



## Complete and Austere Institutions

(FROM *Discipline and Punish*)

It would not be true to say that the prison was born with the new codes. The prison form antedates its systematic use in the penal system. It had already been constituted outside the legal apparatus when, throughout the social body, procedures were being elaborated for distributing individuals; fixing them in space; classifying them; extracting from them the maximum in time and forces; training their bodies; coding their continuous behavior; maintaining them in perfect visibility; forming around them an apparatus of observation, registration, and recording; constituting on them a body of knowledge that is accumulated and centralized. The general form of an apparatus intended to render individuals docile and useful, by means of precise work upon their bodies, indicated the prison institution, before the law ever defined it as the penalty *par excellence*. At the turn of the eighteenth and nineteenth centuries, there was, it is true, a penalty of detention; and it was a new thing. But it was really the opening up of penalty to mechanisms of coercion already elaborated elsewhere. The "models" of penal detention—Ghent, Gloucester, Walnut Street—marked the first visible points of this transition, rather than innovations or points of departure. The prison, an essential element in the punitive panoply, certainly marks an important moment in the history of penal justice: its access to "humanity." But it is also an important moment in the history of those disciplinary mechanisms that the new class power was developing: that in which they colonized the legal institution. At the turn of the century, a new legislation defined the power to punish as a general function of society that was exercised in the same manner over all its members, and in which each individual was equally represented: but in making deten-

tion the penalty *par excellence*, it introduced procedures of domination characteristic of a particular type of power. A justice that is supposed to be "equal," a legal machinery that is supposed to be "autonomous," but contains all the asymmetries of disciplinary subjection, this conjunction marked the birth of the prison, "the penalty of civilized societies."<sup>1</sup>

One can understand the self-evident character that prison punishment very soon assumed. In the first years of the nineteenth century, people were still aware of its novelty; and yet it appeared so bound up, and at such a deep level, with the very functioning of society that it banished into oblivion all the other punishments that the eighteenth-century reformers had imagined. It seemed to have no alternative, as if carried along by the very movement of history: "It is not chance, it is not the whim of the legislator that have made imprisonment the base and almost the entire edifice of our present penal scale: it is the progress of ideas and the improvement in morals."<sup>2</sup> And, although, in a little over a century, this self-evident character has become transformed, it has not disappeared. We are aware of all the inconveniences of prison, and that it is dangerous when it is not useless. And yet one cannot "see" how to replace it. It is the detestable solution, which one seems unable to do without.

This "self-evident" character of the prison, which we find so difficult to abandon, is based first of all on the simple form of "deprivation of liberty." How could prison not be the penalty *par excellence* in a society in which liberty is a good that belongs to all in the same way and to which each individual is attached, as Duport put it, by a "universal and constant" feeling? Its loss has therefore the same value for all, unlike the fine, it is an "egalitarian" punishment. The prison is the clearest, simplest, most equitable of penalties. Moreover, it makes it possible to quantify the penalty exactly according to the variable of time. There is a wages-form of imprisonment that constitutes, in industrial societies, its economic "self-evidence"—and enables it to appear as a reparation. By levying on the time of the prisoner, the prison seems to express in concrete terms the idea that the offense has injured, beyond the victim, society as a whole. There is an economico-moral self-evidence of a penalty that metes out

punishments in days, months, and years and draws up quantitative equivalences between offenses and durations. Hence the expression, so frequently heard, so consistent with the functioning of punishments, though contrary to the strict theory of penal law, that one is in prison in order to "pay one's debt." The prison is "natural," just as the use of time to measure exchanges is "natural" in our society.<sup>3</sup>

But the self-evidence of the prison is also based on its role, supposed or demanded, as an apparatus for transforming individuals. How could the prison not be immediately accepted when, by locking up, retraining, and rendering docile, it merely reproduces, with a little more emphasis, all the mechanisms that are to be found in the social body? The prison is like a rather disciplined barracks, a strict school, a dark workshop, but not qualitatively different. This double foundation—juridico-economic on the one hand, technico-disciplinary on the other—made the prison seem the most immediate and civilized form of all penalties. And it is this double functioning that immediately gave it its solidity. One thing is clear: the prison was not at first a deprivation of liberty to which a technical function of correction was later added; it was from the outset a form of "legal detention" entrusted with an additional corrective task, or an enterprise for reforming individuals that the deprivation of liberty allowed to function in the legal system. In short, penal imprisonment, from the beginning of the nineteenth century, covered both the deprivation of liberty and the technical transformation of individuals. . . .

