

The Holistic Sense of Prison Phenomena in Venezuela: II. Toward a Profound Unveiling of The “Background”.

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This is the second article of the trilogy devoted to the study of the sense of Venezuelan prison institutions. It shows how the research reported in the first article gives way to the central question presented in this paper: what are the conditions of possibility of our discomfort and dissatisfaction with the current situation in the Venezuelan prisons? The reflection on this question progresses by uncovering different ways of understanding the sense of prisons. These serve as hypothetical grounds of the moral intuitions that make the prisons problematical. As the reflection develops, it seems to indicate that what underpins the problematical nature of the prison problem is the same post-modern liberal order which, according to the first article of the trilogy, underpins prison schizophrenia. This poses some theoretical questions, which give way to the third article of the trilogy. Finally, the possibility of an in-depth solution to the Venezuelan prison problem is discussed.

KEY WORDS: Interpretive Systemology, prison system, moral intuitions, modernity, post-modernity, positivism.

1. INTRODUCTION

In the first article of this trilogy —devoted to the search for the sense of Venezuelan prison institutions and their reform— an initial uncovering of the conditions of possibility of the prison phenomenon was presented (López-Garay, 1998). That research consisted in an attempt to give sense to what for many years has been seen publicly as a situation of “institutional schizophrenia” of the Venezuelan State regarding its prison system. The State, according to the latter, manifests a “split personality” in its behavior with respect to prisons: on the one hand, it claims its desire to rehabilitate the offender, and, on the other hand, it maintains an inhuman prison situation which propagates criminality.

Note that the road followed during the first investigation revolved around the question, “What conditions and makes possible for the prison phenomenon to persistently maintain itself with its defects (almost as if on purpose the system was designed to function exactly the opposite to what legislatures formally intended)?” (López-Garay, 1998, sec. 2). This question triggered the unfolding of a number of

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interpretive contexts by which it was attempted to make some sense out of the split personality of the State. The layout of these contexts allowed the behavior of the State to be situated within a broader order: the historical becoming of Modernity in Venezuela. The most comprehensive of these contexts turned out to be the context of “post-modern liberalism”.

This article is a continuation of the research begun in the first one. The leading question here is: *what are the conditions of possibility of our discomfort and dissatisfaction with the current situation in Venezuelan prisons?* In other words: *why do we see this situation as problematical?* But, before beginning a reflection on this question, its origin, its meaning and its importance should first be made clear.

1.1. The problematical nature of prison schizophrenia as an everyday hidden assumption

The research described in the first article of the trilogy had as its starting point one of the elements of the everyday perception of Venezuelan prisons: institutional schizophrenia. In other words, this research had as a firm basis the “currentness” of institutional schizophrenia in the prisons, which was the reason all efforts were aimed toward understanding this phenomenon that presented itself as fragmented and without meaning. But, what did it mean for the research to take this “currentness” as its starting point?

Note that the “currentness” of institutional schizophrenia in prisons was not understood merely as the actual presence of that schizophrenia. It also meant, as the same article points out, that “the prison issue in Latin America has been placed in the foreground together with other current subjects [...]” (López-Garay, 1998, sec. 1). The starting point for the research was, then, the everyday perception of the prison phenomenon, according to which prison schizophrenia is an object of concern and is a topic that calls for urgent reflection, or, in a few words, it is a “problem”.

The above explains why the problematical nature of schizophrenia in prisons was taken for granted in the entire research. Moreover, it could even be said that this assumption propelled the entire research; the will to make sense of the prison phenomenon responded precisely to a perception of the prison phenomenon as a “problem”. Therefore, the problematical nature of schizophrenia in prisons was not, nor could it have been, questioned or put into doubt at this stage. Only the conditions of possibility of the persistence of that schizophrenia could be addressed. However, during the course of the research, the need to ask the following question slowly surfaced: what are the conditions of possibility for the transformation of the prison institutional schizophrenia into a public concern in Venezuela? Let us see how and why this question emerged during the research.

1.2. Sources of the need to question the problematical nature of prison schizophrenia

Two elements influenced the process of formation of the question mentioned above. On the one hand, the appearance of the question was due to the very nature of the research carried out at that time. As research on sense, it had to proceed by uncovering different interpretive contexts that could insert prison schizophrenia into a wider historical and social order. But such an operation inevitably made the concern with prisons constantly fall back on itself: if the contexts suggested we form part of a sociohistorical order that sustained the persistence of institutional schizophrenia, it was reasonable to think that it was this same order that enabled the setting-up of such schizophrenia as a concern, priority topic, or “problem”. Thus, for instance, assuming that a modernization process is currently taking place in Venezuela, the general concern about the prison theme could be explained by the expansion and strengthening of a modern comprehension of individuals as citizens. In this case, we would say that such a concern is due to the presence of certain moral intuitions characteristic of modern thinking. On the contrary, if it is assumed that the order in which we find ourselves is a liberal post-modern order, this concern takes on a very different meaning: it becomes a manifestation of fear of the destruction of individuality by the State. In this case, we would say that such concern is due to the presence of post-modern moral intuitions in society.

