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PUNISHMENT AND MODERN SOCIETY

A STUDY IN SOCIAL THEORY



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Punishment as a Social Institution

1. THE NEED FOR THEORY

In the opening pages of this book I drew a distinction between studies of punishment which are 'penological' in a narrow sense, and a wider, more sociological approach which is concerned to stand back and reflect upon penal institutions, trying to figure out what exactly 'punishment' involves, how it works, what it means, and where it fits in the social scheme of things. As will be all too clear by now, the stance I have adopted is the latter one and the result has been not a work of penology or even penal philosophy, but instead a work of social theory centred upon the institutions of punishment.

In an area of social life as hard and practical as punishment, this pursuit of 'theory' may seem a little misplaced. What need can there be for theorizing when the point of punishment is obvious and when penal systems are plagued by problems of the most mundane kind? Why resort to interpretation when punishment's purposes—and its practical defects—are obvious to anyone? One answer to this would be that it is precisely the 'obviousness' of these everyday problems of punishment—and the dismaying fact that they stubbornly refuse to go away—which prompts an enquiry of a more fundamental kind. In the face of punishment's intractable problems one is led to ask how are we to understand an institution so riven with contradiction, with failure, and with self-defeating policies? What are the forces and the counterforces which keep this institution—and its problems—in place? How can an institution be both relatively stable and deeply problematic at one and the same time?

Another response, equally forceful in my view, is to insist that 'theory' is not some kind of flight from reality. Properly pursued, theoretical argument enables us to think about that real world of practice with a clarity and a breadth of perspective often unavailable to the hard-pressed practitioner. It allows us a chance to escape the well-worn thought routines and 'common-sense' perceptions which penalty—like any other institution—builds up around itself like a protective shell. Theory enables us to develop analytical tools and ways of thinking which question these established habits of thought and action, and seek alternatives to them.

Theoretical work seeks to change the way we think about an issue and ultimately to change the practical ways we deal with it. It is, in its own way, a form of rhetoric, seeking to move people to action by means of persuasion, that persuasion being achieved by force of analysis, argument, and evidence.¹

¹ This is the ideal of rational argument: the scientific ideal. It would, however, be naïve to suppose that the persuasive power of 'good scholarship' depends only upon reasoning and evidence. On the role of rhetoric in the social sciences, see H. White, *Tropics of Discourse: Essays in Cultural Criticism* (Baltimore, 1978), and id., *Metahistory: The Historical Imagination in Nineteenth Century Europe* (Baltimore, 1973); C. Geertz, *Works and Lives: The Anthropologist as Author* (Stanford, 1988); J. Clifford and G. E. Marcus (eds.), *Writing Culture: The Poetics and Politics of Ethnography*

Theorizing is also, therefore, a form of action—one might even say of 'practice'—though its medium is that of symbols and its effect will depend upon whether this symbolic action ultimately affects the way people and institutions actually conduct themselves.² When theory does succeed as a form of action, it does so first of all by changing how people perceive things and the attitudes they adopt towards them. What I want to do in this concluding chapter is to show how the theoretical work which has been undertaken here might make us think differently about punishment—first of all as analysts, who seek to understand this institution in all its complexity, and then, importantly, as citizens, who might wish to think more seriously and more deeply about an institution for which we are at least partly responsible.

With respect to the sociology of punishment, the present study does not aim to set out a specific thesis or pursue a single line of interpretation. Instead, it explores penalty from a number of different angles in an effort to construct a composite picture of the phenomenon, superimposing different perspectives to suggest a fuller, more three-dimensional image than is usually perceived. This analysis has been organized around the arguments of a number of theoretical traditions, each of which presents a particular interpretation of punishment couched within a broader theory of society or social institutions. However my approach to these theories has been determined by my project, rather than by theirs. I have sought to use these theories not as conceptual frameworks for thinking about 'society' but instead as a source of specific interpretations of penalty—interpretations whose validity can stand independently of the general theories which produced them. For my purposes here, the theories of Durkheim, Foucault, the Marxists, and so on have become sources of insight about punishment's social role and significance and producers of facts about its operation and effects—resources to be drawn upon selectively rather than inviolable world-views which can only be swallowed whole.

Proceeding from one explanatory perspective to another I have tried to show how each one asks slightly different questions about the phenomenon, each pursues a different aspect, reveals a different determinant, outlines a different connection. Sometimes, of course, different theorists do address the same issue, only to interpret it in different ways—as when Marxists and Durkheimians disagree about the role of the state or of popular sentiment in the formation of penal policy. In such cases I have tried to argue out this disagreement and resolve it in favour of the best explanation—or to develop an alternative one of my own. At other times one theorist lays emphasis upon a

(Berkeley, 1986); and J. Gusfield, *The Culture of Public Problems: Drinking-Driving and the Symbolic Order* (Chicago, 1981). On rhetoric in criminology, see D. Garland, 'Politics and Policy in Criminological Discourse: A Study of Tendentious Reasoning and Rhetoric', *International Journal of the Sociology of Law*, 13 (1985), 1–33.

