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ABSTRACT

The sociology of punishment offers a framework for analyzing penal institutions that, potentially at least, can give a fuller and more realistic account than the punishment-as-crime-control approach of penological studies or the punishment-as-moral-problem approach of the philosophy of punishment. Sociological perspectives view punishment as a complex social institution, shaped by an ensemble of social and historical forces and having a range of effects that reach well beyond the population of offenders. The Durkheimian perspective interprets punishment as a morality-affirming, solidarity-producing mechanism grounded in collective sentiments. Marxist studies depict punishment as an economically conditioned state apparatus that plays an ideological and political role in ruling class domination. Foucault's work focuses on the specific technologies of power-knowledge that operate in the penal realm and links them to broader networks of discipline and regulation. The work of Norbert Elias points to the importance of cultural sensibilities and the "civilizing process" in the shaping of modern penal measures. Elements of these interpretive traditions can be brought together to produce a multidimensional account of punishment's social forms, functions, and significance that can, in turn, help promote more realistic and appropriate objectives for penal policy and a fuller framework for its normative evaluation.

The standard ways in which we think and talk about punishment are framed not so much by sociological theory as by two rather different discursive traditions, which might best be described as the "penological" and the "philosophical." The first of these ways of thinking—

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which is as common among the lay public as it is among criminologists and criminal justice practitioners—views punishment more or less exclusively as a technique of crime control. Penal institutions and the processes of punishment are seen by penology as so many means to a fairly self-evident end: the reduction of crime rates and the restraint of individual criminals. Within this framework, the primary question is a technical one—“What works?”—and the critical tool for evaluating penal measures is the effectiveness study, which charts the impact of specific sanctions on patterns of offending and recidivism rates. Questions of “cost” are also part of the reckoning, and human costs may figure alongside financial and political ones, but the main thrust of the penological approach is to view criminal justice in instrumental terms as an apparatus whose overriding purpose is the management and control of crime (e.g., Walker 1969; Radzinowicz and Wolfgang 1971, pt. 2; Martinson 1974; Wilson 1975; Cook 1980).

The other way of thinking that standardly shapes our understanding of penal issues is “the philosophy of punishment”—a branch of moral philosophy that flourished during the Enlightenment and that has recently enjoyed something of a renaissance, as criminologists and jurists are led to reexamine the normative foundations on which the penal system rests. This tradition sets up punishment as a distinctively moral problem, asking how penal sanctions can be justified, what their proper objectives should be, and under what circumstances they can reasonably be imposed. Its central concern is not “What works?” but rather “What is just?” and its discursive style is based on ethical reasoning and moral appeal, rather than on empirical research or technical knowledge. Whether the appeal is to Kantian retributivism or Benthamite utility, to arguments for reform or to principles of denunciation, the framework supplied by this tradition leads us to pose punishment as a moral puzzle that can best be resolved by philosophical reflection and moral intuition (e.g., Hart 1968, chap. 1; Acton 1969; Feinberg and Gross 1975, pt. 5; Honderich 1976; Bean 1981).

Between the two of them, these penological and philosophical discourses account for most of the scholarly literature on punishment and shape much of our thinking about penal measures and criminal justice, not least because their arguments and evidence are routinely used in the rhetoric of penal reform and penal politics. To be an expert in penal matters or an authoritative voice on penal affairs is to be learned in one or both of these traditions and able to argue effectively within their terms. But despite the centrality and importance of these frameworks,

and despite the stored-up wisdom and experience that, at their best, each of them represents, both traditions are marked by a number of serious limitations and actually amount to rather inadequate ways of thinking about the phenomenon. To view penal measures as technical instruments of crime control, to be evaluated in terms of efficacy and cost benefit, is no doubt a proper activity from the point of view of those charged with running the penal enterprise. But this penological approach fails to recognize that penal measures and institutions are never fully and rationally adapted to a single organizational objective of an instrumental kind. As sociological and historical studies show, penal measures and institutions have social determinants that have little to do with the need for law and order, social effects that go well beyond the business of crime control, and a symbolic significance that routinely engages a wide population, making it inappropriate to think of them in purely instrumental terms. The adoption of a penological approach thus tends to restrict the scope of inquiry and silence important aspects of the phenomenon. By taking the institution of punishment at its face value—as merely an instrument of crime control—penological studies produce data that may be useful to the enterprise, but at the cost of a more fundamental understanding that more adequately depicts its day-to-day operations and that might usefully challenge the institution's self-conceptions.

This instrumental way of thinking about punishment also helps create inappropriate and unrealistic expectations on the part of the public and the authorities, which add to the penal system's difficulties rather than resolving them. An instrumental technology, rationally and exclusively attuned to the goal of crime control, might reasonably be expected to work and generally to produce positive results, so it becomes difficult to account for the negative findings that are so consistently revealed by penological research. Penologists sometimes respond to this by blaming the penal system's difficulties on "extraneous" pressures—pointing to problems of underfunding, unwanted political interference, hostile mass media, irrational public attitudes, and so on. But in fact this response merely points up the limitations of the penological approach itself, for it is inconceivable that any penal system could be disengaged from social forces such as these, and it therefore makes little sense to view punishment as if it somehow stands outside of society and is only occasionally affected by it.

The philosophy of punishment, as currently conceived, is also marked by some serious limitations and by a similarly inadequate con-

ception of the nature of penal practice. It is certainly important to subject penal institutions to moral scrutiny—not least because technical penology tends to shield punishment from searching moral questions by giving pride of place to effectiveness studies and taking it for granted that the institution is, in fact, a legitimate one. But the problem with much philosophy of punishment is that its philosophical foundations and the way in which it addresses the question of punishment tend to prevent it from mounting an effective evaluation of the actual details and different aspects of penal practice.

Most modern philosophizing about punishment begins with a rather idealized and one-dimensional image of punishment that treats the problem of punishing as a variant of the classic liberal problem of how the state should relate to the individual (see Garland 1983). Punishment is viewed primarily as an instance of state coercion and an infringement on individual freedom and therefore triggers a number of arguments about the general justifications of state power (usually some version of the social contract), about the circumstances justifying particular punishments (usually the perpetration of harm to others), and about the proper purposes of measures of this kind (usually the prevention of further harms). No doubt these are important issues, and philosophers have had important things to say about them, but by focusing so readily on the “civil liberty” aspects of the phenomenon, the philosophy of punishment often allows other aspects to be ignored. Conventional philosophy thus has little of substance to say about the actual methods of punishment that it is appropriate to use, about the nature of penal regimes and the quality of penal institutions. Key decisions about the acceptability of capital or corporal punishments, the use of electronic monitoring and close control regimes, solitary confinement or three prisoners to a cell consequently attract little comment or assistance from this brand of moral philosophy. Similarly, penal philosophy offers no help whatsoever in dealing with problems that take an aggregative rather than an individualistic form—such as the appropriate size of the prison population or the proportion of national resources that might be devoted to rehabilitative programs. Nor, finally, does it provide any developed means for evaluating the wider social and symbolic effects of punishment—the impact on sensibilities, solidarities, and social relations that punishments clearly have and that affect a population far beyond the offender in the dock or the inmate in a prison cell. These difficult issues tend to escape detailed moral scrutiny because they do not feature in the oversimplified conception of “punishment” that phi-

losophers conventionally use: they are not part of the problem that this tradition has set out for itself. And yet these are often the most urgent and perplexing problems that assail those responsible for administering penal systems and legislating penal laws. If the philosophy of punishment often appears limited in its relevance and in its practical effect, this is because its basic conception of "punishment" has been shaped by traditional patterns of liberal thought (see Lacey 1988), rather than by close acquaintance with the characteristics of modern penal practice.

In recent years a third style of thinking about punishment has begun to develop and to offer a different framework for the analysis of penal issues. Instead of viewing punishment as a means to an end or a stock problem for moral philosophy, sociologists and historians have begun to conceptualize punishment as a social institution and to pose a series of questions that stem from this approach. In place of questions about punishment's effectiveness or its justification, these writers have been asking, "How do specific penal measures come into existence?" "What social functions does punishment perform?" "How do penal institutions relate to other institutions?" "How do they contribute to social order, or to state power, or to class domination, or to the cultural reproduction of society?" and "What are punishment's unintended social effects, its functional failures, and its wider social costs?" "Punishment" is thus understood as a cultural and historical artifact that may be centrally concerned with the control of crime but that is nevertheless shaped by an ensemble of social forces and has a significance and range of effects that reach well beyond the population of criminals. And the sociology of punishment—as I shall term this emergent tradition—has been concerned to explore the social foundations of punishment, to trace out the social implications of specific penal modes, and to uncover the structures of social action and webs of cultural meaning that give modern punishment its characteristic functions, forms, and effects (Ignatieff 1981; Garland and Young 1983; Jacobs 1983, chap. 1; Cohen 1985, chap. 1; Hirst 1986, chap. 7; Garland 1990a).

It is worth making clear, however, that this sociological tradition is by no means fully at odds with what I have termed the "penological" approach—indeed, it shares the same subject matter, adopts a similarly empirical or social scientific approach, and makes extensive use of penological materials in its analyses. The crucial difference is really one of analytical scope and parameters of study: whereas penology situates itself within penal institutions and seeks to attain a knowledge of their penological functioning, the sociology of punishment views the institu-

tions from the outside, as it were, and seeks to understand their role as one distinctive set of social processes situated within a wider social network.

Nor does the sociological approach deny that penal institutions are, to a great extent, oriented toward crime control and shaped by that orientation. What it does deny, however, is that punishment and penal forms can be wholly understood in terms of this declared objective, simply because no social artifact can ever be explained in this way. Like architecture, or diet, or clothing, or table manners, the penal system has an instrumental purpose, but also a cultural style and an historical tradition, that shapes the ways in which that objective is pursued. The need to control crime in its various forms and to respond to the depredations of law breakers is thus only one of the factors that helps shape the institutions of penality. To the extent that penal systems adapt their practices to the problems of crime control, they do so in ways that are heavily mediated by independent considerations such as cultural conventions, economic resources, institutional dynamics, and political arguments—and it is precisely this interaction between the “social” and the “penological” that the sociological approach brings into focus.

It is also worth emphasizing that this sociological approach to punishment is not just an academic enthusiasm or a theoretical exercise without any practical payoff. Potentially, at least, it offers to provide an informed, empirical basis for understanding the ways in which penal systems actually operate in modern society and can thus help to develop more realistic expectations and objectives for penal policy and more appropriate strategies for putting policies into effect (e.g., Downes 1988). As we have seen, the conventional “penological” and “philosophical” approaches both base themselves on an implicit—and rather badly worked out—sociology of punishment, insofar as they rely on certain commonsense conceptions of what kind of institution punishment is and what kinds of social purposes it serves. To undertake a sociological analysis of punishment is thus to reinspect the basic presumptions that are normally made about punishment rather than simply to take them on trust. Properly done, the sociology of punishment should inform us about the social forces that condition penal processes and the various social consequences that these processes in turn produce. And rather than displacing the other traditions of thinking about punishment, or rendering them redundant, the sociological approach can be expected to revitalize and enrich them, inasmuch as its

findings can provide the basis for a more sociologically informed penology and a more relevant and wide-ranging philosophy of punishment.

