

THE DELINQUENT AS A FADING CATEGORY OF KNOWLEDGE

Sebastian Scheerer

I Introduction

To the extent to which common sense perceives the social world as perfectly natural, it also takes the category of the delinquent (and the mentally ill, the patient, etc.) for granted. This "natural appearance" even extends to the institutions of confinement which are seen as the logical reaction to the existence of criminals, the mentally insane, etc. If Karl Marx's statement about the criminal who himself "produces the whole police and criminal justice, the catchpoles, judges, hangmen, jurors etc."¹ still had an ironic undertone (which nonetheless has all too often been overlooked by Marxist scholars), common sense would never hesitate to see the *raison d'être* of the prison as the "existence" of criminals. But it may be that the days of the criminal as a category of knowledge are counted. We are approaching a period in which it will make ever less sense to conceptualize a person as "delinquent" or "criminal." Sooner or later, and I think it might rather be sooner, even common sense will have to adapt to the fact that the dominant control forms are already starting to operate beyond and without both the habitual concept of the delinquent and the traditional institutions of confinement.²

In other words: the sub-universe of delinquency (as well as that of mental illness) has become so deeply entrenched in our sense of reality that we tend to treat "delinquency" and "mental illness" as parameters rather than products of our minds; while they are historical, we treat them as if they were anthropological; and while they are subject to social change, we treat them as if they were not. But times are a-changing, and there is a growing gap between our everyday conceptualization of the world and the changes that are happening within it.

II History

For the purposes of a short sketch, we can distinguish some distinct stages in the period from the sixteenth to the nineteenth century in the making of the category

of "delinquent" as well as some recent stages which are currently leading to their dissolution. Examples given could refer to any part of Europe, but for practical purposes I will draw my historical illustrations from the German territories.

***The first stage: pre-categorical internments
(sixteenth – mid-eighteenth century)***

Leper houses were the main segregating institutions of the Middle Ages. They obviously housed victims of leprosy or *Hanseniasis*, but as a metaphor at the level of popular anxieties they were seen as housing the incarnation of evil or the types of people who made rituals of purification a deeply felt necessity.

But leprosy disappeared rather suddenly, and the leper houses remained as empty vessels of fear, to be filled with whoever would inherit the stigma.

Foucault has demonstrated how, after the scourge of the Middle Ages had vanished, governments suddenly started to institutionalize more people than ever before (something like one in every hundred). And he showed how the leper houses were first used to house the syphilitic, but how in the end the leper stigma (and the right, or rather the obligation, to inhabit their institutions) was passed to the *mad*. In and around Hamburg the leper houses were turned into general hospitals as early as 1540; in some other countries even earlier, in France mostly later. At any rate it was the category of *madness* that inherited the central role as a threat to the self-image of society from the now departed scourge of leper. But it was to take centuries for madness to find its most mature, differentiated and systematically closed conceptual form.³

By the mid-eighteenth century, the Swedish scientist Carl Linnaeus invented his binary nomenclature for plants. The "Philosophia botanica" appeared in 1751. This was also the year, incidentally, when the first insane asylum was inaugurated in London. Those years witnessed the first climax of classification. Popular interest was almost getting out of hand. When Linnaeus published a complete list of all known animals, plants and minerals in 1766, his publisher had to release twelve "prints" within two years.

It seemed as if only the classification of the human animals was lagging a little behind, but if this was the case, then the situation was soon to be remedied. A century later, the diverse types of humans and their relation to power, morality and citizenship had been catalogued, mapped and internalized as self-concepts of Western societies. By the end of the nineteenth century, the universe of everyday knowledge allowed the framing of all situations and interactions with regard to their location on the general social map, the center of which was inhabited by responsible and law-abiding normal citizens, while the margins were distressed by groups of outsiders who were either unable to interact on the basis of equality (the mentally ill) or unworthy of such interaction (the criminals).

of "delinquent" as well as some recent stages which are currently leading to their dissolution. Examples given could refer to any part of Europe, but for practical purposes I will draw my historical illustrations from the German territories.

***The first stage: pre-categorical internments
(sixteenth – mid-eighteenth century)***

Leper houses were the main segregating institutions of the Middle Ages. They obviously housed victims of leprosy or *Hanseniasis*, but as a metaphor at the level of popular anxieties they were seen as housing the incarnation of evil or the types of people who made rituals of purification a deeply felt necessity.

But leprosy disappeared rather suddenly, and the leper houses remained as empty vessels of fear, to be filled with whoever would inherit the stigma.

Foucault has demonstrated how, after the scourge of the Middle Ages had vanished, governments suddenly started to institutionalize more people than ever before (something like one in every hundred). And he showed how the leper houses were first used to house the syphilitic, but how in the end the leper stigma (and the right, or rather the obligation, to inhabit their institutions) was passed to the *mad*. In and around Hamburg the leper houses were turned into general hospitals as early as 1540; in some other countries even earlier, in France mostly later. At any rate it was the category of *madness* that inherited the central role as a threat to the self-image of society from the now departed scourge of leper. But it was to take centuries for madness to find its most mature, differentiated and systematically closed conceptual form.³

By the mid-eighteenth century, the Swedish scientist Carl Linnaeus invented his binary nomenclature for plants. The "Philosophia botanica" appeared in 1751. This was also the year, incidentally, when the first insane asylum was inaugurated in London. Those years witnessed the first climax of classification. Popular interest was almost getting out of hand. When Linnaeus published a complete list of all known animals, plants and minerals in 1766, his publisher had to release twelve "prints" within two years.