The prison, the place where the penalty is carried out, is also the place of observation of punished individuals. This takes two forms: surveillance, of course, but also knowledge of each inmate, of his behavior, his deeper states of mind, his gradual improvement; the prisons must be conceived as places for the formation of clinical knowledge about the convicts; "the penitentiary system cannot be an *a priori* conception; it is an induction of the social state. There are moral diseases, as well as breakdowns in health, where the treatment depends on the site and direction of the illness."<sup>4</sup> This involves two essential mecha-

nisms. It must be possible to hold the prisoner under permanent observation, every report that can be made about him must be recorded and computed. The theme of the panopticon—at once surveillance and observation, security and knowledge, individualization and totalization, isolation and transparency—found in the prison its privileged locus of realization. Although the panoptic procedures, as concrete forms of the exercise of power, have become extremely widespread, at least in their less concentrated forms, it was really only in the penitentiary institutions that Bentham's utopia could be fully expressed in a material form. In the 1830s, the panopticon became the architectural program of most prison projects. It was the most direct way of expressing "the intelligence of discipline in stone,"<sup>5</sup> of making architecture transparent to the administration of power,<sup>6</sup> of making it possible to substitute for force or other violent constraints the gentle efficiency of total surveillance; of ordering space according to the recent humanization of the codes and the new penitentiary theory: "The authorities, on the one hand, and the architect, on the other, must know, therefore, whether the prisons are to be based on the principle of milder penalties or on a system of reforming convicts, in accordance with legislation which, by getting to the root cause of the people's vices, becomes a principle that will regenerate the virtues that they must practice."<sup>7</sup>

In short, its task was to constitute a prison-machine<sup>8</sup> with a cell of visibility in which the inmate will find himself caught as "in the glass house of the Greek philosopher"<sup>9</sup> and a central point from which a permanent gaze may control prisoners and staff. Around these two requirements, several variations were possible: the Benthamite panopticon in its strict form, the semicircle, the cross-plan, the star shape. In the midst of all these discussions, the Minister of the Interior in 1841 sums up the fundamental principles: "The central inspection hall is the pivot of the system. Without a central point of inspection, surveillance ceases to be guaranteed, continuous, and general; for it is impossible to have complete trust in the activity, zeal, and intelligence of the warder who immediately supervises the cells. . . . The architect must therefore bring all his attention to bear on this object; it is a question both of discipline and economy. The

more accurate and easy the surveillance, the less need will there be to seek in the strength of the building guarantees against attempted escape and communication between the inmates. But surveillance will be perfect if from a central hall the director or head-warder sees, without moving and without being seen, not only the entrances of all the cells and even the inside of most of them when the unglazed door is open, but also the warders guarding the prisoners on every floor. . . . With the formula of circular or semicircular prisons, it would be possible to see from a single center all the prisoners in their cells and the warders in the inspection galleries."<sup>10</sup>

But the penitentiary panopticon was also a system of individualizing and permanent documentation. The same year in which variants of the Benthamite schema were recommended for the building of prisons, the system of "moral accounting" was made compulsory: and individual report of a uniform kind in every prison, on which the governor or head-warder, the chaplain, and the instructor had to fill in their observations on each inmate: "It is in a way the *vade mecum* of prison administration, making it possible to assess each case, each circumstance and, consequently, to know what treatment to apply to each prisoner individually."<sup>11</sup> Many other, much more complete systems of recording were planned or tried out.<sup>12</sup> The overall aim was to make the prison a place for the constitution of a body of knowledge that would regulate the exercise of penitentiary practice. The prison has not only to know the decision of the judges and to apply it in terms of the established regulations; it has to extract unceasingly from the inmate a body of knowledge that will make it possible to transform the penal measure into a penitentiary operation, which will make of the penalty required by the offense a modification of the inmate that will be of use to society. The autonomy of the carceral regime and the knowledge that it creates make it possible to increase the utility of the penalty, which the code had made the very principle of its punitive philosophy: "The governor must not lose sight of a single inmate, because in whatever part of the prison the inmate is to be found, whether he is entering or leaving, or whether he is staying there, the governor must also justify the motives for his staying in a particular classification or for his movement from

one to another. He is a veritable accountant. Each inmate is for him, in the sphere of individual education, a capital invested with penitentiary interest."<sup>13</sup> As a highly efficient technology, penitentiary practice produces a return on the capital invested in the penal system and in the building of heavy prisons.

Similarly, the offender becomes an individual to know. This demand for knowledge was not, in the first instance, inserted into the legislation itself, in order to provide substance for the sentence and to determine the true degree of guilt. It is as a convict, as a point of application for punitive mechanisms, that the offender is constituted himself as the object of possible knowledge.

