

## SOCIAL ISSUES OF LAW AND ORDER

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*In this paper the author extends his account of 'postmodernity and its discontents' to address questions of crime and penal policy in the contemporary period. It is argued that there is a tendency to maintain order by resort to a 'paradigm of exclusion' and this pattern is exemplified by a discussion of the significance of the Pelican Bay 'super-max' prison in California and the more widespread reliance upon mass incarceration that has emerged in recent years.*

*It is argued that the Pelican Bay project is not, as it appears at first sight, a super high-tech version of the Panopticon. On the contrary, the project is shown to lack the key qualities of work-related discipline and re-subjectification that characterized the latter. Instead it operates as a factory of exclusion for people habituated to their status as 'the excluded'. It is a technique of immobilization, one of several measures of 'space-confinement' that have arisen in response to the postmodern social field and the wasteful, rejecting logic of globalization.*

*The role of prisons in the post-correctional age is shown to be linked to the new forms of anxiety that characterize the populations of postmodern societies, and to the political strategies that express and reinforce these widespread sentiments. Whereas modern liberal societies were organized around a compromise wherein a measure of individual liberty was exchanged for collective economic security, today's tendency is the opposite of this: a trade off of collective security in exchange for the maximization of individual choice, which in turn, focused by the political process upon the problem of crime and its control gives rise to a logic of exclusion and fortification. This feature of postmodernity is, in effect, symptomatic of a failure to face up to the challenge of existential insecurity generated by our social and economic arrangements.*

There are many ways of being human, and each society makes its choices. As a matter of fact, if we call a certain assembly of people a 'society', implying that these people 'belong together', make a 'totality', it is due to that choice: a selection, which is at the same time a constraint imposed on the permissible. It is that choice which makes one assembly of people look different from another—that difference which we refer to when we speak of different societies. Whether a given assembly is or is not a 'society', and where its boundaries run, and who does and who does not belong to the society which that assembly constitutes—all that depends on the force with which the choice is made and promoted, and on the compliance with which it is obeyed. The choice boils down to two impositions (or, rather one imposition with twofold effects): of an *order* and a *norm*.

The great novelist/philosopher of our times, Milan Kundera, described 'the longing for order', evident in all known societies (in *La Valse aux Adieux*, here quoted in Peter Kussi's translation (1993: 85) —*The Farewell Party*), as 'a desire to turn the human world into an inorganic one, where everything would function perfectly and work on schedule, subordinated to a suprapersonal system. The longing for order is at the same time a

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longing for death, because life is an incessant disruption of order. Or to put it the other way around: the desire for order is a virtuous pretext, an excuse for violent misanthropy'.

To be sure, the desire for order does not necessarily stem from misanthropy—and yet it cannot but prompt it, as well as offer an excuse for whatever actions follow that sentiment. Any order is, after all, a desperate attempt to impose uniformity, regularity and predictability on the human world, the kind of world which is endemically diversified, erratic and unpredictable. Since the humans are, as Cornelius Castoriadis (1989: 103–4) put it, such 'one type of being that creates something else, that is a source of alterity, and thereby itself alters itself', there is no chance that the human world everywhere (except for the graveyards, that is) will ever stop being diversified, erratic and unpredictable. Being human means constant choice. The longing for order is conceivable only thanks to that quality of being: any model of order is itself a choice—although it is a kind of choice which wants to supersede all other choices and put an end to all further choosing. Such an end being not on the cards, misanthropy follows—whether invited or not. The true object of the suspicion, revulsion and hatred which combine into misanthropy is the stubborn, inveterate and incurable eccentricity of human beings, that inexhaustible source of disorder.

The other imposition is that of the norm. Norm is the reflection of the model of order as it is projected on human conduct. The norm tells people what it means to behave in an orderly fashion in a well-ordered society—it translates, so to speak, the concept of order into the language of human choices. Any order is a choice, and so is the norm; but the choice of certain kinds of order limits the range of tolerable behavioural patterns and privileges certain kinds of conduct as normal, while casting all other sorts as abnormal. 'Abnormal' stands for any departure from the favoured pattern; it turns into 'deviation', which is an extreme case of abnormality, a conduct calling for therapeutic or penal intervention—if the conduct in question does not just differ somewhat from the preferred pattern, but transcends the boundary of tolerable choices. The distinction between mere 'abnormality', a matter of attention, treatment and cure, and the much more sinister 'deviation', is never clearly drawn and when drawn tends to be always hotly contested; just like the question of the limits to tolerance, that attitude which makes the difference between them.

Concern with order and norm signals, as a rule, that not everything is as it should be, and that not everything that is can be left in its present state. The very ideas of order and norm are born of that sense of (rectifiable) imperfection, and of the urge to do something about it. Both ideas are therefore constrictive—diversive and selective: the 'should' which they imply cuts into the 'is', leaving out large chunks of human reality. None of the two ideas would make any sense were they all-inclusive, able to accommodate all people and everything people do. The whole point about 'order' and 'norm' is precisely the opposite—the emphatic declaration that not everything that exists at present can find room in the postulated, properly functioning assembly and not every choice can be accommodated there. 'Order' and 'norm' are sharp knives pressed against the society as it is; they are first and foremost about separation, amputation, excision, expurgation, *exclusion*. They promote the 'proper' by sharpening the sights on the improper; they single out, circumscribe and stigmatize parts of reality denied the right to exist—destined for isolation, exile or extinction.

'Order' performs the job of exclusion directly—enforcing special regimes upon those meant to be excluded; excluding them through subordinating to the special regime.

'Norm' acts indirectly—making the exclusion look more like self-marginalization. In the first case, excluded and banished are those who 'breach the order'. In the second, those who 'are not up to the norm'. In both cases, though, it is the excluded themselves who are charged with the guilt of their exclusion; the perspectives of order and norm alike apportion the blame in advance deciding *a priori* the issue of responsibility and blame against the excluded. It is their actions—*wrong* actions—that brought the plight of exclusion upon them.