I. Sociological Perspectives on Punishment

Up to this point, I have talked about the sociology of punishment as a tradition of thinking about punishment, and to the extent that it represents a distinctive way of approaching the phenomenon—differing from penology and the philosophy of punishment—this is a reasonable way of presenting the matter. However, it would be quite misleading to continue to discuss the sociology of punishment as if it were a single, unified framework of thought (Garland 1990*b*). On closer inspection, the sociological and historical literature on punishment displays a range of theoretical approaches, analytical perspectives, and concrete interpretations that do not necessarily add up to form a single coherent or comprehensive account. Instead, what one finds is a set of competing interpretations, each one drawing on a different model of sociological explanation, each one going at the problem in a different way and for a different purpose, and each one highlighting a different characteristic of punishment and its social role. Like much of sociology, the sociology of punishment is characterized less by a settled research agenda and agreed parameters of study than by a noisy clash of perspectives and an apparently incorrigible conflict of different interpretations and varying points of view. One response to this situation has been to adopt a particular perspective—say, a Marxist approach, or a Durkheimian one—and to develop this analysis in critical disregard of other ways of proceeding. However, it is at least arguable that such an approach is less fruitful than one that tries to bring these different theoretical perspectives into conversation with one another, seeking to synthesize their interpretative strengths, to identify analyses that are complementary rather than contradictory, and to isolate specific points of disagreement so that one can endeavor to resolve them by means of further research or theoretical reflection.

What I do in this essay is to survey the major sociological interpretations of punishment and to give some sense of the resources that social theory offers for the understanding of punishment. I set out a number of perspectives in turn, dealing first with the more established traditions associated with the work of Durkheim, Marx, and Foucault and then with the perspective suggested by the work of Norbert Elias. In each case, I set out the distinctive questions that are posed, summarize

the major interpretive themes associated with the perspective, and identify the kinds of insights each theory has to offer for the understanding of modern penality, as well as pointing to the weaknesses and limitations that affect each one. Inevitably a survey of this kind will flatten out nuances and fail to reflect the subtleties of the original works, but its main concern is to introduce readers to the central characteristics of each approach and point them to the texts themselves. The concluding section of the essay discusses the interrelationship of these perspectives and seeks to illustrate how a sociological approach to punishment can alter the way we think about certain penal issues.

A. Punishment and Social Solidarity: The Durkheimian Perspective

According to Emile Durkheim, punishment is above all a moral process, functioning to preserve the shared values and normative conventions on which social life is based. It is an institution that draws its motivating energies and support from the moral sentiments of the community; its forms symbolize and enact moral judgments; and its most important effect is to reaffirm and strengthen the moral order on which it is based. It is thus a part of the complex moral circuitry that creates and sustains social solidarity—a basic social institution with important moral functions, not just a regulatory mechanism for the control of crime. In effect, Durkheim's analysis insists that we must draw back from the immediacies of dealing with offenders and view punishment on a broader social plane if we are to appreciate the true characteristics of the institution and the forces that make it work (Durkheim 1933, 1973, 1983).

Durkheim argues that the criminal law of society is, for the most part, an embodiment of the basic moral values that society holds sacred, so that crimes that violate this "conscience collective" will tend to provoke collective moral outrage and a passionate desire for vengeance. These "passionate reactions" find expression in the legal practice of punishing offenders which, however much it becomes routinized and institutionalized, remains a mechanism for the channeling and expression of collective moral sentiment. So although the modern state now monopolizes the delivery and administration of punishment—and in doing so "graduates" the intensity of this reaction and renders it more uniform and predictable—Durkheim insists on two important points. First, that a much wider population feels itself to be involved in the act of punishing, thus supplying the state institution with its social support and legitimacy. Second, that despite all attempts to make punishment a

rational, impassive, utilitarian process, it continues to be marked by the punitive sentiments and emotive reactions that are at the root of society's response to crime.

Punishment, therefore, is not an instrumental mechanism—or at least not primarily, since its deterrent and regulatory impact on offenders is, for Durkheim, severely limited. Rather it is an expressive institution: a realm for the ritualized expression of social values and the controlled release of psychic energy. And herein lies punishment's true functioning and social utility, for in reacting against violators of the *conscience collective*, penal institutions demonstrate the material force of basic social values and restore collective confidence in the integrity and power of the moral order. In Durkheim's view, the rituals of punishment are directed less at the individual offender than at the audience of impassioned onlookers whose cherished values and security had been momentarily undermined by the offender's actions. Punishment's significance is best conceived as social and moral rather than purely penological.

Punishment is thus an occasion for the practical realization of the moral values that make up the *conscience collective*. It responds to the criminal's attack on morality and solidarity by reaffirming the strength of that moral order, restating its terms, and reasserting its authority. It is able to do so because it can draw on the support of all those "healthy consciences" that are outraged by crime, a reaction that the ceremonial ritual of punishing helps to elicit as well as to express. Punishment thus transforms a threat to social order into a triumph of social solidarity. Instead of damaging the cohesiveness of society, crime sets in motion an elaborate moral circuitry that channels the energy of outraged sentiments into a socially binding ritual of moral affirmation (Durkheim 1933, pp. 70–111; Durkheim 1973, chaps. 11 and 12).

This sentiment-based, morality-affirming, solidarity-producing description of punishment is, according to Durkheim, as appropriate to modern penal systems as it is to premodern ones because it is only the *forms* of punishment that have undergone historical change, not the *functions* (Durkheim 1983). Modern sanctions—such as imprisonment—are considerably less severe than the terrible punishments of medieval or ancient societies, but this is because our modern *conscience collective* is more solicitous of the rights of individuals—even criminal individuals—and less dominated by religious or absolutist values. We have not ceased to react punitively when collective values are breached—it is rather that these values themselves dictate that punish-

ments should be less destructive of human life. The suggestion that punishment might nowadays be directed toward nonpunitive ends—such as correction, rehabilitation, or prevention—is dismissed by Durkheim as a modern delusion reflecting the aspirations of penal administrators, not the actualities of their institutions (1933, p. 87).

This Durkheimian description of punishment undoubtedly has its limitations. It is very much a one-dimensional account, concerned to explicate punishment's moral content and moral consequences and to trace punishment's role in the maintenance of moral order. To the extent that punishment has other characteristics, other sources, and other effects, Durkheim's work has little or nothing to say of these. He offers, for example, very little analysis of the actual apparatus and instrumentalities of punishment. Penalty's armory of carceral regimes, physical restrictions, monetary penalties, supervisory measures, and so on, are interesting to him only as so many means of conveying moral passions and moral messages to and from a watching public. Insofar as they operate as techniques for behavioral control or forms of disciplinary regulation, he no longer considers them truly moral phenomena, and they thus fall below the horizon of his analysis. Similarly, Durkheim has nothing to say about the ways in which penal institutions are influenced by all of those social forces—such as economic considerations, political ideologies, technical developments, scientific conceptions, or professional interests—that have little to do with moral passions or a collective conscience. But limitations of interpretive scope—which is what, in fact, these amount to—should not prevent us from seeing the intrinsic value and possibilities that Durkheim's work contains. As it turns out, all of the sociological perspectives that currently exist are limited in this way because neither Durkheim nor any of the others intended to develop a comprehensive theory of punishment's internal and external functioning. What is offered instead is an interpretive vision that, whatever its limitations, offers a way of understanding important aspects of this complex institution and connecting them to the other phenomena of social life, and it is in this sense that it ought to be considered.

Other criticisms of Durkheim do, however, have more force in the present context. His conception of the *conscience collective* is deeply problematic in a number of respects, as is his claim that penal sanctions and criminal laws are its faithful embodiment. To the extent that modern, pluralistic societies can be said to have a "totality of beliefs and sentiments common to the average citizen" (Durkheim 1933, p. 79), it seems

more appropriate to think of this as the political achievement of the dominant cultural groups, whose particular vision of social order has achieved a measure of hegemony, rather than a given set of values that are somehow consensually shared. In this respect, institutions such as law and punishment should not be seen as merely reflecting values that everyone already holds. Rather, they are active, value-imposing agencies whose practices play a crucial role in winning support for the dominant morality.

Similarly, one must question Durkheim's easy assumption that penal measures somehow manifest or embody values that are generally held. As his critics have continually emphasized, it is not "society as a whole" that enacts laws and punishes offenders but, rather, legislative elites and professional functionaries, whose particular priorities and concerns may prompt an enacted version of social morality that is not universally shared (Spitzer 1975; Lukes and Scull 1983). And whatever the reality of the "passionate reactions" that Durkheim attributes to the public—and to the post-Freudian imagination these emotions seem a little too sanitized and well adjusted—they can only be indirectly effective in the formulation and enforcement of modern penal policies.

One might also argue—following Foucault and Elias—that Durkheim's stress on the public ritual of punishment is altogether misplaced in modern society since modern penal measures tend to be deployed "behind the scenes" of social life, located in closed institutions on society's margins, and are no longer conducted in public for all to see (Foucault 1977; Elias 1978). This, it seems to me, is an important criticism, as it points to a crucial division in modern penal systems between the *declaration* of punishment, which continues to take the form of a public ritual and which is continually the focus of public and media attention, and the *delivery* of punishment that now characteristically occurs behind closed doors and has a much lower level of visibility. Indeed, one might argue that modern punishment operates a two-pronged strategy—one aimed at expressing, educating, and reassuring public sentiment (which is the one Durkheim describes) and another aimed more directly at regulating deviant conduct, about which Durkheim has relatively little to say. If this is the case, then it amounts to another important limitation of Durkheim's analysis—confining this interpretation to a particular sphere of punishing rather than the whole system—but it is not a blanket refutation.

Durkheim's central argument about the solidarity-enhancing effects of punishment has also been a focus for criticism—even by writers such

as Mead (1918), Garfinkel (1956), and Erikson (1966) who are usually seen as exponents of the Durkheimian interpretation of punishment. This body of work suggests that Durkheim is too ready to assume the very "functionality" that he sets out to prove. In contrast to his assertion that penal rituals always give rise to a single, solidarity-enhancing effect on a morally homogeneous and receptive community, these writers point to the possibility that punishment may evoke social divisions instead of solidarities, that it may achieve social bonding only by promoting feelings of hostility and intolerance, or even that the ritual may altogether fail to promote significant symbolic results. On this revised view, the processes of punishment do not necessarily promote "social solidarity." Rather, they should be regarded as a ritualized attempt by legal officials to reconstitute and reinforce already existing authority relations. Where there are limits to that authority, or contests of authority, the effects of penal rituals may be "functional," "dysfunctional," or simultaneously both.

Which leads us to a final criticism, regarding the basic argument that punishment is "functional" for society. Clearly punishment does perform certain "functions"—it sanctions certain kinds of rules, restrains certain kinds of conduct, expresses certain felt emotions, and reaffirms specific forms of authority and belief. But these rules, conducts, emotions, beliefs, and authorities may be the property of particular social groups rather than "society as a whole," and they need not be sanctioned in a way that necessarily promotes social harmony. One has to analyze punishment's effects in relation to specific interests, specific social relations, and particular outcomes—bearing in mind that what is "functional" from one point of view may be dysfunctional from another (Giddens 1978). Taken together, these are a formidable set of criticisms, and they could be extended were more space available. But their critical force is not to refute the Durkheimian perspective nor to reject the questions that it poses but instead to qualify the key terms of the perspective and to refine or modify the arguments that it makes. Thus, even if Durkheim's version of the *conscience collective* is unacceptable as it stands, it is nonetheless true that there is some correspondence between the moral rules that punishments enforce and the deeply felt beliefs of significant sections of the population, particularly in democratic societies, where popular sentiments help condition legal codes and decisions. And although his discussion of punishment's symbolic effects is marred by his functionalist assumptions, he is undoubtedly correct to point to the communicative and metaphoric propensities that punish-

ments possess and thereby to alert us to the importance of what one might call the semiotics of punishment. As Durkheim makes clear, an act of punishment is also a sign that the authorities are in control, that crime is an aberration, and that the conventions that govern social life retain their force and vitality—which is why policies of crime control and punishment can so often become metaphors for political strength and take on a political significance out of proportion to their penological effect. (Ironically, Durkheim [1973] also makes it clear that punishment is used most frequently where authority is weakest—but in such cases it has least effect. A strong, legitimately established moral order requires only minimal sanctions to restore itself and to deal with violators—such regimes have little need of terroristic or force-displaying forms of punishment.)