² Louis Althusser coined the term 'theoretical practice' to avoid the idea of an absolute division between 'theory' and 'practice' and capture the sense of theorizing as a form of action. See also K. Burke on *Language as Symbolic Action: Essays on Life, Literature and Method* (Berkeley, 1966).

particular aspect of a complex phenomenon—for instance Foucault's stress on the instrumentalized, rationalized character of modern penal systems—while another stresses a different aspect, as Durkheim does when he points to the persistence of expressive, emotional, and non-rational elements. In these instances I have tried to show how each interpretation might be modified by the other to take account of the dialectical interplay of the various forces which structure modern penalty. In other cases it may be that a particular theorist successfully identifies an element of penalty which seems to escape the scrutiny of other theoretical accounts—as with Foucault on power-knowledge techniques, Durkheim on the role of the onlooker, Rusche and Kirchheimer on the role of the labour market, or else Spierenburg on changing sensibilities. In response to this I have tried to suggest how different elements and aspects of penalty may fit together to form a complex, internally differentiated whole, and to point to some of the ways in which these different elements are structurally arranged and interrelated.

Throughout the work I have tried to show how we might play different interpretations off against each other—and against the factual evidence which we possess—and thus overlay them, build them up, and use each one to correct and refine the others. What others have seen as rival approaches which are mutually exclusive I have tried to turn into 'reciprocal commentaries, mutually deepening'.³ In effect I have been building upon the fragments of social and historical theory as they currently exist to suggest the outlines of a wide-ranging and reasonably comprehensive sociology of punishment.

The danger of such an undertaking, of course, is that it may all too easily collapse into an arbitrary eclecticism. In drawing upon arguments made by different theorists about 'punishment and society' one can too readily assume an identity of concerns where none in fact exists, and end up in an intellectual tangle of incompatible premisses, ambiguous concepts, and shifting objects of study. Trying to say everything at once, one can wind up saying nothing with any clarity or conviction. But, conscious of these risks, I have tried to suggest the explanatory power of pluralism without falling into the logical absurdities of eclecticism. I have not sought to add together global theories of 'society' which are theoretically and ideologically incompatible. Nor have I tried to pursue at once the very different theoretical projects that each of these traditions marks out. Instead, I have tried to harness these works for a project which none of their authors envisaged, but to which all can be made to contribute—namely, the construction of a rounded sociological account of penalty.

As a centre-piece for this project I have set out a number of simple questions concerning the social foundations, functions, and effects of punishment: questions which each approach in some way addresses. And throughout the investigation I have tried to keep these questions steadfastly in view while

³ Geertz, *Local Knowledge*, p. 234.

drawing upon the various theories and historical accounts for suggestions as to how they might be answered. Moving, on this basis, back and forth between interpretations has allowed a complex picture of penality to emerge, drawing upon the insights of all these theories without being tied to the global framework of any one of them.

2. THE OVERDETERMINATION OF PENAL EVENTS AND INSTITUTIONS

The implicit argument which runs throughout this enterprise has been that a pluralistic, multidimensional approach is needed if we are to understand the historical development and present-day operation of penality. If there is to be a sociology of punishment—and by that I mean a set of general parameters from which specific studies can take their theoretical bearings—then it should be the kind of sociology advocated by Marcel Mauss when he talked about the need for a synthesis and consolidation of perspectives. It should be a sociology which strives to present a rounded, completed image; a recomposition of the fragmentary views developed by more narrowly focused studies.⁴

One can rephrase this argument as being a warning against reductionism in the analysis of punishment—by which I mean the tendency to explain penality in terms of any single causal principle or functional purpose, be it ‘morals’ or ‘economics’, ‘state control’ or ‘crime control’. Instead of searching for a single explanatory principle, we need to grasp the facts of multiple causality, multiple effects, and multiple meaning. We need to realize that in the penal realm—as in all social experience—specific events or developments usually have a plurality of causes which interact to shape their final form, a plurality of effects which may be seen as functional or non-functional depending upon one’s criteria, and a plurality of meanings which will vary with the actors and audiences involved—though some meanings (or, for that matter, causes and effects) may be more powerful than others. The aim of analysis should always be to capture that variety of causes, effects, and meanings and trace their interaction, rather than to reduce them all to a single currency.

In this connection, the concept of ‘overdetermination’—first developed by Freud and subsequently taken up by historians, political scientists, and sociologists—is particularly useful, because it embodies this understanding and captures it in a single theoretical term. As Peter Gay explains, “overdetermination” is in fact nothing more than the sensible recognition that a variety of causes—a variety, not infinity—enters into the making of all historical events, and that each ingredient in historical experience can be counted on to have a variety—not infinity—of functions’.⁵ This concept of overdetermination—along with related ones such as ‘condensation’ (the

⁴ Mauss, *The Gift*, p. 78: ‘Whereas formerly sociologists were obliged to analyse and abstract rather too much, they should now force themselves to reconstitute the whole.’