But this implies that the penitentiary apparatus, with the whole technological program that accompanies it, brings about a curious substitution: from the hands of justice, it certainly receives a convicted person; but what it must apply itself to is not, of course, the offense, nor even exactly the offender, but a rather different object, one defined by variables which at the outset at least were not taken into account in the sentence, for they were relevant only for a corrective technology. This other character, whom the penitentiary apparatus substitutes for the convicted offender, is the *delinquent*.

The delinquent is to be distinguished from the offender by the fact that it is not so much his act as his life that is relevant in characterizing him. The penitentiary operation, if it is to be a genuine reeducation, must become the sum total existence of the delinquent, making of the prison a sort of artificial and coercive theater in which his life will be examined from top to bottom. The legal punishment bears on an act, the punitive technique on a life; it falls to this punitive technique, therefore, to reconstitute all the sordid detail of a life in the form of knowledge, to fill in the gaps of that knowledge, and to act upon it by a practice of compulsion. It is a biographical knowledge and a technique for correcting individual lives. The observation of the delinquent "should go back not only to the circumstances, but also to the causes of his crime; they must be sought in the story of his life, from the triple point of view of psychology, social position, and upbringing, in order to discover the dangerous proclivities of the first, the harmful predispositions of the sec-

ond, and the bad antecedents of the third. This biographical investigation is an essential part of the preliminary investigation for the classification of penalties before it becomes a condition for the classification of moralities in the penitentiary system. It must accompany the convict from the court to the prison, where the governor's task is not only to receive it, but also to complete, supervise, and rectify its various factors during the period of detention."<sup>14</sup> Behind the offender, to whom the investigation of the facts may attribute responsibility for an offense, stands the delinquent, whose slow formation is shown in a biographical investigation. The introduction of the "biographical" is important in the history of penalty. Because it establishes the "criminal" as existing before the crime and even outside it. And, for this reason, a psychological causality, duplicating the juridical attribution of responsibility, confuses its effects. At this point one enters the "criminological" labyrinth from which we have certainly not yet emerged: any determining cause, because it reduces responsibility, marks the author of the offense with a criminality all the more formidable and demands penitentiary measures that are all the stricter. As the biography of the criminal duplicates in penal practice the analysis of circumstances used in gauging the crime, so one sees penal discourse and psychiatric discourse crossing each other's frontiers; and there, at their point of junction, is formed the notion of the "dangerous" individual, which makes it possible to draw up a network of causality in terms of an entire biography and to present a verdict of punishment-correction.<sup>15</sup>

The delinquent is also to be distinguished from the offender in that he is not only the author of his acts (the author responsible in terms of certain criteria of free, conscious will), but is linked to his offense by a whole bundle of complex threads (instincts, drives, tendencies, character). The penitentiary technique bears not on the relation between author and crime, but on the criminal's affinity with his crime. The delinquent, the strange manifestation of an overall phenomenon of criminality, is to be found in quasi-natural classes, each endowed with its own characteristics and requiring a specific treatment, what Marquet-Wasselot called in 1841 the "ethnography of the prisons"; "The convicts are . . . another people within the same people; with its own

habits, instincts, morals."<sup>16</sup> We are still very close here to the "picturesque" descriptions of the world of the malefactors—an old tradition that goes back a long way and gained a new vigor in the early nineteenth century, at a time when the perception of another form of life was being articulated on that of another class and another human species. A zoology of social subspecies and an ethnology of the civilizations of malefactors, with their own rites and language, were beginning to emerge in a parody form. But an attempt was also being made to constitute a new objectivity in which the criminal belongs to a typology that is both natural and deviant. Delinquency, a pathological gap in the human species, may be analyzed as morbid syndromes or as great teratological forms. With Ferrus's classification, we probably have one of the first conversions of the old "ethnography" of crime into a systematic typology of delinquents. The analysis is slender, certainly, but it reveals quite clearly the principle that delinquency must be specified in terms not so much of the law as of the norm. There are three types of convict; there are those who are endowed "with intellectual resources above the average of intelligence that we have established," but who have been perverted either by the "tendencies of their organization" and a "native predisposition," or by "pernicious logic," an "iniquitous morality," a "dangerous attitude to social duties." Those that belong to this category require isolation day and night, solitary exercise, and, when one is forced to bring them into contact with the others, they should wear "a light mask made of metal netting, of the kind used for stone-cutting or fencing." The second category is made up of "vicious, stupid or passive convicts, who have been led into evil by indifference to either shame or honour, through cowardice, that is to say, laziness, and because of a lack of resistance to bad incitements"; the regime suitable to them is not so much that of punishment as of education, and if possible of mutual education: isolation at night, work in common during the day, conversations permitted provided they are conducted aloud, reading in common, followed by mutual questioning, for which rewards may be given. Lastly, there are the "inept or incapable convicts," who are "rendered incapable, by an incomplete organization, of any occupation requiring considered effort and consistent will, and

