In the penal system of the Classical period, one reencounters, mixed together, four great forms of punitive tactics—four forms having different historical origins, each having played if not an exclusive role then a privileged one:

1. exile, cast out, banish, expel beyond the borders, forbid certain places, destroy the home, obliterate the birthplace, confiscate the possessions and properties;

2. arrange a compensation, impose a redemption, convert the damage caused into a debt to repay, turn the offense into a financial obligation;

3. expose, mark, wound, amputate, make a scar, stamp a sign on the face or the shoulder, impose an artificial and visible handicap, torture—in short, seize hold of the body and inscribe upon it the marks of power;

4. confine.

As a hypothesis we may distinguish, in terms of the types of punishment they privileged, banishment societies (Greek society), redemption societies (Germanic societies), marking societies (Western societies at the end of the Middle Ages), and confinement societies—our own?

Ours, but only since the end of the eighteenth century. For one thing is certain: detention and imprisonment do not form part of the European penal system before the great reforms of the years 1780–1820. The jurists of the eighteenth century are unanimous on this point: "Prison is not regarded as a penalty according to our civil law...although the princes, for reasons of State, sometimes go so far as to inflict this penalty, these are decisive blows, and civil courts do not make use of these
kinds of sentences” (Serpillon, *Code criminel*, 1767). But it can already be said that such an insistence on denying that imprisonment has any penal character indicates a growing uncertainty. In any case, the confinements that are practiced in the seventeenth and eighteenth century remain on the fringe of the penal system, even if they are close by and drawing ever closer.

- surety confinement, employed by the courts during the investigation of a criminal matter, by the creditor until repayment of the debt, or by the royal power when it fears an enemy. This is not so much a matter of punishing an offense as of making sure of a person.

- substitute confinement, imposed on someone who doesn’t come under criminal justice (either because of the nature of his offenses, which are only moral or behavioral in nature; or due to a privileged status: the ecclesiastical courts, which since 1629 no longer have the right to pass prison sentences in the strict sense, may order the guilty to withdraw to a monastery; the *lettre de cachet* is often a means for the privileged to escape criminal justice; women are sent to houses of detention for mistakes that men will pay for on the convict ships).

It should be noted, except in this last case, that this substitute confinement is characterized in general by the fact that it is not decided by judicial authority, that its duration is not set once and for all, and that it depends on a hypothetical purpose—correction. Punishment rather than penalty.

Now, fifty years or so after the great monuments of Classical criminal law (Serpillon, *Jousse*, *Muyart de Vouglans*), prison became the general form of penalty.

In 1831, Remusat, in a speech to the Chamber, said: “What is the penal system authorized by the new law? It is incarceration in all its forms. Compare in fact the four main penalties that remain in the Penal Code. Forced labor is a form of incarceration. Penal servitude is an open-air prison. Detention, hard labor, and correctional imprisonment are in a way just different names for the same act of punishment.” And Van Meenen, opening the Third Penitentiary Conference at Brussels, recalled the time of his youth when the land was still covered with “wheels, gibbets, gallows, and pillories,” with “skeletons hideously spread.” It looks as if prison, parapenal punishment, had, at the end of the eighteenth century, made its entry into penal practice and had very quickly occupied the entire space. The Austrian Criminal Code, drafted under Joseph II, offers the most obvious evidence of this immediately triumphant invasion.

The organization of a penal system of confinement is not simply recent, it is enigmatic.

At the very time of its planning, it was the object of vehement criticism—criticism formulated in terms of basic principles; but also formulated with a view to the dysfunctions that prison might induce in the penal system and in society as a whole.

1. Prison prevents judicial authority from supervising and verifying the application of penalties. The law does not penetrate into the prisons, said Decazes in 1818.

2. Prison, by intermingling convicts who are both different and isolated, forms a homogeneous community of criminals who become comrades in confinement and who will remain such on the outside. Prison manufactures a veritable army of domestic enemies.

3. By giving convicts shelter, food, clothing, and often work, prison provides them with a condition preferable at times to that of workers. Not only may it fail to have a disuasive effect, but it fosters delinquency.

4. Leaving prison are people who are doomed by their habits and by the infamy with which they are stamped to a life of crime. Right away, then, prison is denounced as an instrument that, in the margins of justice, manufactures those whom that justice will send or send back to prison. The carceral circle is clearly denounced as early as the years 1815–1830. To this criticism there were three successive replies:

- imagine an alternative to prison which retains its positive effects (the segregation of criminals, their removal from circulation in society) and eliminates its dangerous consequences (their return to circulation). One will take up the old system of transport, which the British had suspended at the time of the War of Independence and reinstated after 1790, in the direction of Australia. The great debates about Botany Bay took place in France around the years 1824–1830. In actual fact, deportation-colonization will never take the place of imprisonment; during the period of the great colonial conquests, it will play a complex role in the controlled circuits of delinquency. A whole ensemble constituted by the groups of more or less vol-
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Voluntary colonists, the colonial regiments, the battalions of Africa, the Foreign Legion, and Cayenne will come to function, during the nineteenth century, in correlation with a penal practice that will remain essentially carceral.

