

Foucault's Concept of Power in the History of Punishment

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French thinker Michel Foucault sought to improve upon the general conception of power which is a prevalent theme of his philosophy especially one of his main works, *Discipline and Punish*.¹ A fundamental argument by Foucault concerning power is that, firstly, it is aimed at the production of knowledge; and secondly, it is always aimed at a better control over the body, which he calls a *political technology of the body*.² In his discussion of power, he elaborated two representations of power: (1) The old representation of power in the form of the power of the king, which had been the more popular conception of power in many social contract philosophies; described as a form of power wielded and owned by a dominant body over a population; and (2) a fundamentally new representation of power which Foucault himself introduces; described as an extremely diffused, dynamic and productive form of power, that is owned by no one but rather is exercised from innumerable points.

Foucault argues that the latter is a more fitting description of power especially since it is a productive force for the development of knowledge; and that such knowledge cannot flourish if it is shackled by the old form of power. He further argues that this new form of power, which is exercised by means of surveillance, is a more efficient way of controlling the body as compared to the old form, which is exercised in public torture.

This paper aims to demonstrate the fundamental characteristics of each form of

power in the context of Foucault's history of punishment found in his *Discipline and Punish*. It not only describes the old representation and the new and how they are exercised in the context of punishment; but it also argues how this new form of power has come to be a more effective means of control.

Sovereign Power

Foucault introduces firstly the popular idea of power. This notion of power is something that is wielded and owned by a single domineering body which rules the dominated lower body. This binary conception of power is popular among the social contract philosophies (for instance, Locke, Rousseau and Hobbes) whose political treatises were all aimed at the justification of the legitimate authority of a government. Likewise, the general idea was still there: *power belongs to the king (the government, or any sovereign)*. Quite understandably, this notion of power has been the popular one since people are accustomed to viewing power in terms of political notions: the simple idea of authority to lead for instance is something taken, wielded, owned, and voted for. In addition, such power is identified with *law*, a multitude of prohibitions, and even more so, a classification of right and wrong, good and bad, acceptable and unacceptable, licit and illicit. Foucault refers to this representation of power as "juridico-discursive".³ Foucault adds that the reduction of power to the figure of a master, that is, the single ruling body, is linked with the reduction of power to the law of prohibition.⁴ In this case, the law is a manifestation of power. This

representation of law as power has led to an understanding of power as limited to the law and king. Consequentially, the contemporary analysis of power is articulated by this old juridical conception and has enjoyed a centuries old privilege.⁵ This law is identified with a series of prohibitions. The classical notion of power is essentially a negative one which binds its citizens in shackles. Thus, disobedience is identified as the only way to challenge power. We can see from here that power is viewed merely as a binary conflict: behold the ruler versus his subject. Power is only seen as a clash of two bodies; and even that clash is asymmetrical since the conflict portrays not a conflict of equals but rather one that is a top-down encounter.⁶

Torture as a Spectacle

Likewise, this idea of power is well reflected on the medieval form of punishment. Foucault accounts the punishment of Francois Damiens,⁷ who charged with *regicide*.⁸ The gruesome scene of this old way of punishing features meticulous and sadistic torture viewed on a scaffold by the public. We find the following features that reflect the juridico-discursive form of power, or sovereign power. It expressed superficially the power of the king over his citizens, and particularly, his direct power over the criminal's body. Torture as a spectacle was primarily a "political ritual" which legitimizes the power of the king; not merely a judicial ritual which punishes the crime.⁹ The horrific scene is only one of many rituals that sovereignty conducts in order to legitimize its rule, such as the king's coronation, entry to a conquered city and submission of rebellious subjects.¹⁰ All of these rituals celebrate the power of the king. This atrocious ritual is necessary to affirm his power, to legitimize it, and to have all the citizens witness it, so that they would submit to it. The crime was not merely seen as a transgression

from established laws but also a direct offense to the authority of the sovereign himself, a direct attack against the king's body.¹¹ The body of the king is not a political metaphor referring to his right to authority, but is a very real thing whose physical presence is a necessity in the functioning of the monarchy.¹² For this reason, he must be present in all these rituals. The king's body is an embodiment of his power so much so that an attack or transgression against power is already a direct attack on the king's body. Hence, punishment serves a "juridico-political function".¹³

Public Torture in Relation to Sovereign Power

The old form of punishment features the top-down characteristic of sovereign power: the ruling body versus the ruled population. In the monarchical setup of sovereign power, it is the king who is the law, that dictates which is allowed and disallowed; those who do not follow become enemies of the state. The form of punishment itself remarkably emanates this binary conception. We have the king and his double-body, which is the criminal. The spectacle of torture serves not only a *reactivation function* as discussed earlier, but also a corrective and deterrent function addressed to the spectators.

