

Essay

The Pains of Sovereignty

On the Joyous Passion of the Self-punishing Subject

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I

The punished individual is a subject to be deprived of sovereignty, a being who is consciously denied the right to self-legislate. This, at least, has been the standard account of modern punishment in recent decades: to be punished, which has largely meant to linger in a state of incarceration, is to forfeit the capacity for self-government. As the US prison sociologist Gresham Sykes observed in the late 1950s, incarceration entails the loss of liberty, goods and services, sexual relationships, autonomy, and security (Sykes [1958] 2008). This view remains remarkably influential today. While these ‘pains of imprisonment,’ as Sykes ([1958] 2008) termed them, certainly remain in place in many traditional carceral institutions, legal punishment has more recently moved beyond these narrow parameters: the logic of contemporary penalty is increasingly aimed at the positivity of affirmation and production rather than the negativity of confinement and restriction. Notably, in *Discipline and Punish*, Foucault registered a transformation from the tendency to punish the body to a punishment of the soul, not to punish more, as Foucault quipped, but to ‘punish better’; in this transformation was implied a positive construction of subjectivity. But Foucault wrote about punishment up till the second half of the nineteenth century and wrote sparingly on punishment beyond this time period. A new sort of punishment has started to make itself felt at the margins of certain penal systems in some Western countries, many of them considered ‘progressive,’ such as the Scandinavian countries (e.g. Pratt 2008), in the form of ‘open,’ minimum-security facilities; or it lies in piecemeal reforms, such as the electronic monitoring of offenders residing beyond the prison’s walls proper, using digital transponders and ankle bracelets to monitor the punished body’s motion through space.

This kind of punishment aims not so much at a curbing of the self as its multiplication and expansion – a form of punishment that seeks, briefly put, not so much a Foucauldian regime of discipline but a Deleuzian mode of control, whose aim, ultimately, is to produce corrected, laboring, loving, and energetic subjects – not disciplined persons but desiring subjects. The electronic monitoring of offenders, who serve time in society at large, and the therapeutic ‘rehabilitation’ of inmates in minimum-security, ‘open’ prisons, are two instances of punishment whose aim is not primarily to encircle, narrow or limit the individual offender; instead, their purpose is to reaffirm and reorient a personal vitality, their guiding principle being not a ‘sad



idealism,’ to borrow Flaxman’s (Flaxman 2011, 220) gloss, but an ‘affirmative instinct and a joyous passion’ – a kind of punishment that integrates and produces more than it excludes and negates. However, this new punishment – a punishment whose locus is the affirmation of personal sovereignty, constituting a novel regime of sovereign punishment – possesses a sufficiently dialectical character to ensure that with the positivity of affirmative punishment, paradoxically, a new kind of negativity is reintroduced, a shadowy penalty that digs deep into the soul of the punished: all is not well in the kingdom of joyous passion, for to be punished today is in many respects to become a self-punishing subject. This self-flagellation, or self-punishment, this affirmation of the sovereign offender, whose watchword is the punished person as sovereign, is painful or frustrating, involving entirely new forms of deprivation that we may call the *pains of sovereignty*.

Some, of course, find the emergence of such novel modalities of punishment entirely acceptable, even welcome. The booming interest in ‘penal subjectivity’ (see e.g. Hayes 2016; Sexton 2015), which means little more than taking seriously the verbally expressed affective states of those subjected to punishment, has failed to engage with such problems as the timing of interviews as well as the inaccessibility of the unconscious, so familiar to certain psychoanalytic practitioners – but almost entirely absent from contemporary empirical sociological accounts (Fink 2014, 241-243). However, the penal-subjectivist strand of thought has, at the very least, produced an interest in what some prisoners say some of the time about how they may feel at a particular point in time. Take this example from a Lithuanian prisoner, now residing in an ‘open’ penal colony, an institutional form partly inspired by the Norwegian prison system (and developed using funding from the Norwegian state), who had been transferred there from a traditional higher-security prison in Estonia: ‘In Estonia I was inside for two and a half [years] – in a cell...it’s enough! I asked to be moved here because this is a colony, I live here like I’m at home... Now I want to walk and walk and walk. [There’s] freedom here... I feel freedom’ (Slade and Vaičiūnienė 2018, 225). The narratives of prisoners held in these late-modern colonies, widely praised for their humanity and beneficence, is occasionally upbeat, a cheery optimism made all the more likely by their contrastive experience of traditional maximum-security facilities – which only suggests that there are no pure penal affects, only affects mediated by institutional experience.

