certainly this was a power-exercise photographing and defining the nature of crime and criminals, reinforcing the perception that the state is responsive to crime victimization.

done, instead of finding that "there is a statistically significant tendency for the number of homicides to drop below the number expected in the week of a publicized execution," we find that there is a statistically significant tendency for the number of homicides to jump way above the number expected in the week of a publicized execution (instead of 15 of 22 negatives we find 16 of 22 positives). If one wishes to take Phillips's conclusion that the deterrent effect is only temporary and counterbalanced by subsequent rises in homicides, one certainly can add the deaths by execution and state that execution has done nothing but increase the number of deaths.

Responding to the limited context in which insufficient application of capital punishment is believed to undermine the deterrent effect, Lehtinen has suggested that we, at the very least, execute all first-degree murderers (15% of 20,000) or about 3,000 persons a year (Lehtinen, 1977: 241). Such a methodological remedy of course has some ethical as well as scientific problems. Lehtinen argues that insufficient application undermines the ultimate taboo (thou shalt not kill) and makes killing easier: "The more systematically we eliminate killers by executions, the greater will be the reinforcement of the taboo against killing and the greater the number of innocent lives saved" (ibid.: 244). She asks, "Would not even 'heat of anger' killers (those not now deterred) be deterred if society had always executed every killer?" Furthermore, she feels that media publicity, method and other glorifications are primitive—guaranteed "to raise the public's emotional temperature and totally unnecessary" (ibid.: 246). She further argues that:

We have not taken advantage of the means provided by medical technology . . . (to) produce death in a quiet, painless, and dignified manner. The hospital setting would also make possible the excision of organs for transplant purposes; thus the administration of the death penalty can be likened to eradication of a diseased entity, the murderer, that has infected otherwise healthy tissue, society (ibid.).

On public policy she writes that, "Under appropriate circumstances society has the moral right and obligation to take the life of one of its members to ensure the protection of all" (ibid.: 238). Public policy decisions, she states:

. . . are founded on compromise—the need for efficient and rapid transportation justifies the cost in innocent lives. Similar decisions are seen in committing troops to battle in the national interests; establishing safety, health, and environmental protection regulations in industry; and setting medical research priorities that condemn some to a premature and often painful death so that others may live. It is evident that the state must constantly set priorities and standards to achieve given goals. Merely setting state standards and priorities frequently means the sacrifice of innocent lives, an inherent cost of governing and decision making.

The possible loss of innocent lives as a result of the death penalty, under these circumstances, should be a minor consideration. Its cost should be weighed against the possible benefits to be achieved for society with the rigorous and systematic employment of the death penalty (ibid.: 248).

Other researchers suggest that the deterrent, educational, and moralizing long-range effects of punishment are largely independent of the nature of the penalties employed (Smith, 1977). Arguing against the death penalty, Smith states:

The taking of a human life is an evil in itself and should be endured only for a greater good. It is incumbent on the advocates of the death penalty to prove that positive social effects will result from its use. Failure to demonstrate such effects should compel us to avoid use of an irrevocable penalty (ibid.).

However, it would seem that such statements, despite their position against capital punishment, would encourage the 3,000 executions experiment, for how else are the advocates to prove positive effects if you don't allow the experiment? On the other hand, Smith, among others, suggests that the data from such an experiment would show that by taking so many lives the state expands the acceptability of killing, undermines the value of life in general, and sets a poor example for its subjects (Glaser and Zeigler, 1974).

Such brutalizing effects have been shown in Archer and Gartner's study of postwar homicide (1976):

Most of the combatant nations in the study experienced substantial postwar increases in their rates of homicide. These increases did not occur among a control group of noncombatant nations. The increases were pervasive and occurred after large and small wars, with several types of homicide indicators, in victorious as well as defeated nations, in nations with improved postwar economies and nations with worsened economies, among both men and women offenders, and among offenders of several age groups. Postwar increases were most frequent among nations with large numbers of combat deaths. . . . The one model which appears to be fully consistent with the evidence is the legitimization model which suggests that the presence of authorized or sanctioned killing during war has a residual effect on the level of homicide in peacetime society. . . .

