

## Decomposing Rawls's Philosophy of Justice with Foucault's Discipline and Punish by way of a Transmutation of Hegel's Master-Slave Dialectic in the Phenomenology of Spirit

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### Abstract

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This paper deconstructs Rawls's philosophy of justice by appropriating certain theoretical views of power and domination advanced by Foucault's work, particularly in *Discipline and Punish*. It attempts to show that the enclosed world of the prison may not differ so much from external normalization processes in a free society that tend to produce a servile consciousness to unquestioned laws and policies. Hegel's master-slave dialectic is appropriated to advance this argument. The paper concludes with certain reflections on how Marx's theory of the alienation of labor, monastic asceticism and religious self-examination and Foucault's theory of the moral reform of prisoners - as an insidious form of domination - compare and contrast in various ways to disclose certain limits to the pursuit of ideal justice in a free society.

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For Foucault, justice, equality, and law are not self-justifying categories that legitimize the power to punish in the modern world. And the prison should not be taken as a sign of historical progress in which humanity becomes more benevolent. Rather, something in the nature of power changed, unbeknownst to anyone, in which the law transformed too given the ontological change in the nature of power. Now all individuals, both free and imprisoned, are subjected to a form of discipline that makes us believe in the inherent fairness of the modern prison and its underlying justification to punish the deviant, the pathological, and the criminal.<sup>2</sup>

With the creation of the modern prison a secret and invisible world sits within our visible world of normal, social, democratic, peaceful societies. Most of us are free, we do not break the law, but we imagine we are free (at least in principle) without questioning whether that is so—we just know that we are free to move around and not trapped in a prison cell from which we cannot leave. And to the extent that we know the law (and do not naively subscribe to the notion that ignorance of the law is a type of defense if we break laws) we subscribe to them wholeheartedly: we do not steal from or hurt others. But those in prisons are locked away from our view.

How these two worlds coexist is a mystery because the free world barely sheds a moment thinking about the other world; the moment it does, it opens up a taboo. Some other world exists to which we never acknowledge and when we do, we are shocked to think that this world exists in our world, yet is so different, other, remote and quite frankly frightening. One can ask what would it be like if one were to leave the free world and go to prison right at this moment with no recourse to escape or avoid such an imminent enclosure? The new type of power, the particular new kind of domination engendered in modern imprisonment emerges beneath the veneer of 'equality, justice, autonomy, and law' – the latter of which descend from the so-called sound principles of Enlightenment Reason. It descends from the philosophy of right, freedom and law.

But the prison is the alter-ego, the unconscious where overt power (that cannot occur in the legal order) is transferred to the realm of the prison where the darkest and deepest parameters of power expand in creative ways—when humans are given absolutely enclosed and un-monitored or un-accounted power over other humans but not in terms of the ancient, sovereign, physical and public frenzy of torture but in terms of what is 'humane and moral' as a form of continuous, aimless experimentation in the 'science and art of technical discipline.' What is the motivation of

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<sup>2</sup> Michel Foucault, *Discipline and Punish*, 2<sup>nd</sup> Edition, trans. Alan Sheridan (New York: VintageBooks, 1995), p. 231.

this new type of power to become other and monstrous, where every possible creative act can emerge to see the extent that a human being can fashion another human being without being subjected to any explicit secular moral or legal code? The latter itself descends from the religious traditions of antiquity and the medieval sovereign model, which is public torture and punishment as restoration of the social, political order of the sovereign and its Christian world-view. Instead, the modern prison is pure technical mastery; will to power and perfection down to the minutiae of controlling every aspect of a human life (mind, body, soul, conscience). By using Foucault (and with Hegel in the backdrop) our question will be whether any philosophy of justice (Plato to Locke to Rawls) can justify itself when someone like Foucault has unlocked the underbelly of social, legal, political, economic structures in terms of this new type of power as technical discipline. We can then try to imagine what a world government or world order and principles of international justice could look like in light of Foucault's insights, which can be expanded by a Hegelian inspiration to overcome the master-slave dialectic. We will accomplish this act by contrasting Foucault's non-dialectical asymmetries of power with Hegel's dialectic. Can there be justice, particularly in human relation to humans (the social contract) that does not succumb to Foucault's analysis of a penal society?

