



THE RELATIONSHIP BETWEEN PUNISHMENT AND POWER: MICHEL FOUCAULT PERSPECTIVE

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ABSTRACT

Michel Foucault has great contribution in the sociology of punishment. His analysis of punishment is concerned with power relations in society. He was interested to see how the body became an object, which is worth for exercise of power. In his book Discipline and Punish, he tried to explore many theses. His book reflects upon the changing nature of state power. For him the emergence of prison as a form of punishment during 18th century was nothing more than the changing nature of power. He called it 'carceral' power. He argued that most social theories on power define it in negative sense; whereas power has positive effects too.

KEYWORDS: Punishment, Power, Emotions, Morality, Human Spirit, Discipline

INTRODUCTION

This article covers Foucault contribution in the field of punishment. It includes his analysis of punishment and of power. It discusses how Foucault consider demonstration of power in the form of harsh punishment i.e. torture as a judicial as well as political ritual. In addition, it explains the changing nature of punishment, reform, Panopticon modality of power, discipline as types of power and major criticisms on Foucault's work.

ABOUT MICHEL FOUCAULT

The French philosopher, Michel Foucault is one of the most influential postmodern philosophers. He wrote and published numerous books during his lifetime. Some of his work include *History of Madness in the Classical Age (1961)*, *The Birth of the Clinic (1963)*, *The Order of Things (1966)*, *The Archaeology of Knowledge (1969)*, *Discipline and Punish: The Birth of the Prison (1975)*, *History of Sexuality (1976)*, *The Use of Pleasure (1984)* and *The Care of Self (1984)*. If we look at Foucault's work, his writing appears to be an eclectic group of writings and having no connection

to each other. However, he did have a central theme, which is the focus of most of his writings. Most of his work is concerned with the power relations in society.

Discipline and Punish (1975) is one of the Foucault's most influential and important works. In this book, he discusses the concepts of power and domination. In this book, he gave the history of French Penal system during 18th century. His work identifies the domination of the human spirit. He discussed as to how the present penal system evolved and how it control the masses in society. Even today, his book *Discipline and Punish* is used as a central reference point in the sociology of punishment. His work is so important in the field of punishment that according to Cohen 'to write today about punishment and classification without Foucault is like talking about the unconscious without Freud' (cited in Garland, 1995:131).

FOUCAULT ON PUNISHMENT

In *Discipline and Punish*, Foucault gave a clear and useful picture of the changing nature of modern punishment. He considers punishment as a system of power and domination. He argued that punishment is not merely a repressive mechanism rather it has complex social functions. Punishment is not only a judicial process; it is a political tool as well. He was interested to see how penal institutions are structured and how they exercise their power in order to dominate the people.

Foucault's analysis of punishment is different from other philosophers like that of Durkheim and Marx. For Durkheim, punishment is always a passionate response rooted in emotions. He considered punishment as a violent response to crime and criminals. Durkheim argued that punishment is an act of taking revenge. He stated that punishment, thus, "remains for us what it was for our fathers. It is still an act of vengeance since it is an expiation. What we avenge, what the criminal expiates, is the outrage to morality" (Durkheim, 1960:89). Unlike Durkheim, Foucault said nothing about emotions and morality in his analysis on the sociology of punishment.

Furthermore, the Marxist analysis on punishment is organised along class lines and means of production. For Marx, punishment is a state instrument for suppressing the working class. Like Marx, Foucault analysis of punishment also involves the questions of power and of government. However, Foucault deals with these questions by 'examining the very fabric of penalty' (Garland, 1995:133). To differentiate Foucault's work from that of Marx, Garland argued that

Marxist approach tends to address penalty from the outside, as it were, showing the impact of this class context upon penal forms and upon the ways in which penal sanctions are used. Foucault, in contrast, focuses upon the power relations internal to the penal process, analysing these in detail along with the techniques and knowledge which they entail (1995:132).

Hence, it is safe to argue that Foucault central point is the way in which power is exercised in the society. Foucault was not concerned with the way moral authority is constructed in a society (like Durkheim does) or the logic of capitalist economy (like Marx) (see Hudson, 1996).