It seemed as if only the classification of the human animals was lagging a little behind, but if this was the case, then the situation was soon to be remedied. A century later, the diverse types of humans and their relation to power, morality and citizenship had been catalogued, mapped and internalized as self-concepts of Western societies. By the end of the nineteenth century, the universe of everyday knowledge allowed the framing of all situations and interactions with regard to their location on the general social map, the center of which was inhabited by responsible and law-abiding normal citizens, while the margins were distressed by groups of outsiders who were either unable to interact on the basis of equality (the mentally ill) or unworthy of such interaction (the criminals).

medical doctor from Hamburg with a keen interest in languages and social reform. In twelve public lectures on prisons (1827), Julius acquainted his listeners with John Howard in England and the philanthropic activities of the Quaker community in Pennsylvania. He also published the influential yearbooks on penitentiaries, translated Beaumont and Tocqueville's report on the American correctional system, and traveled extensively.⁷ Luckily for him, one of the most enthusiastic students listening to his prison lectures had been the Prussian crown prince himself who, as King Friedrich Wilhelm IV (1840–61), was to make the introduction of solitary confinement in Prussia a political priority. When, for instance, the new Pentonville prison in England was inaugurated in 1842, both Julius and his King went there to study the model. In the very same year the state of Hesse adopted a new penal code that had been written by true believers in solitary confinement, stimulating Prussia to begin similar constructions in 1844. In 1845, the government of Baden decided to build a copy of the Pentonville prison at the town of Bruchsal and passed the first German law that formally introduced solitary confinement as the regular prison regime. The same year the Prussian King declared that the house rules of the prison at Rawicz were to go into effect for all Prussian prisons. As it happened the house rules of this prison (dating from 1835), were modeled after the "silent system" that had been operating in New York's Auburn prison since 1823, and prohibited any communication among inmates. In terms of isolation, they were as close to the solitary system as could be, given the non-existence of appropriate single cells. Planned by the King as a provisional step only, the *Rawiczzer Regiment*⁸ was to remain in effect until 1902.

The fourth stage: ideological domination (1846–68)

From 1846 onwards, one can speak of an undeniable ideological domination of the solitary system in Germany. This domination preceded its implementation in terms of laws, buildings, and prison regimes. In September of that year, the city of Frankfurt hosted the First International Prison Conference. The conference organizer was the medical doctor Georg Varrentrapp who, much like Julius, had traveled England, France, and Switzerland, and had been convinced of the advantages of the solitary system. The resolutions passed were a triumphant victory for the Pennsylvanian system. The rise of the solitary ideal was also reflected by the treatment of the correctional system in three subsequent editions of the *Staatslexikon*. While the first edition (1835) was hostile to it, the second (1846) added an article that can best be described as a hymn in praise of the solitary system, and the third (1858) defended it exclusively by leaving out the original article of 1835. In 1848, the Bruchsal prison was inaugurated. A year later, Moabit opened, with similar constructions following at Münster, Breslau, and Ratibor.

Still unsatisfied with the slow progress of his solitary confinement policy, the King appointed a staunchly conservative "child saver" and zealous supporter of the principles of solitary confinement, as his counsel in prison matters (1857).

Johann Hinrich Wichern (1808–1881), founder of a large Hamburg orphanage (*Das Rauhe Haus*; The Rough House), persuaded the King to introduce solitary confinement by decree instead of waiting for the *Diet* to vote the respective legislation.

This disrespect angered the Liberal Party, and from 1858 onwards, the relationship between the King and the *Abgeordnetenhaus* deteriorated noticeably, thus leading to a deep and bitter constitutional conflict between the Crown and Parliament as a result of which the introduction of solitary confinement came to a halt. The effect was that until 1869 there were no more than two prisons practicing solitary confinement as their regular regime.

By the time that a compromise put an end to the conflict between the King and the legislature in 1869, time had already passed over the solitary ideal. While it is true that, from 1880 onwards, practically all construction work in terms of prison buildings was undertaken with the one and only goal to supply more facilities for solitary confinement, intellectual support for this kind of punishment was waning. Experts in penology had begun to defect from the solitary ideal for some years, and ever more practitioners were leaning towards the social ideal of the Irish or “progressive” system. The solitary ideal still was the official government position, but every success of official politics only deepened the gap. The appointment of Karl Krohne as head of the Prussian prison department in 1894 was such a Pyrrhic victory. During his tenure, the single cell rate showed a steep increase and turned the Quakers’ ideal into a bitter reality for a sizeable part of the prison population in the years before World War I. But by that time official prison politics had already lost touch with a different, mostly intellectual, but nevertheless strongly emerging reality.⁹

While it is generally assumed that the institutions as a whole only entered their phase of crisis and decline following World War II, our microscopic *pars pro toto* approach shows a different picture, in which the post-war crisis is only a continuation of a process that began during the late nineteenth century.

The first phase of decline: 1870–1945

Paradoxically, the guiding principles of and the philosophy behind the solitary system had already become obsolete at the peak of their realization. Solitary confinement started to look displaced amidst the processes of bureaucratization, rationalization, and massification that now characterized European societies.

The correctional ideal was not seen in the sinners’ individual repentance, but in progressive social rehabilitation. The solitary ideal was giving way to the rehabilitative ideal.