However, this point could not have been made fully visible, if it had not been accompanied by a second element: a general reflection on the “currentness” of any issue. How can a certain issue become “current” and a priority? The question becomes more significant when it is noted that even a superficial review of the history of Venezuelan prisons shows that they have never carried out their rehabilitating role. Why, then, is it just now that the prison schizophrenia issue has become problematical and urgent?

The outcome of this second reflection could be summarized as follows: whether a theme is “current” or not cannot depend exclusively on the theme itself, but also depends on the way in which it is revealed by the way of thinking characteristic of a social space. In other words, the prison matter had to be socially “problemized” in a certain way in order to become a current issue. This “problemization”, in turn, is a phenomenon that neither pertains exclusively to what becomes a problem, nor to the society that problemizes it. Rather, the problemization is something that occurs between what becomes a problem and the social order that problemizes, but in such a way that it is “problemization” itself that constitutes both sides of the relation: *what-is-a-problem* and *for-whom-it-is-a-problem*.

The above ideas are based on the theoretical framework of Interpretive Systemology (Fuenmayor and López-Garay 1991; Fuenmayor 1991, 1991a, 1991b). What has been shown here concerning the “problematical” nature of a theme, is simply a particular example of how all that happens is grounded on the dialectical

unity *distinction-scene*. But these ideas also coincide with the Foucaultian way of understanding how different thematic objects appear in societies. Contrary to the simplistic position according to which there are realms of concerns that are universal and natural for human beings, Foucault claims that “social practices can breed realms of knowledge that not only give rise to new objects, concepts and techniques, but, moreover, can also give birth to totally new forms of subjects and subjects of knowledge” (Foucault, 1978, p. 14, my translation).

So, we have seen how the first part of the research prepared the way for the second stage. Nevertheless, the importance of the question concerning the sources of the problemization of prisons still needs to be unfolded.

1.3. Importance of the question.

The question at issue becomes important in a dual sense. In a *theoretical* sense, it is a question that can be considered the key to an in-depth uncovering of the *scene* of prison schizophrenia. In fact, we have said in this article that the relation “problem”–“social order” can be understood as a particular case of the *distinction–scene* relation. Thus, understanding in what way a certain problemization belongs to a certain social order implies understanding the scene in whose background the Venezuelan prison theme currently appears. So this is a question that, like the one that propelled the first part of the research, points toward the conditions of possibility of the Venezuelan prison phenomenon. As such, it is a question that contributes to the research on the sense of Venezuelan prison institutions².

The question is also important in a *practical* sense. The collective anguish felt by us in the face of the current situation in Venezuelan prisons tends to produce a clamor for “solving” the “problem” of these institutions. But the meaning of the word “solution” used herein remains unclear even to us. What is usually said is that we have to “modernize” Venezuelan prisons. But what does modernizing prisons mean? Is it about introducing sophisticated technology into prisons in order to automate administrative processes and make them more efficient? Does it involve applying more effective and more scientific “rehabilitating” therapies to successfully achieve the readjustment of prisoners to society? Does it mean connecting prisons to the productive sectors in order to transform them into an element of the Venezuelan economy? Does it imply making prisons more respectful of basic human rights? Is it about closing the gap between the way prisons work in Venezuela and the way they do in the “first world” countries? Is it about making the

² This, however, poses a theoretical problem. It has been said that not only the first, but also the second, research constitutes an unveiling of the scene of the Venezuelan prison phenomenon. However, the roads that each one of these takes are substantially different. The first road consists in an unveiling of the conditions of possibility of the presence of institutional schizophrenia in prisons. The second road consists in an unveiling of the conditions of possibility of the “problematical” nature of this same presence. How can this dual road be theoretically justified? What relation is there between the two roads? This is a theme that will be discussed in the last article of this trilogy.

prisons “more democratic” by allowing non-governmental bodies to run them? Does it concern adjusting the functioning of prisons to modern philosophical, moral, and political thought?

Perhaps it means putting all of the above into practice. But if this is the case, what is the fundamental unity of all of the above? Is there such a fundamental unity? Will all these meanings be compatible with the word “modernize”? All these questions should be answered in order to clarify the meaning we want to give to the words “solution” and “modernization”. But it will not be possible to propose such a task while our moral intuitions, which sustain the problematical nature of the prison problem, as well as the type of thinking and social order to which they belong, remain invisible. So long as the question of “how” and “why” prison schizophrenia is disturbing to us is not thoroughly examined, our outcry for a “solution” will have the aspect of a choir singing a song it does not know or care about.

Let us, then, begin the inquiry. As will be seen further on, the research will proceed by uncovering different ways of understanding the sense of prisons, which serve as hypothetical grounds of the moral intuitions that show the prisons as problematical.

2. THE MODERN WILL TO MAKE JUSTICE

According to what was stated above, at a first glance, it could be thought that the research is about the kind of thinking that gives meaning to the modern prison model. This first hypothesis surfaces as the most probable option, because it is usually assumed that the order in which we live is, to a great extent, a modern order. In fact, there is no doubt that modern moral and political thinking would be shocked by the state of the Venezuelan prisons. But do our indignation and rejection really have their origin in modern thinking?