- reform the internal system of the prison so that it stops manufacturing an army of domestic perils. This is the goal that was pointed to throughout Europe as “penitentiary reform.” We can give as chronological markers for it the Lessons on Prisons by Julius (1828), on the one hand, and on the other the Brussels Conference in 1847.

This reform includes three main aspects: complete or partial isolation of prisoners inside the prisons (debates about the systems of Auburn and Pennsylvania); moral reform of convicts through work, instruction, religion, rewards, sentence reductions; development of parapenal institutions of prevention, or cooptation, or supervision.

Now, these reforms, which the revolutions of 1848 put an end to, did not have the slightest effect on the prison dysfunctions that were denounced in the preceding period;

- finally, give an anthropological status to the carceral circle; replace the old project of Julius and of Charles Lucas (to establish a “science of prisons” capable of giving the architectural, administrative, and pedagogical principles of a “correctional” institution) with a “science of criminals” that would be able to characterize them in their specificity and define the modes of social reaction suited to their case.

The class of delinquents, to which the carceral circuit gave at least part of its autonomy and whose isolation and closure it ensured, appears then as a psychosociological deviation. A deviation that comes under a “scientific” discourse (into which will rush psychopathological, psychiatric, psychoanalytic, and sociological analyses); a deviation about which people will wonder if prison constitutes a response or an appropriate treatment.

What prison was reproached for in other terms at the beginning of the nineteenth century (its forming a “marginal” population of “delinquents”) is now considered as an inevitability. Not only is it accepted as a fact, but it is constituted as a primary assumption. The “delinquency” effect produced by prison becomes a delinquency problem to which prison must give a suitable response. A criminological turning of the carceral circle.

It must be asked how such a turning was possible; how effects that were denounced and criticized managed, after all, to be assumed as fundamental data for a scientific analysis of criminality; how it came about that prison, a recent, unstable, criticizable and criticized institution, was planted so deep in the institutional field that the mechanism of its effects could be posited as an anthropological constant; what prison’s ultimate reason for being was; what functional requirement it happened to meet.

It is all the more necessary to pose the question and, beyond that, all the more difficult to answer it, as one has trouble seeing the “ideological” genesis of the institution. One might think, in fact, that prison was indeed denounced, and very early on, in its practical consequences, but that it was so firmly tied to the new penal theory (the one presiding over the drafting of the nineteenth-century code) that it had to be accepted along with the theory; or, further, that this theory would have to be reworked, from top to bottom, if one aimed to formulate a radical prison policy.

Now, from this viewpoint, an examination of the penal theories of the second half of the eighteenth century yields rather surprising results. None of the great reformers, whether they were theoreticians like Beccaria, jurists like Servan, legislators like Le Peletier de Saint-Fargeau, or both at the same time like Brissot, recommend prison as a universal or even a major penalty. In a general way, in all these formulations, the criminal is defined as society’s enemy. In this respect, the reformers take up and transform what had been the result of a whole political and institutional evolution since the Middle Ages: the replacement of litigation settlement by public prosecution. By intervening, the king’s prosecutor designates the infraction not just as an attack on a person or a private interest but as an attempt upon the king’s sovereignty. Commenting on the English laws, Blackstone said that the public prosecutor defends both the sovereignty of the king and the interests of society. In short, a large majority of the reformers, starting with Beccaria, sought to define the notion of crime, the role of the public party, and the necessity of punishment solely on the basis of the interest of society or the need to protect it. The criminal injures society first of all; breaking the social compact, he sets himself up in society as a domestic enemy. A certain number of consequences derive from this general principle.

1. Each society will have to adjust the scale of penalties according to
its particular needs. Since the punishment does not derive from the transgression itself but from the harm caused to society or from the danger to which it exposes society, the weaker the society is, the more mindful of its security it will have to be, and the more severe it will need to show itself. Hence, no universal model of penal practice, and an essential relativity of penalties.

2. If the penalty were expiation, there would be no harm in its being too harsh; in any case, it would be difficult to establish a just proportion between it and the crime. Yet if it is a matter of protecting society, one can calculate it in such a way that it ensures exactly that function: any additional severity becomes an abuse of power. The justice of the penalty is in its economy.