For all its difficulties, Durkheim's analysis does succeed in opening up important dimensions of punishment that are not otherwise apparent. He shifts our attention from the mundane, administrative aspects of punishment (which form penalty's modern self-image) to the broader social and emotive aspects of the process. Instead of seeing a utilitarian mechanism adapted to the technical business of crime control, we see an institution that operates on a different, symbolic register—and that resonates with meaning both for the social collectivity and for the individuals who compose it. The sense Durkheim gives of the sacred qualities claimed by authority, of the emotions that are stirred by crime and punishment, of the collective involvement of on-lookers, of the role of penal rituals in organizing this, and, finally, of the social and moral significance of penal practices—all these interpretive insights can be shown to be important and relevant to an understanding of punishment today.

B. The Political Economy of Punishment: The Marxist Perspective

To adopt a Marxist perspective on punishment is to address a whole range of issues that are not dealt with at all by the Durkheimian tradition and to reinterpret many of those that are. Questions concerning the economic and political determinants of penal policy, the role of penal institutions in strategies of class rule, and the ways in which punishment serves class power—either symbolically or materially—now move to the forefront of attention, while the relations between punishment and popular morality, or between the state and the people, are reformulated to suggest ideological domination or even repression, instead of the implicit agreement that Durkheim suggests.

Marxist analyses of punishment are a product of recent "neo-Marxist" writings rather than of the original writings of Marx and Engels, and they reveal a variety of approaches to their topic. The problem of locating "punishment" within the Marxist conceptual framework has led some writers, such as Rusche and Kirchheimer (1968) or Melossi and Pavarini (1981), to stress the interconnections between penal institutions and the economic requirements of modes of production, while other writers, such as Pashukanis (1978) or Hay (1975), have preferred to stress the role of punishment in political and ideological class struggles and in the maintenance of state-power or ruling-class hegemony. We thus find some Marxist accounts dealing with punishment as an economic phenomenon that is ancillary to the labor market, others discussing its political role as a repressive state apparatus, and yet others conceiving it as an ideological institution that deals in symbols of legitimacy and the justification of established authority.

The most sustained and comprehensive Marxist account of punishment—and perhaps the most influential—is that developed by George Rusche and Otto Kirchheimer in their text *Punishment and Social Structure* (1968). In this historical account of penal development from the late Middle Ages to the middle of the twentieth century, the authors' primary concern is to explain why particular penal methods come to be selected and used at particular moments in time and to what extent the pattern of penal development is determined by "the basic social relations" (by which they mean the mode of production). In pursuing this historical question, they develop a number of theoretical propositions that can be abstracted from their account and stated in general terms. They thus propose that analysis should focus on historically specific penal practices and institutions rather than any general conception of "punishment as such"; punishment should be seen as a social phenomenon in its own right and not merely a technical response to crime. Specific penal practices are never determined solely by crime-control objectives, nor are their social effects exclusively "penological"; penal institutions are to be viewed in their interrelationship with other institutions and with nonpenal aspects of social policy. In effect, penal policy is taken to be one element within a wider strategy of controlling the poor; punishment should be understood not as a social response to the criminality of individuals but as a mechanism operating in the struggle between social classes; and official aims of penal agencies together with the philosophies of punishment that the judiciary espouse

should be treated as ideological legitimations rather than prescriptions for actual practice. These "ideological veils and juristic appearances" must be stripped away to reveal the underlying (economic) relationships that really determine penal policy (Rusche and Kirchheimer 1968, pp. 3-7 and *passim*).

These, then, are the basic orientations of this Marxist analysis, and, one might note, they share with Durkheim an insistence that penal institutions are fully intelligible only on a wider social plane and by reference to wider social functions. Moving from this basic interpretive framework, Rusche and Kirchheimer go on to argue that it is the labor market which, in a variety of ways, has been the leading influence on the choice of penal methods and their pattern of use. To the extent that the labor of convicted offenders provides a potentially exploitable resource, its relative value has been a key consideration in penal policy. During periods when labor is in abundant supply, penal institutions can afford to be reckless with human lives, leading to the widespread use of corporal and capital punishments. However, where demand for labor threatens to exceed supply, then the state and its penal institutions have been less ready to dispense with the valuable resources that their captives represent. Penal measures such as galley slavery, transportation, forced labor, the early modern houses of correction, and even some twentieth-century prison regimes are all presented as clear instances where the exploitation of labor was the major determinant of penological developments.

Another, more immediate, way in which the labor market influences penal sanctions relates to the principle of "less eligibility" and the relative standards of penal institutions. Rusche and Kirchheimer insist that the penal system operates as a kind of coercive ancillary to the labor market, ensuring that the poorer classes are unable to sustain a living by criminal means, and threatening severe penalties for those who are tempted to try. In order to function in this role, it is vital that penal institutions adopt regimes that are markedly more unpleasant than the conditions of life experienced by the lowest strata living in "free society." Thus the discipline, the diet, the labor requirements, and the general living conditions of penal institutions are seen to be determined not by penological objectives but by the requirement that penalty be "less eligible" than the labor market that it supports. As the authors argue in a chapter entitled "Modern Prison Reform and Its Limits," this concern for relative deprivation in punishment sets tight constraints on the possibilities of rehabilitative and humane regimes and is "the inner

contradiction which underlies every reform programme" (1968, p. 159). It ensures that "all efforts to reform the punishment of criminals are inevitably limited by the situation of the lowest socially significant proletarian class" (Rusche 1980, p. 12).

Finally, in addition to shaping the options of the work force in general, modern punishments from the sixteenth century onwards are seen as attempts to shape the attitudes of the individual convict worker. Rusche and Kirchheimer suggest that a constant theme within penal institutions has been the concern to imbue prisoners with the disciplines and attitudes necessary for adaptation to the workplace. The modern prison—like its forerunners, the house of correction and the *hôpital général*—is, among other things, "a way of training new labour reserves," and even when labor can no longer be put to profitable use, prison inmates are still put to work as a kind of compulsory training for industry (1968, p. 63).

Rusche and Kirchheimer acknowledge that in the twentieth century it has become increasingly difficult to use convict labor in an economically effective way—whether because of resistance to the use of forced labor, or else because of the difficulties of operating modern production techniques in prisons—and consequently other considerations become central to the formation of penal policy. In particular, they point to the concern to minimize expenditure and to reduce the financial burden represented by punishment. This second-line fiscal consideration leads to the use of measures such as the fine, which in the twentieth century has come to be the most frequently deployed penal measure and "the epitome of rationalized capitalist penal law" (1968, p. 206). Moreover, the history of the use of the fine clearly indicates the dependence of penal policy on the economic status of the lower classes. As they point out, a generalized system of fining requires that the whole population should have access to an expendable monetary income. This was not always the case, and indeed the recurrence of serious unemployment and poverty can still lead to large-scale defaulting and the undermining of any penal system that relies heavily on financial penalties (1968, chap. 10).

A rather different Marxist interpretation of punishment is developed by the Russian jurist E. B. Pashukanis (1978), who argues that the penal institutions of capitalist societies are organized around a series of bourgeois values and ideological conceptions that tie punishment to the logic of capitalist economic relations rather than to the more appropriate logic of "scientific penology" (by which he means a social defense

and treatment model). Thus, for instance, in the criminal court, individuals come to be seen as "legal subjects," bearing all the attributes of free will, responsibility, and hedonistic psychology that the standard bourgeois individual is deemed to possess, no matter how far the actualities of the case depart from this ideal. In the same way, what we would now call the "justice model" of sentencing and the philosophy of punishment that underlies it are shown to be structured by bourgeois principles and capitalist economic categories. According to Pashukanis, the essential idea in this style of sentencing is that punishment should be an "equivalent" of the offense, so that justice consists in a kind of fair trading that exchanges one harmful action for another that equals it. This idea of an equivalent—which Pashukanis traces back to the commodity form—makes punishment itself into an exchange transaction, in which the offender "pays his debt" and crime becomes "an involuntarily concluded contract." In dealing with offenders in this way, the courts help regenerate the basic ideological forms of capitalist society in the face of actualities such as inequality, unfreedom, and destitution.

The sanction of imprisonment is also seen by Pashukanis as a specifically bourgeois invention, utilizing conceptions of the person and of value that spring up from the capitalist mode of production and that reproduce bourgeois mentality in the process of punishing (1978, p. 181). Capitalist economic relations give rise to the idea of independent man as the possessor of labor power and liberty, both of which can be calibrated and measured in terms of time, and the modern prison owes its existence and extensive usage to these very notions. Thus, although the prison—and penal law more generally—has its uses as a repressive instrument of class domination, it also operates as an ideological apparatus, helping to reproduce the mental and cultural categories on which capitalist rule depends.

This view of punishment as a politicoideological instrument of the bourgeois state, structured by economically derived categories and used to promote ruling class power is developed and extended by other writers working in this tradition. The historical work of Douglas Hay (1975) likewise stresses the dual role of criminal law as ideological legitimation as well as class coercion. His study of eighteenth-century criminal law details the ways in which ruling class hegemony can be sustained by the strategic use of discretion in criminal justice, the careful management of symbols and ceremony, and the ideological appeal of a system that generally abides by its own legal ideals. For Hay, as much as for Pashukanis, penal law concerns itself with social

authority and the governing claims of those in power. It reinforces these claims by means of coercive sanctions as well as symbolic displays, making punishment a form of power exercised as well as power expressed. Where social power and authority are structured on definite class lines, as they were in the eighteenth-century England that Hay describes, then punishment will reproduce the forms and figures of class even when its actions appear to transcend class divisions and protect those on the wrong side of the class divide.

These attempts by Marxist writers to explain penal practice by reference to the imperatives of class struggles and economic relations are open to important criticisms. Rusche and Kirchheimer undoubtedly overestimate the explanatory power of economic factors in the analysis of penal institutions, and the main weakness of their account of penal history is its failure to recognize the ways in which economic concerns are always tempered by other social forces—not just the kinds of political and ideological concerns noted by Hay and Pashukanis, but also by professional interests, institutional dynamics, criminological conceptions, and the religious and humanitarian reform programs that have played a crucial role in shaping penal practice (Ignatieff 1981; Spierenburg 1984a; Garland 1985; Beattie 1986; Innes 1987). To say this is not to dismiss the effectivity of modes of production in shaping penal systems, but it is to insist that any such causal effect is much more mediated and indirect—and therefore less “determinative”—than their account suggests. Historians such as Michael Ignatieff (1978) have demonstrated that one can combine a sensitivity to the specific interests and genuine concerns motivating actors in the penal process with a recognition that the shaping context for these ideas, and the practical constraints in which they operate, will be determined by the broader political and economic structure of the society in question—and such an approach would seem an important refinement of the Marxist case.