The language we use to describe the prison situation seems to indicate that this is so. We speak of “freedom”, “dignity”, “human rights”, “legality”, “justice”, etc., and all these words, in fact, correspond to key notions of modernity. But, if our thinking is modern, why are we not equally horrified, for instance, by the critical poverty in Venezuela, or by the violation of the right to education and health? Perhaps this may be due to the great emphasis placed on the prison fiasco by the mass media. It is possible, but the question still remains intact: what is it that permits so much emphasis on the prison problem while other situations in the country—which are terrible according to modern thinking—do not seem so problematical? Moreover, why has the prison situation, which has existed for as long as there have been prisons in Venezuela, become a problem precisely now?

All these questions are disturbing enough to call for seriously undertaking the task of a more in-depth examination of the modern moral order and its normative discourse about prisons. So, let us see what Immanuel Kant³ (one of the

³ Kant has been selected as representative of modern discourse because of the completeness and clarity of his philosophical standpoint. However, it should be emphasized that the review of other European philosopher

philosophers who contributed most significantly to the birth of Modernity) thought about the role of prison institutions.

2.1. Rational Morality⁴

The “freedom” and “dignity” of human beings have been Modernity’s main themes since its very beginnings in the 18th century. However, these are not two independent elements that together produce the Modern moral and political discourse. Rather, human freedom and dignity appear as two sides of the coin called “rational morality”.

Freedom was conceived by Kant as the capacity of human beings to guide their conduct according to Reason, without paying attention to what is imposed “from outside” their rationality. Freedom, so understood, is *autonomy*. But, how is autonomy possible in man? Autonomy can rest only on the power of Reason to be practical by itself, that is, on the power to spontaneously produce principles for a course of action and an interest in following such principles. This has two important consequences. The first is that these principles present themselves as *unconditionally necessary*. The second is that, given that Reason is universal, these principles present themselves as *absolutely universal*, i.e., valid for all rational beings. Therefore, these rational principles constitute a rational morality that is simultaneously conceived as the ultimate ontological basis for all existing moralities in human societies.

Now then, we have already seen that in modern thinking freedom is the ability that humans have to guide themselves according to rational morality. But how does the notion of human “dignity” relate to all this? “Dignity” is conceived as a concept produced by rational morality itself. Rational morality, as shown by Kant, is centered on the respect due to every rational being as an “end in itself”. A rational being is an end in itself in the sense that it is destined to the complete fulfillment of its rationality, which means achieving autonomy. Thus, rational morality places man as a rational being above everything else. This privileged condition of human beings is what constitutes their “dignity”. So we see that freedom, understood as autonomy, is simultaneously the source of human dignity and the source of the need to respect such dignity. To respect the rationality and the autonomy of others is to exercise one’s own rationality and autonomy.

From this respect due to others the need is born for a civil union under common laws guaranteed by a power with sufficient authority: the State. In the pre-civil state no one is sure of the actions of others. Everyone does what he thinks is correct, and harm caused to humanity cannot be avoided and does not produce any consequences. Then, the *raison d’être* of the State lies in making justice effective, that is, in making respect for human dignity effective. From this perspective, the State plays the role of a “representative” of Reason, or the entity that translates

of the 18th century, such as Rousseau or Hume, would lead to the same conclusion concerning prisons.

⁴ For a detailed account of the issues presented in this section, see Kant (1785, 1788) and Suárez (1996).

rational principles into laws and exercises the necessary power to enforce them. From this meaning of the State—as the ultimate legal authority that decides what is correct or incorrect—the moral obligation to respect laws at all costs emerges.⁵

But seen from this viewpoint, how should we deal with the offense and with the offender? To be sure, modern penal discourse must use the language of “dignity”, “rights”, “justice”, etc. However, it is not enough to state that our thinking and feeling about prisons are expressions of modern sensibility. If modern penal discourse is closely examined, one finds certain surprising elements that are completely alien to our current moral intuitions. Perhaps what is most surprising and alien to us is the following: the 18th century philosophers agreed that a person, who deliberately violates the prevailing legal norm, *should be punished according to the law of retaliation*. Let us see what ideas supported such a stance.

2.2. Rational penal justice⁶

In the same way “freedom” and “dignity” are the main themes of modern moral discourse, “responsibility” and “justice” are the main themes of modern penal discourse. If human beings are thought of as free because of their access to rational morality, then it is also necessary to think of them as being responsible for their actions. “Responsible” means, first of all, that each individual is the “cause” of his actions, i.e. that these actions are consciously and deliberately carried out, that is, at *will*.⁷ But this kind of responsibility also implies something else. Given that Reason shows moral principles to every human being, a violation of such principles can be neither explained nor justified by moral ignorance. A person who violates a moral principle does so with full awareness of the meaning of his action, and, therefore, is motivated by *bad will*. On the contrary, a person who obeys a moral rational principle, and acts accordingly, is motivated by *good will*. As can be seen, responsibility lies in the fact that will can be good or bad, which means that it is always a moral responsibility.