FOUCAULT CONCEPT OF POWER

In *Discipline and Punish*, Foucault did not use power strictly in the sense of physical force. He discussed power in social context which determine our relationships to others. For Foucault, power is not a property or an instrument which a particular class or individual hold or use it. Power refers to "various forms of domination and subordination and the asymmetrical balance of forces which operate whenever and wherever social relations exist" (Garland, 1995:138). Foucault stated that penal history clearly shows the shift of focus to exercise power on body to the soul. Foucault called it as the

"new technology of power" (Smart, 1985:81). This does not mean to suggest the liberation of body from the grip of power; the body has now been taken to a secondary and mediatory position. Hudson (1996) argued that Foucault concept of power discussed in *Discipline and Punish* is primarily concerned with "bio-power - power of and over the body" (Hudson, 1996:118).

In *Discipline and Punish*, Foucault discussed power relations in prison as well. By this power relation he does not mean the physical power given to the guards i.e. security systems, batons, etc, but he take into account the way power is socially exercised. By social power, Foucault refers to the way the prisons are designed to give the prisoners an idea of who they are and to make them internalize particular methods of behaviour. Foucault's focus is always upon power relations exist in society and upon the individual and groups who dominate or are dominated as a consequence.

PUNISHMENT AS DEMONSTRATION OF POWER

In his book *Discipline and Punish*, Foucault did not limit power relation strictly to judicial sense; he argued that it is a political strategy/tactic as well. Power is exercised in order to dominate people. In the following section, we will see how he views punishment both as judicial process as well as a political strategy/tactic.

a) Punishment (torture) as judicial power:-

During 17th and 18th century, punishment associated with torture played a central role in penalizing the criminals. Torture was considered as legal ceremonial process to reveal the truth of the crime (Harris, 2003). Foucault argued that certain element of torture had been there in every penalty associated with serious crime. Every penalty of certain seriousness notion of torture Punishments were excessively violent, public and ritualistic in nature and were associated with the monarchal laws and the exercise of sovereign power. Foucault notion of torture

Smart (1985:81) stated that 'punishment was excessively violent, ritualistic, public, and spectacular'. To proceed further, it is important to understand Foucault's notion of torture. He argued that, 'every penalty of certain seriousness had to involve an element of torture' (1975:33). Torture, he believed that 'must produce a certain degree of pain' which should be according to the seriousness of the crime and the rank of the victim (1975:33). It must mark the victim either by scars from physical abuse or by the spectacle that accompanied the torture and public torture and execution must be spectacular (Santos, 1999).

The torture was justified because crime was seen as attach on king's body and the king has the right to take revenge over the criminal on behalf of the victim. Smart (1985:81) stated that 'within the practice of penal torture relations of power and truth are to be found articulated on the body'. There were certain techniques for inflicting penal torture.

It, Foucault (1975:34) argued that 'correlates the type of corporal effect, the quality, intensity, duration of pain, with the gravity of the crime, the person of the criminal, the rank of his victims'.

b. Punishment (torture) as political power:-

Along with judicial process, punishment in the form of torture was a political ritual as well. As mentioned earlier, that crime was directed against the sovereign and to gain revenge, punishment must represent an element of excess. Torture served some political functions too. It was not only a way of punishing the offenders. Public executions were carried out to control the population. Santos (1999) stated that 'the very means by which the execution was carried out was to show both the power of the king and the truth of the crime'. In addition, public spectacle reveals 'for all to see the power relation that gave his force to the law' (Foucault, 1975:50).

Foucault argued that crime is considered as attack on the sovereign and it poses threat to the ability of the sovereign to keep peace and security. Therefore torture and public execution was used as a political strategy for the manifestation of sovereign power over the life and death of the masses. Barker (2003:53) stated that 'it is a manifestation of the power of the sovereign that the public execution had also to be part of a display of this power that was visible and rich with symbolism and ritual'.

For Foucault (1975:49) punishment was a 'policy of terror' which was designed to intimidate the rest of the population. The public execution and penal torture constituted display of sovereign power. Foucault (1975:48) argued that 'the right to punish, therefore, is a sovereign right to make war on his enemies'. Therefore by making the torture public spectacle, the king actually want to tell people that he is the sole ruler and any violation of rules of the land will be punished to the full possible extent.