The Foucaultian-Hegelian analysis of power and society can be taken in to imagine the future world order, world governance and global justice—and the deepest motivations that underlie the entire movement towards international human rights. In terms of previous epochs we find: 1.) power in the pagan world which is pre-Judeo-Christian; 2.); Judeo-Christian structure of power and discipline; 3.) Middle Ages and pre-modern Age; 4.) Foucault's model of modern punishment – late 18<sup>th</sup> century to the present. The shifts between these epochs and underlying temporalization requires to suspend any easy moral intuitions about the progress of human history. Each of these epochs can be analyzed with regard to their own positivities and negativities in which 'morality' is supported by underlying mechanisms of law, power, legitimacy and rule. What makes Foucault's analysis unique is that in the very creation of a modern distinction between the public and private spheres, a new type of technical which normalizes all aspects of human emotion, behavior, thinking and even physical movement seems to permeate the two spheres without being noticed. He asks: "how could the prison not be immediately accepted when, by locking up, restraining and rendering docile, it merely reproduces, with a little more emphasis, all the mechanisms that are to be found in the social body?"<sup>3</sup> And furthermore, "this double foundation- juridico-economic on the one hand, technico-disciplinary on the other- made the prison seem the most immediate and civilized form of all penalties."<sup>4</sup>

Foucault questions the moral foundations of modern forms of penalty. Why make it civilized, humane, as in as free from any kind of moral attack as possible precisely if the history of human consciousness is the history of the development of specifically a modern moral sensibility based on human rights, which Nietzsche's genealogy so aptly deconstructed? How did this coincide with liberal democracy and the birth of human rights? What the modern logic of penalty conceals is the quest for the will to truth, the perfect society and the just society. Justice and the pleasure of pain is what we will set out to study in light of Foucault's initial insights. We are not just looking at the deprivation of liberty when liberties are guaranteed in a legal, constitutional, well-ordered democracy—Locke's contract raised to Rawls's abstraction or the 'basic structure of society as justice as fairness.'<sup>5</sup> Rawls's basic structure includes social cooperation, mutual advantage, tolerance, respect, reciprocity and egalitarian distributive values such as the common good where everyone has a fair chance at a successful life (however much success is achieved) and absolute concentration of wealth and power is avoided.<sup>6</sup> However beneath this justice-imbued society is continuous experimentation beneath the veer of legal justification to punish.

The Locke proviso seems to remain intact—to maximize as much individual freedom as possible with the caveat that one should not deprive others of life, limb or property and if they do, the violator must be punished and the victim must be compensated. That is why people agree to form a state out of the social contract. But with Foucault, the double foundation of juridico-economic and technical discipline of the body inside the prison is the analogue of what is at work in all processes of normalization in society writ large and it's just institutions; hence there is no distinction between freedom and deprivation of liberty (prison), or what is inside or outside the prison. Society

<sup>3</sup>Ibid., p. 233.

<sup>4</sup> Ibid.

<sup>5</sup> John Rawls, *A Theory of Justice*, Revised Edition (Cambridge: Harvard University Press, 1999), p. 3.

<sup>6</sup> See John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001).