Now, if there are individuals who show good will, and others who show bad will, it seems obvious that the State should not treat them in the same way. On the one hand, bad will is intolerable for good will, since the former threatens the freedom and the dignity of human beings. Therefore, those with good will feel obligated to help others not to suffer the consequences of the actions resulting from bad will. The problem that emerges here is: how can bad actions be prevented? This problem, in turn, leads to another: why does someone act wrongly?

We have seen that good will consists in being guided by rational *necessary and universal* principles. Bad will, in turn, consists in being led by principles that are neither necessary nor universal—principles that are, therefore, *arbitrary* and

⁵ It is necessary to emphasize that the duty to obey judicial law, since it is a moral duty (unconditionally mandatory), can never be contingent. That is, for instance, it cannot depend on the private opinion of the citizen about the rightness of the law.

⁶ For a detailed discussion on the issues presented in this section, see Kant (1797) and Suárez (1996).

⁷ With the exception of those “without reason”, for example, a demented person or a child.

convenient to someone's *particular* interests. Egoism, then, is the source of bad will. Being so, the most effective way to prevent bad actions is by instilling in man the awareness of the certainty of the imminent suffering that will result from a bad action. According to this, an egoist, after pondering the pros and cons of his possible bad actions, will decide not to commit them. Herein lies the usefulness of punishment arising from the law of retaliation: the individual, who attempts to steal, knows that he will be robbed; the person, who attempts to kill, knows that he will be killed, etc. Note that this mechanism requires the act of punishment to be public.

However, the above argument in favor of retributive punishment is not completely satisfactory. According to it, punishment would be a simple means of ensuring general respect for human dignity, that is, justice. But, if this were so, punished individuals would be considered as mere means and not as an end in themselves. (For example, the execution of a murderer would simply be a means of maintaining social order). On the other hand, there are other means—less radical and more effective—by which the same end could be reached: re-education, for example. This criticism points to the need for a more solid basis to support punishment. We find this in the rational notion of *justice* upon which the *morality* of punishment, beyond its mere *usefulness*, is based.

As we have seen, all human beings, as rational beings, are destined to the task of fulfilling their rationality. But it is also true that all of us, as biological beings, have natural needs that must be satisfied. Fulfilling our rational destiny makes us *good*; satisfying our natural needs makes us *happy*. But these two purposes that merge in man are not identical to each other at all. In carrying out a moral principle we are often compelled to upset what our biological make-up demands, whereas satisfying our natural needs is frequently in opposition to what morality demands. Then, morality and happiness are two clearly different goods to human beings. Of the two, morality is undoubtedly a greater good, because happiness can be considered fully good only insofar as it is preceded by good will.

Hence, a notion of justice surfaces that links morality to happiness: happiness in a human being can be approved only to the extent to which he deserves it thanks to his moral merits. Similarly, when someone has moral demerits, he deserves less happiness. It is clear, then, that punishment—when applied according to the law of retaliation⁸ and by a competent authority—is not only good because of the beneficial consequences it brings to the social order, but is also good in itself, regardless of its consequences, because it is a moral act of justice.

Now we can see that, from this point of view, imprisonment cannot be considered the best means for punishing the offender. On the one hand, loss of freedom constitutes fair punishment (one fitting the nature of the crime) only in certain exceptional cases, such as the crime of kidnapping. On the other hand, prison, as a space for confinement and isolation, is not suitable for the indispensable

⁸ The law of retaliation embodies this idea of justice, which proportionally links morality to happiness. The severity of a bad action (its moral demerits) is measured by the harm (suffering) it has caused.

public display of the punishment. Finally, absence from the public eye allows prisons to become susceptible to abuse of power by the civil servants in charge of administering these institutions.

The brief review outlined above, concerning the modern perspective on penal justice clearly shows that our moral intuitions with respect to Venezuelan prisons do not belong to this kind of thinking. If we reject the current state of the prisons, it is not because we prefer to punish the offenders according to the law of retaliation. On the contrary, nowadays this way of treating offenders seems extremely barbarous and irrational to us. Perhaps we would even place it on the same level of irrationality that we place the way prisoners are treated in Venezuela. But, then, the question remains open: if our opinions concerning the prison situation are not based on a Modern discourse, what are they based on?

Perhaps, after all, our current perspective is in fact Modern. But possibly it is just “more modern” than that of the Enlightenment. If we dislike punishment, it seems to be precisely because of our feeling of respect for “human dignity”. Moreover, the 18th century discourse on the offender is obviously a “moralistic” discourse: the bad guy should be punished. This moralism, as we know, has been surpassed by the progress in human sciences (such as medicine, psychiatry, sociology and criminology). These sciences offer us a more rational perspective —a positive knowledge— of the causes of crime and of the most appropriate ways for preventing it. Therefore, it seems that we would be inclined toward a “more humane” and “more scientific” way of treating the offender. Such treatment of the offender would prevent suffering (so as not to harm human rights or provoke social resentment) and, consequently, would be beneficial to him, as well as to the community. We shall now see a more detailed account of this possibility and its implications.