In the process of exclusion, the excluded themselves are cast as the principal, perhaps the sole, agency. Being excluded is presented as an outcome of social *suicide*, not a social *execution*. It is the fault of the excluded that they did nothing, or not enough, to escape exclusion; perhaps they even invited their fate, making the exclusion the foregone conclusion. Excluding them is an act of good sense and justice; those who do the exclusion might feel sensible and righteous, as becomes the defenders of law and order and guardians of values and standards of decency.

The excluded are unfit to be free agents, *quod erat demonstrandum*. Horrid things would follow were they let loose. They would bring all sorts of disasters upon themselves as much as on all the others. And so the depriving of the excluded of the freedom to act which they are bound to misuse or waste, apart from being necessary for the protection of law and order—is also called for in the best interests of the excluded; policing, controlling and supervising the conduct of the excluded is also an act of human care and charity, a profoundly moral duty.

What this perspective leaves out of sight and prevents from being considered is the possibility that—far from bearing responsibility for their sorry fate—the excluded might be at the receiving end of forces which they have been given no chance of resisting, let alone controlling. That some among them might 'breach the order' since they have been marked for exclusion because of what they are, for the traits they possess but did not choose to have, not because of what they have done; that they have been excluded because 'people like them' did not fit an order of *someone else's*, not of their own, choice. And, above all—that some among the excluded happened to be 'not up to the norm' not for the lack of trying and not because of malice aforethought, but due to the lack of resources without which 'living up to the norm'—the resources other people have, that they do not; resources which are in short supply and therefore cannot be had by all, not in sufficient measure.

These two aspects—protection of order from those who have 'excluded themselves', and protection of the excluded from the dire consequences of their self-exclusion—intertwine and merge in the urge to 'do something' about the excluded part of the population—the impulse which draws its impetus and strength from the concern with the installation and preservation of order. To preserve order, the powers of disorder must be disempowered. To support the observance of norm, those in breach of the norm must be seen to be punished. Best of all, they must be seen to be excluded.

### *The Paradigm of Exclusion*

Pierre Bourdieu points out that the state of California, celebrated by some European sociologists as the very paradise of liberty, dedicates to the building and running costs of

prisons a budget transcending by far the sum total of state funds allocated to all institutions of higher education. Imprisonment is the ultimate and the most radical form of attention of the government by the political elite in the forefront of contemporary 'time/space compression'.

Spatial confinement, incarceration of varying degrees of stringency and harshness was at all times the prime method of dealing with the unassimilable, difficult to control, and otherwise trouble-prone sector of the population. Slaves were confined to the slave quarters. So were the lepers, the madmen, the ethnic or religious aliens and outcasts. If allowed to wander beyond the allotted quarters, they were obliged to wear the signs of their spatial assignment—so that every passer-by be aware that they belonged to another space. Spatial separation leading to enforced confinement was over the centuries almost a visceral, instinctual fashion of responding to all difference and particularly such difference that could not be, or was not wished to be, accommodated within the web of habitual social intercourse. The deepest meaning of spatial separation was the banning or suspension of communication, and so the forcible perpetuation of estrangement.

Estrangement is the core function of spatial separation. Estrangement reduces, thins down and compresses the view of the other: individual qualities and circumstances which tend to be vividly brought within sight thanks to the accumulated experience of daily intercourse, seldom come into view when the intercourse is emaciated or prohibited altogether: typification takes then the place of personal familiarity, and legal categories meant to reduce the variance and to allow to disregard it render the uniqueness of persons and cases irrelevant.

As Nils Christie (n.d.) pointed out, when personal familiarity prevails in daily life, concern with compensation for the harm done prevails over demand of retribution and punishment of the culprit. However angry we may be with the person responsible, we would not apply to the case the categories of penal law (we would not even think about the case in terms of endemically impersonal categories of crime and punishment, to which paragraphs of law may be applied) 'because we know too much . . . In that totality of knowledge a legal category is much too narrow'. Now, however, we live among people we do not know and most of whom we are unlikely ever to know. It was natural to abstain from resorting to the cold letter of the law if the act which prompted our wrath was seen for what it was—not really like other acts 'of the same category'. 'But this is not necessarily true of the strange kid who just moved in across the street.' And so, says Christie, it is not entirely unexpected (even if not inevitable either), that the consistent trend in our modern society is to give 'the meaning of crime' to 'more and more of what is seen as unwanted or at least dubious acts', and that 'more and more of these crimes are met with imprisonment'.

One may say that the tendency to reduce the variance with the help of legally defined categories, and the ensuing spatial segregation of difference, is likely to become a must, and certainly would grow in demand, since with the advent of modern conditions the physical density of the population tends to become considerably greater than its moral density, and so to be in excess of the absorptive capacity of human intimacy and the reaches of the personal relations network. But one can also reverse the connection and conclude that spatial separation which adds vigour to that reduction is itself a major resource used to prolong and perpetuate that mutual estrangement in which the reductionist operations, also the reductionist impact of criminal law, becomes a must. The tendency to resort to the dry and impersonal letter of law instead of relying on

person-to-person negotiation of a common *modus vivendi* is a consequence of the gradual yet relentless demise of what Richard Sennett called 'the multiplicity of contact points'—once the foremost characteristic of city life. When cast in a condition of enforced unfamiliarity guarded and cultivated by the closely supervised space boundaries, held at a distance and barred regular or sporadic communicative access—the Other turns into an Alien and is permanently locked and sealed in that condition, having been effectively 'effaced'—stripped of the individual, personal uniqueness which alone could prevent stereotyping and so outweigh or mitigate the reductionist impact of law—also the criminal law.