⁵ P. Gay, *Freud for Historians* (New York, 1985), p. 187.

fusion of several forces and meanings in the same object) and 'polysemy' (the capacity of an object to support multiple meanings and interpretations)—have been used in this work to move the sociology of punishment from a series of more or less singular interpretations towards a more multidimensional framework in the belief that this will improve analysis and deepen understanding.

For the historian, the injunction to 'seek complexity . . . and tame it' has always been central to scholarly practice, and in many histories of punishment one sees this principle acted out to good effect.⁶ As John Beattie has put it, summing up his magisterial study of penal change in early modern England:

... changes in punishment are almost certain not to arise from a simple, one-dimensional effect. The forms of punishment employed by a society at any one moment are shaped by a variety of interests and intentions. They arise in response to what must often be antagonistic considerations, including the framework of law, what is technologically possible, what seems desirable or necessary in the light of the apparent problem of crime, what society is willing to accept and pay for. Why one method of punishment loses favour over time and gives way to another is a complex question because penal methods evolve within a larger social and cultural context that in imperceptible ways alters the limits of what is acceptable and what is not.⁷

Sociologists forget this at their peril, but they do sometimes forget it—as occasionally do historians—usually in an effort to develop a more general social theory, to drive home a critical point, or simply to domesticate the chaos of experience by reference to some clear explanatory principle. When this occurs, and when singular interpretations emerge, it is important that these be identified as specific contributions to be placed alongside others, rather than as comprehensive accounts that can stand by themselves.

3. PUNISHMENT AS A SOCIAL INSTITUTION

In order to ground this approach to the study of punishment, we need more than just methodological imperatives. We also need an appropriate conceptual image of the phenomenon—a theoretical depiction or representation of the object of study which will itself suggest the kind of complexity I have been stressing and the kind of analysis which this requires. At present there are a number of conceptions which are frequently used to ground our understanding of penalty. Punishment can be viewed as a kind of technical apparatus which forms an instrumental means to an end, and this seems to be the way in which the penology of crime control chooses to imagine it. It can be seen as a coercive relationship between the state and the offender, which is the central image underlying many critical studies of penalty. It can also be represented as a legal procedure, a form of power, an instrument of class domination, an expression of collective feeling, a moral action, a ritual event, or an embodiment of a certain sensibility. And as we have seen in our discussions, each of these images captures a certain aspect of the phenomenon, a certain truth about its

⁶ Ibid.

⁷ Beattie, *Crime and the Courts*, p. 470.

character which one would wish to retain, but does so in a fragmentary way, leaving out of focus as much as it brings in.

As an alternative to these fragmentary images—or rather as a background and framing device in which to set them—I suggest we use the concept of a social institution as a means of thinking about punishment. Penalty should be seen not as a singular kind of event or relationship but rather as a social institution which, by definition, entails the kind of complexity of structure and density of meaning which we have come across again and again. Such an image is admittedly a little abstract, and already very ‘sociological’. One can only see things in this way on the basis of a developed understanding and an appreciation of the distinctive characteristics of ‘social institutions’. But then this is true to some degree of all the conceptual images which are already in use. We can only imagine something as ‘a means to an end’ because we have already learned to think in these terms, and, having become acquainted with this way of thinking, we use its imagery and its metaphors as lenses with which to view the world. Learning to think of punishment as a social institution, and to picture it primarily in these terms, gives us a way of depicting the complexity and multifaceted character of this phenomenon in a single master image. It enables us to locate the other images of punishment within this overall framework while also suggesting the need to see penalty as being tied into wider networks of social action and cultural meaning.

Social institutions—which include the family, the law, education, government, the market, the military and religion, among others—are highly patterned and organized sets of social practices. They are society’s settled means of dealing with certain needs, relationships, conflicts, and problems which repeatedly recur and must be managed in an orderly and normative way if social relations are to be reasonably stabilized and differentiated. Each institution is organized around a specific area of social life and provides a regulatory and normative framework for human conduct in that area. Typically, such institutions evolve slowly, over a long period of time, so that their present character is often shaped by history and tradition as much as by the contemporary functions which they perform. Developed social institutions are, in effect, established frameworks for the satisfaction of needs, the resolution of disputes and the regulation of life in a particular social sphere. Having developed as a means of managing tensions, arbitrating between conflicting forces, and getting certain necessary things done, social institutions typically contain within themselves traces of the contradictions and pluralities of interest which they seek to regulate. As John Anderson puts it, institutions are the scenes of particular conflicts as well as being means to a variety of ends, so it is no surprise to find that each particular institution combines a number of often incompatible objectives, and organizes the relations of often antagonistic interest groups.⁸

⁸ See J. Anderson, *Studies in Empirical Philosophy* (Sydney, 1962) and the introduction by J. E. Passmore. Note that this conception avoids an overly functional view of social institutions. They are products of history and the scenes of continuing conflict, not just functional mechanisms.