3. THE POSITIVIST WILL TO NORMALIZE

The discourse about “more humane” or “more scientific” treatment of the offender belongs to the “rehabilitation” prison model —also known as “readjustment” “resocialization” or “reeducation” model. According to this model, the purpose of prisons is not to punish individuals, but to apply a therapy that restores normality, which is lacking in them, in order to enable them to rejoin society. The suspicion raised before (that this is the ground of our concern with what is currently happening in the prisons), is reinforced by the fact that Venezuelan penal laws adhere to this model. For example, the Venezuelan constitution (Art. 60) states that “measures of social interest concerning dangerous subjects [...] will be oriented in all cases toward the readjustment of the subject to the requirements of social coexistence”. Let us see, then, what the theoretical and moral framework that supports this model is exactly.

3.1. The bio-psycho-social truth about human beings

The birth of the rehabilitation model in the 19th century is closely linked to the rise of the positivist philosophical discourse⁹. It was during that period that disciplines of knowledge first emerged, whose purpose was the scientific study of the human being on three levels: biological, psychological and social. The new sciences attempted to oppose, surpass, and replace all previous knowledge about man —mainly religious and philosophical. Such forms of knowledge, prevailing up until then, would be seen thereafter as arbitrary discourses, lacking an empirical basis and, therefore, irrelevant to a real understanding of human nature and its laws. But this “positive surpassing” —which seems to be merely theoretical— also constituted a practical project for improvement in the social and political spheres. It was not simply about gaining true knowledge of human nature, but was also about constituting a social order coherent with such knowledge. Just as the political and social orders of previous periods had found their justification in the dominant theological or metaphysical discourses, positivism also sought to convert scientific knowledge into the basis for a new order of life¹⁰.

But what is the scientific truth concerning man? As already said, man is considered here as an entity made up of three “levels”: biological, psychological and social. Of these three, the biological is the most fundamental. This is so because it supports the psychological level (the mind is produced by the chemistry of the nervous system), which supports, in turn, the social level (social relations are produced by interactions among individual minds). Thus, the biological level necessarily determines the roles of the psychological and social levels in human beings. In other words, the true purpose of the mind and of society can only be properly understood when considered from the perspective of its subordination to the biological purpose. This purpose common to all living beings is, of course, survival. Let us now see how the human mind and society are seen when considered biologically.

The mind is seen as a faculty that allows man to survive in his environment with greater effectiveness. Therefore, the central activity of the human mind is the designing of strategies for action with a view to survival. This activity is “central” because all other activities of the mind —such as conceptualizing, understanding, planning possibilities, calculating consequences, memory, subconscious activity, etc.— are sub-activities of the former. Hence, the mind is the capacity that rewards human beings for their enormous lack of natural instincts (when compared to other animals). This atrophy of natural instincts, together with the hypertrophy of mental activity, has important consequences on the way in which human societies are constituted.

⁹ For a detailed account of the relationship between rehabilitation and the birth of positivist sciences of man, see Foucault (1975).

¹⁰ In reference to this point, the reader can review Comte’s (1830) philosophy of history and his project for constituting a scientific sociology to provide the necessary principles for a scientific ordering of society.

Using a very broad meaning of the word “society”, the making of societies is not an exclusive feature of mankind, since many other species of animals live in large groups or herds. All these societies—including the human society—have the same purpose: to maximize the survival possibilities of individuals by using the cooperative organization of each individual’s strengths and capabilities. However, in the case of non-human societies, the social behavior of individuals is instinctive, whereas in human societies, individuals do not have a social instinct that dictates to them how they should behave with respect to others. This has two important consequences. The first is that the social order of human societies has to be established and maintained by mental constructs and not by means of instincts. The second is that this lack of social instincts implies that the human social order is always at risk, since human societies—contrary to the social orders of other species—can be transgressed and even destroyed by one or more of its members. This situation explains the need for moral patterns in societies and the need to control the morality of individuals’ behavior.

3.2. Morality and social control

According to the biological perspective discussed herein, moral patterns are mental constructs needed to organize human societies so that they can seek the maximization of survival possibilities for their members¹¹. It is for this reason that “good” behavior is cooperative or pro-social behavior in all societies, whereas “bad” behavior is conflictive or anti-social behavior. It is also for this reason that different societies construct different moral patterns. Since moral patterns, unlike instincts, are not biologically pre-determined, they must respond to the particular environmental circumstances in which a society develops and on which its survival depends. (Thus, for example, nudity would be permitted in tropical regions, but would be banned in cold climates.) But how can a society ensure the observance of moral patterns by its members?

Moral patterns function in the minds of individuals as “restraints” to conduct which endangers social order. The main way in which societies attempt to ensure that individuals acquire these “restraints” is the socialization process to which they are subjected since birth. When this process is successful and the individual is adequately socialized, moral patterns function as quasi-instincts; that is, they produce an immediate feeling of rejection when the individual is faced with the mere idea of improper conduct. However, since moral patterns actually never function in a completely automatic way (i.e., they are never transformed into instincts), socialization is not enough to ensure respect for the social order. A second method of social control over individual conduct is needed. This second method is carried out by introducing penal systems into societies.

