

Discipline and punish : the birth of the prison /
Michel Foucault; New York: Vintage Books,
1977. (231-256 p.)

1. Complete and austere institutions

It would not be true to say that the prison was born with the new codes. The prison form antedates its systematic use in the penal system. It had already been constituted outside the legal apparatus when, throughout the social body, procedures were being elaborated for distributing individuals, fixing them in space, classifying them, extracting from them the maximum in time and forces, training their bodies, coding their continuous behaviour, maintaining them in perfect visibility, forming around them an apparatus of observation, registration and recording, constituting on them a body of knowledge that is accumulated and centralized. The general form of an apparatus intended to render individuals docile and useful, by means of precise work upon their bodies, indicated the prison institution, before the law ever defined it as the *penalty par excellence*. At the turn of the eighteenth and nineteenth centuries, there was, it is true, a penalty of detention; and it was a new thing. But it was really the opening up of penalty to mechanisms of coercion already elaborated elsewhere. The 'models' of penal detention – Ghent, Gloucester, Walnut Street – marked the first visible points of this transition, rather than innovations or points of departure. The prison, an essential element in the punitive panoply, certainly marks an important moment in the history of penal justice: its access to 'humanity'. But it is also an important moment in the history of those disciplinary mechanisms that the new class power was developing: that in which they colonized the legal institution. At the turn of the century, a new legislation defined the power to punish as a general function of society that was exercised in the same manner over all its members, and in which each individual was equally represented: but in making detention the *penalty par excellence*, it introduced procedures of domination characteristic of a particular type of power. A

justice that is supposed to be 'equal', a legal machinery that is supposed to be 'autonomous', but which contains all the asymmetries of disciplinary subjection, this conjunction marked the birth of the prison, 'the penalty of civilized societies' (Rossi, 169).

One can understand the self-evident character that prison punishment very soon assumed. In the first years of the nineteenth century, people were still aware of its novelty; and yet it appeared so bound up and at such a deep level with the very functioning of society that it banished into oblivion all the other punishments that the eighteenth-century reformers had imagined. It seemed to have no alternative, as if carried along by the very movement of history: 'It is not chance, it is not the whim of the legislator that have made imprisonment the base and almost the entire edifice of our present penal scale: it is the progress of ideas and the improvement in morals' (Van Meenan, 529-30). And, although, in a little over a century, this self-evident character has become transformed, it has not disappeared. We are aware of all the inconveniences of prison, and that it is dangerous when it is not useless. And yet one cannot 'see' how to replace it. It is the detestable solution, which one seems unable to do without.

This 'self-evident' character of the prison, which we find so difficult to abandon, is based first of all on the simple form of 'deprivation of liberty'. How could prison not be the penalty *par excellence* in a society in which liberty is a good that belongs to all in the same way and to which each individual is attached, as Dupont put it, by a 'universal and constant' feeling? Its loss has therefore the same value for all; unlike the fine, it is an 'egalitarian' punishment. The prison is the clearest, simplest, most equitable of penalties. Moreover, it makes it possible to quantify the penalty exactly according to the variable of time. There is a wages-form of imprisonment that constitutes, in industrial societies, its economic 'self-evidence' – and enables it to appear as a reparation. By levying on the time of the prisoner, the prison seems to express in concrete terms the idea that the offence has injured, beyond the victim, society as a whole. There is an economico-moral self-evidence of a penalty that metes out punishments in days, months and years and draws up quantitative equivalences between offences and durations. Hence the expression, so frequently heard, so consistent with the functioning of

punishments, though contrary to the strict theory of penal law, that one is in prison in order to 'pay one's debt'. The prison is 'natural', just as the use of time to measure exchanges is 'natural' in our society.¹

But the self-evidence of the prison is also based on its role, supposed or demanded, as an apparatus for transforming individuals. How could the prison not be immediately accepted when, by locking up, retraining and rendering docile, it merely reproduces, with a little more emphasis, all the mechanisms that are to be found in the social body? The prison is like a rather disciplined barracks, a strict school, a dark workshop, but not qualitatively different. This double foundation – juridico-economic on the one hand, technico-disciplinary on the other – made the prison seem the most immediate and civilized form of all penalties. And it is this double functioning that immediately gave it its solidity. One thing is clear: the prison was not at first a deprivation of liberty to which a technical function of correction was later added; it was from the outset a form of 'legal detention' entrusted with an additional corrective task, or an enterprise for reforming individuals that the deprivation of liberty allowed to function in the legal system. In short, penal imprisonment, from the beginning of the nineteenth century, covered both the deprivation of liberty and the technical transformation of individuals.

Let us remember a number of facts. In the codes of 1808 and 1810, and the measures that immediately preceded or followed them, imprisonment was never confused with mere deprivation of liberty. It was, or in any case had to be, a differentiated and finalized mechanism. Differentiated because it had to have the same form, whether the prisoner had been sentenced or was merely accused, whether he was a minor offender or a criminal: the various types of prison – *maison d'arrêt*, *maison de correction*, *maison centrale* – ought in principle to correspond more or less to these differences and provide a punishment that would be not only graduated in intensity, but diversified in its ends. For the prison has a purpose, which is laid down at the outset: 'The law inflicting penalties, some of which are more serious than others, cannot allow the individual condemned to light penalties to be imprisoned in the same place as the criminal condemned to more serious penalties . . . although the penalty fixed

by the law has as its principal aim the reparation of the crime, it also desires the amendment of the guilty man' (Real, 244). And this transformation must be one of the internal effects of imprisonment. Prison-punishment, prison-apparatus: 'The order that must reign in the *maison de force* may contribute powerfully to the regeneration of the convicts; the vices of upbringing, the contagion of bad example, idleness . . . have given birth to crime. Well, let us try to close up all these sources of corruption; let the rules of a healthy morality be practised in the *maisons de force*; that, compelled to work, convicts may come in the end to like it; when they have reaped the reward, they will acquire the habit, the taste, the need for occupation; let them give each other the example of a laborious life; it will soon become a pure life; soon they will begin to know regret for the past, the first harbinger of a love of duty.'² The techniques of correction immediately form part of the institutional framework of penal detention.