3. The role of the penalty is entirely oriented toward the exterior and toward the future: to prevent crime from recommencing. Logically, a crime that one knew for certain to be the last would not need to be punished. Hence, make the guilty incapable of further harm and dissuade the innocent from any similar infraction. Here, the certainty of the penalty, its inevitability, more than any severity, constitutes its effectiveness.

Now, from such principles it is not possible to deduce what will actually come to pass in penal practice, namely, the universalization of prison as the general form of punishment. On the contrary, one sees the emergence of very different punitive models:

- one of these is geared to dishonor, that is, to the effects of public opinion. Dishonor is a perfect penalty, since it is the immediate and spontaneous reaction of society itself; it varies with each society; it is graduated according to the harmfulness of each crime; it can be revoked by a public rehabilitation; lastly, it affects only the guilty person. It is therefore a penalty that is adjusted to the crime without having to go by way of a code, without having to be applied by a court, and without risk of being misused by a political power. It is exactly attuned to the principles of penal practice. “The triumph of a good legislation is when public opinion is strong enough to punish offenses by itself. . . . Fortunate is the people in whom the sense of honor can be the only law. It has little need of legislation. Dishonor, there is its penal code”;9

- another model employed in the plans for reform is that of retaliation. By sentencing the guilty individual to a punishment of the same type and of the same gravity as the crime, one is sure of obtaining a penalty that is both graduated and exactly proportional. The penalty takes the form of a counterattack. And, provided the latter is quick and inevitable, it almost automatically nullifies the advantages expected by the lawbreaker, rendering the crime useless. The benefit of the offense is abruptly brought back to zero. Doubtless, the retaliation model was never proposed in a detailed form; but it often enabled one to define some types of punishment. Beccaria, for example: “Attacks against persons ought to be punished by corporal penalties”; “personal injuries against honor ought to be pecuniary.” One also finds it in the form of a “moral retaliation”: punish the crime not by turning its effects around but by turning back toward the beginnings and the vices that are its cause.10 Le Peletier de Saint-Fargeau recommends to the National Assembly (21 May 1791): physical pain to punish heinous crimes; hard labor to punish crimes originating in idleness; and dishonor to punish crimes inspired by an “abject and degraded” soul;11

- lastly, a third model, enslavement for the benefit of society. Such a penalty can be graduated, in its intensity and duration, according to the harm done to the community. It is connected with the transgression through that damaged interest. Beccaria, apropos of thieves: “Temporary slavery places the labor and the person of the guilty individual in the service of society so that this state of total dependence compensates it for the unjust despotism that he practiced by violating the social compact.”12 Brissot: “By what should the death penalty be replaced? By slavery which makes the guilty incapable of harming society; by labor which makes him useful; by long and continuous suffering which frightens those who might be tempted to imitate him.”13

Of course, in all these plans, prison often figures as one of the possible penalties: either as a condition of forced labor, or as a retaliation penalty for those who have interfered with the liberty of others. But it does not appear as the general form of penalty, nor as the condition for a psychological and moral transformation of the delinquent.

It is in the first years of the nineteenth century that one will see the theoreticians grant this role to prison. “Imprisonment is the preeminent penalty in civilized societies. Its tendency is moral when it is
accompanied by the obligation of labor" (P. Rossi, 1829). But during this period the prison will already exist as a major instrument of penalty. Prison as a place of improvement is a reinterpretation of a practice of imprisonment that had spread in the preceding years.

Thus, prison practice was not implied in penal theory. It was born elsewhere and was formed for other reasons. And it was imposed from the outside, as it were, on penal theory, which would be obliged to justify it after the fact. For example, this is what Livingston would do, in 1820, when he said that the prison penalty had the fourfold advantage of being divisible into as many degrees as there were degrees of seriousness in the offenses; of preventing recurrence; of enabling correction; of being mild enough so that juries would not hesitate to punish and the people would not rebel against the law.

To understand how prison really functioned, beneath its apparent dysfunction, and how deeply successful it was beneath its surface failures, we must go back, no doubt, to those parapenal agencies of control which it figured, as we have seen, in the seventeenth and especially the eighteenth centuries.

In those instances, confinement plays a role that includes three distinct features.

• It intervenes, in the spatial distribution of individuals, through the temporary imprisonment of beggars and vagabonds. No doubt, ordinances (end of seventeenth and eighteenth century) sentence them to the convict ships, at least in the case of repeat offenses; but confinement remains in fact the most frequent punishment. Now, if they are confined, it is not so much to keep them where they are held as to move them: make the cities off-limits to them, send them into the countryside, or also prevent them from roaming in an area, force them to go where they can be given work. This is at least a negative way of controlling their location relative to the apparatus of farm and factory production; a way of acting upon the population flow, taking into account the needs of production and of the job market.