Penal systems, seen from the biological perspective, have the mission of

¹¹ An account of this biological sense of moral patterns can be found in Nietzsche (1903), Freud (1930) and Taylor (1989).

maintaining social order by intimidating individuals with different types of punishment. Punishment is aimed toward the individuals' minds in order to impose an additional "restraint" against possible inappropriate conduct. This restraint consists in the certainty of the imminent suffering that would result as a penalty for such conduct. In this sense, the punishment imposed on the transgressor of social order has the whole society as its target rather than merely the individual punished. This is also the reason why punishment is usually accomplished through a public act. Finally, let us note that the success of the penal system lies in the fact that punishment always involves a degradation of the survival conditions of the individual punished. This clearly shows that man's biological nature is the condition of possibility—not always explicitly acknowledged as such—for the existence of penal systems.

So far, we have outlined how the human being is understood by positivist science. On this background, we can now uncover the meaning of the rehabilitation prison model.

3.3 Scientific social control¹²

Just as the positivist line of thinking emerged in opposition to theological and metaphysical discourses of previous epochs, the rehabilitation proposal also begins by challenging the social control methods of the past, that is, the entire penal discourse. Its main criticism of penal systems is twofold: *theoretically* speaking, these do not fully suit the nature of the human being and society and are, therefore, *in practice* ineffective and even harmful. We have seen that society's fundamental goal is to maximize the survival conditions of its members. This maximizing is ensured by channeling the ordered contribution of each individual's capacities and strengths toward this common goal. Penal systems, although motivated by the will to preserve the order which makes this cooperation possible, offend the natural objectives of individuals, as well as those of society. But the twofold nature of this criticism should be assessed further.

As previously mentioned, punishment creates a deterioration of the capacity for survival of the individual punished. It should be noted that this deterioration is caused by society, which is obviously contradictory to the natural relationship between the individual and society. Additionally, if the survival conditions of one of the members of society deteriorate, the survival conditions of the entire society inevitably decline, too. Finally, penal systems seek to obtain obedience to the social order on the basis of fear, and this is clearly contrary to the cooperative relationship that gives rise to society. In a few words, penal systems are essentially trapped in a paradox, which can be expressed as follows: maximizing the survival conditions of individuals requires impairing those very conditions. This is the reason penal systems are considered unsuitable to human nature.

But punishment also has other harmful consequences for society.

¹² A panoramic view on rehabilitation therapies can be found in Kaufmann (1979).

Punishment, as an act that is contrary to human nature, not only turns out to be ineffective as a means of restraining socially destructive conduct, but also tends even to encourage it in two ways. On the one hand, punishment generates anti-social attitudes in the individuals punished, as a natural and inevitable consequence of the fact that the individual's capacity for survival is threatened by society itself. On the other hand, a social order based on individuals' fear is, by nature, unstable. In the long run, individuals inevitably perceive such order as intolerable and absurd to the point that they finally adopt destructive behavior toward it. This is the source of the criticism that points out the ineffectiveness and perniciousness of penal systems is due to this.

On the basis of this twofold criticism, it is possible to grasp the sense of the rehabilitation discourse. From the viewpoint of a biological understanding of what a natural relationship between the human being and his society is, the preservation of this natural relationship is set up as an ideal. "Rehabilitating" means rebuilding the natural cooperative interaction between the individual and society. For this reason, the preferred subject for rehabilitation is not the occasional transgressor, since occasional transgressions cannot be considered an abnormality¹³. The preferred subject for rehabilitation is the habitual offender, the individual whose conduct shows that his socializing process has been especially poor, who has not succeeded in assimilating moral patterns adequately, and who consequently lacks the restraints necessary for functioning normally in society. For this reason, rehabilitation is also re-socialization, readjustment or re-education. Seen in this way, rehabilitation is beneficial both to the individual and to society, since the cooperative relationship, which it is sought to rebuild, is convenient for both. As a result, rehabilitation is "more humane".

From all the above, it follows that rehabilitation should be achieved by means of a therapy given to the offender. Under this conception, prison is not a penal institution, but rather a therapeutic institution. Consequently, physicians, psychiatrists, psychologists, criminologists, sociologists, anthropologists, etc. should control prisons. The mission of these "scientists of man" is to diagnose the abnormality present in the transgressor's personality, design the appropriate treatment for him, implement it, and monitor its outcome. Once the treatment is successfully completed, the individual can rejoin society. This is why rehabilitation is "more scientific".

Once again, the question regarding our moral intuitions is raised: do they have their origin in the kind of discourse just outlined? It does not seem so. The rehabilitation discourse turns out to be offensive to us on several levels. First, due to its eagerness to control individual minds, it attempts to transform individuals' personalities as though they were damaged machines in need of repair. This is the

¹³ It is not abnormal since occasional transgressions are simply unavoidable, because moral patterns do not act as mere instincts. Generally in these cases, the transgressor genuinely acknowledges that he has done wrong and is willing to repair the damage caused.

kind of annoyance and rejection that is expressed so well in Stanley Kubrick's film "The Clockwork Orange". In this sense, rehabilitation seems to seriously attempt against human freedom.