Unlike other kinds of publicized killing . . . war involves homicide legitimized by the highest auspices of the state. During many wars, the killing of enemy soldiers has been treated not merely as a regrettable and expedient measure, but instead as praiseworthy and heroic. This legitimization is often explicit, in the form of official propaganda about the justice of the nation's cause, the inhumanity of

the enemy, and the manly virtues of those who kill the most enemy soldiers. This legitimization generally is directed at both a nation's soldiers and at people on the home front; but it may be more credible to civilian than to combat soldiers with direct experience of the realities of war.

Wars provide concrete evidence that homicide, under some conditions, is acceptable in the eyes of the nation's leaders. This wartime reversal of the customary peacetime prohibition against killing may somehow influence the threshold for using homicide as a means of settling conflict in everyday life (ibid.: 960).

A parallel may be drawn with the domestic war on murderers. Bowers and Pierce have found that capital punishment has brutalizing effects. In their study of capital punishment in New York from 1907 to 1963, they indicate that the number of homicides increased slightly in the months after each execution and conclude that far from deterring homicide, executions have the effect of saying that it is correct and appropriate to kill those who have gravely offended us (Bowers and Pierce, 1980). The brutalizing effect was responsible for an average of at least two, and possibly three homicides, after each execution. Execution,



The New

with Snyder being electrocuted at Sing Sing Prison, 1929

at least as it has been practiced, these researchers argue, has had the unintended effect of making homicide less repulsive (or more legitimate), thus increasing the frequency of homicide via imitation, moral example, or reinforcing, in general, violent conflict resolution techniques or modes.

However, executions or the lack of executions are obviously not the only, nor perhaps even a significant, determinant of the level of homicide rates in a society. Perhaps the frequent use of capital punishment and high rates of homicide both reflect the prevalence of attitudes, or a subculture of the state and its subjects, that reflect a low valuation of life (Glaser and Zeigler, 1976). It is most difficult to foster both capital punishment as a reaction to violence and abhorrence of violence in private or international conflicts/disputes; and to value life, yet see life as an instrumentality (for transplants, cannon fodder, or for social control-deterrence).

Criminologists against capital punishment frequently point out that research should be directed not at whether deterrence can work (they reject Lehtinen's proposal) but at whether it does now work and when, where, why, and how it can possibly be made more effective without unduly straining either resources or the sense of justice in the society (Henshel, 1978). Does capital punishment deter more than other alternatives? They point out that abhorrence of homicide should be expressed through severity, celerity, and certainty of confinement. They wish to know what forms of confinement or modes of treatment might best reduce homicides; how severe must length of confinement or its certainty, celerity, or a combination be to reduce homicides (Bailey, 1976)? Can an implantation of an electrode or brain-attached microcomputer aggressivity repressor reduce homicides (Mothner, 1973)? How can clarity of punishment be altered to decrease homicides? How can we modify the criminal justice system to decrease homicides? Or how can economic policy decrease homicides (McGahey, 1980)? How can other forms of response showing sacredness of life reduce homicides? Or how can promoting deliberation and discussion, mediation and nonviolent dispute resolution modes reduce homicides (Glaser and Zeigler, 1976)?

In sum, the proponents of capital punishment research find scientific and ethical justification for the exercise of state power, while its opponents find similar justification for alternative tactics. Both limit scientific evidence and discourse to finding the most effective exercise of power.

What ignorance does this knowledge produce and what is significantly learned by this ignorance? How does this knowledge/ignorance complex reproduce and refine power-exercise in our society?

The murderer, like the terrorist and ordinary criminal, belongs to our photogenic imagery. If the murderer cannot ordinarily be seen among us, capital punishment and capital punishment discourse locate and identify him/her. The murderer is he/she who is executed, who awaits execution,¹¹ who ought to be executed. Scientific and ethical discourse

disclose the murderer's psychological profile, his/her actions, his/her victim's plight, the social processes which designate him/her as murderer, and the choices of collective response. Assuredly, the discourse signifies that a certain type of death-dealing is murder and that certain specific types of persons conduct this death-dealing.