Confession of crime was also an important part of public spectacle. Torture was a mean of extracting confession from the offender of his/her crime and then begs for forgiveness. All these processes were designed to show the power of the king over the masses. However, soon it became clear that control over people cannot be achieved through torture and public execution. The crowd often revolt against the executioners. The scaffold soon brought tension between the public and the king. Thus, Smart (1985:82) mentioned that 'executions were sometimes prevented, condemned criminals released and pardons obtained through force exercised on executioners and/or judges by a sympathetic public'. With this the mechanism of power relations changed. Santos (1999) argued that 'it is because of this that a new form of punishment was born, one that would seem more human and not attach on the body but rather the soul'.

CHANGING NATURE OF PUNISHMENT

Towards the end of 18th century, punishment changed its shape due to the continuous protest against public execution and torture. Therefore prison emerged as a result of public demand for punishment without torture. Physical torture has been replaced by deprivation of liberty as the main form of punishment. Harris (2003) stated that 'this is also a shift from a notion of the body as a site of pain to one where as body simply loses rights'. Punishment however became more humane.

The purpose of the new punishment system was not to stir up the masses with the cruel display of power. The new system of punishment focused to understand the offender, his background and the reason of his committing the offence. Social sciences emerged and it brought changes in the penal system where experts like psychologist, social workers, and criminologists began to play key role in the justice system. Santos (1999) argued that 'power was no longer based on physical force, but on detailed knowledge of the offender, on intervention techniques, and on corrections'. For Foucault, the underlying principle of both the 'humanization of the penal system and of the knowledge of man' was new 'technology of power' (1975:23).

Foucault (1975) stated that during the late 18th century in France, three mode of punishment were in practice i.e. the traditional royal, the punitive city and the use of prison. He added that these modes of punishment cannot be reduced to theories of law, nor to different apparatuses or institution, nor simply moral choices. They are for Foucault (1975:131) the 'modalities according to which the power to punish is exercised: three technologies of punishment'. He however believed that these changes in penal system do not simply come from the growing sense of compassion for the people. The overt aim of these changes might be the humanization of penal system but the covert aim was based on power domination and political tactics. He argued that the history of the body already existed in demography or in social medicine but not really the politics if it. He stated that

'the body is also directly involved in a political field; power relations have an immediate hold upon it; they invest it, mark it, train it, torture it, force it to carry out tasks, to perform ceremonies, to emit signs' (1975:25).

So to control bodies and to make economic use of it, a number of mechanisms of subjection and domination have developed. The study of these mechanisms becomes a 'political technology of the body' (Foucault, 1975:26). There is 'micro-physics of power' where 'power exercised on the body is conceived not as a property, but as a strategy' (Foucault, 1975:26). He argued that power

is not possessed; rather it is exercised on the body as a deliberate strategy by those who dominate.

REFORM: A NEW ECONOMY OF POWER

The penal reformers of 18th century began to express their criticism on the excessive use of harsh penalties in the prevailing penal system. Public executions designed to show the power of the king and to deter people from offending proved to be ineffective in deterring crime. These public ceremonies often lead to social disturbances and revolt against the executors. Foucault (1975:90) argued that 'the right to punish has shifted from the vengeance of the sovereign to the defence of the society'. According to Santos (1999), this shift of power to punish accomplishes two purposes; it did avoid the conflict between the king and the people and it 'strengthened control over people because power has become hidden'. It consequently brings changes in the act of punishment. Foucault (1975:104) stated that 'the art of punishing then must rest on a whole technology of representation'.

As a result, a new form of punishment was needed to replace the existing one. Foucault (1975:81-2) argued that this criticism leads to the 'emergence of a new strategy for the exercise of the power to punish'. The reformers advocated more humane, progressive and lenient changes in the use of punishment. Reform, for Foucault is

to make of the punishment and repression of illegalities a regular function, co-extensive with society; not to punish less, but to punish better; to punish with an attenuated severity perhaps, but in order to punish with more universality and necessity; to insert the power to punish more deeply into the social body (1975:82).