is an inverted prison, an exteriority that is unfree and what is free is the secret of its unconscious, the taboo of a world (prison) enclosed within the world of freedom. This maddening quest for society to normalize through both the invention of what requires continuous policy and scientific fascination—how to ‘reform’ an individual and turn them into an ideal citizen finds its correlate in the theories of justice and the promotion of rights and their acquiescence so that individuals can maximize their ‘moral powers’ as Rawls says, namely the ‘sense of justice and the conception of the good.’<sup>7</sup> To overcome these contradictions inherent in a just society based on a secular, legal, constitutional, democratic order, we need Hegel’s phenomenology of the master-slave dialectic to contrast that with Foucault’s notion of power in the most ‘civilized form of all penalties,’ namely the prison. Another dialectic is at work with the anonymous system of power of incarceration and what is at stake in its political, legal, juridical, economic, social and cultural relations. The ‘master is the slave of the slave and slave is the master of the master’ as Hyppolite reminds us in his magisterial commentary of Hegel’s *Phenomenology of Spirit*.<sup>8</sup> The slave’s being is constituted in terms of increasing self-consciousness, freedom while facing death, which Hegel calls the ‘absolute Lord’ of the slave, in which labor and being are extinguished into one another and has to become Other to both terms. Yet a strange set of mutations are at work which upsets the Hegelian dialectic when we think about the creation of the perfect human in terms of ‘technical discipline’ as Foucault describes. Definitely below the order of positivist law and human rights and reforming the prison as Foucault says is another way to think about a justice and its a-moral foundations in the ‘new technical discipline of power.’ Once we contrast Hegel and Foucault, we can proceed to deconstruct the deepest motivations behind Rawls’s philosophy of justice.

Foucault gives us some important links between how the deprivation of liberty is justified in the penal system, which requires a more insidious transformation of what it means to be human. He states: “in short, penal imprisonment, from the beginning of the nineteenth century, covered both the deprivation of liberty and the technical transformation of individuals.”<sup>9</sup> Indeed the legal justification of deprivation of physical liberty and ownership of one’s whole life (that is the nature of the prison) conceals the uncontrollable quest of science, technology, policy and planning to best organize labor within the socio-economic structure of a fake utopic world, namely the life of the prison. This is a pure experiment on how best to manufacture moral beings without the use of religion underneath the veneer of the law whose justification resides outside of the world of the prison, namely the stable, peaceful, law-abiding democratic order. Society is reflected in the prison but then repressed from its consciousness so that society and prison appear as a dichotomy. This is pure experimentation with the creation of a conscience dedicated strictly to self-examination precisely under the total and absolute subjugation of an inscrutable order of observation. The peak of un-freedom of mind and soul trying to purify itself through ‘reform’ mirrors the peak of physical un-freedom of life in the prison, a completely regulated life; and yet the un-freedom of mind and soul from the perspective of the policy reformer of how to best organize prison life believes in the moral uplifting and health of the prisoner and all in the name of social progress. This is the dialectical structure we have to examine and then contrast with the categories in Rawls (primary goods, two principles of justice, moral powers, social choice in the original position) etc.

Continuing with Foucault’s paradox of the historical simultaneity of the ‘new technical discipline of power’ embodied in the prison and the moral compulsion to improve and reform, he states: “Prison reform is virtually contemporary with the prison itself: it constitutes, as it were, its programme.”<sup>10</sup> The mindset for reform descends from the Protestant reformation with regard to the juridical structure of the Catholic Church from the Middle Ages—for Foucault this is the time of the public spectacle of exacting punishment for anyone who attacked the body politic, which is literally the sovereign. Eye for an eye but not really.

Medieval man did not understand why such force was necessary to achieve a balance that was apparently damaged by an act that transgressed the moral, political and social order. The sovereign monarch with divine justification is one with the body politic and hence the social body. Once reform and the examination of the conscience was born together (in Luther’s revolt), the whole cycle of punishment, guilt, the continuous refinement of the soul, and the oscillation of being tested and tempted and the will to be free beyond the conscience emerged. Luther’s madness is the precursor to what Foucault says is the modern penal system, which ends up perfecting criminality by transferring the punishment of the body to technical discipline of mind, body and soul under scientific

<sup>7</sup> Ibid, p. 18.

<sup>8</sup> Jean Hyppolite, *The Genesis and Structure of Hegel’s Phenomenology of Spirit*, trans. Samuel Cherniak and John Heckman (Evanston: Northwestern University Press, 1979), p. 172.

<sup>9</sup> Foucault, p. 233.