One should also recall that the movement for reforming the prisons, for controlling their functioning is not a recent phenomenon. It does not even seem to have originated in a recognition of failure. Prison 'reform' is virtually contemporary with the prison itself: it constitutes, as it were, its programme. From the outset, the prison was caught up in a series of accompanying mechanisms, whose purpose was apparently to correct it, but which seem to form part of its very functioning, so closely have they been bound up with its existence throughout its long history. There was, at once, a prolix technology of the prison. There were inquiries: that of Chaptal in 1801 (whose task it was to discover what could be used to introduce the modern prison system into France), that of Decazes in 1819, Villermé's work published in 1820, the report on the *maisons centrales* drawn up by Martignac in 1829, the inquiries carried out in the United States by Beaumont and Tocqueville in 1831, by Demetz and Blouet in 1835, the questionnaires addressed by Montalivet to the directors of the *maisons centrales* and to the general councils of the *départements* during the debate on solitary confinement. There were societies for supervising the functioning of the prisons and for suggesting improvements: in 1818, the very official *Société pour l'amélioration des prisons*, a little later the *Société des prisons* and various philanthropic groups. Innumerable measures – orders,

instructions or laws: from the reform that the first Restoration had envisaged in September 1814, and which was never implemented, to the law of 1844, drawn up by Tocqueville, which ended for a time the long debate on the means of making imprisonment effective. There were programmes drawn up to improve the functioning of the machine-prison:³ programmes for the treatment of the prisoners, models for material improvement, some of these, like those of Danjou and Harou-Romain, remaining no more than projects, others becoming embodied in instructions (like the circular of 9 August 1841 on the building of *maisons d'arrêt*), others becoming actual buildings, such as the Petite Roquette in which cellular imprisonment was organized for the first time in France.

To these should be added the publications that sprang more or less directly from the prison and were drawn up either by philanthropists like Appert, or a little later by 'specialists' (such as the *Annales de la Charité*)⁴ or, again, by former prisoners; *Pauvre Jacques* at the end of the Restoration, or the *Gazette de Sainte-Pélagie* at the beginning of the July monarchy.⁵

The prison should not be seen as an inert institution, shaken at intervals by reform movements. The 'theory of the prison' was its constant set of operational instructions rather than its incidental criticism – one of its conditions of functioning. The prison has always formed part of an active field in which projects, improvements, experiments, theoretical statements, personal evidence and investigations have proliferated. The prison institution has always been a focus of concern and debate. Is the prison still, then, a dark, abandoned region? Is the fact that one has ceased to say so for almost 200 years sufficient proof that it is not? In becoming a legal punishment, it weighted the old juridico-political question of the right to punish with all the problems, all the agitations that have surrounded the corrective technologies of the individual.

Baltard called them 'complete and austere institutions' (Baltard, 1829). In several respects, the prison must be an exhaustive disciplinary apparatus: it must assume responsibility for all aspects of the individual, his physical training, his aptitude to work, his everyday conduct, his moral attitude, his state of mind; the prison, much more than the school, the workshop or the army, which always involved a

certain specialization, is 'omni-disciplinary'. Moreover, the prison has neither exterior nor gap; it cannot be interrupted, except when its task is totally completed; its action on the individual must be uninterrupted: an unceasing discipline. Lastly, it gives almost total power over the prisoners; it has its internal mechanisms of repression and punishment: a despotic discipline. It carries to their greatest intensity all the procedures to be found in the other disciplinary mechanisms. It must be the most powerful machinery for imposing a new form on the perverted individual; its mode of action is the constraint of a total education: 'In prison the government may dispose of the liberty of the person and of the time of the prisoner; from then on, one can imagine the power of the education which, not only in a day, but in the succession of days and even years, may regulate for man the time of waking and sleeping, of activity and rest, the number and duration of meals, the quality and ration of food, the nature and product of labour, the time of prayer, the use of speech and even, so to speak, that of thought, that education which, in the short, simple journeys from refectory to workshop, from workshop to the cell, regulates the movements of the body, and even in moments of rest, determines the use of time, the time-table, this education, which, in short, takes possession of man as a whole, of all the physical and moral faculties that are in him and of the time in which he is himself' (Lucas, II, 123-4). This complete 'reformatory' lays down a recoding of existence very different from the mere juridical deprivation of liberty and very different, too, from the simple mechanism of exempla imagined by the reformers at the time of the *idéologues*.

1. The first principle was isolation. The isolation of the convict from the external world, from everything that motivated the offence, from the complicities that facilitated it. The isolation of the prisoners from one another. Not only must the penalty be individual, but it must also be individualizing – in two ways. First, the prison must be designed in such a way as to efface of itself the harmful consequences to which it gives rise in gathering together very different convicts in the same place: to stifle plots and revolts, to prevent the formation of future complicities that may give rise to blackmail (when the convicts are once again at liberty), to form an obstacle to the immorality of so many 'mysterious associations'. In short, the prison

should form from the malefactors that it gathers together a homogeneous and interdependent population: 'There exists at this moment among us an organized society of criminals . . . They form a small nation within the greater. Almost all these men met or meet again in prison. We must now disperse the members of this society' (Tocqueville, *Rapport à la Chambre des Députés*, quoted in Beaumont and Tocqueville, 392-3). Moreover, through the reflection that it gives rise to and the remorse that cannot fail to follow, solitude must be a positive instrument of reform: 'Thrown into solitude, the convict reflects. Placed alone in the presence of his crime, he learns to hate it, and, if his soul is not yet blunted by evil, it is in isolation that remorse will come to assail him' (Beaumont and Tocqueville, 109). Through the fact, too, that solitude assures a sort of self-regulation of the penalty and makes possible a spontaneous individualization of the punishment: the more the convict is capable of reflecting, the more capable he was of committing his crime; but, also, the more lively his remorse, the more painful his solitude; on the other hand, when he has profoundly repented and made amends without the least dissimulation, solitude will no longer weigh upon him: 'Thus, according to this admirable discipline, each intelligence and each morality bears within itself the principle and measure of a punishment whose error and human fallibility cannot alter the certainty and invariable equity . . . Is it not in truth like the seal of a divine and providential justice?' (Aylies, 132-3). Lastly, and perhaps above all, the isolation of the convicts guarantees that it is possible to exercise over them, with maximum intensity, a power that will not be overthrown by any other influence; solitude is the primary condition of total submission: 'Just imagine,' said Charles Lucas, referring to the role of the governor, the instructor, the chaplain and other 'charitable persons' as regards the isolated convict, 'just imagine the power of human speech intervening in the midst of the terrible discipline of silence to speak to the heart, to the soul, to the human person' (Lucas, I, 167). Isolation provides an intimate exchange between the convict and the power that is exercised over him.