Similarly, it is insufficient to describe correlations between “economic interests” and penal outcomes, as Rusche and Kirchheimer tend to do, without also describing the mechanisms that allow these “interests” to be realized. This is particularly important in diversified, democratic societies, where penal decisions are undertaken by personnel who may be quite remote from the sphere of economic activity. If it is to be argued that economic imperatives are conveyed into the penal realm, then the mechanisms of this indirect influence must be clearly described, otherwise correlations can be seen as mere coincidence. It may be possible—as Steven Box has recently argued (1987)—that sen-

tencers, prison authorities, and state officials come to recognize labor-market "needs" and "ruling-class interests" and then make decisions in accordance with them, but an analysis of this process would need to be much more complex than the one that Rusche and Kirchheimer supply.

Finally, the tendency of these analyses of punishment to describe criminal justice as a kind of class instrument used to regulate and control the working classes has had to contend with strong evidence that criminal law commands a wide degree of support among the popular classes, who frequently perceive it as protecting their interests as well as those of the ruling classes (Brewer and Styles 1980; Sparks 1980; Langbein 1983). Thus, if the Marxist argument is to be sustained, it must recognize—as many Marxists now do—that the criminal law's class functions are combined with genuine social functions, such as the prohibition of violence and the punishment of predatory criminals. Consequently, the key to understanding criminal law in class terms is not to deny its universal functions but rather to appreciate the ways in which particular interests are silently interwoven with more general ones. One might extend this point to argue that Pashukanis's rejection of "bourgeois legality" and the penal practices based on it fails to recognize the general protections that such principles can afford—a criticism made by fellow Marxists such as E. P. Thompson (1975)—and to point out that the legal ideals developed in capitalist societies may have a value that is independent of that particular socioeconomic context—as democratic socialists frequently assert. However, if this counterargument reduces the critical force of the Marxist position, it leaves intact the observation that the major principles, categories, and values to be found in the penal sphere are often direct homologues of cultural categories to be found in other areas of society, such as the polity and the economy.

If one bears in mind these criticisms and scales down Marxism's explanatory claims so that economic pressures and ruling-class interests are viewed as influential on, rather than wholly determinative of, penal policy, it seems clear that this kind of perspective can illuminate certain features of modern punishment. It can, for instance, go some way toward explaining contemporary penal phenomena such as the ideological importance of work in penal institutions, the continuation of "less eligibility" as a principle of administration, and the centrality of monetary penalties in most penal systems. Similarly, current policy developments such as the "privatization" of corrections, the movement toward "punishment in the community," and the utilization of new surveil-

lance technologies, all have clear financial implications and repercussions for the labor market that would invite an analysis of this kind. The resilience and renewal of justice model thinking—throughout the era of rehabilitation and particularly since the 1970s—may also be better comprehended if we bear in mind the linkages identified by Pashukanis and look to the resurgence of market ideologies and the political decline of welfarism that has occurred in recent years. Finally, this perspective should make us prepared to analyze punishment not in the narrow terms of “the crime problem” but instead as one of the mechanisms for managing the urban underclass, together with social welfare regulations, policing strategies, housing, schooling, and employment policies. On this broader view, penal measures are shaped not just by patterns of criminality—themselves linked to the conditions of life of marginal groups and their relation to other classes—but primarily by governmental perceptions of the poor as a social problem and the preferred strategies for their treatment. These forms of treatment may involve aspects of caring and provision as well as coercion and control, but the embeddedness of these forms within wider strategies of rule is the point most crucial for their comprehension.

C. Punishment, Power, and Knowledge: The Work of Michel Foucault

I said of Durkheim that he told us little about the actual apparatus and instrumentalities of punishment. The same might be said of the Marxist perspective, which is primarily concerned to show how penal institutions come to be caught up in class divisions and shaped by economic and political structures. In contrast to these, Foucault's work takes us straight to the internal workings of the penal apparatus, focusing on the specific technologies of penal power and their mode of operation. His studies (Foucault 1977, 1978, 1980, 1990) analyze in detail the mechanisms whereby modern penal sanctions exert their specific forms of control, the principles of surveillance, inspection, and discipline on which they rely, and the penological knowledges and rationalities that inform these modes of exercising power. The result is a kind of phenomenology of penal control, showing the detailed ways in which the “microphysics of power” come into contact with the bodies of those subjected to it. And although he is concerned to show how penal technologies link up with other areas of governance and discipline and to situate them within a wider network of power relations, he insists that such matters cannot be understood by reference to general theories about how “society” is structured.

Foucault's *Discipline and Punish* (1977) sets itself the historical problem of how to explain the disappearance of one style of punishment—in which punishment operates as a public spectacle of bodily violence—and the emergence of another—in which the prison comes to be the standard penal method. He selects this problem in order to explore the wider (and more contemporary) theme of how power is exercised and individuals are governed in the modern world, and so, for the most part, the book is an analysis of the apparatus of power that the prison deploys and the forms of knowledge, technology, and social relationship on which this apparatus depends.

The emergence of the “modern” penal style that the prison epitomizes—and which Foucault locates between 1750 and 1820—is to be understood as a qualitative shift rather than a mere decrease in the quantity or intensity of punishment. In this transformation, the target of punishment is altered so that, although the body is still addressed by some penal measures, it is now as an instrument for transforming the soul rather than as a surface on which to inflict pain. At the same time, the objective of punishment undergoes a change so that the concern is now less to avenge the crime than to transform the criminal who stands behind it. This change in penal technology—from the scaffold to the penitentiary—signifies a deeper change in the character of justice itself. The new concern is to know the criminal, to understand the sources of his criminality, and to intervene to correct them wherever possible, so that the focus of judgment shifts away from the offense itself toward an assessment of the individual (see also Foucault 1990). This, in turn, requires the appointment of a variety of experts who become necessary in order to provide this knowledge, identify abnormalities, and help bring about a reformation. The result of these changes is a system of dealing with offenders that is not so much punitive as corrective and is more intent on producing normal, conforming individuals than on dispensing punishments and penalties.

On a wider scale, these developments represent for Foucault an illustrative model of how power tends to operate in modern society. Open physical force, the apparatus of violence, and the ceremonies of might are more and more replaced by a mode of power based on detailed knowledge, routine intervention, and gentle correction. The idea now is to regulate thoroughly, and at all times, rather than to repress in fits and starts, and by this means to improve troublesome individuals rather than to destroy them.

Foucault's way of looking at punishment is thus distinctive and quite

specific. According to the principles of interpretation that he sets out, punishment is to be understood as a "political tactic" situated within the general field of power relations. It is to be studied with a view to its positive effects, however marginal or indirect, and not simply as a repressive mechanism. It is to be thought of as intimately and internally linked with the development of "the human sciences" (psychology, sociology, criminology, etc.) and not merely influenced by them from the outside. And, finally, the new concern with the individuality of the offender—with his "soul"—is to be conceived as the most recent chapter in a longer history of ways in which "the body" has been dealt with by political policies. Punishment is thus about power, particularly positive power; it is about knowledge—or rather power-knowledge; and it is about the ways in which technologies of power-knowledge come into contact with the bodies of offenders and exercise power in and through them.

Modern punishment—and especially the modern prison—deploys a distinctive kind of power that Foucault describes as "disciplinary" (1977, pt. 3). Discipline, for Foucault, is a method of mastering the human body and rendering it both obedient and useful. It operates on the smallest scale of control, paying attention not primarily to the whole body but to its individual movements and gestures, aiming to increase the efficiency of each movement and develop its coordination with others. This training of the body is accompanied by a constant, uninterrupted supervision that is alert to the slightest deviation and thus facilitates a meticulous control of the individual who is being disciplined.

This kind of close control was, in turn, dependent on certain organizational principles that had gradually been developed in various non-penal settings from the seventeenth century onwards. Thus it was the army that did most to develop the art of distributing individuals in space—its ranks and files introducing a set orderliness into a mass of individuals, separating them one by one so that they could be individually viewed, supervised, and assessed. Similarly, the monastery developed the timetable—a means of imposing set rhythms to organize time and movement, specify a series of occupations, and regulate the cycle of repetition. On a smaller scale, the concept of "the manoeuvre" derives from both the barracks and the workshop. In this repeated routine the exact posture of the body, the positioning of the limbs, and the smallest of bodily movements were programmed to increase their efficiency and link them to the use of a weapon or the operation of a machine. By these

means, bodies were to be put through their paces until they became docile, efficient, useful machines, programmed to carry out the functions for which they have been trained (Foucault 1977, pp. 135–70).

By way of enforcement, and in order to deal with deviance and disobedience, these disciplinary systems rely on a corrective method that Foucault calls “normalization.” Normalization involves, first of all, a means of assessing the individual’s performance in relation to a desired standard of conduct. Surveillance arrangements, case records, and examination procedures provide this knowledge, allowing incidents of nonconformity or departures from set standards to be recognized and dealt with, at the same time “individualizing” the different subjects who fall under this gaze. And since the object is to correct rather than punish, the actual sanctions used tend to involve exercises and training, measures that in themselves help bring conduct “into line” and make individuals more self-controlled. Implicated within this process of normalization are the new “human sciences”—such as criminology, penology, psychology, and sociology—since these sciences are only made possible by the production of detailed, systematic knowledge about individuals and, in their turn, are made to contribute to the normalizing power and control that is exercised over individuals (1977, pp. 107–95).

The “Panopticon” or “Inspection House” that Jeremy Bentham designed in 1791 is seen by Foucault as the very epitome of these power-knowledge principles—and as the prototype not just for prisons but for all institutions that implement regimes of surveillance and discipline. The Panopticon, in its ideal version, takes the form of a circular building with individual cells around its perimeter, the windows and lighting of which are arranged so as to make their occupants clearly visible to the central inspection tower, though it remains opaque to them. It is thus an architectural form designed to individualize bodies and to render these individuals constantly subject to the knowledge and power of the authorities who occupy its center. In time, this constant visibility and vulnerability is designed to induce self-control on the part of the inmates of the cells. Power no longer needs to unleash its sanctions, and instead its objects take it upon themselves to behave in the desired manner. Any remnant of physical repression is thus gradually replaced by a gentle but effective structure of domination (1977, pp. 195–209).

On the basis of this analysis, the prison and much of modern punishment are to be interpreted as specific aspects of that wider historical phenomenon, the development and generalization of the disciplines.

Key principles of modern penology—the investigation of “the criminal” behind the crime, the concern with correction and adjustment, the involvement of experts whose task is to observe, to assess, and to cure—are all hallmarks of this disciplinary process, as are the standard penitentiary techniques of isolation, work, individualized treatment, and the adjustment of sentence to reflect behavioral improvement. Moreover, the science of “criminology” comes to be viewed as an element within this normalizing, disciplinary system—with the implication that different regimes of power might give rise to rather different forms of criminological knowledge (and, of course, vice versa).