As a (thus far) distant ideal of communicative separation, a total isolation beckons, one that would reduce the Other to a pure incarnation of the punishing force of law. Close to such an ideal come American 'state of the art' prisons, like the Pelican Bay in California, the richest of American states which also—to quote Nils Christie's pithy portrayal (Christie 1993)—'favours growth and vivacity' and so plans for eight prisoners for every thousand of population by the turn of the century. Pelican Bay prison, according to the enthusiastic report printed in the *Los Angeles Times* of 1 May 1990, is 'entirely automated and designed so that inmates have virtually no face-to-face contact with guards or other inmates'. Most of the time the inmates spend in 'windowless cells, built of solid blocks of concrete and stainless steel . . . They don't work in prison industries; they don't have access to recreation; they don't mingle with other inmates'. Even the guards 'are locked away in glass-enclosed control booths and communicate with prisoners through a speaker system', and so are seldom, if ever, seen by the prisoners. The sole task left to the guards is to make sure that prisoners stay locked in their cells—that is, non-seeing and non-seen, incommunicado. Apart from the fact that the prisoners are still eating and defecating, their cells could be mistaken for coffins.

At a first glance, the Pelican Bay project looks like an updated, state of the art, super high-tech version of Panopticon; the ultimate incarnation of Bentham's dream of total control through total surveillance. The second glance reveals, however, the superficiality of the first impression.

Panoptical control had an important function to perform; panoptical institutions were conceived above all as *houses of correction*. The ostensible purpose of correction was to bring the inmates back from the road to moral perdition on which they embarked of their own will or on which they had been pushed for no direct fault of their own; to prod them to develop habits which will eventually permit the return of the temporarily excluded into the fold of 'normal society'; to 'stop the moral rot', to fight back and conquer sloth, ineptitude and disrespect or indifference to social norms—all those afflictions which made the inmates incapable of 'normal life'. The vision of Panopticon was conceived at the times of work ethic—when work, hard work and constant work, was seen as simultaneously the recipe for godly, meritorious life and the basic rule of social order. Those were as well the times when the numbers of smallholders and craftsmen unable to make ends meet were growing unstopably—while the machines which deprived them of livelihood waited in vain for the compliant and docile hands ready to serve them. And so in practice the idea of correction stood for the intention of setting the inmates to work—drilling them for the lifetime of useful work, profitable work. In his vision of Panopticon Bentham generalized the experience of widespread contemporary efforts to resolve the genuine, irksome and worrying problems confronted by the pioneers of the routine, monotonous, mechanical rhythm of modern industrial labour.



At the time when the project of Panopticon was sketched, the lack of willing labour was widely seen as the main obstacle to social improvement. The early entrepreneurs bewailed the resistance and unwillingness of potential labourers to surrender to the rhythm of the factory labour; ‘correction’ meant, under the circumstances, overcoming that resistance and making the surrender more plausible.

To sum it up: whatever their other immediate destinations, all kinds of panoptical-style houses of confinement were first and foremost *factories of discipline—more precisely, factories of disciplined labour*. More often than not, they were also instant solutions to that ultimate task—they set the inmates to work right away, and particularly to the kinds of work least desired by ‘free labourers’ and least likely to be performed of their own free will, however seductive were the promised rewards for drudgery. Whatever their declared long-term purpose, most panoptical institutions were, right away, *workhouses*.

The designers and promoters of the ‘House of Correction’, set in Amsterdam in the early seventeenth century, envisaged the production of ‘healthy, temperate eaters, used to labour, desirous of holding a good job, capable of standing on their own feet, and God-fearing’ and listed a long inventory of manual occupations in which the prospective inmates should engage to develop such qualities—like shoemaking, manufacture of pocketbooks, gloves and bags, edgings for collars and cloaks, weaving of fustians and worsteds, linen cloth and tapestry, knitting, woodcarving, carpentry, glass blowing, basketry etc. In practice, the productive activity in the House was very soon, after a few half-hearted attempts to follow the initial brief, confined to the rasping of Brazilian logwood, originally named as a means of punishment only—a particularly crude and exhausting labour unlikely to find willing performers if not for the coercive regime of the House of Correction (Sellin 1944).

Whether the houses of correction in any of their many forms ever fulfilled their declared aim of ‘rehabilitation’, ‘moral reform’, ‘bringing the inmates back to social competence’, was from the start highly debatable and remains to this day a moot question. The prevailing opinion of researchers is that contrary to the best of intentions the conditions endemic to the closely supervised houses of confinement worked *against* the ‘rehabilitation’. The outspoken precepts of the work ethic never squared well with the coercive regime of prisons, under whatever name they appeared.

In the thoroughly considered, closely argued and backed with comprehensive research opinion of Thomas Mathieson—‘throughout its history, the prison has actually never rehabilitated people in practice. It has never led to the people’s ‘return to “competence”’ (Mathieson 1990). What prison did instead was to *prisonize* their inmates (Donald Clemmer’s term)—that is, to encourage them or force them to absorb and adopt habits and customs typical of the penitentiary environment and of such environment only, and so sharply distinct from the behavioural patterns promoted by the cultural norms ruling in the world outside the walls; ‘prisonization’ was the very opposite of ‘rehabilitation’. In fact, it was itself a major obstacle erected on the ‘road back to competence’ (Clemmer 1940).

The point is however, that unlike the time when the House of Correction was opened in Amsterdam to the applause of learned opinion, the question of ‘rehabilitation’ is today prominent less by its contentiousness than by its growing irrelevance. Many criminologists will probably go on for some time yet rehearsing the time-honoured yet never resolved *querelles* of penal ideology—but by far the most seminal departure is

precisely the abandonment of sincere or duplicitous declarations of 'rehabilitating intent' in the thinking of contemporary practitioners of the penal system.