It is at this point that the debate on the two American systems of imprisonment, that of Auburn and that of Philadelphia, was situated. In fact, this debate, which was so wide-ranging and long drawn out,⁶

concerned only the way in which isolation should be used, it being accepted by all.

The Auburn model prescribed the individual cell during the night, work and meals in common, but under the rule of absolute silence, the convicts being allowed to speak only to the warders, with their permission and in a low voice. It was a clear reference to the monastic model; a reference, too, to the discipline of the workshop. The prison must be the microcosm of a perfect society in which individuals are isolated in their moral existence, but in which they come together in a strict hierarchical framework, with no lateral relation, communication being possible only in a vertical direction. The advantage of the Auburnian system, according to its advocates, was that it formed a duplication of society itself. Constraint was assured by material means, but above all by a rule that one had to learn to respect and which was guaranteed by surveillance and punishment. Rather than keep the convicts 'under lock and key like wild beasts in their cages', they must be brought together, 'made to join together in useful exercises, forced together to adopt good habits, preventing moral contagion by active surveillance, maintaining reflection by the rule of silence'; this rule accustoms the convict 'to regard the law as a sacred precept whose violation brings just and legitimate harm' (Mittermaier, in *Revue française et étrangère de législation*, 1836). Thus this operation of isolation, assembly without communication and law guaranteed by uninterrupted supervision, must rehabilitate the criminal as a social individual: it trains him to a 'useful and resigned activity' (Gasparin); it restores for him 'habits of sociability' (Beaumont and Tocqueville, 112).

In absolute isolation – as at Philadelphia – the rehabilitation of the criminal is expected not of the application of a common law, but of the relation of the individual to his own conscience and to what may enlighten him from within. 'Alone in his cell, the convict is handed over to himself; in the silence of his passions and of the world that surrounds him, he descends into his conscience, he questions it and feels awakening within him the moral feeling that never entirely perishes in the heart of man' (*Journal des économistes*, II, 1842). It is not, therefore, an external respect for the law or fear of punishment alone that will act upon the convict but the workings of the conscience itself. A profound submission, rather than a super-

ficial training; a change of 'morality', rather than of attitude. In the Pennsylvanian prison, the only operations of correction were the conscience and the silent architecture that confronted it. At Cherry Hill, 'the walls are the punishment of the crime; the cell confronts the convict with himself; he is forced to listen to his conscience'. Hence work there is more in the nature of a consolation than an obligation; supervisors do not have to exert force – this is assured by the materiality of things – and consequently, their authority may be accepted: 'At each visit, a few benevolent words flow from this honest mouth and bring to the heart of the inmate gratitude, hope and consolation; he loves his warder; and he loves him because he is gentle and sympathetic. Walls are terrible, but man is good' (Blouet). In this closed cell, this temporary sepulchre, the myths of resurrection arise easily enough. After night and silence, the regenerated life. Auburn was society itself reduced to its bare essentials. Cherry Hill was life annihilated and begun again. Catholicism soon absorbed this Quaker technique into its discourses. 'I see your cell as no more than a frightful sepulchre where, instead of worms, remorse and despair come to gnaw at you and to turn your existence into a hell in anticipation. But . . . what is for an irreligious prisoner merely a tomb, a repulsive ossuary, becomes, for the sincerely Christian convict, the very cradle of blessed immortality.'⁸

A whole series of different conflicts stemmed from the opposition between these two models: religious (must conversion be the principal element of correction?), medical (does total isolation drive convicts insane?), economic (which method costs less?), architectural and administrative (which form guarantees the best surveillance?). This, no doubt, was why the argument lasted so long. But, at the heart of the debate, and making it possible, was this primary objective of carceral action: coercive individualization, by the termination of any relation that is not supervised by authority or arranged according to hierarchy.

2. 'Work alternating with meals accompanies the convict to evening prayer; then a new sleep gives him an agreeable rest that is not disturbed by the phantoms of an unregulated imagination. Thus the six weekdays pass by. They are followed by a day devoted exclusively to prayer, instruction and salutary meditations. Thus the weeks, the months, the years follow one another; thus the

prisoner who, on entering the establishment, was an inconstant man, or one who was single-minded only in his irregularity, seeking to destroy his existence by the variety of his vices, gradually becomes by dint of a habit that is at first purely external, but is soon transformed into a second nature, so familiar with work and the pleasures that derive from it, that, provided wise instruction has opened up his soul to repentance, he may be exposed with more confidence to temptations, when he finally recovers his liberty' (Julius, 417-18). Work is defined, with isolation, as an agent of carceral transformation. This is to be found as early as the code of 1808: 'Although the penalty inflicted by the law has as its aim the reparation of a crime, it is also intended to reform the convict, and this double aim will be fulfilled if the malefactor is snatched from that fatal idleness which, having brought him to prison, meets him again within its walls and, seizing hold of him, brings him to the ultimate degree of depravity.'⁹ Work is neither an addition nor a corrective to the régime of detention: whether it is a question of forced labour, reclusion or imprisonment, it is conceived, by the legislator himself, as necessarily accompanying it. But the necessity involved is precisely not the necessity of which the eighteenth-century reformers spoke, when they wished to make imprisonment either an example for the public or a useful reparation for society. In the carceral régime, the link between work and punishment is of another type.