Being directed towards a particular aspect of social life, and a specific set of needs and problems, each institution has its own intrinsic rationality and its own way of doing things—what one might term its own institutional culture—built up around the accumulated store of knowledge, techniques, normative rules, and working procedures which it has developed. Members or personnel of the institution are generally guided by this institutional logic whenever they function within it, and they are obliged to frame any problem or issue in the terms dictated by the institutional framework. Thus to deal with an issue as a legal problem, or a moral issue, as a family matter or a question of market forces—or, indeed, to approach it as a penal problem—is to subject it to very different ways of thinking and acting, each one with its characteristic languages, norms, and principles. In a sense, each institutional site gives rise to a distinctive world of its own with its own characters and roles, statuses and rule-governed relationships—as anyone who moves from one setting (or jurisdiction) to the other will readily experience.

But these institutional worlds are only partly self-contained. They open up on to other worlds and connect into a social network which extends well beyond their particular domain. Each institution occupies a particular place in the wider social field and routinely relates to its social environment, affecting and being affected by the social forces which surround it. Institutions link up with other institutions and with the world outside. They are affected by the forces of economics, politics, culture, and technology. For all their apparent autonomy, each one is situated within an ensemble of social forces and is structured by the values and social arrangements which form its effective environment. Social institutions thus live a complex life of their own, but they are also constitutive elements within a larger social structure. Each one forms a kind of junction-point in the social field upon which a range of forces converge, as well as being a setting for its own particular norms and practices.

To understand a phenomenon of this kind—and, more specifically, to understand penalty—we need to think in terms of complexity, of multiple objectives, and of overdetermination. We need to think of it as a historical emergent which is also a functioning system; as a distinctive form of life which is also dependent upon other forms and other social relations. Somehow or other we must learn to view it both in its integrity, as an *institution*, and in its relatedness, as a *social* institution. Such a way of thinking may involve a degree of difficulty, and it certainly lacks the spare elegance of some of the more reductionist approaches. But forms of thought are useful only if they are appropriate to their object, and a sociology of punishment which is to come to terms with the complexity of penalty must develop concepts and images which are adequate to it.

4. THE LIMITS OF THEORY

To say that punishment is a social institution in the sense described, that it is conditioned by an ensemble of social and historical forces, that it has an

institutional framework of its own and that it supports a set of regulatory and significatory practices which produce a range of penal and social effects—which is, in short, what this study has been saying—does not amount to a general theory of punishment. To produce such a theory, it would be necessary to do more than show, as I have shown, the ways in which moral, political, economic, cultural, legal, administrative, and penological conditions converge upon the penal realm and shape the forms of penalty; or how, in turn, penal measures serve to enforce laws, regulate populations, realize political authority, express sentiments, enhance solidarities, emphasize divisions, and convey cultural meanings. One would have to go rather further than this and construct a model of these interacting forces which specified the precise pattern of their interaction, identified regular causal sequences, and revealed principles of determination and structuration which are reasonably constant over time.

Such models are still to be found in the social science literature—most notably in the Marxist tradition—but they appear less and less convincing as ways of conceiving social process and historical outcome. They are a legacy of the nineteenth-century scientism which viewed society as a closed, mechanical system, and left little room for agency, contingency, and accident in the historical process. In contemporary social thought these global theories and rigid models have been giving way to more open-ended, pragmatic theorizing which seeks to interpret the varieties of social and historical experience rather than search for iron laws and structural necessities.

It seems to me that the sociology of punishment has no need for a general theory of this kind, and that any attempt to build a single theoretical model of the causes, forms, and consequences of penalty would be misconceived. One reason for this is that 'penalty' exists as a single, unified entity only in the restricted sense that it is a bounded institutional realm, established in law with jurisdiction to administer penal sanctions. At any one time the boundaries of that realm are more or less set and identifiable, which allows us to talk sensibly about its composition, its functions, its relationship with non-penal institutions, and so on. (It also allows governments to develop penal policies which have a measure of unity and impart some coherence in this complicated array of practices and procedures.) However, in most other respects, 'penalty' must be seen as a generic term which covers a multitude of different elements which happen to form part of an institutional complex. 'Penal systems' are composed of specific agencies, offices, apparatuses, rules, procedures and beliefs, strategies, rhetorics, and representations, each of which will have its own history, its own determinants, and its own specific effects. The specific conditions which produce the prison are not those which gave rise to the probation service, any more than the electronic tag can be explained in the same way as the electric chair. And the impact of external pressures (for instance, the rise of a punitive, law-and-order politics) may cause very different effects in different areas of

penalty (thus prisons may expand while social work sanctions decline). Penal policy—which is itself constantly changing in response to a variety of forces, internal and external—makes use of all these different agencies, institutions, and sanctions but requires an explanation in its own terms, to do with policy formulation and the processes of decision-making involved.