However, Foucault finds this old representation of power quite inadequate. For one, a form of power that cannot do anything else but repress other discourses (that were categorized as illicit) cannot possibly aid in the flourishing of knowledge. And yet the fundamental argument of Foucault is that power is the key reason why knowledge has constantly developed through time at a tremendous pace. If such development of knowledge and the sciences were tremendous, then a juridico-discursive type of power cannot simply be *the* power. This problem reflects the problem with the old way

of punishment especially during the rise of reformists in the middle of the 18th Century, which inevitably led to a new form of punishment in the form of *disciplinarity* and *surveillance*.¹⁴

Foucault's new representation of Power

As mentioned, Foucault had his misgivings on the general notion of power (as sovereign power). He boldly declares that we *cut off the head of the king*.¹⁵ What he means is that we must free ourselves from the idea of *sovereignty* when thinking of power.¹⁶ Firstly, He believes that all of reality is constituted by relations of power. He sees power as something that is diffused all throughout the social body. By diffused we mean scattered and tangled with the social network and institutions and other relations of power. It moves away from the popular conception of power since this kind *is not owned, seized or wielded*. On the contrary, *it can be exercised by all individuals who themselves are vehicles of this power*.

Secondly, power is very productive. This is opposed to the general conception that power is merely repressive. *Power constantly produces knowledge*. Power should not be merely seen as something that prevents discourse from flourishing; neither should it be seen as merely a system that sets up the dos and do not's. Rather, it should be seen as behind a complex network which constantly builds and produces new discourses, improving upon present sciences and ultimately producing knowledge and truth. The exercise of power is not definitively limited to domination and repression. In *Discipline and Punish* for instance, forms of observation, studying, as well as regulating behavior, and simply watching the other's behavior is already an exercise of power. It is with this constant observation and studying of the human body, human behavior, with the aim of seizing the

mastery of it, that consequently leads to the production of new discourses: introduction of new ways of looking at the criminal through psychology, forensics and even in literature. Lastly, power is inevitably met with various forms of resistance. More specifically, resistance is something immanent in power. Just as power is diffused within an entangled and chaotic network, so is resistance scattered with it even if they are their irreducible opposites; that is, the existence of power-relations heavily "depends on the multiplicity of resistance: these play the role of adversary, target, support, or handle in power-relations."¹⁷

Foucault's notion of power is radically different from its juridical notion. Unlike its more common notion, this power does not follow the binary, top-down schema but is rather exercised anywhere; neither is it seen merely in the form of law or the king which represses discourse, but is something that comes from anywhere; and is exercised by anyone.

Disciplinarity and Surveillance

The eighteenth century gave rise to what Foucault calls the "synaptic regime of power".¹⁸ He describes it as a power not from above, but a power within the social body. Consequentially, the old power was outgrown, and is viewed as "archaic and monstrous". The body was seen as the very target of power. Power now aimed at not only asserting legitimate authority and vengeance of the king. It was more on domesticating the body; not only to tame it but to make it useful to society; in Foucault's words, to make it *docile*. Hence a new kind of penal practice was developed, in the form of discipline.

This form of penalty featured 3 instruments: Hierarchical observation, Normalizing judgment, and Examination. *Hierarchical*

Observation was the key to coercion.¹⁹ Basically, the gaze of another is already enough to make an individual think about his actions. It would then actually restrict the movements of the individual being observed. In this manner, the gaze of the observer actually exercises power, in which he is able to restrict and regulate the movements of the subject being observed. If one gaze certainly has a significant effect in the individual, imagine a multiplicity of gazes around him; a multiplicity of intersecting observations. In addition to this, observation features an indiscernible observer. It's as if he is able to exert power over the individual without him being identified.