Several polemics that took place under the Restoration and the July Monarchy throw light on the function attributed to penal labour. First, there was the debate on the subject of wages. The labour of prisoners was remunerated in France. This posed a problem: if work in prison is remunerated, that work cannot really form part of the penalty; and the prisoner may therefore refuse to perform it. Moreover, wages reward the skill of the worker and not the improvement of the convict: 'The worst subjects are almost everywhere the most skilful workers; they are the most highly remunerated, consequently the most intemperate and least ready to repent' (Marquet-Wasselot, quoted in Lucas, 324). The debate, which had never quite died down, was resumed with great liveliness in the early 1840s: it was a period of economic crisis, a period of workers' agitation and a period, too, in which the opposition between the worker and the delinquent was beginning to crystallize (cf. below,

285). There were strikes against the prison workshops: when a Chaumont glove-maker succeeded in organizing a workshop at Clairvaux, the workers protested, declared that their labour was dishonoured, occupied the manufactory and forced the employer to abandon his project (cf. Aguet, 30-31). There was also a widespread press campaign in the workers' newspapers: on the theme that the government encouraged penal labour in order to reduce 'free' wages; on the theme that the inconveniences of these prison workshops were even more evident for women, who were thus deprived of their labour, driven to prostitution and therefore to prison, where these same women, who could no longer work when they were free, then competed with those who were still at work (*L'Atelier*, 3rd year, no. 4, December 1842); on the theme that prisoners were given the safest jobs - 'in warm and sheltered conditions thieves execute the work of hat-making and cabinet-making', while the unemployed hatter is forced to go 'to the human slaughter-house to make white-lead at two francs a day' (*L'Atelier*, 6th year, no. 2, November 1845); on the theme that philanthropy is more concerned about the working conditions of prisoners than those of free workers: 'We are sure that if prisoners worked with mercury, for example, science would be a great deal more ready than it is to find ways of protecting the workers from the dangers of its fumes: "Those poor convicts:" someone would exclaim, who scarcely has a word for the gilders. But what can you expect? One has to have killed or robbed to arouse compassion or interest.' On the theme above all that, if the prison was tending to become a workshop, it would not be long before beggars and the unemployed were sent there, thus reconstituting the old *hôpitaux généraux* of France or the workhouses of England. In addition, there were petitions and letters, especially after the law of 1844 - one petition, rejected by the Chambre de Paris, 'found inhuman that one should propose to apply murderers and thieves to work that is today the lot of a few thousand workers'; 'the Chambre preferred Barrabas to us' (*L'Atelier*, 4th year, no. 9, June 1844 and 5th year, no. 7, April 1845; cf. also, of the same period, *La Démocratie pacifique*); typographical workers sent a letter to the minister when they learnt that a printing-works was to be set up in the prison at Melun: 'You have decided between reprobates justly punished by the law and citizens who sacrifice

their days, in abstinence and probity, to the lives of their families and to the wealth of their nation' (*L'Atelier*, 5th year, no. 6, March 1845).

The answers given by the government and the administration to this whole campaign changed very little. Penal labour cannot be criticized for any unemployment it may give rise to: with its limited extent, and its low output, it cannot have a general effect on the economy. It is intrinsically useful, not as an activity of production, but by virtue of the effect it has on the human mechanism. It is a principle of order and regularity; through the demands that it imposes, it conveys, imperceptibly, the forms of a rigorous power; it bends bodies to regular movements, it excludes agitation and distraction, it imposes a hierarchy and a surveillance that are all the more accepted, and which will be inscribed all the more deeply in the behaviour of the convicts, in that they form part of its logic: with work 'the rule is introduced into a prison, it reigns there without effort, without the use of any repressive and violent means. By occupying the convict, one gives him habits of order and obedience; one makes the idler that he was diligent and active . . . with time, he finds in the regular movement of the prison, in the manual labours to which he is subjected . . . a certain remedy against the wanderings of his imagination' (Bérenger). Penal labour must be seen as the very machinery that transforms the violent, agitated, unreflective convict into a part that plays its role with perfect regularity. The prison is not a workshop; it is, it must be of itself, a machine whose convict-workers are both the cogs and the products; it 'occupies them continually, with the sole aim of filling their moments. When the body is agitated, when the mind applies itself to a particular object, importunate ideas depart, calm is born once again in the soul' (Danjou, 180). If, in the final analysis, the work of the prison has an economic effect, it is by producing individuals mechanized according to the general norms of an industrial society: 'Work is the providence of the modern peoples; it replaces morality, fills the gap left by beliefs and is regarded as the principle of all good. Work must be the religion of the prisons. For a machine-society, purely mechanical means of reform are required' (Faucher, 64; in England the 'treadmill' and the pump provided a disciplinary mechanization of the inmates, with no end product). The making of machine-men, but also of proletarians; in effect, when one has

only a 'pair of arms for any good work', one can live only 'from the product of one's labour, through the practice of a profession or from the product of the labour of others, by thieving'; but, although the prison did not force offenders to work, it seems to have reintroduced into its very institution and, obliquely, by means of taxation, this levying by some on the labour of others: 'The question of idleness is the same as in society; it is from the labour of others that the convicts live, if they do not exist from their own labour' (Lucas, II, 313-14). The labour by which the convict contributes to his own needs turns the thief into a docile worker. This is the utility of remuneration for penal labour; it imposes on the convict the 'moral' form of wages as the condition of his existence. Wages inculcate the 'love and habit' of work (Lucas, II, 243); they give those malefactors who do not know the difference between mine and thine a sense of property - of 'what one has earned by the sweat of one's brow' (Danjou, 210-11; cf. also *L'Atelier*, 6th year, no. 2, November 1845); they also teach those who have lived in dissipation the virtues of thrift and foresight (Lucas; a third of the prisoner's daily wages was set aside for the day when he left the prison); lastly, by proposing a quantity of work to be carried out, they make it possible to express quantitatively the convict's zeal and the progress of his improvement (Ducpétiaux, 30-31). The wages of penal labour do not reward production; they function as a motive and measure of individual transformation: it is a legal fiction, since it does not represent the 'free' granting of labour power, but an artifice that is presumed to be effective in the techniques of correction.

What, then, is the use of penal labour? Not profit; nor even the formation of a useful skill; but the constitution of a power relation, an empty economic form, a schema of individual submission and of adjustment to a production apparatus.