Of course there are broad, structuring patterns which help shape penalty over time—as we saw when we discussed secularization, rationalization, civilization, the development of commodity production, the rise of the state, and so on. But a theoretical model of punishment couched in these terms is likely to be so unspecific as to be banal. Large-scale historical forces do not fit together in a stable interplay that can be duplicated in theory, any more than they 'work themselves out' in predetermined historical outcomes. In fact grand forces such as 'rationalization' or 'civilization' do not exist as such outside of historical interpretations. Rather it is historians and sociologists who study the vast myriad of events, large and small, and seek to understand and characterize them by means of these analytical tools. Consequently, it is only in combination with specific histories, empirical studies, and concrete analyses that any theoretical 'model' can be of much use in this field.

The fact that we have been able—through empirical research and theoretical reflection—to discern the kinds of determinants and functional requirements which tend to shape punishment, does not mean that we can predict, in any particular instance, how penal developments will turn out. 'Overdetermination' does not imply a range of forces which flow smoothly together in the same direction, intent on the same result. It implies constant conflict, tension, and compromise and suggests outcomes which are unique in their particularity rather than uniformly shaped by a pre-cut mould. Penal history is thus made up of 'historical individuals', as Weber would put it. In the shaping of any penal event—whether it be a sentencing decision, the formation of a regime, or the legislative enactment of a penal policy—a large number of conflicting forces are at work. Broad ideological ambitions may run up against immediate financial constraints, political expediency may conflict with established sensibilities, the perceived requirements of security may differ from those of morality, the professional interests of one group may be in tension with those of another, and the pursuit of any one value will generally involve the violation of several others. These swarming circumstances are only ever resolved into particular outcomes by means of the struggles, negotiations, actions, and decisions which are undertaken by those involved in the making and the implementation of policy, and can only be traced by detailed historical work. There is no settled hierarchy of purposes or causal priorities which prevails at every point allowing us to describe, once and for all, the sequence of forces and considerations which 'determine' the specific forms which penalty displays.

Theoretical work of the type I have been discussing alerts us to the kinds of constraints and structures within which penal policy is developed. It points to

the interconnections which link penalty to other spheres of social life and the functional role which it occupies in the network of social institutions. It can reveal institutional dynamics, characteristics, and effects which might otherwise go unacknowledged and of which policy-makers themselves may be unaware. But only empirical research can determine how these conditioning circumstances come together at a particular moment to shape a course of action or define a particular event. Theory should be a set of interpretative tools for guiding and analysing empirical enquiry—not a substitute for it.

What I have tried to do in this study is to demonstrate how the theoretical tools of sociology can be used to help us think about punishment in its various aspects. As we have seen, each of the different traditions of social theory provides a specific set of tools in the form of a specially adapted conceptual vocabulary, designed to explicate a particular aspect or dimension of social life. And, as we have also seen, each of these interpretative vocabularies has its uses in understanding punishment, and becomes more or less useful depending upon the questions asked and the characteristics being explained. Thus in some circumstances, and for some people (e.g. those groups for whom the law is merely superior force, coercively imposed) punishment is an exercise of raw power, best understood in vocabularies such as those supplied by Foucault or Marx. Yet at other points, and for other people—perhaps in the same society and the same penal system—punishment may be an expression of moral community and collective sensibility, in which penal sanctions are an authorized response to shared values individually violated. In these circumstances, the vocabularies of power and ideology need to be tempered by the rather different concerns articulated by Elias and Durkheim. The purpose of my study is not to create a grand synthesis of these traditions, nor to construct some kind of overarching theoretical model, for the reasons I have stated above. Rather, it tries to suggest how we might handle the range of perspectives and vocabularies through which punishment can be variously understood, and outlines a conception of penalty which can ground this multiplicity of interpretations and show how they interrelate.

For those who like their social theory cut and dried, or who believe that a single vocabulary can be evolved that answers all the questions, this style of analysis may seem to leave too much undone. It might seem necessary to go one step further and to gather up all these intertwining interpretations in a single narrative, insisting that punishment is 'above all' (or else 'at base') a story about, say, 'power' or about 'control'. Indeed one can see how such an approach might characterize all the causes, effects, and operations of punishment in terms of power over bodies, power over meanings, economic power, technical power, repressive power, constitutive power, and so on. Such an analysis undoubtedly achieves a rhetorical force and a radical tone, and can form the basis for some formidable polemics against the institutions concerned. But in analytical terms—as we saw in our discussion of Foucault—such a move is distinctly unhelpful, tending to skate over the importance of such

things as moral authority, sensibilities, and culture, and to blur the different social conditions which ground penal power and make it possible.⁹

5. SOME CONSEQUENCES OF THIS CONCEPTION

The burden of my argument, then, is that underlying any study of penalty should be a determination to think of punishment as a complex social institution. What I have in mind—and it may not be fully conveyed by the terms I have used—is something akin to Mauss's idea of a 'total social fact', which on its surface appears to be self-contained, but which in fact intrudes into many of the basic spheres of social life.¹⁰ Like the institutions of gift exchange which Mauss described, punishment is a distinctive social institution which, in its routine practices, somehow contrives to condense a whole web of social relations and cultural meanings.