While politicians were only starting to implement the system, the competing ideologies were gaining strength by the year. In the 1880s the government’s policy, while now being implemented at increased speed, was rapidly losing the support of criminologists and penologists. One of the most influential advocates of the “progressive” system and the rehabilitative ideal was the founder of the

modern school of penal theory, Franz von Liszt (1859–1919). With the enthusiastic reception of his *Marburger Programm* (1882) the defenders of the solitary ideal suddenly appeared to belong to a *Weltanschauung* of the distant past.¹⁰

From 1882 onwards, the solitary ideal was in visible decline. Its successor was to become the slowly emerging rehabilitative ideal. Seen in its light, of course, all newly built solitary prisons looked very old from the start. One of Liszt's pupils, Eberhard Schmidt, later was to denounce their anachronistic character by referring to them as petrified giant errors (*steingewordene Riesenirrtümer*).¹¹

Following World War I, the Quakers' principles of solitary confinement already looked like a thing from the distant past. Nazi Germany did not even consider returning to solitary confinement. Its concern was not the individual, but the management of masses, including the concentration and annihilation of segments of the population.¹²

The second phase of decline: 1946–77

After World War II, the use of solitary confinement declined drastically, in terms both of the absolute numbers so interned and the relative importance of this prison strategy. Imprisonment was increasingly modified, as well as justified, by psychotherapeutic and socially rehabilitative methods and goals. Solitary confinement was seen as counterproductive to these ends. The law of 1977 (*Strafvollzugsgesetz*) therefore introduced the most restrictive conditions for its use. From now on it could only be imposed when it was indispensable (*"unerläßlich"*). If any prisoner was subjected to solitary confinement for (altogether) more than three months his case had to be reported to the state minister of justice. Prisons contracted psychologists, and for some time during the 1960s and 1970s, delinquents came to be seen as patients rather than criminals. More and more prisoners were being held in small collective living units (*Wohngruppenvollzug*) where they were subjected to all kinds of well-meaning psychological counseling, and something like a benevolent surveillance from the part of social workers, teachers and other professionals. There were serious efforts to transform prisons into therapeutic institutions (*sozialtherapeutische Anstalten*). But public opinion remained skeptical, and the effectiveness of intramural treatment questionable.¹³

The third phase of decline: 1978–96

During the 1980s the decline of the rehabilitative ideal became impossible to ignore. Plans for *sozialtherapeutische Anstalten* were silently scrapped, and no effort was made to justify the boom in prison constructions with reference to a psychotherapeutical frame of reference. Disillusionment with any kind of intramural therapy of offenders – be it drug-related or crime-related – spread. The prison became increasingly seen as a simple instrument for selective incapacitation. A typical case in point was the strict solitary confinement imposed on members of the social-revolutionary Red Army Faction (*Rote Armee Fraktion, RAF*) during the

early 1970s. But in the end "incapacitation," however selective, appears to be quite a thin layer of legitimation for an institution that once used to be able to mobilize much stronger moral arguments in its favor.¹⁴

Intramural segregation of the individual prisoner, once a venerated ideal, was now regarded an undesirable, albeit sometimes "indispensable" measure for security reasons, and while the future of confinement might be unclear, solitary confinement is likely to become ever more marginalized in the system of social control. As a matter of fact, today's era is characterized by a transition from the age of confinement (and discipline) into one of mere registration (and control by the management of desires).¹⁵

III Tendencies

Today, while some predict an uncontrollable growth of the prison system, others are observing a loss of functions that could soon lead to the abandonment of the institution as such, with its control functions taken over by electronic monitoring and other (post-)modern devices.

The following part of the chapter will sketch the general tendencies of social control and relate them to the modifications in the external prison system and internal prison regime.

The first tendency: socialization and the birth of the "dividual"

While the medieval person used to live with a low level of self-constraints and impulse controls, the fabrication of modern individuals at least since the sixteenth century has been marked by a steady increase in internalization and psychic integration of the originally divergent personality components.¹⁶ The rise of the categories/institutions of both madness and crime accompanied this rise of the rational standard individual, who was imagined and positioned in simple hierarchical structures, from family via military to the firm, and whose life, opinions and styles reached a maximum of homogeneity and social discipline in the nineteenth century.

A reverse tendency was discovered by research in socialization since World War II. The emerging personality type is steered in his actions less by internalized norms and values than by the demands of the respective situations, interaction partners, and group commitments. The dominance of situational expectations and role requirements over conscience and convictions led David Riesman to speak of a "marketing character" ("outer-directed man"); others defined the new personality type of post-modern times as being "narcissistic."¹⁷ This is a dramatic change that implies a whole array of highly ambivalent phenomena including, for example, the relation between adults and young persons – a battlefield of interests and morality that among other things might explain much of the present-day concerns over pedophilia.¹⁸ However this may be, the common

denominator of all the reviewed theory and research concerning personality-type changes seems to be the tendency of the person to experience a fracturing of their "single" identity and the increasing independence of their multiple roles from each other. As a result, her or his ability to construct and maintain a coherent self is seriously impaired. The once indivisible individual is slowly transforming itself into what French philosopher Gilles Deleuze called the forthcoming "dividual," i.e. a multiplicity of persons according to situational expectations and requirements.¹⁹

The second tendency: commodification as a medium of control

The new extroverted personality is subjected to a completely new kind of social control. After the decay of the medieval catholic church as a hegemonic force of social control, its functions are now being fulfilled by an intricate system of material and immaterial wants and what one may call "the politics of desires."