But these institutions conceal a darker, more shadowy side, wherein the pursuit of freedom-within-penal-constraint comes to be experienced as frustrating, deceptive, and even dangerous (see e.g. Shammas 2014). Moreover, when the trope of ‘rehabilitation’ becomes the central institutional imperative, all the old modernist critiques of this idea resurface. Famously, Hegel noted his aversion towards the rehabilitation of criminal offenders on the grounds that it was tantamount to an animalistic reduction of the human subject: it was like saying a dog had been too poorly trained in its formative stages, and now the beast would have to be ‘re-educated.’ In addition to his assertion of the values of human (and non-animalistic) reason, Hegel dismissed rehabilitation on epistemological grounds: one cannot in advance determine whether an individual will successfully be corrected, and one cannot sufficiently judge after the fact whether rehabilitation has truly taken place (Hegel 1995, 102). Rehabilitation is quite simply dogged by a fundamental problem of knowledge. We cannot determine what is inside another person, because the contents of their soul must remain at least partly shrouded

in obscurity. This causes insurmountable problems prior to, during, and after the process of (alleged) rehabilitation. It is this unattainable truth-condition to which all parole boards, psychological evaluators, and risk-assessing actuaries aspire – inevitably without genuine success.

Hegel's dismissal of rehabilitation, on the grounds that it is antipathetic to human reason is reminiscent of Foucault's aversion to 'alternatives to the prison' or 'new model prisons.' In a telling essay from the mid-1970s, Foucault excoriated the Swedish model of 'open' prisons. Writing dismissively of such prisons, Foucault observed that 'they are not so much alternatives as quite simply attempts to ensure through different kinds of mechanisms and set-ups the functions that up to then have been those of prisons themselves' (Foucault [1976] 2009, 15). In other words, such prisons amount to little more than carceral window dressing, concealing modern punishment in an apparently counterpunitive disguise. On the Foucauldian view, rehabilitation contains the possibility of an even deeper form of legal punishment because it promises to remold subjectivity against the will of the subject. On Hegel's view, rehabilitation is a not-so-subtle proclamation that the individual should not be free to select the conditions of their own determination: they must be remade and raised anew, like animals, the rehabilitationists are implicitly saying. A similar point was made by Adorno in his critique of the psychoanalytic 'reality principle.' With this principle in hand, Adorno argued, analysts are forever on the lookout for signs that patients, or analysands, have started deviating from normal reality. While Adorno's comments may have been specific to a particular, historical moment in psychoanalytic practice, he contributes a valuable argument that the normalizing procedures of psychotherapy more broadly conceived neglect the fact that members of particular social categories may have good reasons to want to escape from their miserable reality. 'Adaptation to reality has the status of a *summum bonum*,' Adorno wrote, 'whereas any deviation from the reality principle is immediately branded as an escape. [But] the experience or reality is such that it provides all kinds of legitimate grounds for wanting to escape. This exposes the harmonistic ideology behind the psychoanalytic indignation about people's escape mechanisms' (Adorno 1984, 13). Similarly, when inmates in open prisons are punished swiftly and severely for rules infractions (smoking, drinking, using recreational drugs), or for failing to obey the strictures of various therapeutic interventions, this fails to recognize that such escape mechanisms and modest acts of rebellion have the status of necessity for these subaltern categories, the only form of *jouissance* available to beings neuroticized by the semi-enclosures of prison. Rehabilitation is inherently normalizing, stemming as it does from the Latin *habilis*, meaning 'able,' but this seemingly innocuous term conceals numerous important questions: for whom is one to be made able? In what way? According to whose criteria? To what final purpose? All good liberals can criticize the reeducation camps of the Chinese Communist Party and the gulags of the Soviet Union (and they are of course right to do so), because these camps clearly force individuals to conform to a set of norms in ways that run against a respect for individual autonomy; but Western, liberal retraining facilities, i.e. minimum-security prisons and their rehabilitative programs, are held up as pillars of virtue, because the norms to which they are working towards are held to be above criticism. Interestingly, in California, rehabilitation has been widely lauded even as the colloquial term used to describe inmate participation in such activities is 'programming,' which is, of course, the same term as is used for creating the code needed to instruct a computer to operate in a particular way; when an