<sup>10</sup> Ibid, p. 234.

policy rigorous examination. To re-form is to literally form something again. (This is also true for Weber who says that this Protestant Reformation became the irrational quest for the modern capitalist enterprise, a new ethic of continuous self-investment as savings and investment.<sup>11</sup>) A true comparison of Foucault's *Discipline and Punish* and Rawls's *A Theory of Justice* will show that the same mechanisms that govern the prison in Foucault's analysis are the principles that govern the 'basic structure of society' for Rawls, which is 'justice as fairness.'<sup>12</sup> Both intend to cultivate the moral powers of persons defined as citizens in a democratic, peaceful, legal, constitutional regime. Rawls takes care of citizens in society who are law-abiding and Foucault describes the incarcerated individual who broke the law: yet the latter is supposed to become the former and the prison is the ontological passage for such a transmutation. Foucault says a certain distortion was concealed when the age old-question of what justifies the right to punish legally confronted technologies of power how to control individuals, which supersedes the law and human agency or institution.

He states: "in becoming a legal punishment, it weighted the old juridico-political question of the right to punish with all the problems, all the agitations that have surrounded the corrective technologies of the individual."<sup>13</sup> First we have to analyze these phrases and their distinctions as we conduct a genealogical analysis of their assumptions. One can ask naively that when it comes to legal punishment when is the law purely neutral as a system of objective justice? For an anarchist, the law by nature is punishment. For Kant, it is what we give ourselves without defining what it is by nature (as a fixed metaphysical substance); and in that self-given act we agree to abide by the law as if it were a universal maxim. What I will I must will for all as a universal maxim. But what if inscribed in the law is the will to punish? The law commands and forbids as does the warden. In terms of the juridico-political question of right to punish a question emerges. What are the associated rights and duties that are correlated to this? There is absolutely no justification to punish unless some social consensus exists that certain acts either constitutes a wrong (moral or legal) or they lead to loss or deprivation of an innocent other who did not deserve such depreciation. What is the 'substance of the right' that is based on a 'justified demand' for something and whose 'actual enjoyment should be guaranteed against standard social threats' to quote the Shue framework?<sup>14</sup> The right to punish is society's right and not just the state acting on behalf of an individual who because they left the state of nature and entered the social contract cannot punish the wrong-doer on their own—they cannot take the law into their own hands.

These technologies of the individual is yet another type of power. For Foucault, they are not simply reducible to either the juridico-political right to punish or legal punishment. Technology and discipline of the self is what is contested and worked out like an on-going experiment, and all of this is protected within the state and society because of legal punishment and the right to punish. If one were to separate technological-discipline of individuals from the legal process of depriving one's liberty in the prison, then for Foucault, one fundamentally misunderstands the nature of power in human societies- one is naïve about the so-called freedom they have in their peaceful, legal, constitutional democracy. And to this we have to added bio-power, biotechnologies, human-machine like existence and entities. The prison is the future of power itself—where all the fundamental issues of humans experiment on other humans for the betterment of 'humanity' ultimately get transferred to the outside, and then normalized in all institutions that govern the civil society that we 'free' citizens ultimately do not question. How is a city planned, how is a university run, how is a public space used, and how is a site for social protest and assembling structured?

Technologies of discipline on the self have no author and ultimately they seep into our free society, producing yet new types of bodily movements and so-called freedoms. Consciousness of liberty becomes a phantasm because liberty of consciousness is nothing but a technical discipline. To this Foucault, gives us some basic insights into the social ontology of perverted space that is the prison. He asserts: "the prison has neither exterior nor gap; it cannot be interrupted, except when its task is totally completed; its action on the individual must be uninterrupted; an unceasing discipline."<sup>15</sup> For Foucault, the prison is continuous action, not discrete or quanta. It is an inside without an outside and no inside-outside distinction exists. It is infinite without boundary because it is society turned into itself, self-

<sup>11</sup> Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. Peter Baehr and Gordon C. Wells (New York: Penguin Classics, 2002).

<sup>12</sup> Rawls, p. 3.

<sup>13</sup> Foucault, p. 235.

<sup>14</sup> Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy*, 2<sup>nd</sup>. Edition (Princeton: Princeton University Press, 1996), p. 13.