The new system is deeply rooted in both the capitalist production sphere as well as in a concomitant "consumerist ethos," an ethos which is itself closely, albeit contradictorily, related to the unbroken tendency towards ever more rationalization, routinization, and disenchantment with the world.²⁰

Commodification itself requires the continual creation of new products and new markets, thus contributing to the desensitization of the individual and to the need for ever more stimulating experiences to produce excitement. And the more the capitalist system stresses cost-benefit rationality, purposive labor, etc., the stronger becomes the consumption ethic as its complementary component.

To attain self-realization and meaning in life, one must buy certain commodities that represent this meaning, for example security (life-insurance, home), experience of the inner self (courses in meditation, preferably in Tuscany), existential self-experience (free-climbing, bungee-jumping), complete relaxation (long and expensive vacations in the sun), etc. A prerequisite of all is, of course, conformity with the work ethic, but the harder one works the more one needs to compensate everyday alienation in leisure time. It was Herbert Marcuse who has provided us with the most profound analysis of this process, his main thesis being that Western societies are able to satisfy the basic needs and are at the same time solid enough to tolerate quite a lot of variations in behavior, thus producing a sense of freedom which, in a deeper sense, actually results in a submission to ever more processes of domination and manipulation. Post-modern societies evidently make especially great use of techniques that are able to neutralize potential revolt through what he called "repressive tolerance," that is, the harmless and sometimes only illusory satisfaction of real or artificially induced needs that pacify the working class and rob them of their revolutionary fervor.²¹

The third tendency: the commodification of security

Privatization is one of the common denominators of today's laboratories for the future of social systems, and hence one of the traits most likely to continue to shape them. But privatization has many faces and means many things. While it is an attractive idea for all those who see the state as the source of all evil, it may also represent uncontrolled vigilantism and infringements on civil rights. More than anything else, it is likely to lead to an ever more unequal distribution of security, because privatization is also a very euphemistic term for what would be more correctly termed "commodification" and "commercialization" of security. Its growth corresponds to significant changes in property ownership. In North America, for instance, many public activities which used to take place in public community-owned spaces, now take place within huge privately owned facilities, the so-called "mass private property," such as shopping centers with hundreds of individual retail establishments, enormous residential estates with hundreds, if not thousands, of housing units, equally large office, recreational, industrial, and manufacturing complexes, and university campuses.²² The considerable demand for both services and goods from the security industry has already led to a reversal in the ratio of public and private police personnel in the United States (with private personnel outnumbering the public service by almost three to one, and where four to one is a current forecast for the year 2000). In the US, the private security industry's turnover was estimated at around 50 billion dollars in 1990, and in Germany, estimates rose from less than 11 billion Deutschmarks in 1990 to more than 14 billion in 1994.²³

The fourth tendency: from control of individuals to control of situations

Foucault's disciplinary society still wanted the reliable individual, but Deleuze's control society wants to prevent (or monitor or analyze) situations. The individual as such is not interesting anymore – the idea of catching it, putting it in a cage and submitting it to psychological techniques in order to improve its character seems increasingly ridiculous. While treatment is *out*, surveillance, observation, registration of voices as well as the documentation of (real and genetic) fingerprints – and the creation of security/conformity standards (workplace drug testing, video registration, electronic admission systems) are *in*. Some sociologists even believe they can detect a tendency towards a shift from normative to cognitive control techniques – a belief that find some support in the trend towards *actuarial justice*.²⁴

The fifth tendency: from overt, concentrated and reactive to covert, dissipated and proactive control

Nineteenth-century law enforcement reacted to a breach of law by individuals on whom it concentrated its efforts. Post-modern law-enforcement tendencies are rapidly moving in the opposite direction. Electronic surveillance is covert just like the use of informers and undercover agents. Instead of concentrating on single offenders, agencies of social control focus on structures and movements. The most popular pastime of police hierarchies is piling up data for possible future use in law-enforcement activities.

Beyond this, the increased emphasis on the architecture of defensible space and the inflation of preventive programmes indicate a trend towards prophylactic intervention that makes the focus on reacting to actually committed crimes look very old-fashioned indeed. Prevention, though, is necessarily less specific than reaction, since everyone is a potential offender and millions belong to "risk groups." Eavesdropping, computerized mass searches for life-style irregularities, etc. belong in this emerging picture of a generalized panopticon.

The mechanism of the "politics of wants" or "politics of desires" works best in artificial environments that preventively allow access only to those who are materially and ideologically prepared to participate in the consensual pursuit of commodified pleasures. Therefore, many analysts have come to believe that one only has to turn one's attention to the malls, the amusement parks, and the affluent suburbs of the metropolises in order to have a preview of things to come. The huge covered shopping areas just outside the metropolitan areas of North America and Europe look like laboratories for the construction of an artificially "cleansed" society. In the midst of a snowy Canadian winter, you will find palm trees and waterfalls, flowers and exotic birds, and when the seasons change you will find respite in the cool spring-like mall when everybody else is sweating their souls out. The malls are little cities or mini-countries of their own. They have border controls (private security with precise orders regarding who is and who is not to be granted entry) and internal policing (by private security firms), while the only real and ultimate sanction is expulsion from the artificial paradise. There are no beggars or loiterers, no (visibly) poor, nor will one find anyone who is not shopping (except, again, the omnipresent and helpful private security guard who makes a walk through the mall one of the safest experiences you can have).²⁵

The malls are a good laboratory for a new system of social control that works not by nineteenth-century command structures, but via an unobtrusive politics of landscape (the malls are at a certain distance from the city, with practically non-existent public transport connections, thereby preventing access of undesired people from the very start), defensible and sterile architecture with pre-fabricated pleasure stimuli (unobtrusive techno-prevention), and a consensual atmosphere that makes it the unavoidable duty of every visitor to obey cheerfully all the rules of the game.