The aim of reform movement in penal system was not so much the leniency of punishment and humanity, rather it was to create a new 'economy of power to punish' (Foucault, 1975:80). He argued that the new form of punishment was 'not to be concentrated at certain privileged points' and to be distributed equally 'down to the finest grain of the social body' (1975:80). One point should be kept in mind that this pressure did not come from the reformers only. Foucault (1975:81) argued that 'reform did not have a single origin'. He added that the enlightened members of the public, philosophers, various social groups, the magistrates and the lawyers did contribute in reforming the penal system. He however pointed out that this change in the penal practice did not happen outside the legal machinery. It was prepared by the magistrates and lawyers with in the existing legal machinery.

The effects of these changes can be seen in the style of penal practices through out Europe and USA. The new strategies were more focused towards training the soul rather than to torture the body. Garland (1995:136) stated that 'the target of punishment shifted so that measures are now

aimed to affect the soul of the offender rather than just to strike the body'.

PANOPTIC MODALITY OF POWER

Jeremy Bentham was a great 18th century philosopher and prison reformer. He gave the idea of a perfect mechanism to gain control over offenders in prison, he called it 'Panopticon'. It is derived from Greek word *Panoptos* (*pan - all, optos - visible*). According to this design, the Panopticon has cells around the central tower and all the cells would open toward it. A guard sitting in the main tower can easily watch all the prisoners in the cells. The prisoners cannot interact with one another. The main feature of Panopticon was that the guard can easily watch all the prisoners in their cells whereas they cannot see the guard in the tower. However, they must believe that they are being watched at any time. Foucault (1975:201) expressed that 'the inmate must never know whether he is being looked at any one moment; but he must be sure that he may always be so'. Harris (2003) argued that 'constant surveillance was supposed to induce a permanent awareness that they are being watched, while the actual occurrence of surveillance was to be unverifiable'. Foucault stated that the Panopticon was supposed to assure the automatic functioning of power. Gary (2003) explained Foucault concept of surveillance with the help of an example and stated that 'the tiered rows of seats in a stadium not only makes it easy for spectators to see but also for guards or security cameras to scan the audience'. Therefore, he added that Foucault wanted to tell us that 'to a great extent, control over people (power) can be achieved by observing them' (Gary, 2003). In addition, Smart (1985:88) stated that 'the panopticon was to function as an apparatus of power by virtue of the field of visibility in which individuals were to be located, each in their respective places (e.g. cells, positions, rooms, beds, etc.) for a centralized and unseen observer'.

Foucault consider Bentham Panopticon as 'an ideal architectural model of modern disciplinary power' (Gary, 2003). However for him, the panopticon was not limited to the prison which is used to confine the offenders. He consider Panopticon as liberty where a person could be observed and examined, and his behaviour could be monitored and altered. Foucault (1975:204) says that 'the Panopticon functions as a kind of laboratory of power'. He added that 'it could be used as a machine to carry out experiments, to alter behaviour, to train or correct individuals' (1975:203).

In *Discipline and Punish*, Foucault stated that;

The Panopticon is polyvalent in its applications; it serves to reform prisoner, but also to treat patients, to instruct schoolchildren, to confine the insane, to supervise workers, to put beggars and idlers to work. It is a type of location of bodies in space, of distribution of individuals in relation to one another, of hierarchical organization, of disposition of centres and channels of power, of

definition of the instruments and modes of intervention of power, which can be implemented in hospitals, workshops, schools, prisons. Whenever one is dealing with a multiplicity of individuals on whom a task or a particular form of behaviour must be imposed, the panoptic schema may be used (1975: 205)

As mentioned earlier that Panopticon was actually a design of prison put forward by famous English philosopher Jeremy Bentham. It was however designed to carry two important functions i.e. constant surveillance of the prisoners and to carry out productive activities (discipline). Garland (1995) stated that the 19th century prisons featured two things: constant surveillance and inducing discipline. He added that surveillance was important for the sake of security reason, and for the prisoners to behave properly and to monitor the progress (discipline) of the offender.

For Foucault, Bentham Panopticon was not limited to a place where offenders could be kept for certain period of time. Bentham Panopticon, for him was more than a prison, 'it is a principle of punitive power' (Hudson, 1996:120). She added that the emergence of prison as a dominant form punishment during 19th century is actually the 'arena for personal changes and social experimentation (1996:120).