Punishment is, on the face of things, an apparatus for dealing with criminals—a circumscribed, discrete, legal-administrative entity. But it is also, as we have seen, an expression of state power, a statement of collective morality, a vehicle for emotional expression, an economically conditioned social policy, an embodiment of current sensibilities, and a set of symbols which display a cultural ethos and help create a social identity. At once an element of social organization, an aspect of social relations, and an ingredient of individual psychology, penalty runs like a connecting thread through all the layers of social structure, connecting the general with the particular, the centre with its boundaries. What appears on its surface to be merely a means of dealing with offenders so that the rest of us can lead our lives untroubled by them, is in fact a social institution which helps define the nature of our society, the kinds of relationships which compose it, and the kinds of lives that it is possible and desirable to lead there.

⁹ Ironically, this 'radical' move may even be unhelpful in political terms, since its failure to separate out different dimensions of punishment, or even to identify the different social forces that support it, provides little guidance for the siting of oppositional struggles and little indication of the different strategies that they might employ. Strategies for contesting state power are likely to be very different from strategies for changing popular culture or remoulding sensibilities.

¹⁰ As Evans-Pritchard says in his introduction to *The Gift*, Mauss's notion of understanding is to see social phenomena in their totality: "'Total' is the key word of the Essay, the exchanges of archaic societies which he examines are total movements or activities. They are at the same time economic, juridical, moral, aesthetic, religious, mythological and socio-morphological phenomena. Their meaning can only be grasped if they are viewed as a complex concrete reality, and if for convenience we make abstractions in studying some institution we must in the end replace what we have taken away if we are to understand it' (pp. vii-viii). Unfortunately the connotations of the word 'total'—which suggests the complete, functional interconnection of *all* aspects of society—and of 'social fact'—which is altogether too positivistic—makes Mauss's term more problematic than the overused but still useful idea of a 'social institution'. It is also worth emphasizing that Mauss's idea of a 'total social fact' seeks to capture the significance of such an institution within pre-modern societies which are not extensively differentiated and where consciousness is not fragmentary. In such circumstances, social actors experience 'the gift' in the 'total' way which he describes. In modern, functionally differentiated societies, however, the crucial point is that 'total social facts' may not be experienced as such.

This developed conception of penalty has, I think, important implications for the way we think about punishment and penal policy. By making the social dimensions of punishment explicit, and by showing the kinds of internal conflicts and social consequences which penal institutions entail, the sociology of punishment provides a more adequate empirical basis for policy evaluation, philosophical reflection, or political judgment in this area. As things stand at present, the evaluation of punishment is too readily cast in the narrow terms of instrumental utility. We are too prone to think of punishment as a simple means to a simple end—usually that of crime control—and to treat all other aspects of the institution as minor considerations. So, for instance, imprisonment, or probation, or rehabilitative policies, or even capital punishment, are all too frequently approached as if the major question to be answered concerned their technical efficacy as instruments of crime control. Their evaluation thus turns primarily upon measurements of recidivism, of deterrence, and of correlative crime rates rather than upon judgments of their total worth as social practices. But, as I have argued throughout this work, we can hardly begin to understand penal institutions if we insist upon treating them as instrumentalities, geared to a single penological purpose, so the tendency to evaluate them in these terms seems misguided and unproductive.

Thus to recall and extend an important example, we might take the case of the prison in modern society. As every critical report reminds us, this institution signally fails to achieve the ends of crime control which, it is assumed, form its basic *raison d'être*. Most prisoners are not reformed, new generations of criminals go undeterred, national crime rates are not forced into decline, so that by all these criteria the prison is deemed an inefficient instrument (though, it should be noted, not much more inefficient than most of its alternatives). This margin of failure—it is not suggested that prison has no success—is such that the prison presents a serious puzzle for social commentators and penal reformers alike. Theorists such as Foucault assume that the prison's failures must, in some covert political sense, be 'useful for power'. Historians such as Stone assume it is a 'vestigial institution' which has somehow outlived its usefulness. Criminologists throw up their hands in despair at the 'irrationality' of policy and urge governments to pay heed to their own research findings and the failures which they imply. But, in an important sense, this argument is misconceived, and the 'puzzle' of imprisonment arises only because of the misconceived starting-points from which these analyses begin.