The awe-inspiring, reverential fear-producing, protested execution signals the power to master and use the murderer. The creation of the murderer is a hierarchical maneuver of power-exercise which makes us ignorant of, and ethically justifies, other forms of death-dealing. Potential murderers strike ubiquitously on the street and in the home, but they are not to be found in other places. They are nowhere to be found in the corporate workplace, the surgery room, the military's maze, the congressional office, or in our minds.¹² Murderers are not those who perform unnecessary surgery and annually take the lives of thousands of persons. Murderers are not those who promote and profit from an economy which manufactures and distributes cancer and takes the lives of 200,000 persons each year in the United States. Murderers are not those who promote and profit from an economic workplace which annually produces 100,000 deaths from occupationally contacted and preventable disease. Murderers are not those who promote and profit

from secret wars and the death-machine economy. Murderers are not those who find it ethical to exercise power over others in the home or school and thus deal spiritual death. Murderers are not those who write criminology which embodies these maneuvers of death. Murderers are not those who would execute murderers. *Murderers are not us!*

The public policy of execution rises in the context wherein life is cheap, wherein life is surplus, wherein life is not an end. Capital punishment discourse and executions arise in the context of a call for more severe and more ceremonious exercises of power, for a stronger centralized state, and for a clearer reinforcement of the base values of hierarchy and authority. The execution reproduces and dramatizes the acceptance of the exercise of power, for the state in responding to "murder" increases its legitimate exercise of power in other forms of death-dealing.

In conclusion, capital punishment and capital punishment discourse reproduce the legitimacy of power-exercise. However, they also produce ignorance and exclude from discourse the necessity and desirability of having an ethical social order wherein death-dealing is absent and power-exercise transformed and dissolved (Tift and Sullivan, 1980; Tift, 1979; Wieck, 1979).

FOOTNOTES

1. This paper is a revised version of two papers: One was presented at the Annual Meetings of the American Society of Criminology, San Francisco, 1980, and titled "Treason, Criminals, Radical Criminology and Us." The second was presented at the Annual Meeting of the Midwest Sociological Society, Minneapolis, 1981, and titled "Capital Punishment Research: What Does This Death Dealing Regenerate?" This paper thus owes a debt of gratitude to Hal Spinsky and John Galliher who organized these sessions and who have supported most generously the opportunity for these sessions to have a hearing. Special contributions were made by Colleen Tift, Dennis Sullivan, Pat Shields, Jim Julian, Lois Stevenson, Jonathan, and the Rudolphs.

2. Power relations can neither be transformed nor dissolved without entering this discourse and demonstrating how knowledge produces ignorance, how power-exercise, knowledge, and ignorance are related; and how an understanding of these relationships can aid in the transformation of our current relations with one another. (See Foucault, 1978; Tift and Sullivan, 1980.) The following are important references on the politics and ethics of criminological research: Matt and Takagi, 1977; Galliher, 1979; and Tift, Sullivan, and Vogel, 1975.

3. Foucault's conception of power as process can clearly be seen in the following statement (Foucault, 1978: 26-27):

Now, the study of this micro-physics presupposes that the power exercised on the body is conceived not as a property, but as a strategy, that its effects of domination are attributed not to "appropriation," but to dispositions, manoeuvres, tactics, techniques, functionings; that one should decipher in it a network of relations, constantly in tension, in activity, rather than a privilege that one might possess; that one should take as its model a perpetual battle rather than a contract regulating a transaction or the conquest of a territory. In short this power is exercised rather than possessed; it is not the "privilege," acquired or

preserved, of the dominant class, but the overall effect of its strategic positions—an effect that is manifested and sometimes extended by the position of those who are dominated. Furthermore, this power is not exercised simply as an obligation or a prohibition on those who "do not have it"; it invests them, is transmitted by them and through them; it exerts pressure upon them, just as they themselves, in their struggle against it, resist the grip it has on them.

4. Foucault applies his conceptualization of power-knowledge to the "soul" (ibid.: 29-30):

It would be wrong to say that the soul is an illusion, or an ideological effect. On the contrary, it exists, it has a reality, it is produced permanently around, on, within the body by the functioning of a power that is exercised on those punished—and, in a more general way, on those one supervises, trains and corrects, over madmen, children at home and at school, the colonized, over those who are stuck at a machine and supervised for the rest of their lives. This is the historical reality of this soul, which, unlike the soul represented by Christian theology, is not born in sin and subject to punishment, but is born rather out of methods of punishment, supervision and constraint. This real, noncorporeal soul is not a substance; it is the element in which are articulated the effects of a certain type of power and the reference of a certain type of knowledge, the machinery by which the power relations give rise to a possible corpus of knowledge, and knowledge extends and reinforces the effects of this power. On this reality-reference, various concepts have been constructed and domains of analysis carved out: psyche, subjectivity, personality, consciousness, etc.; on it have been built scientific techniques and discourses, and the moral claims of humanism. But let there be no misunderstanding: it is not that a real man, the object of knowledge, philosoph-

ical reflection or technical intervention, has been substituted for the soul, the illusion of the theologians. The man described for us, whom we are invited to free, is already in himself the effect of a subjection much more profound than himself. A "soul" inhabits him and brings him to existence, which is itself a factor in the mastery that power exercises over the body. The soul is the effect and instrument of a political anatomy; the soul in the prison of the body.