who are therefore incapable of competing in work with intelligent workers and who, having neither enough education to know their social duties, nor enough intelligence to understand this fact or to struggle against their personal instincts, are led to evil by their very incapacity. For these, solitude would merely encourage their inertia; they must therefore live in common, but in such a way as to form small groups, constantly stimulated by collective operations, and subjected to rigid surveillance."<sup>17</sup> Thus a "positive" knowledge of the delinquents and their species, very different from the juridical definition of offenses and their circumstances, is gradually established, but this knowledge is also distinct from the medical knowledge that makes it possible to introduce the insanity of the individual and, consequently, to efface the criminal character of the act. Ferrus states the principle quite clearly: "Considered as a whole, criminals are nothing less than madmen; it would be unjust to the latter to confuse them with consciously perverted men." The task of this new knowledge is to define the act "scientifically" *qua* offense and above all the individual *qua* delinquent. Criminology is thus made possible.

The correlative of penal justice may well be the offender, but the correlative of the penitentiary apparatus is someone other; this is the delinquent, a biographical unity, a kernel of danger, representing a type of anomaly. And, although it is true that to a detention that deprives of liberty, as defined by law, the prison added the additional element of the penitentiary, this penitentiary element introduced in turn a third character who slipped between the individual condemned by the law and the individual who carries out this law. At the point that marked the disappearance of the branded, dismembered, burnt, annihilated body of the tortured criminal, there appeared the body of the prisoner, duplicated by the individuality of the "delinquent," by the little soul of the criminal, which the very apparatus of punishment fabricated as a point of application of the power to punish and as the object of what is still called today penitentiary science. It is said that the prison fabricated delinquents; it is true that it brings back, almost inevitably, before the courts those who have been sent there. But it also fabricates them in the sense that it has introduced into the operation of

the law and the offense, the judge and the offender, the condemned man and the executioner, the noncorporate reality of the delinquency that links them together and, for a century and a half, has caught them in the same trap.

The penitentiary technique and the delinquent are in a sense twin brothers. It is not true that it was the discovery of the delinquent through a scientific rationality that introduced into our old prisons the refinement of penitentiary techniques. Nor is it true that the internal elaboration of penitentiary methods has finally brought to light the "objective" existence of a delinquency that the abstraction and rigidity of the law were unable to perceive. They appeared together, the one extending from the other, as a technological ensemble that forms and fragments the object to which it applies its instruments. And it is this delinquency, formed in the foundations of the judicial apparatus, among the "*basses œuvres*," the servile tasks, from which justice averts its gaze, out of the shame it feels in punishing those it condemns, it is this delinquency that now comes to haunt the troubled courts and the majesty of the laws; it is this delinquency that must be known, assessed, measured, diagnosed, treated when sentences are passed. It is now this delinquency, this anomaly, this deviation, this potential danger, this illness, this form of existence, that must be taken into account when the codes are rewritten. Delinquency is the vengeance of the prison on justice. It is a revenge formidable enough to leave the judge speechless. It is at this point that the criminologists raise their voices.

But we must not forget that the prison, that concentrated and austere figure of all the disciplines, is not an endogenous element in the penal system as defined at the turn of the eighteenth and nineteenth centuries. The theme of a punitive society and of a general semio-technique of punishment that has sustained the "ideological" codes—Beccarian or Benthamite—did not itself give rise to the universal use of the prison. This prison came from elsewhere—from the mechanisms proper to a disciplinary power. Now, despite this heterogeneity, the mechanisms and effects of the prison have spread right through modern

criminal justice; delinquency and the delinquents have become parasites on it through and through. One must seek the reason for this formidable "efficiency" of the prison. But one thing may be noted at the outset: the penal justice defined in the eighteenth century by the reformers traced two possible but divergent lines of objectification of the criminal: the first was the series of "monsters," moral or political, who had fallen outside the social pact; the second was that of the juridical subject rehabilitated by punishment. Now the "delinquent" makes it possible to join the two lines and to constitute under the authority of medicine, psychology, or criminology, an individual in whom the offender of the law and the object of a scientific technique are superimposed—or almost—one upon the other. That the grip of the prison on the penal system should not have led to a violent reaction of rejection is no doubt due to many reasons. One of these is that, in fabricating delinquency, it gave to criminal justice a unitary field of objects, authenticated by the "sciences," and thus enabled it to function on a general horizon of "truth."