Similar to the malls, amusement parks are even more like simulated countries (or even the world: for example *Disney-World*). They are geared to please (and control) "the family," i.e. not the *individual*, but a good-humored, lovingly *harmonious entity* worth building a nation upon, and a worthy model for the structure of the "global village" (with the poor but happy countries in the role of the children). Everything must be safe, so everybody can have pleasure. Unlike the mall, the commodities that are for sale in the amusement parks are probably best described as highly standardized pleasurable experiences. To the extent that pleasure is the ultimate end of life activities in a secularized world, what you buy in amusement parks is as close to a sense of life as one can get in a commodified universe.

In there, safety control is to a large extent unobtrusive. Things have been constructed extremely cleverly so as to allow as little deviance and accident as possible. Amusement park employees are gentle, often costumed and entertaining, and always lend a helping hand when anyone shows any sign of behavior that is not perfectly in line with the expected routines. They act as unobtrusive engineers of consensus between the amusement park company, the parents, their children, and the other visitors. There is no quarrel, no command, nor need to obey.

There is an elective affinity between the very structures of the shopping mall and the amusement parks and the ever-growing number of affluent suburbs that begin to cover the globe like a pattern of "islands," or "fortresses" of the very rich. Maybe it is here that the results of the social laboratories are finding their way into a "real life" that, paradoxically enough, seems quite unable to shed the smell of the artificial in terms of social chemistry, social engineering, and a sad simulation of what the ancient philosophers used to refer to as the "Good Life." The pattern of islands or fortresses is really a community of communities, unrelated geographically, but structurally closer to each other than to their immediate environment where crimes of violence mingle with misery and desperation. On these paradise islands, there is no filth, no misery, no violence; the lawns are always well cut, the children happy and healthy, and people cheerful and positive in their thinking.

IV The future of the delinquent as a category of knowledge

We can now discover a relation between the decline of the prison (and the mental hospital) on one hand and the broader tendencies of social control on the other.

First, the neglect of internal determination of human actions and the emphasis on situational elements – "the birth of the individual" – finds a reflection in the turn away from essentialist strategies that defined the *born criminal* and the new emphasis on human biographies as a *career* or rather a process of *drift*. People are seen as drifting into and out of phases of holding a job, of committing petty offenses, or even crimes. Instead of the eternal criminals (and mentally ill)

confronting an equally stable core of normal citizens, we are accustomed to seeing relatives enter mental hospitals and leaving them, only to enter again after a few years during a more severe spell of psychosis. Fixed ontological concepts like the delinquent and the mentally ill do not fit this reality.

Maybe it is worthwhile to realize that *critical criminology* has both reflected this process and contributed to it. The idea of the ubiquity of criminal behavior – and the corresponding idea that the prison population differs from normal citizens not in terms of behavior, but only in terms of exposure to social control – dealt a severe blow to the very category of the delinquent.²⁶

Second, the commodification of social control reaches deep into all institutions and puts them under an explosive pressure. The ambivalent preserve of commodities like television, stoves, telephones, etc. in prisoners' cells is clear: on the one hand these commodities serve as instruments that can be withheld for disciplinary purposes, on the other hand this system only works if these commodities are basically attainable. Thereby, the deprivation of liberty loses relevance. Most of the disciplinary mechanisms – like withholding money for the weekly purchase of extra food, cosmetics, cigarettes, etc. – would basically also work (or work even better) if the delinquent was on the other side of the walls, in a tight probation scheme. By substituting traditional repressive mechanisms of intramural control, these new kinds of control are undermining the very construction the prison rests upon.²⁷

Third, the commodification of security implies not only the idea of privatizing prisons (and turning delinquents into quasi-customers), but also of using commodities (like electronic tags) instead of institutions, thus reducing the visibility of the delinquents as a class and blending everyday normal life with that of delinquents.

Fourth, the individual delinquent (and their “class”) loses importance to the extent that he is seen as a normal person who spends a phase of his life breaking, but most of his life respecting, the law. To the extent that the control of situations becomes the paramount challenge for law enforcement, persons recede into the background, getting out of the focus of attention and losing the extreme attention of society that had coined their image for generations.

Fifth, the satellites that control phone, fax and e-mail communication are geared towards risky worlds, not dangerous individuals. Their covert, dissipated, and proactive control does not distinguish between electronic impulses sent from a prison yard and from an affluent suburb. The spatial concentration of deviants has no advantage over their spatial dissipation. Total institutions are outdated in the face of modern control techniques and priorities.²⁸

V Contradictory evidence

There is contradictory evidence. While the aforementioned tendencies can be used as indicators in favor of a complete dissolution of both the total institutions and the corresponding concepts of “delinquents” and “mentally ill,” there are quite a few data that seem to indicate the contrary.