Bentham was not been able to built his Panopticon, however Gary (2003) argued that 'it is the instrument through which modern discipline has replaced pre-modern sovereignty (kings, judges) as the fundamental power relation'.

DISCIPLINE: A TYPE OF POWER

In *Discipline and power*, Foucault stated that *discipline* is not an institution; it is rather a *modality of power*. He argued that

Discipline may be identified neither with an institution nor with an apparatus; it is a type of power, a modality for its exercise, comprising a whole set of instruments, techniques, procedures, levels of application, targets; it is a 'physics' or an 'anatomy' of power, a technology. And it may be taken over either by 'specialized' institutions... or by institutions that use it as an essential instrument for a particular end ... or by pre-existing authorities that find in it a means of reinforcing or reorganizing their internal mechanisms of power... (1975:215)

Foucault argued that in every society, the body used to be the main subject for the exercise of power. However, with the passage of time, the modality of power changed its shape and the capacities of the body became the subject of power rather than the body itself.

Foucault stated that punishment has changed its shape and it become nothing more than discipline where people are not tortured but trained. He stated that 'the chief function of the disciplinary power is to train' (1975:170). The training effects

people in such a way that they become docile, easy to mould by those who hold the control. For him, discipline was an art in order to master the human body, its actions, and movements and to make him a useful citizen. He however sees disciplinary power as productive and integrated. He argued such power is generally taken in punitive sense; however it has positive use as well. Thus for Foucault, Broadhead & Howard (1998) argued that 'the moulding and integration of the individual is a central part of the production of power'.

The disciplinary technology of power which emerged during eighteenth century and developed through out nineteenth century is not confined to the prison only. Many aspects of techniques of disciplinary power had long been established practice in monasteries, armies and workshops. What is of interest is that 'such disciplinary methods subsequently became general formulas of domination' (Smart, 1985:85).

CRITICISM

Despite great intellectual contribution in the field of penalty, Foucault work has been criticised as well. In this essay I will mention some of those criticisms on Foucault's work. Patton (1998:64) stated that Foucault's work has been criticised on two themes,

First, his descriptive analyses of power provide us with no criteria for judgement, no basis upon which to condemn some regimes of power as oppressive or to applaud others as involving progress in human freedom. Secondly, critics complain that he offers no alternative ideal, no conception either of human being or of human society freed from the bonds of power.

Hudson (1996:127) stated that one of the critiques over Foucault work is that 'the penal events did not occur when and where Foucault says they did'. Evidence suggests that the shift in the nature of punishment did not change from public spectacle to punishment in prison. It is argued that Foucault did not offer an extensive documented history of changes in penal practices.

Hoy (1986) stated that one of the critics of Foucault is that he did not give a purpose for the struggle or a goal to be achieved. He asked that 'why is struggle preferable to submission? Why ought domination not be resisted? (Hoy, 1986:8) Foucault did not mention any thing about the goal of this struggle.

Similarly, Edward W in his article *Foucault and the Imagination of Power*, stated that

'Foucault seemed to have been confused between the power of institutions to subjugate individuals, and the fact that individual behavior in society is frequently a matter of following rules of conventions. As Peter Dews puts it: '[Foucault] perceives clearly that institutions are not merely imposed constructs, yet has no apparatus for dealing with this fact, which entails that

following a convention is not always equivalent to submitting to a power...But without this distinction every delimitation becomes an exclusion, and every exclusion becomes equated with an exercise of power' (cited Hoy, 1986: 151).

CONCLUSION

Foucault work in *Discipline and Punish* offers a great intellectual insight for analysing and understanding the development of penalty in the modern era. *Discipline and Punish* is more than a history of the modern prison system. This book is about power relations between the dominators and those who are dominated. The aim of this power relation for Foucault is to get control over body and soul. He gave the notion of discipline which can be found in all social institutions.

Foucault believed that power relations exist in each and every institution. It is not limited to the prison only. In his view, the social relations are inevitable and inescapable of power relations. He believes that a society without out power relations can not exist. To sum up, Patton (1998:64) stated that 'Foucault offers only a bleak political horizon on which the subject will always be an effect of power relations, and on which there is no possibility of escape from domination of one sort or another'.

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