The prison, that darkest region in the apparatus of justice, is the place where the power to punish, which no longer dares to manifest itself openly, silently organizes a field of objectivity in which punishment will be able to function openly as treatment and the sentence be inscribed among the discourses of knowledge. It is understandable that justice should have adopted so easily a prison that was not the offspring of its own thoughts. Justice certainly owed the prison this recognition.

## Notes

<sup>1</sup> P. Rossi, *Traité de droit pénal*, III (1829), p. 169.

<sup>2</sup> P. Van Meenan, "Congrès pénitentiaire de Bruxelles," *Annales de la Charité* (1847), pp. 529–30.

<sup>3</sup> The play between the two "natures" of the prison still continues. A few days ago [summer 1974] the head of state recalled the "principle" that detention ought to be no more than a "deprivation of liberty"—the pure essence of imprisonment, freed of the reality of prison, and added that the prison could be justified only by its "corrective" or rehabilitating effects.

<sup>4</sup> L. Faucher, *De la réforme des prisons* (1838), p. 6.

<sup>5</sup> C. Lucas, *De la réforme des prisons*, I (1836), p. 69.

<sup>6</sup> "If one treats of the administrative question by abstracting the question of buildings, one runs the risk of drawing up principles that are based on no reality; whereas, with a sufficient knowledge of administrative needs, an architect may accept a particular system of imprisonment that theory may have dismissed as utopian" (Abel Bouet, *Projet des prisons cellulaires* [1843], p. 1).

<sup>7</sup> L. Baltard, *Architectonographie des prisons* (1829), pp. 4–5.

<sup>8</sup> "The English reveal their genius for mechanics in everything they do . . . and they want their buildings to function as a machine subject to the action of a single motor" (*Ibid.*, p. 18).

<sup>9</sup> N. P. Harou-Romain, *Projet de pénitencier* (1840), p. 8.

<sup>10</sup> Ducatel, *Instruction pour la construction des maisons d'arrêt* (1841), p. 9.

<sup>11</sup> E. Ducpétiaux, *De la réforme pénitentiaire*, III (1837), pp. 56–7.

<sup>12</sup> See, for example, G. de Grégory, *Projet de Code pénal universel* (1832), p. 199ff; and Grellet-Wannmy, *Manuel des prisons*, II (1839), pp. 23–5, 199–203.

<sup>13</sup> Lucas, *De la réforme des prisons*, II, pp. 449–50.

<sup>14</sup> *Ibid.*, pp. 440–2.

<sup>15</sup> One should study how the practice of biography became widespread at about the same time as the constitution of the individual delinquent in the punitive mechanisms: the biography or autobiography of prisoners in Appert; the drawing up of biographical files on the psychiatric model; the use of biography in the defense of accused persons. On the last point one might compare the great justificatory memoirs of the late eighteenth century written for the three men condemned to the wheel, or for Jeanne Salmon—and the defenses of criminals in the period of Louis Philippe. Chaix d'Est-Ange pleaded for La Roncière: "If long before the crime, long before the charge is laid, you can scrutinize the defendant's life, penetrate into his heart, find its most hidden corners, lay bare all his thoughts, his entire soul" (*Discours et plaidoyers*, III, p. 166).

<sup>16</sup> J. J. Marquet-Wasselot, *L'Ethnographie des prisons* (1841), p. 9.

<sup>17</sup> G. Ferrus, *Des prisonniers* (1850), pp. 182ff, 278ff.



# Illegality and Delinquency

(FROM *Discipline and Punish*)

... The prison, in its reality and visible effects, was denounced at once as the great failure of penal justice. In a very strange way, the history of imprisonment does not obey a chronology in which one sees, in orderly succession, the establishment of a penalty of detention; then the recognition of its failure; then the slow rise of projects of reform, seeming to culminate in the more or less coherent definition of penitentiary technique; then the implementation of this project; lastly, the recognition of its successes or its failure. There was in fact a telescoping or, in any case, a different distribution of these elements. And, just as the project of a corrective technique accompanied the principle of punitive detention, the critique of the prison and its methods appeared very early on, in those same years 1820-45; indeed, it was embodied in a number of formulations which—figures apart—are today repeated almost unchanged.