Second, the goal of such a process of transformation seems to be the total homogenization of the values and purposes of individuals. According to the rehabilitation discourse, it would seem that the very fact of thinking in a way different from socially established patterns raises the suspicion of an "abnormality" that needs to be "corrected". It seems to us to be an attempt against interpretative variety, which, we believe, is essential to human existence. Finally, this homogenization of the individuals' personalities can serve—and we suppose it actually does—the interests of certain powerful groups that control and maintain a social order that is beneficial to them.

A certain previously invisible unity now appears concerning our opinions on the prison issue. This unity shows itself in the fact that the reasons for rejecting retributive punishment are the same as those for rejecting rehabilitation, and are the ones due to which we reject the current situation in Venezuelan prisons. As will be seen below, what has been discussed so far makes it possible for us to begin to uncover some aspects of the ground that sustain our moral intuitions on Venezuelan prisons.

4. TOWARD THE UNVEILING OF THE BACKGROUND OF THE PRISON PROBLEM

If we look carefully at what motivates us to reject punishment, rehabilitation and the current prison situation, we will note that, in the three cases, what is offensive to us is the fact that there are individuals subjected to an oppressive power that works on behalf of the dominant social groups. In the case of the Venezuelan prison situation, this is quite evident. What we see there is brutal repression carried out by a political system that calls itself democratic, but serves the interests of a very small sector of society. In the case of retributive punishment, we see dominant groups, which veil their true interests behind philosophic moralist speech with claims of universal validity and hold repressive and brutal power over individuals. Finally, when we look at rehabilitation, we see refined and subtle (and, therefore, more fearsome) power exercised over individuals, which attempts to homogenize their minds and guide their conduct in ways convenient to the dominant groups.

It is obvious that this rejection of the exercise of power over individuals does not have its immediate origin in Enlightened thinking or in positivist thinking¹⁴. It is true that both ways of thinking oppose the exercise of arbitrary

¹⁴ However, it can be assumed that our current rejection of all manifestations of power can be historically traced to the positivist and Enlightened discourses, and probably even further back to the very origins of Western civilization. This, of course, would require much more extensive research than that presented in this article.

power. But this opposition to arbitrary power at the same time favors a power seen as legitimate and justified on the basis of a discourse claiming to be true. The Enlightened thinking of the 18th century opposed the power exercised at the time by the Church, because it found such power arbitrary (i.e., irrational). Note that the arbitrariness of the power exercised in the name of the Church can only be revealed as such against the background of the legitimacy of the power exercised in the name of Reason. Likewise, positivist thinking sees the power exercised in the name of theological and metaphysical discourses (including that of the Enlightenment) as arbitrary. This arbitrariness, in turn, is revealed against the background of the legitimacy secured by scientific knowledge.

But the nature of our rejection of power is different. It does not seem to include any theoretical conception about what legitimate exercise of power is. Moreover, it seems to be a rejection that essentially *cannot* allow any conception of legitimacy. The reason behind this is that all theoretical discourses with claims of universal validity, by which a certain exercise of power is justified, nowadays stand out as masks that hide individual interests. Enlightened thinking intended to surpass the false legitimacy of the theological discourse, and positivist thinking the false legitimacy of the theological and metaphysical discourses. Our thinking has not only surpassed both, but has also surpassed the mere notion of legitimacy. In other words, for us truth is, in essence, an instrument of power.

However, the matter is not that simple. We are not witnessing total dissipation of all possible legitimacy, but rather we are faced with the fact that all legitimacy has become illegitimate. Total dissipation of legitimacy would mean the disappearance of all moral intuition and all normative discourse, something that up to now has not happened. But the fact that legitimacy has become illegitimate implies that we are still in the presence of something similar to legitimacy (which precisely allows legitimacy to show itself as illegitimate). This kind of quasi-legitimacy can never explicitly appear as full legitimacy (in such a case, it would immediately destroy itself) and, therefore, must remain in the shadows, in the realm of the tacit. Nevertheless, we can try to uncover some of its elements.

We have said that what guides our moral intuitions is the rejection of the exercise of power over individuals. This being so, the quasi-legitimacy on which this rejection rests must involve some idea of freedom. Such a freedom would have to be defined as non-submission to the power of another. But more elements can be added to this initial definition. Being subjected to the power of another always implies not being able to do as one wishes; in other words, not being able to act according to one's will. Freedom, then, consists in exercising will. But, how is will exercised?¹⁵

If adopting discourses with claims to universal validity is a manifestation of submission to the power of another, then freedom consists in detaching oneself from these discourses and living according to individually chosen conceptions of

¹⁵ The Enlightened answer to this question would be "by obeying the pure practical principles of Reason."

the world, which would then be non-universal and non-enforced. This also implies having access to a wide variety of options to choose from (that is why only a well-informed person can be free). Therefore, freedom consists in being able to choose at will—that is, arbitrarily—the truth by which to live¹⁶. And here something strange happens: under this conception, not only legitimacy becomes illegitimate, but also and symmetrically, illegitimacy becomes legitimate when arbitrariness is set up as a superior way of life.