Efforts to get the inmates back to work may be effective or not, but they make sense only if work is waiting, and they get their animus and credibility from the fact that the work is waiting impatiently. The first condition is today hardly ever met, the second is blatantly absent. Once zealous to absorb ever growing quantities of labour, the capital reacts now nervously to the news of falling unemployment; through its stock-exchange plenipotentiaries it rewards the companies for laying off the staff and cutting the number of jobs. Under these conditions, confinement is neither a school for employment nor the second best, forcible method to augment the ranks of productive labour when the ordinary and preferred, 'voluntary' methods fail—to bring into the industrial orbit the particularly reluctant and obstreperous categories of the 'masterless men' or to fill the particularly odious and repulsive jobs. It is rather, under the present circumstances, an *alternative to employment*; a way to dispose of, to incapacitate or remove out of sight a considerable chunk of the population who are not needed as producers and for whom there is no work 'to be taken back to'.

In a blatant opposition to the work-ethic commandments, the pressure today is to *dismantle* the habits of permanent, round-the-clock, steady and regular work; what else may the fashionable slogan of 'flexible labour' mean? The strategy commended today is to make the labourers *forget*, not to *learn*, whatever work ethic in the days of the modern industry's ascent was meant to teach them.

Labour can conceivably get truly 'flexible' only if the present and prospective employees lose their trained habits of day-in-day-out work, daily shifts, permanent workplace and steady workmates' company; if they do not get used and habituated to any job, and most certainly if they abstain (or are prevented) from developing vocational attitudes to any job currently performed and give up the morbid inclination to fantasize, let alone assume, job-ownership rights and responsibilities.

On their latest annual meeting held in September 1997 in Hong Kong, the managers of the International Monetary Fund and the World Bank severely criticized German and French methods to get more people back to work. They saw such efforts as going against the grain of 'flexibility of the labour market'. What the latter requires, they said, is the revocation of 'too favourable' job-and-wages-protecting laws, dismantling of all 'distortions' which stand in the way of unalloyed competitiveness, and breaking the resistance of the existing labour against the withdrawal of their acquired 'privileges' (cf. Marti 1997), that is of the rules protecting stability of their employment, their jobs and incomes. In other words—what is needed are new conditions which would favour habits and attitudes diametrically opposed to those which the work ethic prophesied and which the panoptical institutions expected to implement that ethic were to promote. According to the managers of planetary finances, labour must de-learn their hard trained dedication to work and give up their hard won emotional attachment to the workplace as well as the personal involvement in its well-being.

In this context the idea of the Pelican Bay prison as the continuation and a high-tech version of the early industrial workhouses whose experience, ambitions and unresolved problems the project of the Panopticon reflected, looks much less convincing. No productive work is done inside the concrete walls of Pelican Bay prison. No training for work is intended either—there is nothing in the prison's design which may set the stage

for such activity. Indeed, for its inmates the Pelican Bay is not a school of anything—even of a purely formal discipline. The whole point of the Panopticon, the paramount purpose of the constant surveillance, was to make sure that the inmates go through certain motions, follow certain routines, do certain things. But what the inmates of the Pelican Bay prison *do* inside their solitary cells *does not matter* at all. What *does matter* is that they stay there. Pelican Bay prison has not been designed as a factory of discipline or disciplined labour. It was designed as the *factory of exclusion* and of people habituated to their status of the *excluded*. And since the mark of the excluded in the era of the time/space compression is enforced *immobility*—*what the Pelican Bay prison brings close to perfection is the technique of immobilization*.

If the concentration camps served as laboratories of a totalitarian society, where the limits of human submission and serfdom were explored, and if the Panopticon-style workhouses served as the laboratories of industrial society, where the limits of routinization of human action were experimented with—the Pelican Bay prison is a laboratory of the ‘globalized’ (or ‘planetary’, in Alberto Melucci’s term) society, where the techniques of space-confinement of the rejects and waste of globalization are tested and their limits are explored.

#### *Prisons in the Post-Correction Age*

Apart from the rehabilitating function, Thomas Mathiesen in the already quoted book scrupulously examines other widely used assertions meant to justify the use of imprisonment as a method of resolving acute and noxious social problems, such as the theories of the preventive role of prisons (in both universal and individual sense), of incapacitation and deterrence, of just retribution—only to find them all, without exception, logically flawed and empirically unsustainable. No evidence of any sort has been thus far found and collected to support, let alone to prove, the assumptions that prisons perform the roles ascribed to them in theory, and that they achieve any degree of success if they try to perform them—while the assumed justice of most specific measures which such theories propose or imply fails the simplest tests of ethical soundness and propriety (for instance: ‘what is the moral basis for punishing someone, perhaps hard, in order to prevent entirely different people from committing equivalent acts?’; the question all the more ethically poignant and worrying for the fact that ‘those we punish to a large extent are poor and highly stigmatized people in need of assistance rather than punishment’ (Mathiesen 1990: 70)).

The number of people in prison or awaiting likely prison sentences is growing, and fast, almost in every country. In America, their total number already exceeds the number of students in all colleges of higher education. The network of prisons enjoys nearly everywhere a building boom. State-budget expenditure on the ‘forces of law and order’, mainly the active police force and prison service, are on the rise throughout the globe. Most importantly, the proportion of population in direct conflict with the law and subject to imprisonment is growing on apace, which signals more than a purely quantitative increase and suggests a ‘greatly increased significance of the institutional solution as a component in criminal policy’; it signals, moreover, that there is a presumption taken by many governments and enjoying wide support of public opinion that ‘there is



an increased need for disciplining of important population segments and groups' (Mathiesen 1990: 13).

What the sharp acceleration of the punishment-by-incarceration suggests, in other words, is that there are some new and large sections of the population targeted for one reason or another as the threat to social order, and that their forcible eviction from social intercourse through imprisonment is seen as an effective method to neutralize the threat, or at least to calm the public anxiety which that threat evokes.