—Prisons do not diminish the crime rate: they can be extended, multiplied, or transformed; the quantity of crime and criminals remains stable or, worse, increases: "In France, one calculates at about 108,000 the number of individuals who are in a state of flagrant hostility to society. The means of repression at one's disposal are: the scaffold, the iron collar, three convict ships, 19 *maisons centrales*, 86 *maisons de justice*, 362 *maisons d'arrêt*, 2,800 cantonal prisons, 2,238 cells in police stations. Despite all these, vice goes unchecked. The number of crimes is not diminishing... the number of recidivists is increasing, rather than declining."<sup>1</sup>

—Detention causes recidivism; those leaving prison have more chance than before of going back to it; convicts are, in a very high proportion, former inmates; thirty-eight percent of

those who left the *maisons centrales* were convicted again and thirty-three percent of those sent to convict ships (a figure given by G. de Rochefoucauld during the debate on the reform of the penal code, December 2, 1831);<sup>2</sup> between 1828 and 1834, out of almost 35,000 convicted of crime, about 7,400 were recidivists (that is, 1 out of 4.7 of those convicted); out of over 200,000 *correctionels*, or petty offenders, almost 35,000 were also recidivists (1 out of 6); in all, one recidivist out of 5.8 of those convicted;<sup>3</sup> in 1831, out of 2,174 of those condemned for recidivism, 350 had been in convict ships, 1,682 in *maisons centrales*, 142 in four *maisons de correction* that followed the same regime as the *centrales*.<sup>4</sup>

And the diagnosis became even more severe during the July monarchy: in 1835, out of 7,223 convicted criminals, 1,486 were recidivists; in 1839, 1,749 out of 7,858; in 1844, 1,821 out of 7,195. Among the 980 prisoners at Loos, there were 570 recidivists and, at Melun, 745 out of 1,008 prisoners.<sup>5</sup> Instead of releasing corrected individuals, then, the prison was setting loose a swarm of dangerous delinquents throughout the population: "7,000 persons handed back each year to society... they are 7,000 principles of crime or corruption spread throughout the social body. And, when one thinks that this population is constantly increasing, that it lives and moves around us, ready to seize every opportunity of disorder, to avail itself of every crisis in society to try out its strength, can one remain unmoved by such a spectacle?"<sup>6</sup>

—The prison cannot fail to produce delinquents. It does so by the very type of existence that it imposes on its inmates: whether they are isolated in cells or whether they are given useless work, for which they will find no employment, it is, in any case, not "to think of man in society; it is to create an unnatural, useless and dangerous existence"; the prison should educate its inmates, but can a system of education addressed to man reasonably have as its object to act against the wishes of nature?<sup>7</sup> The prison also produces delinquents by imposing violent constraints on its inmates; it is supposed to apply the law, and to teach respect for it; but all its functioning operates in the form of an abuse of power. The arbitrary power of administration: "The feeling of injustice that a prisoner has is one of

the causes that may make his character untamable. When he sees himself exposed in this way to suffering, which the law has neither ordered nor envisaged, he becomes habitually angry against everything around him; he sees every agent of authority as an executioner; he no longer thinks that he was guilty: he accuses justice itself."<sup>8</sup> Corruption, fear, and the inefficiency of the warders: "Between 1,000 and 1,500 convicts live under the surveillance of between thirty and forty supervisors, who can preserve some kind of security only by depending on informers, that is to say, on the corruption that they carefully sow themselves. Who are these warders? Retired soldiers, men uninstructed in their task, making a trade of guarding malefactors."<sup>9</sup> Exploitation by penal labor, which can in these conditions have no educational character: "One inveighs against the slave trade. But are not our prisoners sold, like the slaves, by entrepreneurs and bought by manufacturers. . . . Is this how we teach our prisoners honesty? Are they not still more demoralized by these examples of abominable exploitation?"<sup>10</sup>

—The prison makes possible, even encourages, the organization of a milieu of delinquents, loyal to one another, hierarchized, ready to aid and abet any future criminal act: "Society prohibits associations of more than twenty persons . . . and it constitutes for itself associations of 200, 500, 1,200 convicts in the *maisons centrales*, which are constructed for them *ad hoc*, and which it divides up for their greater convenience into workshops, courtyards, dormitories, refectories, where they can all meet together. . . . And it multiplies them across France in such a way that, where there is a prison, there is an association . . . and as many anti-social clubs."<sup>11</sup> And it is in these clubs that the education of the young first offender takes place: "The first desire that is born within him will be to learn from his cleverer seniors how to escape the rigors of the law; the first lesson will be derived from the strict logic of thieves who regard society as an enemy; the morality will be the informing and spying honored in our prisons; the first passion to be aroused in him will be to frighten the young mind by these monsters that must have been born in the dungeon and which the pen refuses to name. . . . Henceforth he has broken with everything that has bound him to society."<sup>12</sup> Faucher spoke of "barracks of crime."