The perfect image of prison labour was the women's workshop at Clairvaux; the silent precision of the human machinery is reminiscent of the regulated rigour of the convent: 'On a throne, above which is a crucifix, a sister is sitting; before her, arranged in two rows, the prisoners are carrying out the task imposed on them, and, as needlework accounts for almost all the work, the strictest silence is constantly maintained. . . It seems that, in these halls, the very air breathes penitence and expiation. One is carried back, as by a

spontaneous movement, to the time of the venerable habits of this ancient place, one remembers those voluntary penitents who shut themselves up here in order to say farewell to the world'. Compare this with the following; 'Go into a cotton-mill; listen to the conversations of the workers and the whistling of the machines. Is there any contrast in the world more afflicting than the regularity and predictability of these mechanical movements, compared with the disorder of ideas and morals, produced by the contact of so many men, women and children' (Faucher 20).

3. But prison goes beyond the mere privation of liberty in a more important way. It becomes increasingly an instrument for the modulation of the penalty; an apparatus which, through the execution of the sentence with which it is entrusted, seems to have the right, in part at least, to assume its principle. Of course, the prison institution was not given this 'right' in the nineteenth century or even in the twentieth, except in a fragmentary form (through the oblique way of release on licence, semi-release, the organization of reformatories). But it should be noted that it was claimed very early on by those responsible for prison administration, as the very condition of the good functioning of a prison, and of its efficiency in the task of reformation that the law itself had given it.

The same goes for the duration of the punishment; it makes it possible to quantify the penalties exactly, to graduate them according to circumstances and to give to legal punishment the more or less explicit form of wages; but it also runs the risk of having no corrective value, if it is fixed once and for all in the sentence. The length of the penalty must not be a measurement of the 'exchange value' of the offence; it must be adjusted to the 'useful' transformation of the inmate during his term of imprisonment. It is not a time-measure, but a time finalized. The form of the operation, rather than the form of the wages. 'Just as the prudent physician ends his medication or continues it according to whether the patient has or has not arrived at a perfect cure, so, in the first of these two hypotheses, expiation ought to end with the complete reform of the prisoner; for, in this case, all detention has become useless, and from then on as inhuman to the reformed individual as it is vainly burdensome for the State.'¹⁰ The correct duration of the penalty must be calculated, therefore, not only according to the particular crime and

its circumstances, but also according to the penalty itself as it takes place in actual fact. This amounts to saying that, although the penalty must be individualized, it is so not on the basis of the individual-offender, the juridical subject of his act, the responsible author of the offence, but on the basis of the individual punished, the object of a supervised transformation, the individual in detention inserted in the prison apparatus, modified by it or reacting to it. 'It is a question only of reforming the evil-doer. Once this reform has come about, the criminal must return to society' (C. Lucas, quoted in the *Gazette des tribunaux*, 6 April 1837).

The quality and content of detention should no longer be determined by the nature of the offence alone. The juridical gravity of a crime does not at all have the value of a univocal sign for the character of the convict, whether or not he is capable of reform. In particular the crime-offence distinction, which the penal code recognized in drawing the corresponding distinction between mere imprisonment and imprisonment with hard labour, is not operational in terms of reform. This was the almost universal opinion expressed by the directors of the *maisons centrales*, during an inquiry carried out by the ministry in 1836: 'The minor offenders are generally the most vicious. . . Among the criminals, one meets many men who have given in to the violence of their passions and to the needs of a large family.' 'The behaviour of criminals is much better than that of the minor offenders; the former are more submissive, harder-working than the latter, who, in general, are pickpockets, debauchees and idlers.'¹¹ Hence the idea that punitive rigour must not be in direct proportion to the penal importance of the offence – nor determined once and for all.

As an operation of correction, imprisonment has its own requirements and dangers. It is its effects that must determine its stages, its temporary increases, its successive reductions, in severity; what Charles Lucas called the 'mobile classification of moralities'. The progressive system applied at Geneva since 1825 was often advocated in France (Fresnel, 29–31). It took the form, for example, of three areas: a trial area for prisoners in general, a punishment area and a reward area for those who had embarked on the way of reform (Lucas, II, 440). Or it took the form of four phases: a period of intimidation (deprivation of work and of any internal or external

relations); a period of work (isolation, but work which, after the phase of forced idleness, would be welcomed as a benefit); a régime of moralization (more or less frequent 'lectures' from the directors and official visitors); a period of work in common (Duras). Although the principle of the penalty was certainly a legal decision, its administration, its quality and its rigours must belong to an autonomous mechanism that supervises the effects of punishment within the very apparatus that produces them. A whole régime of punishments and rewards that is a way not simply of gaining respect for the prison regulations, but of making the action of the prison on the inmates effective. The legal authority itself came to accept this: 'One should not be surprised, said the supreme court of appeal, when consulted on the subject of a bill concerning the prisons, at the idea of granting rewards, which might consist either for the most part in money, or in a better diet, or even in a reduction of the duration of the penalty. If anything can awaken in the minds of convicts the notions of good and evil, bring them to moral reflections and raise them to some extent in their own eyes, it is the possibility of obtaining some reward' (Lucas, II, 441-2).

And it must be admitted that the legal authorities can have no immediate control over all these procedures that rectify the penalty as it proceeds. It is a question, in effect, of measures that by definition can intervene only after the sentence and can bear only on something other than the offences. Those who administer detention must therefore have an indispensable autonomy, when it comes to the question of individualizing and varying the application of the penalty: supervisors, a prison governor, a chaplain or an instructor are more capable of exercising this corrective function than those who hold the penal power. It is their judgement (understood as observation, diagnosis, characterization, information, differential classification) and not a verdict in the form of an attribution of guilt, that must serve as a support for this internal modulation of the penalty – for its mitigation or even its interruption. When in 1846, Bonneville presented his project of release on licence, he defined it as 'the right of the administration, with the previous approval of the legal authority, to place in temporary liberty, after a sufficient period of expiation, the completely reformed convict, on condition that he will be brought back into prison on the slightest well-founded

complaint' (Bonneville, 5). All this 'arbitrariness' which, in the old penal system, enabled the judges to modulate the penalty and the princes to ignore it if they so wished, all this arbitrariness, which the modern codes have withdrawn from the judicial power, has been gradually reconstituted on the side of the power that administers and supervises punishment. It is the sovereignty of knowledge possessed by the warder: 'He is a veritable magistrate called upon to reign as sovereign in the prison . . . who, in order not to fall short in his mission, must combine the most eminent virtue with a profound knowledge of mankind' (Bérenger).