The structure of modern penal institutions is thus explained genealogically—in terms of the development of the disciplines—and structurally—in terms of the principles of operation and discursive rationalities that they employ. However, Foucault's account of the actual functioning of the prison stresses its hidden role in the wider field of political domination and general social control rather than its declared objectives of disciplining individuals. According to Foucault—and here he repeats the conventional wisdom—the prison has consistently failed in its penological objectives. Indeed, the defects of the prison—its failure to reduce crime, its tendency to produce recidivists, to organize a criminal milieu, to render prisoners' families destitute, and so forth—have all been recognized from as early as the 1820s. But this penological “failure” is reinterpreted by Foucault as a kind of unspoken political success. The creation of a recidivist delinquent class is deemed to be useful in a strategy of political domination because it works to separate crime from politics, to divide the working classes against themselves, to enhance the fear of prison, and to guarantee the authority and power of the police. By creating a well-defined delinquent class, the prison ensures that habitual criminals are known to the authorities and can more easily be managed, while the powers of surveillance, which this group necessitates, can be easily used for wider political purposes. On this account, the prison does not control the criminal so much as control the working class by creating the criminal, and, for Foucault, this is the unspoken rationale for the institution's persistence through nearly 200 years (1977, pp. 271–85; see also Foucault 1980).

The location and functioning of the prison in a more general “surveillance society” is most clearly brought out when Foucault describes the extensive network of normalizing practices in modern society. He describes how the frontiers between judicial punishment and the other

institutions of social life, such as the school, the family, the workshop, and social welfare institutions came increasingly to be blurred by the development of similar disciplinary techniques in all of them, and the frequent transfers that take place from one institution to another. According to Foucault, there exists a kind of "carceral continuum" that covers the whole social body, linked by the pervasive concern to identify deviance, anomalies, and departures from the relevant norm. Within this overall framework, the process of punishing is not essentially different from that of educating or curing, and it tends to be represented as merely an extension of these less coercive practices, with the consequence that the legal restrictions that once surrounded the power to punish—tying it to specific crimes, determining its duration, guaranteeing the rights of those accused, and so on—tend to disappear. Penal law in effect becomes a hybrid system of control combining the principles of legality with the principles of normalization, and it is this transformation that extends the scope of its effective power, allowing it to sanction not just "violations of the law" but also "deviations from the norm" (1977, pp. 293–308).

This Foucauldian account of punishment, like any singular interpretation, has definite weaknesses and limitations. In focusing on the relations of power and knowledge that structure modern punishments, Foucault neglects other issues such as the sensibilities, moral values, and emotional forces that form the cultural framework in which penal power is exercised, the social support and political legitimacy on which penal measures depend, and even the day-to-day political struggles and negotiations that shape penal policies and institutional regimes. His account tends to identify modern punishment with disciplinary or normalizing methods, despite the fact that important contemporary sanctions, such as the fine and indeed the death penalty, are not, in his sense, disciplinary; despite the continuing tendency of criminal courts to utilize the language of moral censure and the logic of retribution; and despite the fact that, even where disciplinary techniques have been adopted, they are often in practice compromised by humanitarian and civil rights concerns, or even by an unreconstructed punitiveness (Botoms 1983; Garland and Young 1983).

His assertion that the prison has consistently failed in its disciplinary project—whatever the plausibility of his alternative account of its functioning—also raises a theoretical problem for his approach: for if the prison is a concentrated, totalized form of discipline and it nonetheless fails in its disciplinary endeavors, what does this tell us about the

conditions required for successful discipline? One possible answer is that the individual concerned must somehow share the goal of becoming disciplined—and that cooperation of this kind is infrequent in a punitive context. But to pursue this idea is to highlight the role of the subject-to-be-disciplined and his or her value orientation and, thus, to move away from the rather more automatic conception of discipline that Foucault implies. Also, his political explanation for the historical transformation of punishment seems to imply that the disappearance of the scaffold and physical sanctions coincided with the political sea change of the French Revolution, when in fact the decline of public penal violence seems to have been a much more gradual process, beginning at the start of the seventeenth century and continuing to the present day (Spierenburg 1984b).

A more contemporary criticism of Foucault's work might be that, although it describes very well the power-knowledge relations implicit within "rehabilitative" or "treatment-oriented" regimes of criminal justice, such strategies are no longer characteristic of penal policy in the 1980s and 1990s. In this "postrehabilitation" era—in which justice model thinking, retributive sentencing, and aims such as general deterrence and incapacitation have come to dominate penal policy—the phenomenology of penal control that Foucault presents might seem to relate to a system that no longer exists. However, such a criticism views Foucault's work much too narrowly and fails to understand the analytical level at which it aims. *Discipline and Punish* is not just an account of "positivist criminology" and "rehabilitative" policies: it is an account of more fundamental structures of penal modernity that have outlasted the policy objectives that first justified their introduction. Put in more Weberian terms, Foucault describes how punishment has become a rationalized, instrumentalized institution, dependent on expert knowledge, bureaucratic routines, and calculated techniques of fine-grain control. This historical process of professionalization, bureaucratization, and rationalization, of which the disciplines are a leading instance, has ensured that, whatever the judicial or political objectives of punishment, the institutions of penal control tend to adopt rationalized styles of regulation and risk-management procedures that rely on and refine the kinds of principles that Foucault describes. Contemporary policy options—such as selective incapacitation, and the identification of career criminals, dangerous individuals, or even appropriate cases for diversion—rely on the same principles of assessment, diagnosis, and prediction as did rehabilitative regimes (Floud and Young 1981; Green-

wood 1982; von Hirsch 1985). "Panoptic" principles continue to inform not only modern prisons and reformatories but also spread out into the community via the new technologies of electronic surveillance and the various forms of house arrest and at-a-distance control that these make possible (Marx 1985). Normalization techniques continue to be utilized by the myriad of community-based criminal justice agencies that operate in the space between full imprisonment and unconditional liberty (Donzelot 1980; Cohen 1985; Harris and Webb 1987), and the importance of transfers along the carceral continuum is made vividly apparent by the fact that, in some jurisdictions, the number of individuals transferred into prison from parole agencies (as a result of parole violation) is now greater than that sent there directly by the courts (Messinger and Berecchia 1990). In other words, the eclipse of the rehabilitative ethos has done nothing to diminish the extensive network of investigative, classifying, and normalizing practices that were initially introduced under the rubric of "helping the offender" but that now form an essential part of the power-knowledge network of penal control.

Thus, although Foucault's account may overstate the importance of the disciplines and may neglect to deal with the counterdisciplinary forces and nondisciplinary forms that operate within the penal realm, he has nevertheless succeeded in identifying and analyzing certain characteristics of penal practice that are of major significance in the modern world.

D. Punishment and Sensibilities: Norbert Elias and the "Civilizing" of Penal Methods

The interpretive perspectives of Durkheim, Marx, and Foucault are by now well-established frameworks in the sociology of punishment and have prompted a considerable body of research and commentary. The final perspective that I discuss—that of Norbert Elias—is less well known and has only recently been shown to be relevant to the understanding of punishment and penal history.

The value of Elias's work for the sociology of punishment is that it provides a detailed account of certain cultural and psychic structures, which he terms "civilized sensibilities," that are characteristic of modern Western societies, and that can be shown to have major implications for the ways in which we punish. Although Durkheim touches briefly on this theme at one point, questions of "sensibilities" and "civilization" have not featured prominently in recent sociologies and

histories of punishment. Indeed, Marxist and Foucauldian theorists have tended to exclude sensibilities from their explanatory framework, arguing that "humanitarianism" and "civilized sentiments" should be seen not as causal factors in penal change but instead as superficial rhetorics or ideologies concealing more basic economic interests or covert strategies of power and control (Ignatieff 1981). As a reaction to uncritical moral histories of penal progress, this skeptical approach was probably necessary, and it has certainly been illuminating in ways that I have already described. But it is increasingly apparent that this rejection of sensibilities and substantive moral convictions has been altogether too vehement. The revisionist emphasis on the implicit strategies of control and domination that operate through punishment has hidden the important role that cultural values and sensibilities play in giving shape and limits to the penal measures that may be deployed. Thus it may well be that hanging in chains, flogging bodies, or exposing offenders to crowd violence on scaffold or pillory no longer fit with the strategies of rule and the political relations of our time, and so their disappearance can be understood in political terms. But it is also the case that these measures would now be an affront to the normal sensibilities of individuals who have grown up in modern Western societies, and the reality and force of these sensibilities would soon be felt by any ruler who tried to reintroduce such "barbaric" methods within that cultural context.

The persuasiveness of the skeptics' account stems from their demonstration that the demands of "civilized" or "humanitarian" sentiments have sometimes coincided with interests of a political, economic, or ideological kind, as for example when humane measures also produced greater control and enhanced legitimacy. But on other occasions the two pull in opposite directions, and this is where the reality of sensibilities is best revealed: where they show themselves to be a genuine social force and not just "incidental music" (Geertz 1978). The ways in which we punish depend not just on political forces, economic interests, or even penological considerations but also on our conceptions of what is or is not culturally and emotionally acceptable. Penal policy decisions are always taken against a background of mores and sensibilities that, normally at least, will set limits to what will be tolerated by the public or implemented by the penal system's personnel. Such sensibilities force issues of "propriety" on even the most immoral of governments, dictating what is and is not too shameful or offensive for serious consideration.

There is thus a whole range of possible punishments (tortures, maimings, stonings, public whippings, etc.) that are simply ruled out as "unthinkable" because they strike us as impossibly cruel and "barbaric"—as wholly out of keeping with the sensibilities of modern, civilized human beings. Such judgments, based on the prevailing sensibilities, define the outer contours of possibility in the area of penal policy. Usually this boundary line has the unspoken, barely visible character of something that everyone takes for granted. It becomes visible, and obvious, only when some outrageous proposal crosses the line, or else when evidence from other times or other places shows how differently that line has been drawn elsewhere. It is therefore stating the obvious—but also reminding us of something we can easily forget—to say that punishments are, in part, determined by the specific structure of our sensibilities, and that these sensibilities are themselves subject to change and development.

The indispensable guide for any general analysis of civilized sensibilities is Elias's two-volume account of *The Civilizing Process* (1978 and 1982), first published in 1939. In the course of this historical study, Elias sets out a detailed description of the ways in which Western sensibilities have changed since the late medieval period, identifying a number of broad developmental patterns that seem to underlie the multitude of tiny, specific, and very gradual changes of attitude and conduct that the historical sources reveal. Having described this pattern of change and the typical directions that it has taken, Elias then sets out an explanatory account that links changes in sensibility and individual psychology with wider changes in social organization and modes of interaction. Unfortunately, Elias himself has little to say about the way in which the history of punishment fits into the broad developments which he describes. (He offers some brief remarks about the place of the gallows in the medieval world of the knight [it stands "in the background of his life. It may not be very important but at any rate, it is not a particularly painful sight"] and notes, on the very first page, that "the form of judicial punishment" is one of the social facts to which "civilization" typically refers [Elias 1978, p. 207 and p. 3]. Beyond this, nothing specific is said.) Nevertheless, it seems perfectly clear that Elias's analysis of the development and characteristics of modern sensibilities has a profound importance for the understanding of punishment, as the work of Pieter Spierenburg (1984b) and others has begun to make clear. In the remainder of this section, I set out the major themes of Elias's work and suggest how they can help us to

understand the forms and cultural foundations of modern punishments. In doing so, I focus mainly on his account of modern sensibilities and the characteristic structure of fears, anxieties, and inhibitions produced in individuals by the controls and rituals of contemporary culture. It should be noted, however, that this psychic-cultural dimension forms only one aspect of Elias's general theory of social organization and development—a project conceived on the grand scale of Weber and Durkheim and synthesizing many of the arguments of these two writers.