—The conditions to which the free inmates are subjected necessarily condemn them to recidivism: they are under the surveillance of the police; they are assigned to a particular residence, or forbidden others; "they leave prison with a passport that they must show everywhere they go and which mentions the sentence that they have served."<sup>13</sup> Being on the loose, being unable to find work, leading the life of a vagabond are the most frequent factors in recidivism. The *Gazette des tribunaux*, but also the workers' newspapers, regularly cited cases like that of the worker convicted of theft, placed under surveillance at Rouen, caught again for theft, and whom no lawyers would defend; so he took it upon himself to speak before the court, told the story of his life, explained how, on leaving prison and forced to reside in a particular place, he was unable to take up his trade as a gilder, since as an ex-convict he was turned down wherever he went; the police refused him the right to seek work elsewhere; he found himself unable to leave Rouen, with nothing to do but die of hunger and poverty as a result of this terrible surveillance. He went to the town hall and asked for work; for eight days he was given work in the cemeteries for fourteen sous a day: "But," he said, "I am young, I have a good appetite, I eat more than two pounds of bread a day at five sous a pound; what can I do with fourteen sous to feed myself, wash my clothes and find lodging? I was driven to despair, I wanted to become an honest man again; the surveillance plunged me back into misfortune. I became disgusted with everything; it was then that I met Le-maitre, who was also a pauper; we had to live and wicked thoughts of thieving came back to us."<sup>14</sup>

—Lastly, the prison indirectly produces delinquents by throwing the inmate's family into destitution. "The same order that sends the head of the family to prison reduces each day the mother to destitution, the children to abandonment, the whole family to vagabondage and begging. It is in this way that crime can take root."<sup>15</sup>

It should be noted that this monotonous critique of the prison always takes one of two directions: either that the prison was insufficiently corrective, and that the penitentiary technique was still at the rudimentary stage; or that in attempting to be corrective it lost its power as punishment,<sup>16</sup> that the true peni-



tenitary technique was rigor,<sup>17</sup> and that prison was a double economic error: directly, by its intrinsic cost, and, indirectly, by the cost of the delinquency that it did not abolish.<sup>18</sup> The answer to these criticisms was invariably the same: the reintroduction of the invariable principles of penitentiary technique. For a century and a half, the prison had always been offered as its own remedy: the reactivation of the penitentiary techniques as the only means of overcoming their perpetual failure; the realization of the corrective project as the only method of overcoming the impossibility of implementing it. . . .

One must not, therefore, regard the prison, its "failure," and its more or less successful reform as three successive stages. One should think, rather, of a simultaneous system that historically has been superimposed on the juridical deprivation of liberty; a fourfold system comprising: the additional, disciplinary element of the prison—the element of "super-power"; the production of an objectivity, a technique, a penitentiary "rationality"—the element of auxiliary knowledge; the *de facto* reintroduction, if not actual increase, of a criminality that the prison ought to destroy—the element of inverted efficiency; lastly, the repetition of a "reform" that is isomorphic, despite its "idealism," with the disciplinary functioning of the prison—the element of utopian duplication. It is this complex ensemble that constitutes the "carceral system," not only the institution of the prison, with its walls, its staff, its regulations, and its violence. The carceral system combines in a single figure discourses and architectures, coercive regulations and scientific propositions, real social effects and invincible utopias, programs for correcting delinquents and mechanisms that reinforce delinquency. Is not the supposed failure part of the functioning of the prison? Is it not to be included among those effects of power that discipline and the auxiliary technology of imprisonment have induced in the apparatus of justice, and in society in general, and which may be grouped together under the name of "carceral system"? If the prison institution has survived for so long, with such immobility, if the principle of penal detention has never seriously been questioned, it is no doubt because this carceral system was deeply rooted and carried out certain very precise functions. As evidence of this strength and immobility, let us take a recent

fact: the model prison opened at Fleury-Mérogis in 1969 simply took over in its overall plan the panoptic star-shape that made such a stir in 1836 at the Petite-Roquette. It was the same machinery of power that assumed a real body and a symbolic form. But what role was it supposed to play?

. . . The prison, apparently "failing," does not miss its target; on the contrary, it reaches it, insofar as it gives rise to one particular form of illegality in the midst of others, which it is able to isolate, to place in full light, and to organize as a relatively enclosed, but penetrable, milieu. It helps to establish an open illegality, irreducible at a certain level and secretly useful, at once refractory and docile; it isolates, outlines, brings out a form of illegality that seems to sum up symbolically all the others, but which makes it possible to leave in the shade those that one wishes to—or must—tolerate. This form is, strictly speaking, delinquency. One should not see in delinquency the most intense, most harmful form of illegality, the form that the penal apparatus must try to eliminate through imprisonment because of the danger it represents; it is rather an effect of penalty (and of the penalty of detention) that makes it possible to differentiate, accommodate, and supervise illegality. No doubt delinquency is a form of illegality; certainly it has its roots in illegality; but it is an illegality that the "carceral system," with all its ramifications, has invested, segmented, isolated, penetrated, organized, enclosed in a definite milieu, and to which it has given an instrumental role in relation to the other illegality. In short, although the juridical opposition is between legality and illegal practice, the strategic opposition is between illegality and delinquency.