While Gilles Deleuze did not look at prison figures and simply deduced from the overall technical development that prisons have become as anachronistic as any fixed categorization of people, Nils Christie proceeds from the empirical data he collected about prison populations and infers the emergence of a system of "GULAGs, Western Style."²⁹

A look at the rates of imprisonment in the USA is indeed stunning. Numbers prove a steady and strong growth of the US prison population. The incarceration rate (per 100,000 resident population) went up from 102 in 1974 and 244 in 1988 to well over 500 in 1994. The US prison population rose from 200,000 in the early 1970s to 1,100,000 inmates in 1995 (*The Economist*, June 8, 1996: 24). This is an astonishing rate that leaves European countries trailing far behind (with between 50 and 120 per 100,000), but comes frighteningly close to that of Russia which also oscillates between 500 and 600. If the US development is any predictor for things to come in Europe, the message of these numbers is more than clear, and it spells "expansion of the prison system."

The qualitative shift in correctional philosophy evidently did not prevent any of this. The *new penology* is said to be markedly less concerned with responsibility, fault, moral sensibility, diagnosis, or treatment of the individual offender. But its concern with techniques to identify, classify and manage groupings sorted by dangerousness did not empty a single prison in the United States. Rather it has filled the USA with human warehouses. While earlier correctional discourses were concerned with clinical diagnosis or at least retributive judgement, guilt and responsibility, they are now increasingly being replaced by the language of probability and risk. In Germany the one-time *Behandlungsvollzug* of the 1970s (a treatment orientation within the correctional system) first turned into *Verwahrsvollzug* (an orientation, primarily its safe-custody) and then into *Verwahrlosungsvollzug* (correction of "social derelicts").

The facts seem to be diametrically opposed to the perspective that has been developed by Herbert Marcuse, Michel Foucault, and Gilles Deleuze. Their prediction did not imply the exponential growth of incarceration, but much to the contrary a withering away of all kinds of camps, prisons, factories, school buildings, and other nineteenth-century means of spatial inclusion in large-scale buildings. Especially for Deleuze, all kinds of institutionalization and incarceration have already become obsolete in view of the system's growing ability to manipulate motivations and monitor citizens' movements at all times and on all occasions. Their analysis focuses on a shift having taken place from the cruel punishments of the past to medicalization, to admonition instead of infliction of pain, to decarceration and diversion instead of imprisonment, to normalization instead of exclusion, and to destructuring instead of centralization. To them, the construction of new therapeutic categories (diagnoses, syndromes, classifications) is more important than therapeutic systems that involve coercion (involuntary hospitalization, compulsory treatment of addicts, thought-control of political dissidents).

Why then do the data not comply? There are at least two aspects that could

explain the dissonance and should cool down our expectations concerning the "withering away" of the categories of prisoners and mentally ill.

First, Horwitz³⁰ has stressed the fact that the therapeutic style of social control has "only a narrow range of effectiveness. It can promote positive change when clients voluntarily co-operate and share common value systems with controllers. This is usually only the case when people share the educational, class, and cultural orientations of their therapists." This holds true for many of the aforementioned trends. Diversion programs and house arrest, victim-offender reconciliation and compensation schemes, intensive parole and probation, but also ambulatory drug treatment programs and electronic surveillance all indicate a strong tendency towards non-custodial sentences. But at the same time, there is the rapidly increasing prison archipelago that applies to a different kind of clientele. This leads us to the second aspect.

Second, one just has to take a look at the deepening divide between the world's affluent and afflicted parts, between the growing number of both the very rich and the very poor, to come to think of the possibility that the introduction of the new techniques of social control may find its limit right along the poverty line. While the new techniques will drive the old ones into oblivion at the top and maybe at the "core" of (post-)industrial societies, the old ones and even the very old ones will more probably than not be applied to those below and beyond the poverty line, that is, to the pauperized masses within and beyond the borders of the affluent world.

Those who live at the margins of society have little to expect from the gentle forms of medicalization, therapeutization, neutralization, and normalization. There, beyond the enclaves of commodified happiness, the coming of age of young persons is not the continuous learning game with electronically geared reinforcements, but an often violent struggle in an environment that comes as close to the Hobbesian state of nature as any. And as far as the reactions to deviance are concerned one will find all of them there – including the overt brutality of past stages of social formation which many theorists had long forgotten. Reactive social control still does rely on selective brutality that contains a peculiarly effective terrorizing element and which is regularly put in practice by powerful groups when they begin to define situations as critical for the survival of the(ir) system. On a grand historical scale, Mussolini, Hitler, and Franco represent this method of controlling the working classes at a moment of dangerous social unrest. But one can also observe more restricted examples such as the virtually unconditional crack-down on leftist terrorists in Germany during the 1970s, or the extreme persecution of drug traffickers in the United States and other countries. Seemingly outdated and pre-modern as it is, this control method, which includes coercion of masses in camps, long-term imprisonment, the death sentence, extra-legal killings by death squads and/or corrupt police etc. will become ever more important to the extent that structural unemployment, international mass migration, youth violence, and a restless lumpenproletariat will continue to grow, while social consensus is on the decline.

Internal polarizations of societies and the creation of an ever-deepening gap between the fortresses of the affluent and the migrating miserable masses are developments that are resulting in a marked bifurcation of control styles. The prospects are normalization and de-institutionalization for the "in-groups," and an increasing brutalization at the margins for the "out-groups." Each control style, in turn, generates its own dangers and panic-discourses. The amusement park scenario entails the risk of a totalized benevolent submergence of the individual in an ocean of techno-prevention and manipulated consensus, while the scenario at the margins justifies the vision of a complete breakdown of social order and entails the danger of brutal top-down control measures.