Normalizing Judgment provides a norm to which the subjects were compared to. It is through this that disciplinary institutions served their corrective function.²⁰ Now it would seem that normalizing judgment repeats the same juridical form of power in its old representation in the sovereign and the law. However the normalizing schema of disciplinary institutions should not be confused with them. For one, the “perpetual penalty” which is exercised at all points supervises, differentiates, hierarchizes homogenizes and excludes individuals in a consistent basis.²¹ In this way, the consistency of these actions slowly but surely normalizes them, thus correcting them, and turning them into productive and useful individuals. The norm by far was developed from an accumulation of recorded behaviors (via observation), all of which are compared vis-à-vis, and from which a constant normality was deduced.²² Unlike the juridical power, it does not refer to a corpus of laws, but through what has been observed. Juridical power would, based on a black-and-white written law, specify acts by categories, jot down what is licit or illicit, and by operating through condemnation. On the other hand, normalizing judgment would

base their norms through constant differentiating of individuals, hierarchizing, and homogenizing them into a set of norms based on what has been observed.²³

Lastly, *Examination* is a combination of the first two mentioned. It is through examination that the “superimposition” of power relations and knowledge relations are assumed.²⁴ In the slender technique of examination is found the whole domain of knowledge, a whole type of power. Foucault demonstrates the deep-seated importance of *examination* in all of human history, in which power works and new forms of knowledge are generated. Such ‘operational schema’ has spread throughout the sciences of psychiatry, medicine, and even in manufacturing and even in institutions such as schools, hospitals, and prisons.

Concluding Note

Two representations of power have been reviewed and arguably it is disciplinary form of power, Foucault's representation of power which is characteristic of modern society. Foucault notes the *Panopticon* for example, as his main example of a disciplinary system.²⁵ This system of surveillance was in fact most definitively portrayed in Bentham's Panopticon, an all-seeing yet indiscernible ‘eye’ which observes you, is what Foucault states as the general schema for all institutions that we have in modern times.

The panoptic mechanism provides the common thread to what could be called the power exercised on man as a force of work and knowledge of man as an individual. So panopticism could, I think appear and function within our society as a general form.²⁶

The Panopticon is not only found in institutions alone in fact, but its schema extends outside of

it; in other words, all of society follows this panoptic schema for Foucault.²⁷

Society has evolved to be a living system of surveillance. Everyday living is not without an apparatus that observes and surveys one's actions. Schools conduct several examinations and aptitude tests. Hospitals conduct medical examinations and record every detail about the body. Even outside these institutions, there is still an element of control of behavior. The main theme in society today is organization and discipline.²⁸ It moves away from the top-down repressive schema. The observation tower does not solely repress despite its control of behavior. It further examines, studies and categorizes commonalities, trends, behaviors, which consequentially generate more knowledge. Power becomes a knowledge-producing force; knowledge that is geared at a more efficient normalization and control of a population.

¹ I make use of three primary sources for this paper: *Discipline and Punish* firstly because it gives a comprehensive account of the history of punishment and how the two forms of power are exercised in the Medieval and Modern form of discipline; *The History of Sexuality Vol. 1*, which provides a discussion on the characteristics of power per se; and *Power/Knowledge*, a collection of interviews and lectures which supplement Foucault's discussion of the matter.

² The political technology of the body was coined in Foucault's *Discipline and Punish*, wherein he asserts that the knowledge and science of the body is not primarily and solely aimed at the mastery of its operations and functions but is rather more aimed at mastering the control of it. The political technology of the body is fundamentally aimed at arriving at a more efficient way of controlling the human body (human behavior, posture, action, etc.). The way power/knowledge is utilized in the development of this technology of the body is what is being discussed in the book.

Cf., Michel Foucault, *Discipline and Punish*, trans. Alan Sheridan (New York: Vintage Books, A Division of Random House, Inc., 1977), p.26. (hereafter as *DP*).

³ Michel Foucault, *The History of Sexuality Vol. 1: An Introduction*, trans. Robert Hurley (New York: Vintage Books: A Division of Random House Inc., 1990), p. 82. (hereafter as *HS*)

⁴ Michel Foucault, "Power and Strategies", *Power/Knowledge: Selected Interviews and Other Writings (1972-1977)* (New York: Pantheon Books, 1980), p. 139. (hereafter as *P/K*).

⁵ "Power and Strategies", *P/K*, p. 141.