For the observation that prison fails to eliminate crime, one should perhaps substitute the hypothesis that prison has succeeded extremely well in producing delinquency, a specific type, a politically or economically less dangerous—and, on occasion, usable—form of illegality; in producing delinquents, in an apparently marginal, but in fact centrally supervised, milieu; in producing the delinquent as a pathologized subject. The success of the prison, in the struggles around the law and illegality,

has been to specify a "delinquency." We have seen how the carceral system substituted the "delinquent" for the offender, and also superimposed on juridical practice a whole horizon of possible knowledge. Now this process that constitutes delinquency as an object of knowledge is one with the political operation that dissociates illegalities and isolates delinquency from them. The prison is the hinge of these two mechanisms; it enables them to reinforce one another perpetually, to objectify the delinquency behind the offense, to solidify delinquency in the movement of illegalities. So successful has the prison been that, after a century and a half of "failures," the prison still exists, producing the same results, and there is the greatest reluctance to dispense with it. . . .

### Notes

- <sup>1</sup> *La Fraternité*, No. 10 (February 1842).
- <sup>2</sup> *Archives parlementaires*, Vol. 72 (1831), pp. 209–10.
- <sup>3</sup> E. Duppétau, *De la réforme pénitentiaire*, III (1837), p. 276ff.
- <sup>4</sup> *Ibid.*
- <sup>5</sup> G. Ferrus, *Des prisonniers* (1850).
- <sup>6</sup> E. de Beaumont and A. de Tocqueville, *Note sur le système pénitentiaire* (1831), pp. 22–3.
- <sup>7</sup> C. Lucas, *De la réforme des prisons*, I (1836), pp. 127, 130.
- <sup>8</sup> F. Bigot Préameneu, *Rapport au conseil général de la société des prisons* (1819).
- <sup>9</sup> *La Fraternité*, No. 10 (March 1842).
- <sup>10</sup> Text addressed to *L'Atelier* (October 1842) by a worker imprisoned for joining a workers' association. He was able to note this protest at a time when the same newspaper was waging a campaign against competition from penal labor. The same issue carried a letter from another worker on the same subject. See also *La Fraternité*, No. 10 (March 1842).
- <sup>11</sup> L. Moreau-Christophe, *De la mortalité et de la folie dans le régime pénitentiaire* (1839), p. 7.
- <sup>12</sup> *L'Almanach populaire de France* (1839), pp. 49–56.

<sup>8</sup> F. de Barbé-Marbois, *Rapport sur l'état des prisons du Calvados, de l'Eure, de la Manche et la Seine Inférieure* (1823), p. 17.

<sup>9</sup> *Gazette des tribunaux* (3 December 1829). See also *Gazette des tribunaux* (19 July 1839), the *Ruche populaire* (August 1840), *La Fraternité* (July–August 1847).

<sup>10</sup> Lucas, *De la réforme des prisons*, II, p. 64.

<sup>11</sup> This campaign was very vigorous before and after the passing of new regulations for the *maisons centrales* in 1839. The regulations were severe (silence, abolition of wine and tobacco, reduction in food) and they were followed by revolts. On October 3, 1840, *Le Montieur* wrote: "It was scandalous to see prisoners gorging themselves with wine, meat, game, delicacies of all kinds and treating prison as a convenient hostelry where they could procure all the comforts that the state of liberty often refused them."

<sup>12</sup> In 1826, many of the General Councils demanded that deportation be substituted for constant and ineffective incarceration. In 1842, the General Council of the Hautes-Alpes demanded that the prisons become "truly expiatory"; those of Drôme, Eure-et-Loir, Nièvre, Rhône, and Seine-et-Oise made similar demands.

<sup>13</sup> According to an investigation carried out in 1839 among the directors of the *maisons centrales*. The director of the *maison centrale* of Embrun remarked: "The excessive comfort in the prisons probably contributes a great deal to the terrible increase in the number of recidivists." While the director at Eysses remarked: "The present regime is not severe enough, and if one thing is certain it is that for many of the inmates prison has its attractions and that they find in prison depraved pleasures that are entirely to their liking." The director of Limoges: "The present regime of the *maisons centrales* which, for the recidivists, are in fact little more than boarding houses, is in no way repressive" (see L. Moreau-Christophe, *Polémiques pénitentiaires* [1840], p. 86). Compare these remarks with declarations made, in July 1974, by the leaders of the union of prison workers concerning the effects of liberalization in prisons.