VI Discussion

Limiting ourselves to the most advanced countries and the most advanced sectors within them, we focus on the vanguard of social control. It is like looking at the Walnut Street Prison in Philadelphia, in 1796, where the first modern prison started to operate on a minute scale.

Visions of a new kind of society, including a new type of personality and social control, lurk on the horizon. It looks as if it could be very similar to Gilles Deleuze's diagnosis or prophecy. Had he not argued that prisons and other *milieux* of confinement (the mental hospital, the military barracks, the factory, the school, the family) had become anachronistic and were only waiting to be abolished? Just as the societies of sovereignty (which relied on corporal punishment) were followed by the societies of discipline (which relied on the prison as the *milieu* of confinement *par excellence*), the societies of discipline presently find their succession in the control societies of a Deleuzian variety. Control societies are independent from spatial segregation. Workers do not need to congregate in a factory, but simply switch on the electronic connection. Scientists do not need to go to a library, but study electronic journals on their own computer screen. The mentally ill are not segregated in mental hospitals, but given medication which intervenes directly and precisely into their disordered brain chemistry. To serve his sentence a convict does not have to enter a prison but will be assigned a tag that links him to an electronic monitoring system. In this system, the meaning of space changes, but that of incarceration is completely lost. The new methods of control are ambitious because they embrace the general population, but they are liberal insofar as they can leave freedom of movement to those who used to be confined in total institutions. At the same time public sensitivity to the suffering provoked by confinement is increasing. The less necessary confinement becomes from a purely technical point of view (that is, without loss of effectiveness), the more we seem to be ready to define its use as an offence to human dignity. The new techniques of control are ubiquitous and pervasive, but they are so radically different from such outdated devices as prisons, asylums, or any practice of solitary confinement that the present tendency of prison expansion may well reveal itself as a mere sham boom. To the extent that it is unlikely that confinement will

play a significant role in the coming century, the very categories of "the delinquent" and "the mentally ill" will tend to dissolve.

Summary

This paper attempts to look at total institutions as correlates of systems of knowledge. Following the works of Michel Foucault, Gilles Deleuze and others, it stresses the historical emergence of the categories of the delinquent and, in some *obiter dicta*, the mentally ill, to lay some groundwork for an educated guess about what I consider the contemporary tendencies towards their dissolution. The main hypothesis of this chapter has been concerned with, and relates to, the process of decategorization in a fragmented society. My conclusion is that general changes in the nature of social control necessitate a fading away or withering away of the clear-cut categories of "delinquent" and "mentally ill."

Notes

- 1 K. Marx and F. Engels, *Marx-Engels-Werke*, vol. 26, pt. 1: *Theorien über den Mehrwert (Das Kapital: vol. 4: Abschweifung (Über produktive Arbeit)* (East Berlin, 1976): 363–4.
- 2 Cf. S. Scheerer, "Beyond Confinement? Notes on the History and Possible Future of Solitary Confinement in Germany," in: N. Finzsch and R. Jütte, eds, *Institutions of Confinement. Hospitals, Asylums, and Prisons in Western Europe and North America, 1500–1950*. Cambridge University Press, Cambridge, New York, Melbourne 1996: 349–61.
- 3 Cf. Foucault, M. 1977, *Discipline and Punish: The Birth of the Prison*. Harmondsworth: Allen Lane (French ed. 1975); Bériac, F., *Histoire des lépreux au Moyen Age: une société d'exclus*. Paris 1980; Castel, R. 1976, *L'ordre psychiatrique. L'âge d'or de l'aliénisme*. Paris: Les éditions de minuit.
- 4 J. Howard, *The State of the Prisons*. London: Dent 1929 (orig. Warrington 1777); H. B. Wagnitz, *Historische Nachrichten und Bemerkungen über die merkwürdigsten Zuchthäuser in Deutschland*. Vol. 1, Halle 1791; Elisabeth Fry, *Observations on the Visiting, Superintendence, and Government of Female Prisoners*. London 1827.
- 5 Cf. G. Rusche and O. Kirchheimer, *Punishment and Social Structure*. New York 1939; also, with a focus on Italy, cf. D. Melossi and M. Pavarini, *The Prison and the Factory: Origins of the Penitentiary System*. London, 1981.
- 6 Cf. E. Schmidt, *Einführung in die Geschichte der deutschen Strafrechtspflege*. Göttingen, 1965: 186; G. Smaus, "The History of Ideas and Its Significance for the Prison System," in: Finzsch and Jütte, *Confinement* (note 2): 175–90.
- 7 N. H. Julius, *Jahrbücher der Straf- und Besserungsanstalten*, Frankfurt 1829–39; N. H. Julius, *Amerikas Besserungs-System und die Anwendung auf Europa*, Berlin 1833.
- 8 *Reglement für die Straf-Anstalt zu Rawicz. Genehmigt Berlin, den 4. November 1835. Ministerium des Innern und der Polizei*.
- 9 Cf. *Verhandlungen der ersten Versammlung für Gefängnisreform, zusammengetreten im September 1846 in Frankfurt am Main*. Frankfurt am Main, 1847; A. Streng, *Studien über Entwicklung, Ergebnisse und Gestaltung des Vollzugs der Freiheitsstrafe in Deutschland*. Stuttgart, 1886.