• Confinement also intervenes at the level of individual conduct. It penalizes at an infrapenal level ways of living, types of discourse, political projects or intentions, sexual behaviors, rejections of author-
with the French Revolution), new moral reform associations sprang up, much more aristocratic in their recruitment (some of them militarily equipped): they requested royal intervention, the promulgation of a new set of laws, and the organization of a police force. The work and the person of Colquhoun are at the center of this process.

What transformed penality at the turn of the century was the adjustment of the judicial system to a mechanism of oversight and control. It is their joint integration into a centralized state apparatus—but also the establishment and development of a whole series of (parapenal and at times nonpenal) institutions—that serves the main apparatus as a point of support, as forward positions, or reduced forms. A general system of oversight and confinement penetrates all layers of society, taking forms that go from the great prisons built on the panopticon model to the charitable societies, and that find their points of application not only among the delinquents, but among abandoned children, orphans, apprentices, high school students, workers, and so on. In a passage of his Lessons On Prisons, Julius contrasted civilizations of the spectacle (civilizations of sacrifice and ritual, where it is a matter of giving everyone the spectacle of a unique event and the major architectural form is the theater) with civilizations of supervision (where it is a matter of ensuring an uninterrupted control by a few over the greatest number; its privileged architectural form—the prison). And he added that European society, which had replaced religion with the state, offered the first example of a civilization of supervision.16

The nineteenth century founded the age of panopticism.

What needs did this transformation meet?

It seems to have provided new forms and new rules in the practice of illegality. New threats, above all.

The example of the French Revolution (but also of many other movements in the last twenty years of the eighteenth century) shows that the political apparatus of a nation is vulnerable to popular rebellions. A food riot, a revolt against taxes or rents, resistance to conscription are no longer those localized and limited movements which may well reach (and physically so) the representative of political power while leaving its structures and its distribution out of range. They may challenge the possession and exercise of political power. But further, and perhaps above all, the development of industry places the production apparatus in the grasp of those who must operate it. The small-scale craft units, the factories with limited and relatively simple equipment, the low-capacity warehouses supplying local markets did not offer much of an opportunity for gross depredations or large-scale acts of destruction; but mechanization, the organization of great factories, with large stocks of raw materials, the globalization of the market, and the appearance of great centers for the redistribution of commodities place wealth within reach of endless attacks. And these attacks come not from the outside—from those deprived or poorly assimilated individuals who, in the cast-off garb of the beggar or the vagabond, caused such fear in the eighteenth century—but from within, as it were, from the very people who must handle the machines to make them productive. From the daily pillaging of stored products to the great collective smashings by machine operators, a constant danger threatens the wealth that is invested in the productive apparatus. The whole series of measures taken at the end of the eighteenth century and the beginning of the nineteenth to protect the ports, docks, and arsenals of London and to dismantle the networks of black market dealers can serve as an example.

In the countryside, an apparently inverse situation produces analogous effects. The parceling out of rural property, the more or less complete disappearance of the commons, and the bringing of fallow land into cultivation solidify appropriation and make rural society intolerant of a whole set of minor illegalities that people had to accept—like it or not—in the system of great undercultivated estates. The margins disappeared where the poorest and the most mobile had managed to subsist, taking advantage of tolerance and neglect, of forgotten regulations and established facts. The tightening of property ties or, rather, the new status of landed property and its new cultivation transforms many established illegalities into offenses. The importance, more political than economic, of rural offenses in the France of the Directoire and the Consulat (offenses that are connected either to struggles in the form of civil wars or to draft resistance); the importance, too, of resistances in Europe against the forest codes of the beginning of the nineteenth century.

But perhaps the most important form of the new illegality is elsewhere. It concerns not so much the body of the production apparatus or that of landed property as the very body of the worker and the way in which it is applied to apparatuses of production. Inadequate wages, disqualification of labor by the machine, excessive labor hours, multiple regional or local crises, prohibition of associations, mechanism of indebtedment—all this leads workers into behaviors such as absenteeism.
breaking of the “hiring contract,” migration, and “irregular” living. The
problem is then to attach workers firmly to the production apparatus,
to settle them or move them where it needs them to be, to subject them
to its rhythm, to impose the constancy or regularity on them that it
requires—in short, to constitute them as a labor force. Hence a set of
laws creating new offenses (the passbook order, the law concerning
drinking establishments, the lottery prohibition); hence a whole series of
measures that, without being absolutely binding, bring about a divi-
sion between the good and the bad worker, and seek to ensure a behav-
ioral rectification (the savings bank, the encouragement of marriage,
and later, the workers’ housing projects [cités ouvrières]); hence the
appearance of organizations exercising control or pressure (philan-
thropic societies, rehabilitation associations); hence, finally, a whole
immense worker moralization campaign. This campaign defines what
it wants to exorcize as “dissipation” and what it wants to establish as
“regularity”: a working body that is concentrated, diligent, adjusted to
the time of production, supplying exactly the force required. It gives
the marginalization effect that is due to the control mechanisms a psy-
chological and moral status of importance.