The proportion of the population serving prison sentences varies from one country to another—but rapid growth seems to be a universal phenomenon throughout the 'most developed' tip of the world. The US, notoriously, is in the lead and far ahead of the rest—between 1979 and 1993 the proportion of people locked in prisons grew from 230 to 532 per 100,000 of population (in some areas the ratio is much higher—in the district of Anacostia where most of the poor population of Washington is condensed, half of male residents of the 16–35 years' bracket are either awaiting trial or already in prison or on probation (Zucchini 1997))—but the acceleration of pace is marked elsewhere as well: through the same 15 years the comparable figures in Canada went up from 100 to 125, in Britain from 85 to 95, in Norway from 44 to 62, in Holland from 23 to 52 (Christie 1994).

Since the growth is not confined to a selected group of countries but well-nigh universal, it would be probably misleading—if not downright futile—to seek the explanation in the state-bound policies or in the ideologies and practices of this or that political party (even as it would be similarly wrong to deny the modifying impact such policies may exert on accelerating or slowing down the growth). Besides, there is no evidence that the trust in prison as the principal tool to resolve what has been defined as vexing and anxiety-arousing problems has become anywhere a serious, let alone contentious, issue in electoral battles; the competing forces, even if miles apart on other hot issues of the day, tend to manifest a complete agreement on this one; the sole publicly displayed concern of each of them is to convince the electorate that it will be 'tough on crime' and more determined and merciless in pursuing the imprisonment of criminals than its political adversaries have been or are likely to be. One is tempted to conclude, therefore, that the causes of the discussed growth must be of a supra-party and supra-state nature—indeed, of a global rather than local (in either territorial or cultural sense) character. In all probability, these causes are more than contingently related to the broad spectre of transformations subsumed under the name of globalization.

One evident cause of the discussed growth is the spectacular promotion of the issues classified under the 'law and order' rubric in the panoply of public concerns, particularly as such concerns are reflected in the learned and authoritative interpretations of social ills and in political programmes promising to repair them. In my *Postmodernity and Its Discontents* (1997) I argued that whether or not Sigmund Freud was right when suggesting that the trading off of a considerable part of personal liberty for some measure of collectively guaranteed security was the main cause of psychical afflictions and sufferings, unease and anxiety in the 'classic' period of modern civilization—today, in the late or postmodern stage of modernity it is the opposite tendency, the inclination to trade off a lot of security in exchange for removing more and more constraints cramping the exercise of free choice, which generates the widespread sentiments of fear and anxiety. It is these sentiments which seek their outlet (or are being channelled) in the concerns with law and order.

To comprehend fully this remarkable ‘transfer of anxiety’ one needs to reunite what the language in its sometimes excessive zeal to divide and circumscribe, has separated. The emotional/attitudinal unity which underlies the allegedly distinct, since linguistically set apart, experiences of security, safety and certainty is difficult to notice for the English-speaker, but much better grasped by the speakers of German—thanks to the otherwise uncommonly rare frugality of their language: the German word *Sicherheit* grasps all three experiences (of safety, security and certainty) and refuses to accept their mutual autonomy which English speakers are linguistically trained to take for granted.

Freud wrote of *Freiheit* and *Sicherheit*, not of ‘freedom’ and ‘security’. If *Freiheit* was made vulnerable by the early modern quest for *Sicherheit*—that is, the triune compound of safety, security and certainty of order—the same *Sicherheit* is the prime victim of the late modern career of individual freedom. Since we would be hardly able to tell apart the three kinds (or the three ingredients) of unease were it not for the three different words that suggest three separate semantic fields, there is little wonder that the dearth of risk-free, that is *secure*, choices, and the growing unclarity of the game-rules which renders uncertain most of the moves and above all the outcomes of the moves, tend to rebound as perceptions of threats to *safety*—first the safety of the body, and then of property, that body-space extension. In the ever more insecure and uncertain world the withdrawal into the safe haven of territoriality is an intense temptation; and so the defence of the territory—‘safe home’ becomes the passkey to all doors which one feels must be locked up and sealed to stave off the triple threat to spiritual and material comfort.

A lot of tension accumulates in the result around the quest for safety—much in excess of the safety’s carrying power. And where there is a tension, a political capital will surely be spotted by clever investors and expedient stock-brokers. No wonder that the appeals to the safety-related fears are truly supra-class and cross-party, as are the fears themselves. It is perhaps a happy coincidence for the political operators and hopefuls that the genuine problems of insecurity and uncertainty have condensed into the anxiety about safety; politicians can be supposed to be doing something about the first two just because being seen to be vociferous, tough-tongued and keeping busy about the latter.

Happy coincidence, indeed, given that the first two worries are, in fact, intractable. Governments cannot seriously promise anything but more ‘flexibility of labour’—that is, in the ultimate account, more insecurity and ever more painful and incapacitating insecurity. Serious governments cannot promise certainty either; that they must concede freedom to notoriously erratic and unpredictable ‘market forces’ which, having won their exterritoriality, are far beyond the reach of anything the hopelessly ‘local’, territory-bound governments can do, is almost universally taken for a foregone conclusion. Fortunately for the increasingly impotent governments, doing something, or be seen to be doing something, about fighting the crime which threatens personal safety is, however, a realistic option—and one containing a lot of electoral potential. *Sicherheit* will gain little in the result, but the ranks of voters would swell.

*Safety: the Tangible Means to an Elusive End*

Tapering the complex issue of *Sicherheit* to that of personal safety has other political advantages as well. Whatever one may do about safety is a shortcut to the notorious ‘feel

good factor’—for the reason of being incomparably more spectacular, watchable, ‘televisable’ than any move aimed at the deeper, but much less tangible and apparently more abstract, layers of the malaise. Fighting crime, like crime itself, and particularly the crime targeted on bodies and private property, makes an excellent, exciting, eminently watchable show. The mass media producers and scriptwriters are well aware of this. Were one to judge the state of society after its dramatized representations (as most of us do, whether or not we are ready to admit it to others and to ourselves)—not just the proportion of criminals to the ‘ordinary folk’ would appear to exceed by far the proportion of the population already kept in jail, and not only the world as a whole would seem to be divided primarily into the criminals and the guardians of order, but the whole of human life would seem to navigate the narrow sea-passage between the threat of physical assault and fighting back the potential attackers.