inmate is said to be ‘programming,’ that is, participating in educational classes or therapeutic interventions, everyday language hints at a more nefarious interpretation: they are ‘being programmed.’

II

The electronic monitoring of inmates begins as an act of pure managerialism, engineered to function as an instrument of bureaucratic efficiency and fiscal optimization. This has certainly been the case in one of the most progressive penal systems in the world, that found in Norway, that most social-democratic of the (hollowed-out) Scandinavian welfare states. Instead of frittering away the taxpayer’s money on the enclosure of low-risk offenders in costly maximum-security prisons, and rather than embarking on an expensive program of prison construction to counteract the formation of ‘sentencing queues’ - over the course of several years, thousands of sentenced offenders in Norway had to wait for months, if not years, for the ‘right’ to be placed in prison, lingering out in the community while waiting for their sentences to be initiated - electronic monitoring seemed to offer the best of two worlds: on the one hand, safety and security for the public, at least when combined with risk assessment instruments, by diverting ‘less dangerous’ offenders from prisons and into the community; on the other hand, fiscal savings by reducing expenditures on carceral institutions, while allowing sentenced criminals to work, study, live with their families, and become or continue to be productive members of society.

But there is something petrifyingly premonitory about such electronic monitoring schemes. They reveal the hazy boundaries between technologies of punishment and technologies of everyday life. Techniques intended for punishment become technologies deployed for control, broadly conceived, spilling out from their penal containers and into the civilian *Lebenswelt*. Thus, in 2018, Canadian immigration authorities proposed monitoring immigrants using electronic tagging systems, rather than holding them in immigration detention facilities (Silverman 2018). In San Antonio, Texas, immigrants from Central America are permitted to move around in the city, so long as they wear the thick black ankle bracelets that ceaselessly communicate (at least when they do not malfunction) their location to the state. These developments are often hailed as a victory by liberal reformers and progressive critics of these decrepit and devastating institutions. Emblematic of this reading is the analysis of one US legal scholar, who welcomes the prospect of ‘technology setting them free’ – ‘them’ being immigrants previously detained by immigration authorities. The ‘practice of immigrant family detention remains alive and well in this country,’ but this need no longer be the case: instead, the author ‘proposes a cost-effective and more efficient solution to the problem: electronic monitoring’ (Blasco 2017).

But electronic monitoring does not so much cause the prison to dissipate as to be distributed throughout the body politic. The prison does not wither away: instead, its logic of control circulates more widely, its reach is extended, while its logic is transformed from that of circumscription to modulation, to speak in Deleuzian terms. As Deleuze wrote, ‘there is no need to ask which is the toughest or most tolerable regime, for it is within each of that liberating and enslaving forces confront one another. For example, in the crisis of the hospital as [an] environment of enclosure, neighborhood clinics, hospices, and day care could at first express new freedom, but they

could also participate in mechanisms of control that are equal to the harshest of confinements' (Deleuze 1990, 4). Electronic monitoring skips, with leaps and bounds, from the category of prisoners to the category of immigrants – and, why not, to schoolchildren monitored by overbearing teachers or worried and watchful parents, patients in nursing homes suffering from dementia whose families fear their escape and disappearance, soldiers in the battlefield watched from afar, smartphone owners, Facebook users, indeed, anyone browsing the Internet... We are all of us becoming the subjects of electronic monitoring, of course, all of us partaking of this generalized logic of control, whose specificity to the penal domain is dubious and doubtful. 'Better living through surveillance' has become the watchword of our times, made all the more suspect by its joyous, passionate embrace by a multitude of groups, from prison wardens through border patrol agents to mobile telephone users.