<sup>15</sup> Foucault, p. 236.

enclosed with no external referent to view it or judge it. The prison might as well be another planet to the rest of us in free society who do not know that such a planet even exists. What this does to consciousness and questions of justice and the reformation of conscience must be addressed. For Foucault, it is too simple to collapse the justification for punishment in terms of the technological laboratory of the prison with the mere legal act of depriving someone of their liberty. He states: “this complete ‘reformatory’ lays down a recoding of existence very different from the mere juridical deprivation of liberty.”<sup>16</sup>

One could question the very distinction between juridical deprivation of liberty and its underlying moral, legal, political justification descending from Locke’s social contract AND this will to reform-recode, the technology of body and self and the constant experimentation involved in the perfection of the human subject. Like Marx’s general diagnosis of the phenomenon of alienation in modern industrial-technological capitalism, Foucault thinks there is something radically wrong with the nature of modern social and economic systems within which human relations to humans are fundamentally distorted. The distinction between the Anglo-American-born social contract (justifications for laws, rights and right to punish and duties associated with compensation for the violated and the entire edifice of moral and ethical philosophy that underpins modern secular democracies) and Foucault on power and Marx on false consciousness must be brought to light. This way we can imagine propositions for a new world order and a world government that addresses Marx and Foucault’s concerns, i.e. true, equitable socio-economic distributive justice for Marx and alternatives to the coercive, infinite and uncontrollable production of technologies of discipline on the self and processes of normalization that are taken for granted in the name of moral uplifting. Or we can address questions to that proposition of cosmopolitan justice.

Foucault argued that certain steps took shape to codify the processes and operations of prison existence. He states: “the first principle was isolation. The isolation of the convict from the external world, from everything that motivated the offence, from the complicities that facilitated it. The isolation of the prisoners from one another. Not only must the penalty be individual, but it must also be individualizing.”<sup>17</sup> Isolating the self from an external world means disrupting the subject-object distinction that we free citizens have with regard to what we perceive to be a free, external world. Self that has to become its own world with its own inside-outside, subject-object distinction focused on continuous reform in the space of isolation is the inverse of the monk and his transcendental question to go beyond the self and reach the Godhead. The prisoner is a monk without God whereas the monk is a free prisoner who chooses to enclose his self within a world aimed at transcending this world. Furthermore, as Foucault states: that solitude assures a sort of self-regulation of the penalty and makes possible a spontaneous individualization of the punishment: the more the convict is capable of reflecting, the more capable he was of committing his crime; but, also, the more lively his remorse, the more painful his solitude; on the other hand, when he has profoundly repented and made amends without the least dissimulation, solitude will no longer weigh upon him.<sup>18</sup> Solitude is more than being alone physically. It is more than being alone in the world, a psychological anguish when one has no family and friends. Solitude is an individuation of the penalty, which means it is the perfect way to customize a penalty suited to a particular individual.

If Kant speaks of giving ourselves laws by willing it, solitude is the prisoner giving himself the penalty of constant reform about himself— the individual becomes intimate with himself without being free because the power of solitude is the power of a self-consciousness of utter powerlessness, helplessness, and vulnerability; and yet buried in his self-consciousness is the germ or possibility for reform or betterment precisely as the self clarifies itself, gets to know itself—gets to constantly examine itself.

The physically unfree prisoner becomes the free narcissist without that narcissism being directed at anyone else or witnessed by others. It is a private narcissism where the self is both the projector of itself but also its own audience. Contrast this with Hegel’s master-slave dialectic. Like Hegel’s speculative sublation (“aufheben” in German) of the human-divine distinction in Spirit’s Notion, we are on track to understand something beyond the human itself in so far as only humans have known humans, humans have controlled humans, and humans have tried to liberate themselves from humans and all in the name of religion, morality and God. Continuing with Foucault’s analysis of isolation and impact on the self, he states: “isolation provides an intimate exchange between the convict and the

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<sup>16</sup>Ibid.

<sup>17</sup>Ibid.