The overall effect of all this is the self-propelling of fear. Preoccupation with personal safety, inflated and overloaded with meanings beyond its capacity due to the tributaries of existential insecurity and psychological uncertainty, towers yet higher over all other articulated fears, casting all other reasons of anxiety in a yet deeper shade. Governments may feel relieved: no one or almost no one would press them to do something about things which their hands are much too short and feeble to grasp and hold. No one would accuse them either of remaining idle and doing nothing of real relevance to human anguish and fear—when watching daily documentaries, dramas, docudramas and carefully staged dramas disguised as documentaries, telling the story of new and improved police weapons, high-tech prison locks and burglar and car-theft alarms, short sharp shocks administered to the criminals and valiant security officers and detectives risking their lives so that the rest of us may sleep in peace.

Building new prisons, writing up new statutes which multiply the number of breaches of law punishable with imprisonment and make the lengthening of prison sentences mandatory—all these measures increase the popularity of governments; they show the governments to be tough, resourceful and determined, and above all ‘doing something’, not just, explicitly, about the personal safety of their subjects, but by implication about their security and certainty as well; and doing it in a highly dramatic, tangible and visible, and so convincing, fashion.

The spectacularity—the versatility, harshness and promptness of punishing operations matters more than their effectiveness, which—given the endemic listlessness of public attention and short life-span of public memory—is seldom tested anyway. It even matters more than the actual volume of detected and reported crimes. It helps, of course, if time and again a new kind of crime is brought to public attention and found to be particularly repulsive and horrifying as well as ubiquitous, and if a new detecting/punishing campaign is launched. Such occasional prodding of anxiety-prone imagination helps to keep the public mind on the dangers rooted in crime and the criminals and prevents the public from reflecting why, despite all that policing promised to bring the coveted *Sicherheit* about, one goes on feeling unsure, lost, and frightened as before.

There is more than a happy coincidence between the tendency to conflate the troubles of the intrinsic insecurity and uncertainty of the late modern/postmodern being in a single, overwhelming concern about personal safety—and the new realities of nation-state politics, particularly of the cut-down version of state sovereignty characteristic of the ‘globalization’ era.

To focus locally on the 'safe environment' and everything it may genuinely or putatively entail, is exactly what the 'market forces', by now global and so exterritorial, want the nation-state governments to do (effectively barring them from doing anything else). In the world of global finances, state governments are allotted the role of little else than oversized police precincts; the quantity and quality of the policemen on the beat, efficiency displayed in sweeping the streets clean of beggars, pesterers and pilferers, and the tightness of the jail walls loom large among the factors of 'investors' confidence', and so among the items calculated when the decisions to invest or cut the losses and run are made. To excel in the job of the precinct policeman is the best (perhaps the only) thing state government may do to cajole the nomadic capital into investing in its subjects' welfare. The shortest roads to economic prosperity of the land, and so hopefully to the 'feel good' sentiments of the electors, lead through the public display of the policing skill and prowess of the state.

The care of the 'orderly state', once a complex and convoluted task, on a par with the multiple ambitions and wide and multifaceted sovereignty of the state, tends to taper in the result to the task of fighting the crime. In that task, though, an increasingly privileged, indeed a leading role, is allocated to the policy of imprisonment. The centrality of crime-fighting does not by itself explain the prison boom; after all, there are other ways as well to fight back the real or alleged threats to the citizens' personal safety. Besides, putting more people in jail and for a longer time has not thus far been shown to be the most effective among these ways. One would guess therefore that some other factors favour the choice of prison as the most convincing proof that indeed 'something is being done', that the words have flesh and bones: to posit imprisonment as the crucial strategy in the fight for the citizens' safety means addressing the issue in contemporary idiom, using the language readily understood and invoking commonly familiar experience.

Today's existential opportunities and choices are stretched along the hierarchy of the global and the local, with global freedom of movement signalling social promotion, advancement and success, and immobility exuding the repugnant odour of defeat, of failed life, of 'being left behind'. Increasingly, globality and locality acquire the character of contrary values—and paramount values with that, values most hotly coveted or resented and placed in the very centre of life dreams, nightmares and struggles. Life ambitions are more often than not expressed in terms of mobility, free choice of place, travelling, seeing the world; the life fears, on the contrary, are talked about in terms of confinement to a place, lack of change, being barred from places which others traverse easily, explore and enjoy. 'Good life' is the life on the move; more precisely, the comfort of being confident of the facility to move elsewhere in case staying on no more satisfies. Freedom came to mean above all freedom of choice, and choice has acquired, conspicuously, a spatial dimension.

In the era of time/space compression, so many wonderful and untried sensations beckon from afar, that 'home'—though as always attractive as an idea—tends to be enjoyed most in the bitter-sweet emotion of homesickness. In its solid, bricks-and-mortar embodiment, 'home' breeds resentment and rebellion. If locked from outside, if getting out is a distant prospect or not a feasible prospect at all, the home turns into jail. Enforced immobility, the condition of being tied to a place and not allowed to quit, seems a most abominable, cruel and repulsive state; it is the blank prohibition to move,

which renders that condition especially offensive. Being prohibited to move is a most potent symbol of impotence and incapacitation—and the most acute of pains.

No wonder, therefore, that the idea of prison sentence as simultaneously the most effective method of disempowering the potentially harmful people and a most painful retribution for ill deeds, is resonant with contemporary experience and so easily ‘makes sense’ and altogether ‘stands to reason’. Immobilization is the fate which people haunted with the fear of their own immobilization would naturally wish and demand to be visited upon those whom they fear and consider deserving a punishment most harsh and cruel. Other forms of deterrence and retribution seem woefully lenient, inadequate and ineffective—painless—by comparison.