III

There is an interesting political mechanism at play at the core of late-modern society: the adherents and defenders of the liberal, sovereign individual esteem this figure so highly that they would do away with freedom altogether – and in freedom's name. As Slavoj Žižek has pointed out, George W. Bush was so eager to uphold freedom and defend the Christians of Iraq that he was willing to create a near-apocalyptic situation in which nearly all Christians were forced to flee and the conditions of freedom in everyday life likely worsened for at least a decade, if not more, compared with life under Saddam. Obama was such a staunch defender of freedom that he promoted the lawless assassination of thousands of individuals by drone strike, including citizens of his own nation. And capitalism has become such a successful vehicle of individual freedom that it would burn the planet in the wildfires of catastrophic climate change, generated by the twin evils of hyperproducerism and hyperconsumerism, that it forces upon us the imperative of a *tektology*, a novel reshaping of the Earth through feats of geoengineering that will put nature well and truly in the past: 'Tektology is all about constructing temporary shelter in the world, but it is something that has been made, now and for a future, rather than an inheritance or entitlement to be retrieved' (Wark 2014, 150). Lamenting the disappearance of Freud's central ideas from the cultural mainstream, the Lacanian psychoanalyst Bruce Fink has observed that 'the unconscious has been forgotten. There's a kind of social amnesia at work: many of Freud's most important initial insights about the repressed have been thrown out the window. Many a clinician I've spoken with seems to have no idea what I mean when I talk about the repressed!' (Fink 2014, 247) What is it that has been repressed in the 'sovereignization' of the individual, of which the surveilled bodies of convicted criminal offenders are only the outermost symptomatic point? The object of repression in the collective unconscious today is the very idea of delimitation, of finitude, of the necessity and desirability of constraint. As the popular English (and Catholic) writer G. K. Chesterton (1995) observes in *Orthodoxy*, nearly all children seem to inherently enjoy the idea of the limit: they delight in enclosure and find comfort in boundedness. Chesterton gives the example of finding more enjoyment in a scenic from within the framed enclosure of a window than within limitless nature. But this lesson has been forgotten today. The vertiginous limitlessness of our contemporary situation emblemizes the very opposite of the valorization of enclosure. The idea of the limit has been repressed – and now it is returning with a vengeance, in the guise of a liberality that undermines itself.

To be punished today, then, is in many ways to be forced into freedom, at least under those forms of punishment that have moved farthest into their late-modern forms: open prisons and electronic monitoring. The convicted offender is forced to become an author of their own life-course. Like so many neoliberal subjects, they, too, must become entrepreneurs of the self, tailoring their actions to a penal regime that emphasizes remorse for one's crime, insight into one's criminal 'thought patterns,' and the necessity of developing 'prosocial' attitudes and skillsets. Interestingly, these tropes surface in nearly all postindustrialized penal regimes, regardless of their position along the penal continuum: thus, prison systems in both California and Norway emphasize the individual's need to gain insight into their individual-level behavioral and cognitive patterns said to be the proximate causes of their descent into a life of crime (Shammas 2014, 2018). The reason for this seems clear: almost all postindustrialized societies partake of a neoliberal logic of sovereignty that only seems to devolve authority from the state to the individual, while ensuring that statecraft is placed in the service of the promotion of markets. In all this, the punished body is to avoid grumbling, to take a certain delight in their self-correction, which is a self-imposition in name only, and they are to *enjoy* the terms of their own punishment, just as 'neoliberal employment,' in Frédéric Lordon's phrase, 'aims at enchantment and rejoicing: it sets out to enrich the relation with joyful affects' (Lordon 2014, 48). In this sense, neoliberal penalty, too, is something entirely new, for the punished body in former times was rarely expected to be gladdened by their penalized condition. Ultimately, then, neoliberalism is little more than rule by the state, aimed at the promotion of markets, and borne by the figure of the joyous, affirmative individual.

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