This quasi-legitimacy, when projected on the level of the entire society, makes possible a model of coexistence defined by the leveling of power relations and the pluralism of ends and values. Hierarchy and authority were justified in the past by the idea that these were needed for guiding human beings along the only and true path of Good: men could be coerced into thinking and acting in the right way. In this sense, hierarchies were in everyone's interests to the extent that they were the representatives and executors of the common Good. In the case of Enlightened thinking, the common Good was rationality, whereas in the case of positivist thinking, it was maximizing the capacity for survival. Nowadays, we usually think that it was actually the other way around: the discourses on Good appeared because of the need of the groups in power to maintain their hierarchy and authority. Thus, a society that is not willing to impose on individuals a unique conception of Good has no place for hierarchies and authority. Hence, there is inevitably a touch of anarchy in our current political and social thinking. If we accept that there cannot be a State without hierarchies, it would seem that the State would be eternally suspected of being controlled by certain powerful groups.

Let us stop this reflection here. We have tried to give a certain form and unity to what we have called the quasi-legitimacy that conditions our moral intuitions concerning the present prison situation. An alert reader can easily observe that this quasi-legitimacy points to the same interpretative context that emerged at the end of the research reported in the first article of this trilogy: the “post-modern liberal” context. In fact, both researches show that the background of the current prison problem is an order characterized by the impossibility of appealing to any kind of theoretical or practical discourse with claims to universality. As we have seen, this background shapes the present social and political order, as well as the prison system. Now we are ready to ponder what has been gained with these two researches and what new questions they open for further inquiry.

5. CONCLUDING REMARKS

Two different roads converge at a common point in the research. Yet, what does this convergence mean and imply? In the light of both inquiries, the post-modern liberal order is shown to be simultaneously the condition for both the

¹⁶ Some authors, such as MacIntyre (1985), Heidegger (1943, 1955) and Taylor (1989) have already pointed out the surfacing of this way of living and of thinking in present Western societies.

persistence of prison schizophrenia and the persistence of the problematical nature of such schizophrenia. This situation turns out to be interesting in a dual sense.

First, it is interesting because it shows a new and previously hidden facet of the post-modern liberal order. Since this is the very order that sustains prison schizophrenia and supports its problematical nature, it would seem that it is, in essence, contradictory and conflictive. In other words, the post-modern liberal order *sustains* phenomena which it itself finds *unsustainable*. This is not as puzzling as it may seem, since this paradox, manifest at the social and institutional levels, could be interpreted as a simple reflex of deeper tension, namely, that springing from the contradiction of establishing the lack of universality and legitimacy as universally legitimate. When the fragmentation of meaning is such that all possibility of reconciling the fragments disappears, tension and conflict are the sole relationship that can be established. The question that appears immediately is how long can an order of that nature last. Will an explosion of violence resulting from its own inner conflictive nature mark its end?

Second, the comparison of both inquiries gives rise to some theoretical questions concerning the sense of the search for sense. What is the difference between the first part of the research and the second? How is it possible that they finally converge at the same point? Both consist in an uncovering of the conditions of possibility (*scene*) of the prison schizophrenia phenomenon (*distinction*). But the former apparently assumes that such a task consists in answering the question about what makes it possible for schizophrenia *to be*, whereas the latter assumes that it concerns answering the question of what makes it possible for schizophrenia *to show itself as such*. But what is the difference between “to be” and “to show itself as such”?

Lastly, there is one final issue that needs to be examined in this article. At the beginning, it was said that the anguish collectively felt in the face of the Venezuelan prison situation requires an explanation of what “solving” the prison problem would mean for us. It was also mentioned that the research carried out could contribute to this task. So, let us display what our reflections have shown so far concerning the possibility of solving the prison situation.

When listening to the general outcry for a solution to the prison situation, one easily realizes that what is usually demanded is a series of administrative interventions on the part of the State in order to address the problems inside the prisons. Why such problems are judged as such is a matter that never, or hardly ever, reaches the public debate. One of the reasons for this is that it is usually assumed that there is a certain unanimous view in society regarding what jails should be like and how they should operate. The reflection brought forward here shows that, even if such unanimity exists, its nature remains completely invisible to society itself. Moreover, if such unanimity exists, it is established on the basis of a vague and indistinct rejection of the manifestations of power. If this is the case, the possibility of solving the prison problem is very remote. If it is true, as previously

discussed, that our moral intuitions regarding prisons have their sources in the quasi-legitimacy that opposes the exercise of power over individuals, the State is condemned to an eternally illegitimate status. Therefore, as long as the responsibility for restraining crime is in the hands of the State, the prison problem cannot be completely “solved”, and prisons will always be troublesome.

The reflections developed in this article show that the source of the prison problem seems to be at a much deeper level than administrative adjustments. What sustains it as such is a certain order of fragmented meaning that harbors, at its center, irreconcilable contradictions. The institutional “schizophrenia” present in our societies is merely a manifestation of these basic contradictions. Accordingly, *the only possibility of solving the prison problem lies in the remaking of a unitary holistic sense of ourselves as a society*. Reflecting on “how to think” and on “what to think about” will have to be the first step toward a genuine solution to the schizophrenia of our times.

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