⁶ Such a view in fact even holds true in Marx's philosophy, wherein he depicts class struggle as a struggle between two classes, the proletariat against the bourgeoisie. In terms of being a binary clash, even Marxist interpretations of the struggle of the proletariat have not escaped this popular idea of power.

⁷ Foucault illustrates how in an erected scaffold, where the public become witnesses to such a brutal spectacle, Damiens' flesh was brutally torn from his limbs with pincers, which were red-hot. Afterwards, from those areas where these chunks of flesh were removed, molten lead was poured along with boiling oil and burning resin which were all melted together. Afterwards he was made to hold the very knife he used for his alleged parricide, burning hot with sulfur, as a brand given to him, that he is guilty of such a crime. Such horror was not the execution proper still, but merely torture, which is an initial part of the ceremony of the harsh penalty, in which they wish to secure a confession from him. With each tearing of flesh with pincers, the clerk of the court, Monsieur Le Breton, would ask him if he had anything to say. Afterwards, he was drawn and quartered by four horses, in which his limbs were severed from his body, leaving him dead. All the remaining pieces of flesh were burned.

Cf., *DP*, pp. 3-5.

⁸ In the context of monarchical power, any form of breaking the law is a form of regicide. The law as we have noted is embodied in the figure of the king himself and that any violation of it is in fact a direct physical attack against the king. Thus lawbreakers are tantamount to regicides.

⁹ *DP*, p. 47.

¹⁰ *DP*, p. 48.

¹¹ Refer to previous footnote, number 9.

¹² "Body/Power", *P/K*, p. 55.

¹³ *DP*, p. 48.

¹⁴ The Political Technology of the body, as mentioned, is a very important fundamental theme in the history of punishment. This dilemma features a need for a better control of human bodies. The problem with the old form of punishment was that it was not efficient

enough. Not only was it costly, but it in fact generated a significant and steady pace of crimes that it failed to control. Hence there was a need for a better control of bodies in the whole population. This is a prelude to the new form of punishment mentioned.

¹⁵ *Cutting the head of the king* has been a theme constantly reiterated by Foucault in his works and interviews: in *The History of Sexuality vol. 1*, p.89, and “Truth and Power”, *P/K*, p. 121.

¹⁶ Sovereignty in this sense is used to refer to the popular conception of power as something wielded and owned. It does not refer solely to the king.

¹⁷ *HS*, p. 95.

¹⁸ “Prison Talk”, *P/K*, p. 39.

¹⁹ *DP*, p. 170.

²⁰ *DP*, p. 179.

²¹ *DP*, p. 183.

²² *DP*, p. 178.

²³ *DP*, p. 183.

²⁴ *DP*, p. 185.

²⁵ It is described as having a central, *all-seeing* tower with wide windows that open on either side, allowing it to see the periphery, which is an annular building encircling the center. This annular building is divided into individual cells, in which the central tower with all its domineering presence is not only clearly seen, but also felt. These cells have two windows, one on the inside, another on the outside; the former corresponds to the windows of the tower, the latter allows light to cross the cell, thus allowing the individual inside it to be clearly seen rather than be concealed in darkness. Furthermore, the division into cells hindered any form of contact between individual prisoners since there are no windows that would link two cells.

Michel Foucault, *Psychiatric Power: Lectures at the Collège de France (1973-1974)*, trans. Graham Burchell (New York: Palgrave Macmillan, 2006), p. 75. (hereafter as *CdF74*)

²⁶ *CdF74*, p. 79.

²⁷ ***But how is the Panopticon any different from the top-down relationship found in the sovereign form of power?*** It would actually seem that the Panopticon, and other forms of surveillance is merely a new form of control exerted from a top-down movement: the Panopticon seemingly becomes the new figure of the king who more effectively exerts power and controls the population. However, this is not quite true. Firstly, the Panopticon represents an all-around surveillance conducted by *anybody*. The reality of it is that, *anyone, or even no one, is actually watching from the central tower*. The effective control of the Panopticon is made possible

because it gives the prisoner (or any other object), the impression of being watched by an indiscernible other. It does not necessarily have to be the king. This marks a lasting psychological impression on the body so that even when nobody is actually gazing at him, he is under the impression that he is being watched, even by people equal to him. Hence, it is not a top-down relationship but scattered one, in which anyone can exert power over anyone.

²⁸ Paul Oliver, *Foucault: The Key Ideas* (London: Hodder Education, 2010), p. 61.

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