Foucault's central illustration is of three ways of organizing the power to punish (three techniques of power) which contain and imply three procedures of knowing (ibid.: 130-31):

... (1) In monarchical law, punishment is a ceremonial of sovereignty; it uses the ritual marks of the vengeance that it applies to the body of the condemned man; and it deploys before the eyes of the spectators an effect of terror as intense as it is discontinuous, irregular and always above its own laws, the physical presence of the sovereign and of his power. The reforming jurists, on the other hand, saw punishment as a procedure for requalifying individuals as subjects, as juridical subjects; it uses not marks, but signs, coded sets of representations, which would be given the most rapid circulation and the most general acceptance possible by citizens witnessing the scene of punishment. Lastly, in the project for a prison institution that was then developing, punishment was seen as a technique for the coercion of individuals; it operated methods of training the body—not signs—by the traces it leaves, in the form of habits, in behaviour; and it presupposed the setting up of a specific power for the administration of the penalty. We have, then, the sovereign and his force, the social body and the administrative apparatus; mark, sign, trace; ceremony, representation, exercise; the vanquished enemy, the juridical subject in the process of requalification, the individual subjected to immediate coercion; the tortured body, the soul with its manipulated representations, the body subjected to training.

inally, Foucault's study followed four rules of inquiry (ibid.: 3-24):

1. Do not concentrate the study of the punitive mechanisms on their "repressive" effects alone, on their "punishment" aspects alone, but situate them in a whole series of their possible positive effects, even if these seem marginal at first sight. As a consequence, regard punishment as a complex social function.

2. Analyse punitive methods not simply as consequences of legislation or as indicators of social structures, but as techniques possessing their own specificity in the more general field of other ways of exercising power. Regard punishment as a political tactic.

3. Instead of treating the history of penal law and the history of the human sciences as two separate series whose overlapping appears to have had on one or the other, or perhaps on both, a disturbing or useful effect, according to one's point of view, see whether there is not some common matrix or whether they do not both derive from a single process of "epistemologico-judicial" formation; in short, make the technology of power the very principle both of the humanization of the penal system and of the knowledge of man.

4. Try to discover whether this entry of the soul on to the scene of penal justice, and with it the insertion in legal practice of a whole corpus of "scientific" knowledge, is not the effect of a transformation of the way in which the body itself is invested by power relations.

In short, try to study the metamorphosis of punitive methods on the basis of a political technology of the body in which might be read a common history of power relations and object relations. Thus, by an analysis of penal leniency as a technique of power, one might understand both how man, the soul, the normal or abnormal individual have come to duplicate crime as objects of penal intervention; and in what way a specific mode of subjection was able to give birth to man as an object of knowledge for a discourse with a "scientific" status.

5. This insight was pointed out to me by several persons in my criminology class at Michigan Reformatory (Prison) in 1980.

6. *Detroit Free Press* photographer Taro Yamasaki won the 1981 Pulitzer Prize in feature photography for his series on conditions inside Jackson Prison (Michigan). *Detroit Free Press* (December 14-20, 1981). Jackson Prison erupted in May, 1981.

7. A tax proposal to create special funds for this construction was defeated by voters in November, 1980.

8. For other critiques and summaries of critiques of Ehrlich's research, see: McGahey, 1980; Palmer, 1977.

9. Quotation from *St. Louis Globe-Democrat* (October 6, 1980), p. 2X.

10. This is in spite of the fact that the data source, *Great Britain General Register Office Weekly Report*, does so.

11. For studies discussing the social creation of the murderer and the condemned, see: Boris, 1979; Bowers and Pierce, 1980.

12. References for murder in other places can be found in the following sources: Berman, 1978; Braithwaite and Condon, 1978; Clinard and Yeager, 1980; Dowie, 1979; Reiman, 1979; Shrager and Short, Jr., 1978.

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