A certain number of conclusions can be drawn from all this.

The forms of penalty that one sees appearing between the years
1760 and 1840 are not linked to a renewal of moral perception. The
essential nature of the infractions defined by the code scarcely changed
we may note, however, the gradual or sudden disappearance of reli-
gious offenses); the appearance of certain economic or professional
offenses; and while the regimen of penalties grew considerably milder,
the infractions themselves remained nearly identical. What brought the
great renewal of the epoch into play was a problem of bodies and mate-
ruality, a question of physics: a new form of materiality taken by the
production apparatus, a new type of contact between that apparatus and
the individual who makes it function; new requirements imposed on
individuals as productive forces. The history of penalty at the begin-
ing of the nineteenth century does not belong essentially to a history
of moral ideas; it is a chapter in the history of the body. Or let us put
it another way: By questioning moral ideas in light of penal institutions
and practice, one discovers that the evolution of morals is, above all,
the history of the body, of bodies, rather. This being the case, it is
understandable that:

- prison became the general form of punishment, replacing torture.
The body no longer has to be marked; it must be trained and re-
trained; its time must be measured out and fully used; its forces
must be continuously applied to labor. The prison form of penalty
corresponds to the wage form of labor;

- medicine, as a science of the normality of bodies, found a place at
the center of penal practice (the penalty must have healing as its
purpose).

2 The transformation of penalty does not belong simply to a his-
tory of bodies; it belongs more specifically to a history of relations
between political power and bodies. The coercion of bodies, their con-
trol, their subjectivation, the way in which that power is exerted on
them directly or indirectly, the way in which they are adapted, set in
place, and used are at the root of the change we have examined. A
Physics of power would need to be written, showing how that physics
was modified relative to its earlier forms, at the beginning of the nine-
teenth century, at the time of the development of state structures.

A new optics, first of all: an organ of generalized and constant over-
sight; everything must be observed, seen, transmitted: organization of
a police force; instituting of a system of records (with individual files);
establishment of a panopticism.

A new mechanics: isolation and regrouping of individuals, localiza-
tion of bodies; optimal utilization of forces; monitoring and improve-
ment of the output; in short, the putting into place of a whole discipline
of life, time, and energies.

A new physiology: definition of standards, exclusion and rejection
of everything that does not meet them, mechanism of their reestab-
ishment through corrective interventions that are ambiguously thera-
petic and punitive.

3 Delinquency plays an important role in this “physics.” But there
should be no misunderstanding about the term delinquency. It is not a
matter of delinquents, a kind of psychological and social mutant, who
would be the object of penal repression. Delinquency should be under-
stood, rather, as the coupled penalty–delinquent system. The penal
institution, with prison at its center, manufactures a category of indi-
viduals who form a circuit with it: prison does not correct—it endlessly
calls the same ones back; little by little, it constitutes a marginalized
population that is used to exert pressure on the “irregularities” or “illegalities” that cannot be tolerated. And it exerts this pressure on illegalities via delinquency in three ways: (1) by gradually leading the irregularity toward the infraction, with the help of a whole process of exclusions and parapenal sanctions (a mechanism that we may call “indiscipline leads to the gallows”); (2) by incorporating delinquents into its own instruments for supervising illegality (recruitment of provocateurs, informers, detectives; a mechanism that we may call “every thief can become Vidocq”); (3) by channeling the infractions of delinquents toward populations that need watching the most (the principle here: “a poor person is always easier to rob than a rich one”).

So, to return to the question posed right at the start—“Why this strange institution of pénal, why this choice of a penalty whose dysfunction was denounced so early?”—perhaps the answer should be sought along these lines: prison has the advantage of producing delinquency, an instrument of control over and pressure on illegality, a substantial component in the exercise of power over bodies, an element of that physics of power which gave rise to the psychology of the subject.

This year’s seminar was devoted to preparing the Pierre Rivière dossier for publication.

NOTES

3 P. Mayart de Vouglans, _Instituts au droit criminel, ou Principes généraux en ces matières_ (Paris: Breton, 1757).