In Elias's work, the concept of "civilization" refers to "a specific transformation of human behaviour" (1978, p. 151). Using a range of historical sources—but particularly etiquette manuals, pedagogical texts, and similar documents of detailed cultural instruction or description—Elias traces transformations of behavioral norms—and, eventually, of actual behavior—in several different spheres of social and personal life. Table manners, attitudes toward bodily functions, the proper methods of spitting or blowing one's nose, behavior in the bedroom, habits of washing and cleanliness, the expression of aggression, relationships between adults and children, the conduct of men in the presence of women, proper ways of addressing superiors or strangers—all these undergo important changes that Elias describes in rich and often fascinating detail. Moreover, he finds in this multitude of changes a number of recurring patterns and principles of development that give the whole movement a certain orderliness and direction. (One should add that this pattern is based not on any teleology of progress but on parallel developments in social organization—especially the formation of centralized nation-states with monopolies of legitimate violence and the increase in social differentiation and interdependence—that accompanied the transformation from feudal society, to court society, and, finally, to market society [Elias 1982].)

According to Elias, these changes in cultural demands and social relations eventually have an effect on the psychic organization of the individuals involved and, in particular, on the structure of their drives and emotions. Human beings gradually internalize the fears, anxieties, and inhibitions imposed on them by their parents and social environment, developing a superego that more or less effectively inhibits the expression of drives and aggressions in accordance with the demands of cultural life. There is thus a psychic corollary of cultural change—"the *psychical* process of civilization" (1978, p. xii)—that over the long term produces changes in the personality structure typically displayed by

individuals, especially the development of self-controls, internalized restraints, and inhibiting anxieties such as fear, shame, delicacy, and embarrassment. Open displays of aggression, or indeed spontaneous emotion of any kind, are increasingly forbidden by force of law or by social prudence. To the extent that this process of socialization is successful, the emotions and behavior of the individual become more evenly ordered, less spontaneous, and less given to wild oscillation between extremes. Individuals are thus trained and psychologically equipped to sustain social conventions and to display a particular pattern of sensibility. Over time, these conventions tend to become more demanding, calling for greater levels of restraint and forbearance and producing ever-increasing thresholds of delicacy and sensitivity. Moreover there tends to be a diffusion of civilized manners from one social group to another, so that sensibilities and attitudes first developed within the social elite tend to spread outwards and affect ever-greater parts of the population. To the extent, then, that penal policies are conditioned by social attitudes toward violence, by emotional responses to the sight of pain and suffering, and particularly by elite conceptions of appropriate conduct and permissible behavior, Elias's account can be seen to be pertinent to our understanding of penal methods and their historical development.

Even more directly relevant is Elias's thesis that the civilizing process brings with it a move toward the "privatization" of disturbing events.¹ In the development of manners and cultural rituals, a key feature that Elias identifies is the process of privatization whereby certain aspects of life disappear from the public arena to become hidden behind the scenes of social life. Sex, violence, bodily functions, illness, suffering, and death gradually become a source of embarrassment and distaste and are more and more removed to various private domains such as the domesticated nuclear family, private lavatories and bedrooms, prison cells, and hospital wards. Lying behind this process is the tendency to suppress the more animalistic aspects of human conduct as being signs of the crude and the uncultivated. Such conduct comes to be defined as distasteful and unmannerly and individuals are taught to avoid shocking their superiors by displaying such behavior in their presence. Eventually this cultural suppression becomes more general and more pro-

¹ To avoid confusion, it should be noted that the term "privatization" as used by Elias has nothing to do with the kind of "privatization" mentioned earlier, which involves the transfer of the administration or ownership of penal institutions from state agencies to commercial corporations.

found. The sight of other people openly suffering, or defecating, or displaying their bodily functions becomes thoroughly distasteful and is banned from public places. Gradually, new and more private enclaves are developed "behind the scenes" in which such activities can be undertaken more discretely, withdrawn from the sight of others, and often surrounded by an aura of shame and embarrassment.

This concept of privatization is important, not just because it helps us understand the heavy reliance of modern society on institutional enclosures as its favored method of dealing with troublesome individuals. It also makes it clear that civilization involves a displacement and relocation of "uncivilized" behaviors, rather than their total suppression or disappearance. For example, one of the key characteristics of modern, state-governed societies is that violence is no longer a tolerated aspect of everyday, public life. However, as Elias points out, violence in society does not disappear. Instead, it is stored up "behind the scenes"—in the barracks, armories, and prison houses of the state—ready to be used in case of emergency and exerting an ever-present threat to possible violators of state norms and prohibitions (1978, p. 239). It is therefore unsurprising that those societies which are in every respect the most civilized are nonetheless capable of unleashing the massive violence of world wars, nuclear attacks, and genocide should the restraints of civility be for any reason abandoned.

As with other signs of brutishness, the sight of violence, pain, or physical suffering has become highly disturbing and distasteful to modern sensibilities. Consequently, it is minimized wherever possible. And where violence does continue to be used, it is usually removed from the public arena and sanitized or disguised in various ways, often becoming the monopoly of specialist groups such as the army, the police, or the prison staff that conduct themselves in an impersonal, professional manner, avoiding the emotional intensity that such behavior threatens to arouse.

The development of sensibilities, inhibitions, and cultural rituals that we equate with "civilization" took place over a long period of time and with all the unevenness and vicissitudes of any long-term process. However, Elias identifies what he calls a "typical civilization curve" that effectively summarizes the characteristic stages of this gradual development. An example of this developmental curve is given in his discussion of table manners and the socially sanctioned methods of carving animal meat:

The increasingly strong tendency to remove the distasteful from the sight of society clearly applies, with few exceptions, to the carving of the whole animal. This carving . . . was formerly a direct part of social life in the upper class. Then the spectacle is felt more and more to be distasteful. Carving itself does not disappear, since the animal must, of course, be cut when being eaten. But the distasteful is removed behind the scenes of social life. Specialists take care of it in the shop or the kitchen. It will be seen again and again how characteristic of the whole process that we call civilization is this movement of segregation, this hiding "behind the scenes" of what has become distasteful. The curve running from the carving of a large part of the animal or even the whole animal at table, through the advance in the threshold of repugnance at the sight of dead animals, to the removal of carving to the specialized enclaves behind the scenes is a typical civilization curve. [1978, p. 121]

This quotation neatly summarizes much of Elias's discussion and illustrates several important points. But it also serves to suggest just how closely the history of punishment conforms to the general developmental pattern that Elias identifies. If one reads this passage bearing in mind the broad sweep of penal history, then a number of very significant parallels quickly emerge. Over the same period of time—from the sixteenth century to the twentieth—punitive manners have undergone a very similar series of changes. In the early modern period, capital and corporal executions were conducted in public, and both the ritual of judicial killing and the offender's display of suffering formed an open part of social life. Later, in the seventeenth and eighteenth centuries, the sight of this spectacle becomes redefined as distasteful, particularly among the social elite, and executions are gradually removed "behind the scenes"—normally behind the walls of prisons. Subsequently, the idea of doing violence to offenders becomes repugnant in itself, and corporal and capital punishments are largely abolished, to be replaced by other sanctions such as imprisonment (Spierenburg 1984*b*; Zimring and Hawkins 1986, pt. 1). By the late twentieth century, punishment has become a rather shameful activity, undertaken by specialists and professionals in enclaves (such as prisons and reformatories) that are, by and large, removed from the sight of the public.

This example serves to demonstrate that the cultural and psychic

transformations which Elias describes as the origins of our present sensibilities may also have played an important part in shaping our institutions of punishment. If we accept the reality of the phenomena identified by this work—in particular, the intensification of “conscience,” the increased restraints on violent behavior, the expansion of the individual’s capacity to identify and empathize with others, the heightening of sensitivity to pain and suffering, and the broad cultural tendencies toward privatization and sanitization (for broadly supporting historical evidence, see Stone [1979]; Gatrell [1980]; Gurr [1981]; Beattie [1984]; and Thomas [1984]; for an opposing view, see Macfarlane [1981])—then we are obliged to include such variables in any account of penal history or the sociology of punishment. Of course, the role of sensibilities in determining punishments is in no sense an exclusive one: as Elias himself shows, these psychic and cultural phenomena are always bound up with social structures, class struggles, and organizational forms, all of which might be expected to contribute to the shaping of penal practices. Nor is there any need to accept Elias’s account uncritically, or in every detail (see Giddens 1984; Lasch 1985; van Krieken 1989). But once we grant a reality and effectivity to the psychic and cultural phenomena that his work highlights, it seems clear that they must be included as an operative element in any social theory of punishment. Punishments can never be fully explained in terms of their instrumental purposes, their control potential, or their economic and political advantage because, as Elias’s work shows, such possibilities will always be shaped and limited by cultural and psychic forces that define the basic contours of possibility in the realm of penal policy.

The importance of sensibilities in structuring modern penal practice is obvious if one considers the generalized refusal of Western societies to utilize what can, in some respects, be an efficient form of sanctioning, namely, corporal punishment. Unlike imprisonment (which is very expensive, difficult to manage, and which creates its own problems by bringing together large numbers of offenders under the same roof) and unlike the fine (which varies in effect according to the offender’s means, and which frequently results in imprisonment for those who cannot pay) corporal punishments can be inexpensive, they can be precisely calibrated, their side effects can be minimized, and they can be delivered reasonably efficiently and uniformly. In these terms, at least, there are strong reasons to consider corporal punishments as a policy option within modern penal strategies. And yet penologists, by

and large, do not even mention this possibility. (An exception to this is Newman [1983]. See the review by Simon [1985].) It is not an option on the modern penal agenda, but rather a fact of penal history, occasionally reinvoked for dramatic effect by reactionary politicians.

Why is this? The answer would seem to be that our modern sensibilities—or at least those of the sectors of society that are influential in policy-making—have been attuned to abhor physical violence and bodily suffering. Gross violence, deliberate brutality, the infliction of physical pain and suffering, all these are felt by many people to be intolerably offensive in themselves and to have no legitimate place within the public policy of a civilized nation. But it needs to be emphasized that this ban on violence and the infliction of pain is *not* a general one. On the contrary, an understanding of the human impact of some contemporary punishments makes it clear that government policy still permits the infliction of pain and public opinion still tolerates it—so long as it takes a particular form. It is well known to those with experience of imprisonment, for example, that incarceration, particularly for long periods of time, can produce acute mental and psychological suffering (Sykes 1958; Cohen and Taylor 1972). It can also bring about physical deterioration and the erosion of cognitive and social skills, and it frequently results in serious emotional and economic distress for the prisoner's family. But because these pains are mental and emotional rather than physical, because they are corrosive over an extended period rather than immediate, because they are removed from public view, and because they are legally disguised as a simple "loss of liberty," they do not greatly offend our sensibilities and they are permitted to form a part of public policy. In keeping with the demands of a "civilized" society, the experience of pain is ushered behind the scenes—whether this is behind the walls of a prison, or behind the "front" with which prisoners conceal their emotional distress.

The crucial difference between corporal punishments that are banned, and other punishments—such as long-term imprisonment—that are routinely used, is not a matter of the intrinsic levels of pain and brutality involved. It is a matter of the *form* which that violence takes, and the extent to which it impinges on public sensibilities. Modern sensibilities display a definite selectivity. They are highly attuned to perceive and recoil from certain acts of violence, but at the same time, they have particular blind spots, or sympathetic limitations, so that other forms are less clearly registered and experienced. Consequently, routine violence and the suffering of others can be tolerated on condi-

tion that it is discreet, disguised, or somehow removed from view. Because much of the public does not hear the anguish of prisoners and their families, because the discourses of the press and of popular criminology present offenders as "different" and less than fully human, and because penal violence is generally sanitized, situational, and of low visibility, the conflict between our civilized sensibilities and the often brutal routines of punishment is minimized and made more tolerable. Modern punishment is institutionally ordered and discursively represented in ways that deny the violence which continues to inhere in its practices.