- 10 F. v. Liszt, "Der Zweckgedanke im Strafrecht" (1882), in: F. v. Liszt, *Strafrechtliche Aufsätze und Vorträge*, Vol. 1, Berlin 1905, pp 126–79.
- 11 Cf. E. Schmidt, *Zuchthäuser und Gefängnisse*. Göttingen, 1960.
- 12 Cf. R. Gellately, "The Prerogatives of Confinement in Germany, 1933–1945: 'Protective Custody' and Other Police Strategies," in: Finzsch/Jütte, *Confinement* (supra note 2): 191–211.
- 13 Cf. H. Jung, "Das Strafvollzugsgesetz und die Öffnung des Vollzugs," in: *Zeitschrift für Strafvollzug und Straffälligenhilfe* 26.1977: 86–92.
- 14 Cf. Amnesty International *Arbeit zu den Haftbedingungen in der Bundesrepublik Deutschland für Personen, die politisch motivierter Verbrechen verdächtigt werden oder wegen solcher Verbrechen verurteilt sind: Isolation und Isolationshaft*. London, 1980.
- 15 As Pierre Bourdieu has argued, seduction takes over as the means of social control and integration. Cf. P. Bourdieu, *Distinction: A Social Critique of the Judgement of Taste*. London, New York, 1984; cf. also S. Scheerer and H. Hess, *Social Control: A Defence and Reformulation*, in: R. Bergalli and C. Sumner, eds, *Social Control and Political Order. European Perspectives at the End of the Century*. London, 1997: 96–130 (118–26).
- 16 Cf. N. Elias, *Über den Prozess der Zivilisation*, 2 vols. Bern and Munich, 1969 (N. Elias, *The Civilizing Process*. Oxford, 1978).
- 17 Cf. D. Riesman *et al.*, *Die einsame Masse*. Hamburg, 1958 (orig. *The Lonely Crowd*); Ch. Lasch, *Das Zeitalter des Narzissmus*. Munich 1980. At least the new type of personality represents less danger of being authoritarian than the type analyzed by Adorno, Th. W., E. Frenkel-Brunswik, D. J. Levinson, and R. J. Sanford in *The Authoritarian Personality*. New York, 1950.
- 18 Cf. R. Lautmann, *Die Lust am Kinde*. Hamburg, 1984.
- 19 Deleuze, G. "Das elektronische Halsband. Innenansicht der kontrollierten Gesellschaft". *Neue Rundschau* issue 4: 1990: 5–10 (also in: *Kriminologisches Journal* 24.1992: 181–6); cf. also Davis, M. *City of Quartz. Excavating the Future in Los Angeles*. London, New York, 1990: Verso Books.
- 20 Campbell, C. *The Romantic Ethic and the Spirit of Modern Consumerism*. Oxford, 1987: Basil Blackwell.
- 21 H. Marcuse, *One-Dimensional Man*. London, Boston, 1964.
- 22 Shearing, C. D., and Stenning, P. C. "Say 'Cheese!': The Disney Order That Is Not So Mickey Mouse," in: C. D. Shearing and P. C. Stenning, eds, *Private Policing*, Newbury Park, 1987: Sage; Shearing, C. D., Stenning, P. C. "Private Security: Implications for Social Control." *Social Problems* 30 No. 5 June 1983: 493–506.
- 23 Nogala, D. "Was ist eigentlich so 'privat' an der 'Privatisierung sozialer Kontrolle'? Anmerkungen zu Erscheinungen, Indikatoren und Politökonomie der zivilen Sicherheitsindustrie," in: F. Sack *et al.*, eds, *Privatisierung staatlicher Kontrolle: Befunde, Konzepte und Tendenzen*, Baden-Baden, 1995: Nomos.
- 24 Luhmann, N., *Rechtssoziologie*. Reinbek, 1972: Rowohlt; M. Feeley, J. Simon, "The New Penology: Notes on the emerging strategy of corrections and its applications." *Criminology* 4.1982: 449–74.
- 25 supra footnote 22.
- 26 Cf. R. Kreissl, "Soziologie und soziale Kontrolle. Mögliche Folgen einer Verwissenschaftlichung des Kriminaljustizsystems," in: U. Beck and W. Bonss, eds, *Weder Sozialtechnologie noch Aufklärung? Analysen zur Verwendung sozialwissenschaftlichen Wissens*. Frankfurt, 1989: 420–56.
- 27 Cf. Blomberg, T. G. "Criminal justice reform and social control: are we becoming a

- minimum security society?," In: J. Lowman, R. J. Menzies, T. S. Palys, eds, *Transcarceration: Essays in the Sociology of Social Control*. Aldershot, 1987: Gower.
- 28 Cf. S. Scheerer, "Zwei Thesen zur Zukunft des Gefängnisses – und acht über die Zukunft der sozialen Kontrolle," in: T. v. Trotha, ed., *Politischer Wandel, Gesellschaft und Kriminalitätsdiskurse*. Baden-Baden, 1986: 321–334.
- 29 Christie, N. *Crime Control as Industry. Towards GULAGS, Western Style?* London, 1993: Routledge (2nd edition: *Crime Control as Industry. Towards GULAGS, Western Style*. London, 1995).
- 30 Horwitz, A. V. *The Logic of Social Control*. New York 1990: Plenum: 247.