Prison, though, means not only immobilization, but eviction as well. This adds further to its popular attraction and approval as the effective means to ‘strike at the roots of danger’. Imprisonment means protracted, perhaps permanent exclusion (with the death penalty offering the ideal pattern by which the length of all other sentences is measured). This meaning also strikes a highly sensitive chord. The slogan is to ‘make our streets safe again’—and what else promises better to fulfil this slogan than the removal of the carriers of danger into spaces out of sight and out of touch—spaces they cannot escape?

The ambient *Unsicherheit* focuses on the fear for personal safety; that in turn sharpens further—on the ambivalent, unpredictable figure of the Stranger. Stranger in the street, prowler around the home . . . burglar alarms, watched and patrolled neighbourhood, guarded condominium gates—they all serve the same purpose: keeping the strangers away. Prison is but the most radical among many measures—it is different from the rest in the assumed degree of effectiveness only, not in kind. People brought up in the culture of burglar alarms and anti-theft devices would tend to be the natural enthusiasts of prison sentences, and ever longer prison sentences. It all ties up together very nicely—the logic seems to be restored to the chaos of existence.

### *The Out of Order*

‘Today we know’, writes Thomas Mathiesen, ‘that the penal system strikes at the “bottom” rather than at the “top” of society’ (Mathiesen 1990: 70–2). Why this should be the case, has been amply explained by the sociologists of law and practices of punishment. Several causes have been repeatedly discussed.

The first among them are the admittedly selective intentions of lawgivers, concerned as they must be with the preservation not of ‘the order as such’, but of a *certain specific* kind of order. The actions most likely to be committed by people which that order has no room for, by the underdog and the rejected, stand the best chance to appear in the criminal code. On the other hand, robbing whole nations of their resources is called ‘promotion of free trade’; robbing whole families and communities of livelihood is called ‘downsizing’ or just ‘rationalization’. Neither of the two has ever been listed among criminal and punishable deeds.

Moreover, as every police unit dedicated to ‘serious crime’ would have found out, the illegal acts committed at the ‘top’ are exceedingly difficult to disentangle from the dense network of daily and ‘ordinary’ company dealings. In the activity which openly pursues



personal gain at the expense of other people, the borderline between the moves allowed and disallowed is necessarily poorly defined and always contentious—nothing to compare with the comforting un-ambiguity of the act of safe-breaking or forcing a lock. No wonder that, as Mathiesen finds out, the prisons ‘are above all filled by people from the lower strata of the working class who had committed theft and other “traditional” crimes’.

Poorly defined, the crimes ‘at the top’ are in addition awfully difficult to detect and yet more difficult to prosecute. They are perpetrated inside a close circle of people united by mutual complicity, loyalty to the organization and *esprit de corps*, people who usually take effective measures to spot, silence or eliminate the potential whistleblowers. They require a level of legal and financial sophistication virtually impossible to be penetrated, let alone appropriated, by outsiders—particularly by lay and untrained outsiders. And they have ‘no body’, no physical substance, they ‘exist’ in the ethereal, imaginary space of pure abstraction: they are, literally, *invisible*—it takes an imagination on a par with the imagination of the perpetrators to spy out the substance in an elusive form. Guided by intuition and common sense, the public may well suspect that some theft played its part in the history of fortunes—but to point one’s finger to it remains a notoriously daunting task.

Furthermore, only in rare and extreme cases do the ‘corporate crimes’ come to court and into public view. Embezzlers and tax cheaters have an infinitely greater opportunity for an out-of-court settlement than do pickpockets or burglars. Apart from anything else, the agents of local orders are all too aware of the superiority of global powers and so would consider it a success if they got as far as that.

As if to protect the ‘crime at the top’ even better, vigilance of the public in this area is at best erratic and sporadic, at worst non-existent. It takes a truly spectacular fraud, a fraud with a ‘human touch’, where the victims—pensioners or small savers—can be personally named (and even then it takes all the imaginative and persuasive gifts of a small or not that small army of the popular press—journalists) to arouse public attention and keep it aroused for longer than a day or two. What is going on during the trials of high-level fraudsters defies the intellectual abilities of the ordinary newspaper readers and TV watchers; besides, it is abominably short of the drama which makes the trials of simple thieves and murderers such a fascinating spectacle.

More importantly, though, the ‘crime at the top’ (usually an extraterritorial ‘top’) may be in the last account a principal or contributing cause of existential insecurity, and so directly relevant to the endemic *Unsicherheit* which haunts the denizens of late modern society and makes them so obsessed with personal safety in the first place—but by no stretch of imagination can it be conceived of as, of itself, a threat to that safety. Any danger which may be sensed or surmised in the ‘crime at the top’ is of an altogether different order. It would be extremely hard to envisage how bringing the culprits to justice may alleviate the daily fears ascribed to the more tangible dangers lurking in the rough districts and mean streets of one’s own city. There is, therefore, not much electoral capital which can be squeezed out of ‘being seen as doing something’ about the ‘crime at the top’. And there is little political pressure on the legislators and guardians of order to strain their minds and flex their muscles in order to make the fight against that kind of crime more effective; no comparison here with the public hue-and-cry against the car thieves, muggers or rapists, as well as against all those responsible for law and order who are suspected of being too lazy or lenient in transporting them to prison, where they belong.

Last but not least, there is that tremendous advantage the new global elite enjoys when facing the guardians of order: order is local, while the elite and the free-market laws it obeys are translocal. If the wardens of a local order get too obtrusive and obnoxious, there is always a possibility to move away if things get locally too hot for comfort; 'globality' of the elite means mobility, and mobility means the ability to escape and evade. There are always places where local orders do not clash with global market usages, or where the local guardians of order are glad and willing to look the other way in case a clash does happen.