One vivid illustration of this characteristic, which shows both the continued investment in penal violence and the limitations of public sensibilities, is the history of modern attempts to find an "acceptable" method of capital punishment. Throughout the modern period, governments have sought to discover new methods that might perform this ultimate act of violence while simultaneously concealing its brutal and painful aspects. At first the concern was to develop a means of ensuring death that would not depend on the skill of an individual executioner—hence the guillotine, the trapdoor gallows, and the firing squad. Later, in the nineteenth and twentieth centuries, the movement was toward elaborate technical devices—such as the electric chair and the gas chamber—that had the effect of distancing and dehumanizing the fatal act, rendering it as a technical scientific operation rather than one human being deliberately killing another. In effect, the moral question whether it was right to kill or not came to be translated into a question of aesthetics: could judicial killing be undertaken tastefully, in a manner that disguised the fact of its atrocity?

Given the gravity of a decision to kill another human being, it may well seem perverse and absurd to agonize over questions of decorum and presentation, but it is a fact of political life that these cosmetic aspects of punishment have been crucial in making judicial killing acceptable to (at least some sectors of) modern public opinion. Perhaps the high point in this search for a method that can kill without offending public sensibilities is the development of the "lethal injection" that is now used extensively in the United States. This technique of killing involves the injection of a lethal dose of "an ultra-fast-acting barbiturate" in combination with a paralytic agent into the veins of the offender. According to its proponents, this method is virtually painless and offers "an alternative, pleasanter, method of execution." It is represented as a quasi-medical procedure, to be undertaken not by ex-

ecutioners but by medical personnel, and of course in its form it imitates a routine, curative practice of modern health care (Zimring and Hawkins 1986, chap. 6).

This attempt to represent judicial killing as a form of euthanasia has been taken up by more than a dozen U.S. states during the last ten years. In practice, the distancing of the executioners from their victims has been further facilitated at the scene of the execution by the erection of a brick wall that separates the condemned from the technicians and permits the fatal dose to be administered through a tiny opening in the wall. The offender, who is strapped on a stretcher-trolley like a patient awaiting an operation, is put to death anonymously, under the guise of a medical procedure, by technicians who do not immediately witness the effects of their actions (Amnesty International 1987). This strange, and actually rather horrifying, scene encapsulates many of the important characteristics of modern punishment—its privatization, its sanitization, and the careful denial of its own violence—and shows very clearly the formal properties that modern sensibilities require of punitive action.

The value of Elias's work and the kind of approach that he has pioneered is that it trains our attention on the formal characteristics of modern punishment, identifies the kinds of sensibilities that create such forms, and helps us to trace their connection with the wider cultural and societal patterns that have brought them about. And if sensibilities do influence the forms that punishments take—and it seems clear that they do, though never directly or exclusively—then two consequences should follow. The first is the theoretical consequence that any analysis of penal forms or penal history must take these issues into account. We ought never to dismiss evidence of sensibilities as "mere ideology" in the way that Rusche and Kirchheimer and even Foucault tend to do. The second is a more practical point, namely, that cultural struggle, exposé journalism, and moral criticism—the traditional tools of the penal reformer—do have some measure of effectiveness in bringing about penal change. Penal forms are embedded within objective social structures *and* cultural frameworks. Political initiative, moral argument, the cultivation of sensibilities, and public awareness about what goes on "behind the scenes" all play a part in shaping the details and regimes of society's penal institutions. Even if we cannot see the immediate possibility of changing society's infrastructure of class relations, its dependence on capitalist forms, or its proliferation of power-knowledge networks, we can still look to the influence of moral and

cultural struggles in the penal realm. Social institutions are more flexible than most structuralist sociology allows.

II. A Multidimensional Approach

These four broad perspectives that have been outlined—punishment as a moralizing mechanism, a component of class rule, an exercise of power, and an enacted cultural form—cannot be simply added together to provide some kind of grand overview of punishment and penal history. The danger of such eclecticism is that, in drawing on arguments made by different theorists about “punishment and society,” one can too readily assume an identity of concerns where none in fact exists and end up in an intellectual tangle of incompatible premises, ambiguous concepts, and shifting objects of study. Trying to say everything at once, one can wind up saying nothing with any clarity or conviction. Any account of punishment drawing from more than one theoretical source must therefore be careful to avoid mixing up analyses and propositions that are theoretically incompatible. But while eclecticism has these risks, there is a definite explanatory strength to be found in theoretical pluralism, by which I mean a willingness to draw on more than one interpretive perspective and to construct multidimensional accounts of the phenomenon being investigated. What I have tried to suggest in this essay is that these different interpretations might be played off against each other—and against the factual research evidence that they help generate—in such a way as to overlay them, build them up, and use each one to correct and refine the others. Proceeding from one explanatory perspective to another, it becomes clear that each one asks slightly different questions about the phenomenon of “punishment,” each pursues a different aspect, reveals a different determinant, and outlines a different connection.

Sometimes, of course, different theorists do address the same issue, only to interpret it in different ways—as when Marxists and Durkheimians disagree about the role of the state or of popular sentiments in the formation of penal policy. In such cases, one needs to argue out this disagreement and resolve it in favor of the best explanation—or else develop an alternative account that improves on them both. At other times, however, theoretical disagreement may, on closer inspection, turn out to be less substantive than it at first appears. Thus, as we have already seen, where Durkheim insists that modern punishment is irrational, emotional, and punitive, Foucault appears to argue that neither punitiveness nor vengeful emotion has any place in the rationalized

disciplinary strategies of modern punishment—a direct contradiction of Durkheim's view. But in fact this statement misrepresents the scope of Foucault's argument. His analysis, unlike that of Durkheim, does not cover the whole social process of punishment, from prosecution through court trial to penal disposition. Instead he focuses on the practices of prisons and the rationalities that they employ. His is primarily an account of penal administration and technology—that is to say, of one crucial aspect of the penal process, rather than the whole process from beginning to end. And precisely because his purpose is to understand the mechanisms of positive, disciplinary power—rather than to understand “punishment” as such—his work makes no attempt to discuss the extent to which emotions and moral sentiments continue to structure the context in which imprisonment is used. Thus, what appears to be a direct contradiction can be viewed as a difference of interpretive focus and theoretical concern: Foucault, who seeks to understand the rationality of modern power, puts penal institutions into the foreground of his analysis, while Durkheim, concerned to understand social morality, bases his account on the courtroom ritual and the legislation of criminal law. Seen in this way, as interpretations grounded in different aspects of a differentiated process, the question should no longer be, Which one is correct, Foucault or Durkheim? Instead, we should enquire how the different tendencies that they describe interact with one another, how these conflicts are managed, and what effects these tensions have on the modern process of punishment.

In other cases, it may be that a particular theorist successfully identifies an element of penalty that seems to escape the scrutiny of other theoretical accounts—as with Foucault on power-knowledge techniques, Durkheim on the role of the onlooker, Rusche and Kirchheimer on the role of the market, or else Elias on changing sensibilities. Here again, we are reminded that “punishment” is not a unitary thing but rather a complex and differentiated process, involving discursive frameworks of authority and condemnation, ritual procedures of imposing sentences, a repertoire of penal sanctions, institutions, and agencies for their administration, and a rhetoric of symbols and images with which the process is represented to its various audiences. One is therefore led to investigate how these different elements and aspects of punishment fit together to form a complex internally differentiated whole. At the same time, this realization allows us to better understand the diversity of interpretations that has been brought to bear on “pun-

ishment" and to acknowledge the possibility that these interpretations might be in some ways complementary and mutually confirming rather than mutually exclusive.

Thus, to give another example, although they start with quite different premises, both Durkheim and the Marxist writer Douglas Hay agree that punishment works through the forms of ritual display and symbolic representation and addresses itself to an audience of onlookers as much as to the offender in the dock. Both insist that such displays can be crucial to the generation and regeneration of a society's culture and the individual's commitment, whether by shoring up the claims of authority or else by dealing with social dangers. Despite radical disagreement over the interpretation of penal symbols and the nature of the societies that they depict, both accounts confirm the operation of punishments within this wider sphere of cultural and psychic life. Similarly, the Foucauldian and Eliasian accounts begin from very different positions in their analysis of penal history—one emphasizing the importance of sensibilities, the other insisting that these are merely a gloss concealing relations of power and knowledge—but their accounts of the removal of punishment from the public sphere into the privacy of institutional enclosures, administered by specialist functionaries in technical rather than emotive terms, can be seen as dealing with two dimensions of the same historical process and, thus, as mutually illuminating and reinforcing.

The theoretical conclusion that these considerations suggest is that a pluralistic, multidimensional approach is needed if we are to understand the historical development and present-day operation of the penal complex. If there is to be a sociology of punishment—and by this I mean a set of general parameters from which specific studies can take their theoretical bearings—then it should be the kind of sociology advocated by Marcel Mauss (1967, p. 78) when he talked about the need for a synthesis and consolidation of perspectives. It should be a sociology that strives to present a rounded, completed image: a recomposition of the fragmentary views developed by more narrowly focused studies.

One can rephrase this argument as a warning against reductionism in the analysis of punishment—by which I mean the tendency to explain penalty in terms of any single causal principle or functional purpose, be it "morals" or "economics," "state control" or "crime control." Instead of searching for a single explanatory principle, we need to grasp the facts of multiple causality, multiple effects, and multiple meaning.

We need to realize that in the penal realm—as in all social experience—specific events or developments usually have a plurality of causes that interact to shape their final form, a plurality of effects that may be seen as functional or nonfunctional depending on one's criteria, and a plurality of meanings which will vary with the actors and audiences involved—though some meanings (or, for that matter, causes and effects) may be more powerful than others. The aim of analysis should always be to capture that variety of causes, effects and meanings and trace their interaction, rather than to reduce them all to a single currency.

The utility of the individual interpretive frameworks that I have discussed lies not in their creation of broad theoretical perspectives with which to view punishment—although these in themselves can sometimes change the ways in which we think about penal issues—but rather in their capacity to guide and inform more specific studies of penal practice and penal policy. For practical purposes, the kind of knowledge that is most useful is detailed, specific, local knowledge, focused on a particular problem, or institution, or policy question and informed about the specific cultural, political, and penological circumstances that apply. The best studies of this kind are nuanced, subtle, and complex; are able to see the phenomenon in all its complexity and yet at the same time clearly situate it within its social and historical context; and aim to unravel the details of its many determinants, dynamics, and consequences. Typically, works of this kind—whether historical or contemporary—tend to utilize the kind of interpretive pluralism I have been describing rather than rely entirely on one or other interpretive framework. Thus, for example, recent work by David Downes (1988) and by Zimring and Hawkins (1990) that attempts to explain differential rates of imprisonment have stressed the need to draw on a range of theoretical traditions and to construct a complex account of interacting variables and contributory factors. Similarly, the best historical studies in this field—such as those by Michael Ignatieff (1978) and by John Beattie (1986)—mobilize forms of analysis and lines of inquiry suggested by not one but several sociological perspectives and manage to bring them together in ways that do justice to the complexity of real events. As John Beattie has put it, summing up his magisterial study of penal change in early modern England:

Changes in punishment are almost certain not to arise from a simple, one-dimensional effect. The forms of punishment

employed by a society at any one moment are shaped by a variety of interests and intentions. They arise in response to what must often be antagonistic considerations, including the framework of law, what is technically possible, what seems desirable or necessary in the light of the apparent problem of crime, what society is willing to accept and pay for. Why one method of punishment loses favour over time and gives way to another is a complex question because penal methods evolve within a larger social and cultural context that in imperceptible ways alters the limits of what is acceptable and what is not. [1986, p. 470]

Sociological theories, such as those discussed in this essay, are useful in the understanding of punishment because they alert us to the kinds of constraints and structures within which policy is developed and to the kinds of social consequences that punishment can have. They point to the interconnections that link punishment to other spheres of social life and the functional role that it occupies in the network of social institutions. They can reveal institutional dynamics, characteristics, and effects that might otherwise go unacknowledged and of which policymakers themselves may be unaware. But only empirical research can determine how these conditioning circumstances come together at a particular moment to shape a course of action or define a particular event. Theory should be a set of interpretative tools for guiding and informing empirical inquiry—not a substitute for it.