And so we arrive at a principle, clearly formulated by Charles Lucas, which, although it marks the virtual beginning of modern penal functioning, very few jurists would dare to accept today without some hesitation; let us call it the Declaration of Carceral Independence – in it is claimed the right to be a power that not only possesses administrative autonomy, but is also a part of punitive sovereignty. This affirmation of the rights of the prison posits as a principle: that criminal judgement is an arbitrary unity; that it must be broken down; that the writers of the penal codes were correct in distinguishing the legislative level (which classifies the acts and attributes penalties to them) and the judicial level (which passes the sentences); that the task today is to analyse in turn this later judicial level; that one should distinguish in it what is properly judicial (assess not so much acts as agents, measure 'the intentionalities that give human acts so many different moralities', and therefore rectify if it can the assessments of the legislator); and to give autonomy to 'penitentiary judgement', which is perhaps the most important; in relation to it the assessment of the court is merely a 'way of pre-judging', for the morality of the agent can be assessed 'only when put to the test. The judge, therefore, requires in turn a compulsory and rectifying supervision of his assessments; and this supervision is that provided by the penitentiary prison' (Lucas, II, 418-22).

One may speak, therefore, of an excess or a series of excesses on the part of imprisonment in terms of legal detention – of the 'carceral' in relation to the 'judicial'. Now this excess was observed very early on, from the very birth of the prison, either in the form of real practices, or in the form of projects. It did not come later, as a secondary effect. The great carceral machinery was bound up with

the very functioning of the prison. The sign of this autonomy is very apparent in the 'useless' acts of violence perpetrated by warders or in the despotism of an administration that has all the privileges of an enclosed community. Its roots lie elsewhere: precisely in the fact that the prison is required to be 'useful', that the deprivation of liberty – that juridical levying on an ideal property – must, from the outset, have exercised a positive technical role, operating transformations on individuals. And, for this operation, the carceral apparatus has recourse to three great schemata: the politico-moral schema of individual isolation and hierarchy; the economic model of force applied to compulsory work; the technico-medical model of cure and normalization. The cell, the workshop, the hospital. The margin by which the prison exceeds detention is filled in fact by techniques of a disciplinary type. And this disciplinary addition to the juridical is what, in short, is called the 'penitentiary'.

This addition was not accepted easily. To begin with, there was the question of principle: the penalty must be nothing more than the deprivation of liberty; like our present rulers, but with all the freshness of his language, Decazes says: 'The law must follow the convicted man into the prison where it has sent him' (Decazes). But very soon – and this is a characteristic fact – these debates were to become a battle for appropriating control of this additional penitentiary element; the judges were to demand a right of inspection over the carceral mechanisms: 'The moral enlightenment of the inmates requires innumerable cooperators; it is only by visits of inspection, commissions of surveillance and charity associations that this may be accomplished. Auxiliaries, then, are needed and it is the judges who must provide them' (Ferrus, viii; an ordinance of 1847 had set up commissions of surveillance). From this period, the penitentiary order had become sufficiently well established for there to be no question of dismantling it; the question was how to get control of it. This gave rise to the figure of the judge obsessed by a desire for prison. A century later, this was to give birth to a bastard, yet deformed child: the magistrate entrusted with the determination of penalties.

But, if the penitentiary, in so far as it went well beyond mere detention, was able not only to establish itself, but to entrap the

whole of penal justice and to imprison the judges themselves, it was because it was able to introduce criminal justice into relations of knowledge that have since become its infinite labyrinth.

The prison, the place where the penalty is carried out, is also the place of observation of punished individuals. This takes two forms: surveillance, of course, but also knowledge of each inmate, of his behaviour, his deeper states of mind, his gradual improvement; the prisons must be conceived as places for the formation of clinical knowledge about the convicts; 'the penitentiary system cannot be an *a priori* conception; it is an induction of the social state. There are moral diseases, as well as breakdowns in health, where the treatment depends on the site and direction of the illness' (Faucher, 6). This involves two essential mechanisms. It must be possible to hold the prisoner under permanent observation; every report that can be made about him must be recorded and computed. The theme of the Panopticon – at once surveillance and observation, security and knowledge, individualization and totalization, isolation and transparency – found in the prison its privileged locus of realization. Although the panoptic procedures, as concrete forms of the exercise of power, have become extremely widespread, at least in their less concentrated forms, it was really only in the penitentiary institutions that Bentham's utopia could be fully expressed in a material form. In the 1830s, the Panopticon became the architectural programme of most prison projects. It was the most direct way of expressing 'the intelligence of discipline in stone' (Lucas, I, 69); of making architecture transparent to the administration of power;¹⁸ of making it possible to substitute for force or other violent constraints the gentle efficiency of total surveillance; of ordering space according to the recent humanization of the codes and the new penitentiary theory: 'The authorities, on the one hand, and the architect, on the other, must know, therefore, whether the prisons are to be based on the principle of milder penalties or on a system of reforming convicts, in accordance with legislation which, by getting to the root cause of the people's vices, becomes a principle that will regenerate the virtues that they must practice' (Baltard, 4–5).

In short, its task was to constitute a prison-machine¹⁹ with a cell of visibility in which the inmate will find himself caught as 'in the glass house of the Greek philosopher' (Harou-Romain, 8) and a

central point from which a permanent gaze may control prisoners and staff. Around these two requirements, several variations were possible: the Benthamite Panopticon in its strict form, the semi-circle, the cross-plan, the star shape. In the midst of all these discussions, the Minister of the Interior in 1841 sums up the fundamental principles: 'The central inspection hall is the pivot of the system. Without a central point of inspection, surveillance ceases to be guaranteed, continuous and general; for it is impossible to have complete trust in the activity, zeal and intelligence of the warder who immediately supervises the cells. . . The architect must therefore bring all his attention to bear on this object; it is a question both of discipline and economy. The more accurate and easy the surveillance, the less need will there be to seek in the strength of the building guarantees against attempted escape and communication between the inmates. But surveillance will be perfect if from a central hall the director or head-warder sees, without moving and without being seen, not only the entrances of all the cells and even the inside of most of them when the unglazed door is open, but also the warders guarding the prisoners on every floor. . . With the formula of circular or semi-circular prisons, it would be possible to see from a single centre all the prisoners in their cells and the warders in the inspection galleries' (Ducatel, 9).