Neither the prison, nor any other penal institution, rests solely upon its ability to achieve such instrumental ends. Despite recurring Utopian hopes and the exaggerated claims of some reformers, the simple fact is that no method of punishment has ever achieved high rates of reform or of crime control—and no method ever will. All punishments regularly 'fail' in this respect because, as I have already pointed out, it is only the mainstream processes of socialization (internalized morality and the sense of duty, the informal inducements and rewards of conformity, the practical and cultural

networks of mutual expectation and interdependence, etc.) which are able to promote proper conduct on a consistent and regular basis. Punishment, so far as 'control' is concerned, is merely a coercive back-up to these more reliable social mechanisms, a back-up which is often unable to do anything more than manage those who slip through these networks of normal control and integration. Punishment is fated never to 'succeed' to any great degree because the conditions which do most to induce conformity—or to promote crime and deviance—lie outside the jurisdiction of penal institutions.

It will always be open to critics of the prison to point to its failures of crime control and use these as an argument for reform. But it seems altogether inappropriate for a sociologist or a historian to take these same arguments and draw from them the conclusion that the prison is a penological failure which owes its existence to some covert political strategy or else to the dead hand of history. Like all complex institutions, the prison simultaneously pursues a number of objectives and is kept in place by a range of forces. Crime control—in the sense of reforming offenders and reducing crime rates—is certainly one of these objectives but by no means the only one. As we have seen, the prison also serves as an effective means of incapacitation, securely excluding offenders from society, sometimes for very long periods, and containing those individuals who prove too troublesome for other institutions or communities. Unlike lesser penalties, it does not require much in the way of co-operation from the offender, so can deal with recalcitrant individuals, by force if necessary. In the absence of the generalized use of capital punishment, forced exile, or transportation, the prison thus forms the ultimate penalty for most modern penal systems, providing a compelling and forceful sanction of last resort. Most importantly, the prison provides a way of punishing people—of subjecting them to hard treatment, inflicting pain, doing them harm—which is largely compatible with modern sensibilities and conventional restraints upon open, physical violence. In an era when corporal punishment has become uncivilized, and open violence unconscionable, the prison supplies a subtle, situational form of violence against the person which enables retribution to be inflicted in a way which is sufficiently discreet and 'deniable' to be culturally acceptable to most of the population. Despite occasional suggestions that imprisonment is becoming too lenient—a view which is rarely shared by informed sources—it is widely accepted that the prison succeeds very well in imposing real hardship, serious deprivation, and personal suffering upon most offenders who are sent there.

In terms of penological objectives then, the prison supports a range of them, and is 'functional' or 'successful' with respect to some, less so with respect to others. Nor is there any need to argue that the prison's 'failures' are somehow 'useful'—as Foucault and others do. The fact that prison frequently reinforces criminality and helps produce recidivists is not a 'useful' consequence desired by the authorities, or part of some covert 'strategy'. It is a tolerated cost of pursuing other objectives such as retribution, incapacitation, and exclusion,

and is accepted in the same reluctant way that governments absorb the high financial costs entailed in the frequent use of imprisonment. So long as such costs appear to the authorities—and to the public—to be outweighed by the desirability of imprisoning offenders (and this desire has become an established element within public beliefs, institutional frameworks, and social traditions) then the prison remains a 'functional' institution—and neither a puzzle nor an anachronism.

Consequently—and this is my point—if one wishes to understand and evaluate the prison as an institution—and the same arguments apply to the fine, probation, community service, and the rest—it does little good to do so on a single plane or in relation to a single value. Instead one must think of it as a complex institution and evaluate it accordingly, recognizing the range of its penal and social functions and the nature of its social support. Nor does this mean that one must abandon a critical approach because the prison is less irrational than it at first seems. One can challenge the institution by showing that the control of troublesome individuals can be undertaken in more humane and positive settings, that exclusion is anyway an unacceptable goal in a caring society, or that many prisoners are no real danger to the public and could, under certain conditions, be tolerated in the community. One could endeavour to expose the real psychological violence which exists behind the scenes of even the best prisons and argue that such violence is as retrograde and uncivilized in its way as the corporal and capital punishments which the prison replaced. Equally one could challenge the cost of prison as a means of expressing punitive sentiments and exacting retribution against offenders and show ways in which funds and resources could be put to better use—for instance in compensating victims, in crime-prevention schemes, or in basic educational and social provision. In effect, the more one's understanding of an institution begins to capture its nuances and complexities—and its positive effects together with its negative ones—the more thoroughgoing, informed, and incisive will be the critique that one can mount.