All these factors taken together converge on a common effect: identification of crime with the (always local) 'underclass'—or, which amounts to much the same, on criminalization of poverty. The most common types of criminals in public view come almost without exception from the 'bottom' of society. Urban ghettos and no-go-areas are seen as the breeding ground of crime and criminals. And conversely—sources of criminality (of that criminality which truly counts—criminality seen as the threat to personal safety) appear to be unambiguously local and localized.

Donald Clemmer coined in 1940 the term 'prisonization' to denote the true effects of confinement, sharply different from the 're-educating' and 'rehabilitating' impact ascribed to imprisonment by its theorists and promoters. Clemmer found the inmates being assimilated into a highly idiosyncratic 'prison culture', which—if anything—made them even less fit than ever before for life outside the walls, and less capable of following the rules and usages of 'ordinary' existence. Like all cultures, prison culture had a self-perpetuating capacity. Prison was and remains, in Clemmer's opinion, a *school of crime*.

Fourteen years later Lloyd W. McCorkle and Richard R. Korn (1954) published another set of findings, which brought into relief the mechanism making prisons into such schools of crime. According to their data, the whole police/judicial process culminating in imprisonment is, in a sense, one long and tightly structured ritual of symbolic rejection and physical exclusion. Rejection and exclusion are humiliating and meant to be such; they are meant to result in the rejected/excluded accepting their social imperfection and inferiority. No wonder the victims mount a defence. Rather than meekly accepting their rejection and converting official rejection into self-rejection, they prefer to reject their rejectors.

To do that, the rejected/excluded resort to the means at their disposal, which all contain some measure of violence; the sole resource that they may increase their 'nuisance power', the only power they can oppose to the overwhelming might of their rejectors/excluders. The strategy of 'rejecting the rejectors' quickly sinks into the stereotype of the rejected, adding to the image of crime the traits of the criminals' inherent proclivity to recidivism. At the end of the day, prisons emerge as the principal tools of a self-fulfilling prophecy.

This does not mean that there are no other causes of crime and no genuine criminals; it means, though, that the rejection/exclusion practised through the prison system is an integral part of the social production of crime, and that its influence cannot be neatly disentangled from the overall statistics of the incidence of criminality. It also means that once prisons have been identified as outlets for mostly the lower class of 'underclass' elements—one would naturally expect the self-confirming and self-perpetuating effects to be at their most emphatic, and so the criminality to be 'most evident', at the 'bottom' reaches of society.

*Prisons as Testing Grounds of Order Maintenance*

Clemmer and McCorkle and Korn conducted their research among the inmates of prisons and articulated their findings in terms of the effects of imprisonment. One can suppose, though, that what they sought and found was not so much the effects of prison as such, as of the much wider phenomena of *confinement*, *rejection* and *exclusion*. That, in other words, prisons served there as laboratories in which trends ubiquitously (though in a somewhat more dilute form) present in 'normal' life could be observed in their condensed and purified shape (Dick Hebdidge's seminal study *Hiding in the Light* corroborates this guess). Were this supposition correct, then the effect of 'prisonization' and the widespread choice of 'rejecting the rejectors' strategy with all its self-propelling capacity would go a long way towards cracking the mysterious logic of the present-day law-and-order obsession; also towards explaining the apparent success of the stratagem of substituting that obsession for the serious attempt to face up to the challenge of the accruing existential insecurity.

It might also help to understand why the rejection from global freedoms tends to rebound in the present tendency toward self-enclosure and fortification of localities. Rejection prompts the effort to circumscribe localities after the pattern of concentration camps. Rejection of the rejectors prompts the effort to transform locality into a fortress. The two efforts reinforce each other's effects and between them make sure that fragmentation and estrangement 'at the bottom' remain the twin siblings of globalization 'at the top'.

The fortifications built by the better off majority and the self-defence-through-aggression practised by those left outside the walls have a mutually reinforcing effect well predicted in Gregory Bateson's theory of 'schismogenetic chains'. According to that theoretical model, schism is likely to emerge and deepen beyond repair when a position is set up in which

The behaviour x, y, z is the standard reply to x, y, z . . . If, for example, the patterns x, y, z include boasting, we shall see that there is a likelihood, if boasting is the reply to boasting, that each group will drive the other into excessive emphasis of the pattern, a process which if not restrained can only lead to more and more extreme rivalry and ultimately to hostility and the breakdown of the whole system.

The above is the pattern of 'symmetrical differentiation'. What is its alternative? What happens if the group B fails to respond to the x, y, z kind of challenge by the group A with an x, y, z type of behaviour? The schismogenetic chain is not then cut—it only assumes the pattern of the 'complementary', instead of symmetrical, differentiation. If, for instance, assertive behaviour is not responded to in the same currency, but meets with submissiveness, 'it is likely that this submissiveness will promote further assertiveness which in turn will promote further submissiveness.' The 'breakdown of the system' will follow all the same (Bateson 1973).

The overall effect of the choice between the two patterns is minimal, but for the sides tied by the schismogenetic chain the difference between the patterns is one between dignity and humiliation, humanity and its loss. One can safely anticipate that the strategy of symmetrical differentiation would always be preferred to the complementary alternative. The latter is the strategy for the defeated or for those who accepted the inevitability of defeat. Whatever the value of this hypothesis, though, one can safely expect that some things are bound to emerge victorious, whichever strategy is chosen:

the new fragmentation of the city space, shrinkage and disappearance of public spaces, falling apart of urban community, separation and segregation—and above all the exterritoriality of the new global elite and the forced territoriality of the rest.

If the new exterritoriality of the elite feels like intoxicating freedom, the territoriality of the rest feels less like a homeground, and ever more like prison. The present-day trends in prison policies reflect the latter experience, as much as they expand its horizons. It may yet transpire that what Silicon Valley did for our wired-computerized-interwebbed existence, the Pelican Bay prison might have done for the future life conditions of the multitudes who failed to jump on the fast moving train of globalization or were pushed out of it.

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