But the penitentiary Panopticon was also a system of individualizing and permanent documentation. The same year in which variants of the Benthamite schema were recommended for the building of prisons, the system of 'moral accounting' was made compulsory: an individual report of a uniform kind in every prison, on which the governor or head-warder, the chaplain and the instructor had to fill in their observations on each inmate: 'It is in a way the *vade mecum* of prison administration, making it possible to assess each case, each circumstance and, consequently, to know what treatment to apply to each prisoner individually' (Ducpétiaux, 56-7). Many other, much more complete, systems of recording were planned or tried out (cf., for example, Gregory, 199ff; Grellet-Wammy, 23-5 and 199-203). The overall aim was to make the prison a place for the constitution of a body of knowledge that would regulate the exercise of penitentiary practice. The prison has not only to know the decision of the judges and to apply it in terms

of the established regulations: it has to extract unceasingly from the inmate a body of knowledge that will make it possible to transform the penal measure into a penitentiary operation; which will make of the penalty required by the offence a modification of the inmate that will be of use to society. The autonomy of the carceral régime and the knowledge that it creates make it possible to increase the utility of the penalty, which the code had made the very principle of its punitive philosophy: 'The governor must not lose sight of a single inmate, because in whatever part of the prison the inmate is to be found, whether he is entering or leaving, or whether he is staying there, the governor must also justify the motives for his staying in a particular classification or for his movement from one to another. He is a veritable accountant. Each inmate is for him, in the sphere of individual education, a capital invested with penitentiary interest' (Lucas, II, 449-50). As a highly efficient technology, penitentiary practice produces a return on the capital invested in the penal system and in the building of heavy prisons.

Similarly, the offender becomes an individual to know. This demand for knowledge was not, in the first instance, inserted into the legislation itself, in order to provide substance for the sentence and to determine the true degree of guilt. It is as a convict, as a point of application for punitive mechanisms, that the offender is constituted himself as the object of possible knowledge.

But this implies that the penitentiary apparatus, with the whole technological programme that accompanies it, brings about a curious substitution: from the hands of justice, it certainly receives a convicted person; but what it must apply itself to is not, of course, the offence, nor even exactly the offender, but a rather different object, one defined by variables which at the outset at least were not taken into account in the sentence, for they were relevant only for a corrective technology. This other character, whom the penitentiary apparatus substitutes for the convicted offender, is the *delinquent*.

The delinquent is to be distinguished from the offender by the fact that it is not so much his act as his life that is relevant in characterizing him. The penitentiary operation, if it is to be a genuine re-education, must become the sum total existence of the delinquent, making of the prison a sort of artificial and coercive theatre in which

his life will be examined from top to bottom. The legal punishment bears upon an act; the punitive technique on a life; it falls to this punitive technique, therefore, to reconstitute all the sordid detail of a life in the form of knowledge, to fill in the gaps of that knowledge and to act upon it by a practice of compulsion. It is a biographical knowledge and a technique for correcting individual lives. The observation of the delinquent 'should go back not only to the circumstances, but also to the causes of his crime; they must be sought in the story of his life, from the triple point of view of psychology, social position and upbringing, in order to discover the dangerous proclivities of the first, the harmful predispositions of the second and the bad antecedents of the third. This biographical investigation is an essential part of the preliminary investigation for the classification of penalties before it becomes a condition for the classification of moralities in the penitentiary system. It must accompany the convict from the court to the prison, where the governor's task is not only to receive it, but also to complete, supervise and rectify its various factors during the period of detention' (Lucas, II, 440-42). Behind the offender, to whom the investigation of the facts may attribute responsibility for an offence, stands the delinquent whose slow formation is shown in a biographical investigation. The introduction of the 'biographical' is important in the history of penalty. Because it establishes the 'criminal' as existing before the crime and even outside it. And, for this reason, a psychological causality, duplicating the juridical attribution of responsibility, confuses its effects. At this point one enters the 'criminological' labyrinth from which we have certainly not yet emerged: any determining cause, because it reduces responsibility, marks the author of the offence with a criminality all the more formidable and demands penitentiary measures that are all the more strict. As the biography of the criminal duplicates in penal practice the analysis of circumstances used in gauging the crime, so one sees penal discourse and psychiatric discourse crossing each other's frontiers; and there, at their point of junction, is formed the notion of the 'dangerous' individual, which makes it possible to draw up a network of causality in terms of an entire biography and to present a verdict of punishment-correction.¹⁴

The delinquent is also to be distinguished from the offender in

that he is not only the author of his acts (the author responsible in terms of certain criteria of free, conscious will), but is linked to his offence by a whole bundle of complex threads (instincts, drives, tendencies, character). The penitentiary technique bears not on the relation between author and crime, but on the criminal's affinity with his crime. The delinquent, the strange manifestation of an overall phenomenon of criminality, is to be found in quasi-natural classes, each endowed with its own characteristics and requiring a specific treatment, what Marquet-Wasselot called in 1841 the 'ethnography of the prisons'; 'The convicts are . . . another people within the same people; with its own habits, instincts, morals' (Marquet-Wasselot, 9). We are still very close here to the 'picturesque' descriptions of the world of the malefactors – an old tradition that goes back a long way and gained new vigour in the early nineteenth century, at a time when the perception of another form of life was being articulated upon that of another class and another human species. A zoology of social sub-species and an ethnology of the civilizations of malefactors, with their own rites and language, was beginning to emerge in a parody form. But an attempt was also being made to constitute a new objectivity in which the criminal belongs to a typology that is both natural and deviant. Delinquency, a pathological gap in the human species, may be analysed as morbid syndromes or as great teratological forms. With Ferrus's classification, we probably have one of the first conversions of the old 'ethnography' of crime into a systematic typology of delinquents. The analysis is slender, certainly, but it reveals quite clearly the principle that delinquency must be specified in terms not so much of the law as of the norm. There are three types of convict; there are those who are endowed 'with intellectual resources above the average of intelligence that we have established', but who have been perverted either by the 'tendencies of their organization' and a 'native predisposition', or by 'pernicious logic', an 'iniquitous morality', a 'dangerous attitude to social duties'. Those that belong to this category require isolation day and night, solitary exercise, and, when one is forced to bring them into contact with the others, they should wear 'a light mask made of metal netting, of the kind used for stone-cutting or fencing'. The second category is made up of 'vicious, stupid or passive convicts, who have been led into evil by indifference to