Thinking of punishment as a social institution should change not only our mode of understanding penalty but also our normative thinking about it. It should lead us to judge punishment according to a wider range of criteria and to bring to bear the kinds of demands and expectations which we customarily apply to social institutions. To say this is not to suggest that there is some universal normative approach which we always adopt towards social institutions—different institutions have distinctive functions and characteristics and give rise to diverse forms of evaluation. But, nevertheless, when we think of 'the family' or 'the law', 'the government' or 'the economy', and subject them to normative judgment, we do so in ways which are considerably more complex than our thinking about punishment tends to be. In none of these cases do we think it proper to judge these institutions according to purely instrumental criteria, nor do we suppose that they should serve a single end, or affect only a particular sector of the population. Instead, they are all commonly viewed as if

they were 'total social facts', the character of which is in some way constitutive of society's identity and character.

Perhaps the best example of this is the kind of thinking which emerges whenever a democratic society deliberately undertakes to reform its major social institutions by means of a written constitution. People do not ask of such a constitution merely that it should 'work' with some degree of efficiency—although that is itself crucial. They also demand that its moral, political, economic, and cultural significance be considered, and that these wider ramifications be made to conform, as far as is possible, to deeply held conceptions of what kind of people they are, how they wish to be governed, and what kind of society they wish to create. The implication of my arguments is that punishment should be considered in the same kind of way and in the same kind of depth as other social institutions. In other words, we need an enriched form of penological thinking which considers penalty as an institution through which society defines and expresses itself at the same time and through the same means that it exercises power over deviants.

To think of punishment in this way is to question the narrow, instrumental self-description that modern penal institutions generally adopt (and which technical penology tends to repeat) and instead to suggest a more socially conscious and morally charged perception of penal affairs. By demonstrating the deeply social nature of legal punishment, and revealing the values and commitments which are embodied within its practices, the sociology of punishment tends to undermine any attempt to compartmentalize 'the penal question' or to deal with it in a purely administrative way. By showing how penal issues pull together many diverse currents of political and cultural life, such an approach helps to reconstitute a more comprehensive social awareness and to counter the tendency of modern institutions to fragment consciousness and narrow perception. It gives a sense of the sociality of punishment—of the extended significance and depth of stored-up meanings which exist beneath the surface of this specialist legal institution.

It is unlikely that this perception, however widely shared, could lead to any willingness or capacity on the part of the public to become more involved in the administration of punishment, or to take more responsibility for its forms (though community action groups which seek to promote such aims are in fact emerging in Britain and North America). Punishment may be a social institution but the power to punish offenders is presently monopolized by the state and directed by state-employed professionals. But nevertheless it is possible that such a vision may arm the critics of state policies and aid them in their efforts to reform state practices and institutional procedures. In particular it could give strength to an argument (which is occasionally heard but rarely taken seriously) to the effect that the institutions of punishment should be seen—and should see themselves—as institutions for the expression of social values, sensibility, and morality, rather than as instrumental means to a penological end. An awareness of penalty's wider significance makes it easier to

argue that the pursuit of values such as justice, tolerance, decency, humanity, and civility should be part of any penal institution's self-consciousness—an intrinsic and constitutive aspect of its role—rather than a diversion from its 'real' goals or an inhibition on its capacity to be 'effective'.

Given a measure of rethinking and reorganization along these lines, modern societies might begin to expect less in the way of 'results' from penal policy. Indeed, they might be encouraged to treat it instead as a form of social policy which should, where possible, be minimized. For despite the utilitarian myth of the Enlightenment that punishment can be made to produce positive and useful results—a myth which was taken up and renewed by the rehabilitative ideologies of the twentieth century—punishment is better viewed in terms of tragedy than of comedy. It is, as we have seen, an institution which has a last-resort necessity in any society—authority must in the end be sanctioned if it is to be authoritative, and offenders who are sufficiently dangerous or recalcitrant must be dealt with forcibly in some degree. But however necessary it sometimes is, and however useful in certain respects, punishment is always beset by irresolvable tensions. However well it is organized, and however humanely administered, punishment is inescapably marked by moral contradiction and unwanted irony—as when it seeks to uphold freedom by means of its deprivation, or condemns private violence using a violence which is publicly authorized. Despite the claims of reforming enthusiasts, the interests of state, society, victim, and offender can never be 'harmonized', whether by rehabilitation or anything else. The infliction of punishment by a state upon its citizens bears the character of a civil war in miniature—it depicts a society engaged in a struggle with itself. And though this may sometimes be necessary, it is never anything other than a necessary evil.

This tragic quality of punishment, it seems to me, is made more apparent when we approach the issue in a broader, sociological way. Instead of appearing to glorify punishment as a functionally important social institution, the sociology of punishment may be taken to suggest its limitations and point to alternative ways of organizing its tasks. Above all, it teaches that a policy which intends to promote disciplined conduct and social control will concentrate not upon punishing offenders but upon socializing and integrating young citizens—a work of social justice and moral education rather than penal policy. And to the extent that punishment is deemed unavoidable, it should be viewed as a morally expressive undertaking rather than a purely instrumental one.