III. Punishment as a Social Institution

What I have tried to do in this essay is to suggest how the theoretical tools of sociology can be used to help us think about punishment in its various aspects. Each of the different traditions of social theory provides a specific set of tools in the form of a specially adapted conceptual vocabulary, designed to explicate a particular aspect or dimension of social life. And, as I have tried to indicate, each of these interpretative vocabularies has its uses in understanding punishment and becomes more or less useful depending on the questions asked and the characteristics being explained. Thus, in some circumstances, and for some people (e.g., those groups for whom the law is merely superior force, coercively imposed), punishment is an exercise of raw power, best understood in vocabularies such as those supplied by Foucault or Marx. Yet at other points, and for other people—perhaps in the same society and the same penal system—punishment may be an expression of

moral community and collective sensibility, in which penal sanctions are an authorized response to shared values individually violated. In these circumstances, the vocabularies of power and ideology need to be tempered by the rather different concerns articulated by Elias and Durkheim. The object of theoretical work in this area should not be to create a grand synthesis of these traditions, nor to construct some kind of overarching theoretical model. Rather, it should be to investigate how we might most usefully utilize the range of perspectives and vocabularies through which punishment can be variously understood and to develop a conception of punishment that can ground this multiplicity of interpretations and show how they interrelate.

These social interpretations might thus be used to enrich our understanding of punishment, leading us to conceive of it not just as a crime-control mechanism but instead as a distinctive and rather complex social institution that, in its routine practices, somehow contrives to condense a whole web of social relations and cultural meanings. This more developed, sociological conception of punishment can, I think, have important implications for the way we think about punishment and penal policy. By making the social dimensions of punishment explicit, and by showing the kinds of internal conflicts and social consequences that penal institutions entail, the sociology of punishment provides a more adequate empirical basis for policy evaluation, philosophical reflection, or political judgment in this area. As I suggested earlier, the evaluation of punishment is too readily cast in the narrow terms of instrumental utility. We are too prone to think of punishment as a simple means to a simple end—usually that of crime control—and to treat all other aspects of the institution as minor considerations. So, for instance, imprisonment, or probation, or rehabilitative policies, or even capital punishment, are all too frequently approached as if the major question to be answered concerned their technical efficacy as instruments of crime control. Their evaluation thus turns primarily on measures of recidivism, or deterrence, and on correlative crime rates rather than on judgments of their total worth as social practices. But, as each of these sociological perspectives makes clear, we can hardly begin to understand penal institutions if we insist on treating them as instrumentalities, geared to a single penological purpose—so the tendency to evaluate them in these terms seems misguided and unproductive.

Thus, to conclude with an illustration, we might consider the ways

in which the institution of imprisonment tends to be evaluated in contemporary discussions. As every critical report reminds us, this institution signally fails to achieve the ends of crime control that, it is assumed, form its basic *raison d'être* (for a summary, see Mathiesen [1990]). Most prisoners are not reformed, new generations of criminals go undeterred, national crime rates are not forced into decline, so that by all these criteria the prison is deemed an inefficient instrument (though, it should be noted, not much more inefficient than many of its alternatives). This margin of failure—it is not suggested that prison has *no* success—is such that the prison and its present high frequency of use present a serious puzzle for social commentators and penal reformers alike. Theorists such as Foucault assume that the prison's failures must, in some covert sense, be "useful for power." Historians such as Lawrence Stone (1987, p. 10) assume it is a "vestigial institution" that has somehow outlived its usefulness. Liberal criminologists throw up their hands in despair at the "irrationality" of policy and urge governments to pay attention to penological research findings and the failures that these imply. But, in an important sense, this argument is misconceived, and the "puzzle" of imprisonment arises only because of the too-narrow starting points from which these analyses begin.

Neither the prison, nor any other penal institution, rests solely on its ability to achieve such instrumental ends. Despite recurring hopes and the exaggerated claims of some reformers, the simple fact is that no method of punishment has ever achieved high rates of reform or of crime control—and no method ever will. All punishments regularly "fail" in this respect because, as Emile Durkheim (1973, chaps. 10 and 11) and others have pointed out, it is only the mainstream processes of socialization (internalized morality and a sense of duty, the informal inducements and rewards of conformity, the practical and cultural networks of mutual expectation and interdependence, etc.) that are able to promote proper conduct on a consistent and regular basis. Punishment, so far as "control" is concerned, is merely a coercive backup to these more reliable social mechanisms, a backup that is often unable to do anything more than manage those who slip through these networks of normal control and integration. Punishment is fated never to "succeed" to any great degree because the conditions that do most to induce conformity—or to promote crime and deviance—lie outside the jurisdiction of penal institutions.

It will always be open to critics of the prison to point to its failures of

crime control and use these as an argument for reform. But it seems altogether inappropriate for a sociologist or a historian to take these same arguments and draw from them the conclusion that the prison is a penological failure that owes its existence to some covert political strategy or else to the dead hand of history. Like all complex institutions, the prison simultaneously pursues a number of objectives and is kept in place by a range of forces. Crime control—in the sense of reforming offenders and reducing crime rates—is certainly one of these objectives but by no means the only one. As we have seen, the prison also serves as an effective means of incapacitation, securely excluding offenders from society, sometimes for very long periods, and containing those individuals who prove too troublesome for other institutions or communities. Unlike lesser penalties, it does not require much in the way of cooperation from the offender, so that it can deal with recalcitrant individuals, by force if necessary. In the absence of the generalized use of capital punishment, forced exile, or transportation, the prison thus forms the ultimate penalty for most modern penal systems, providing a compelling and forceful sanction of last resort. Most important, the prison provides a way of punishing people—of subjecting them to hard treatment, inflicting pain, doing them harm—that is largely compatible with modern sensibilities and conventional restraints on open, physical violence. In an era when corporal punishment has become uncivilized, and open violence unconscionable, the prison supplies a subtle, situational form of violence against the person that enables retribution to be inflicted in a way that is sufficiently discreet and “deniable” to be culturally acceptable to most of the population. Despite occasional suggestions that imprisonment is becoming too lenient—a view that is rarely shared by informed sources—it is widely accepted that the prison succeeds very well in imposing real hardship, serious deprivation, and personal suffering on most offenders who are sent there.

In terms of penological objectives then, the prison supports a range of them and is “functional” or “successful” with respect to some, less so with respect to others. Nor is there any need to argue that the prison’s “failures” are somehow “useful”—as Foucault and others do. The fact that prison frequently reinforces criminality and helps produce recidivists is not a “useful” consequence desired by the authorities or part of some covert “strategy.” It is a tolerated cost of pursuing other objectives such as retribution, incapacitation, and exclusion and is accepted in the same reluctant way that governments absorb the high financial

costs entailed in the frequent use of imprisonment. So long as such costs appear to the authorities—and to the public—to be outweighed by the desirability of imprisoning offenders (and this desire has become an established element within public beliefs, institutional frameworks, and social traditions), then the prison remains a “functional” institution—and neither a puzzle nor an anachronism.

Consequently—and this is my point—if one wishes to understand and evaluate the prison as an institution—and the same arguments apply to the fine, probation, the death penalty, and the rest—it does little good to do so on a single plane or in relation to a single value. Instead, one must think of it as a complex institution and evaluate it accordingly, recognizing the range of its penal and social functions and the nature of its social support. Nor does this mean that one must abandon a critical approach because the prison is less irrational than it at first seems. One can challenge the institution by showing that the control of troublesome individuals can be undertaken in more humane and positive settings, that exclusion is anyway an unacceptable goal in a caring society, or that many prisoners are no real danger to the public and could, under certain conditions, be tolerated in the community. One could endeavor to expose the real psychological violence that exists behind the scenes of even the best prisons and argue that such violence is as retrograde and uncivilized in its way as the corporal and capital punishments that the prison replaced. Equally, one could challenge the cost of prison as a means of expressing punitive sentiments and exacting retribution against offenders and show ways in which funds and resources could be put to better use—for instance in compensating victims, in crime-prevention schemes, or in basic educational and social provision. In effect, the more one's understanding of an institution begins to capture its nuances and complexities—and its positive effects together with its negative ones—the more thoroughgoing, informed, and incisive will be the critique that one can mount.

Thinking of punishment as a social institution should change not only our mode of understanding penalty but also our normative thinking about it. It should lead us to judge punishment according to a wider range of criteria and to bring to bear the kinds of demands and expectations that we customarily apply to social institutions. To say this is not to suggest that there is some universal normative approach that we always adopt toward social institutions—different institutions have distinctive functions and characteristics and give rise to diverse forms of evaluation. But, nevertheless, when we think of “the family” or “the

law," "the government" or "the economy," and subject them to normative judgment, we do so in ways that are considerably more complex than our thinking about punishment tends to be. In none of these cases do we think it proper to judge these institutions according to purely instrumental criteria, nor do we suppose that they should serve a single end or affect only a particular sector of the population. Instead, they are all commonly viewed as if they were "total social facts" (Mauss 1967), the character of which is in some way constitutive of society's identity and character.

Perhaps the best example of this is the kind of thinking that emerges whenever a democratic society deliberately undertakes to reform its major social institutions by means of a written constitution. People do not ask of such a constitution merely that it should "work" with some degree of efficiency—although that is itself crucial. They also demand that its moral, political, economic, and cultural significance be considered and that these wider ramifications be made to conform, as far as is possible, to deeply held conceptions of what kind of people they are, how they wish to be governed, and what kind of society they wish to create. The implication of the sociological perspectives considered here is that punishment should be considered in the same kind of way and in the same kind of depth as other social institutions. We need an enriched form of penological thinking that considers penalty as an institution through which society defines and expresses itself at the same time and through the same means that it exercises power over deviants (for an elaboration and development of this project, see Garland [1990a]).

To think of punishment in this way is to question the narrow, instrumental self-description that modern penal institutions generally adopt (and which technical penology tends to repeat) and instead to suggest more socially conscious and morally charged perceptions of penal affairs. By demonstrating the deeply social nature of legal punishment, and revealing the values and commitments that are embodied within its practices, the sociology of punishment tends to undermine any attempt to compartmentalize "the penal question" or to deal with it in a purely administrative way. By showing how penal issues pull together many diverse currents of political and cultural life, such an approach helps to reconstitute a more comprehensive social awareness and to counter the tendency of modern institutions to fragment consciousness and narrow perception. It gives a sense of the sociality of punishment—of the extended significance and depth of stored-up meanings that exist beneath the surface of this complex institution.

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