either shame or honour, through cowardice, that is to say, laziness, and because of a lack of resistance to bad incitements'; the régime suitable to them is not so much that of punishment as of education, and if possible of mutual education: isolation at night, work in common during the day, conversations permitted provided they are conducted aloud, reading in common, followed by mutual questioning, for which rewards may be given. Lastly, there are the 'inept or incapable convicts', who are 'rendered incapable, by an incomplete organization, of any occupation requiring considered effort and consistent will, and who are therefore incapable of competing in work with intelligent workers and who, having neither enough education to know their social duties, nor enough intelligence to understand this fact or to struggle against their personal instincts, are led to evil by their very incapacity. For these, solitude would merely encourage their inertia; they must therefore live in common, but in such a way as to form small groups, constantly stimulated by collective operations, and subjected to rigid surveillance' (Ferrus, 182ff and 278ff). Thus a 'positive' knowledge of the delinquents and their species, very different from the juridical definition of offences and their circumstances, is gradually established; but this knowledge is also distinct from the medical knowledge that makes it possible to introduce the insanity of the individual and, consequently, to efface the criminal character of the act. Ferrus states the principle quite clearly: 'Considered as a whole, criminals are nothing less than madmen; it would be unjust to the latter to confuse them with consciously perverted men.' The task of this new knowledge is to define the act 'scientifically' *qua* offence and above all the individual *qua* delinquent. Criminology is thus made possible.

The correlative of penal justice may well be the offender, but the correlative of the penitentiary apparatus is someone other; this is the delinquent, a biographical unity, a kernel of danger, representing a type of anomaly. And, although it is true that to a detention that deprives of liberty, as defined by law, the prison added the additional element of the penitentiary, this penitentiary element introduced in turn a third character who slipped between the individual condemned by the law and the individual who carries out this law. At the point that marks the disappearance of the branded, dismembered, burnt, annihilated body of the tortured criminal, there

appeared the body of the prisoner, duplicated by the individuality of the 'delinquent', by the little soul of the criminal, which the very apparatus of punishment fabricated as a point of application of the power to punish and as the object of what is still called today penitentiary science. It is said that the prison fabricated delinquents; it is true that it brings back, almost inevitably, before the courts those who have been sent there. But it also fabricates them in the sense that it has introduced into the operation of the law and the offence, the judge and the offender, the condemned man and the executioner, the non-corporal reality of the delinquency that links them together and, for a century and a half, has caught them in the same trap.

The penitentiary technique and the delinquent are in a sense twin brothers. It is not true that it was the discovery of the delinquent through a scientific rationality that introduced into our old prisons the refinement of penitentiary techniques. Nor is it true that the internal elaboration of penitentiary methods has finally brought to light the 'objective' existence of a delinquency that the abstraction and rigidity of the law were unable to perceive. They appeared together, the one extending from the other, as a technological ensemble that forms and fragments the object to which it applies its instruments. And it is this delinquency, formed in the foundations of the judicial apparatus, among the '*basses œuvres*', the servile tasks, from which justice averts its gaze, out of the shame it feels in punishing those it condemns, it is this delinquency that now comes to haunt the untroubled courts and the majesty of the laws; it is this delinquency that must be known, assessed, measured, diagnosed, treated when sentences are passed. It is now this delinquency, this anomaly, this deviation, this potential danger, this illness, this form of existence, that must be taken into account when the codes are rewritten. Delinquency is the vengeance of the prison on justice. It is a revenge formidable enough to leave the judge speechless. It is at this point that the criminologists raise their voices.

But we must not forget that the prison, that concentrated and austere figure of all the disciplines, is not an endogenous element in the penal system as defined at the turn of the eighteenth and nineteenth centuries. The theme of a punitive society and of a general semio-technique of punishment that has sustained the 'ideological'

codes – Beccarian or Benthamite – did not itself give rise to the universal use of the prison. This prison came from elsewhere – from the mechanisms proper to a disciplinary power. Now, despite this heterogeneity, the mechanisms and effects of the prison have spread right through modern criminal justice; delinquency and the delinquents have become parasites on it through and through. One must seek the reason for this formidable ‘efficiency’ of the prison. But one thing may be noted at the outset: the penal justice defined in the eighteenth century by the reformers traced two possible but divergent lines of objectification of the criminal: the first was the series of ‘monsters’, moral or political, who had fallen outside the social pact; the second was that of the juridical subject rehabilitated by punishment. Now the ‘delinquent’ makes it possible to join the two lines and to constitute under the authority of medicine, psychology or criminology, an individual in whom the offender of the law and the object of a scientific technique are superimposed – or almost – one upon the other. That the grip of the prison on the penal system should not have led to a violent reaction of rejection is no doubt due to many reasons. One of these is that, in fabricating delinquency, it gave to criminal justice a unitary field of objects, authenticated by the ‘sciences’, and thus enabled it to function on a general horizon of ‘truth’.

The prison, that darkest region in the apparatus of justice, is the place where the power to punish, which no longer dares to manifest itself openly, silently organizes a field of objectivity in which punishment will be able to function openly as treatment and the sentence be inscribed among the discourses of knowledge. It is understandable that justice should have adopted so easily a prison that was not the offspring of its own thoughts. Justice certainly owed the prison this recognition.