<sup>18</sup>Ibid., p. 237.

power that is exercised over him."<sup>19</sup> Isolation is not something simply negative or that which deprives. One can examine the difference between monastic or ascetic withdrawal or hermetic life as allegedly self-chosen and willed and imprisonment which enforces isolation beyond the individual's will or consent. No one consents to a guilty plea; one merely offers the guilty plea when there is no available chance for exoneration and hence freedom. And yet both speak to an issue of submission and power.

The hermit is both master and slave of himself and isolation is submission in the form of increasing diminution—separation from the world to become a world onto oneself. This is not achieving enlightenment or nirvana but relates to submission. What Foucault describes as isolation in the prison is not the same type of submission. Foucault speaks of a positivity involved in the prisoner's encounter with power in a most intimate form, namely isolation. Whereas for the monk or the hermit—the outside world is the prison and self-imposed isolation from it is a willed submission to be completely alone whereby internal (the monastic cell) and external (outside world) dissolve. Foucault recognizes this asymmetric resemblance between the prisoner and the monastic life. He states: "it was a clear reference to the monastic model; a reference, too, to the discipline of the workshop. The prison must be the microcosm of a perfect society in which individuals are isolated in their moral existence, but in which they come together in a strict hierarchical framework, with no lateral relation, communication being possible only in a vertical direction."<sup>20</sup> Indeed there seems to be an analogy between the modern prison 'as the microcosm of a perfect society in which individuals are isolated in their moral existence' and the origin of religion in which perfection of moral self and the soul requires monastic submission to the vertical authority called God and not the mundane, inauthentic, fallen world of everyday life and discourse with other human beings. Religion and prison share the same quest to perfect the soul through submission and elevation beyond everyday society. The prisoner reaches towards the ineffable warden, a type of god in his world, while the monk reaches to a transcendental beyond that is supposed to be beyond the physical universe. The prison takes society's most degenerate and impure (who break laws and goes against moral norms of what are right and wrong acts) and with them they tries to experiment on the individual to achieve perfect a moral existence. The monastery takes the most saintly and pure and breaks them into their raw isolation to the experience of the guilt (without having done anything morally and legally wrong) of feeling themselves or anything else other than what they are supposed to experience, namely the love and gift of the divine presence, whose sole purpose is to forgive them of the sin of existence, i.e. flesh and death. The circle goes from no guilt to a fabricated guilt to forgiveness of a guilt that was never there.

The monk is guilty of only one thing –being born in the world as flesh and body and not true encounter of soul with God in the beatific vision. We can add to this Rawls's basic structure of society. That is the quest for perfect, egalitarian balance between individuals who agree to certain principles of justice knowing full well that people may be equal in essence but not in social and economic outcome and hence an equality of opportunity must be guaranteed as a possibility but not enforced as a reality. The benefits of those who achieve wealth, status, power, authority, prestige and self-respect must go to those who are the 'least advantaged' in a purely egalitarian and reciprocal model that does not leave things up to chance (utilitarian aggregate that does leave some behind) or pure concentrations of wealth and power in the hands of the few to the detriment of all society. The moral powers of the citizens being amplified is the ultimate goal of a fair distribution, which brings things back full circle- namely the idea of some good and sense of justice in a fair system of social cooperation that passes down from one generation to another.<sup>21</sup>

The prison, the monastery and the just society all aim for stability and a moral concentration but in ways that can be contrasted using Hegel's master-slave dialectic. For Foucault, the force of the law or the fear of punishment is not the ultimate cause or effect of the birth of the social contract. Rather, the production of moral beings is prior to any utilitarian discussion as to why the law and state can guarantee human cooperation. Foucault states: "it is not, therefore, an external respect for the law or fear of punishment alone that will act upon the convict but the workings of the conscience alone. A profound submission, rather than a superficial training; a change of 'morality,' rather than

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<sup>19</sup>Tbid.

<sup>20</sup>Tbid., p. 238.

<sup>21</sup> Rawls, *Justice as Fairness: A Restatement*.

of attitude.”<sup>22</sup> Conscience is not isolated as a thing, a soul, a brain, or element of the body. The conscience is made and produced as Nietzsche and Hegel recognized. Working at the level of ‘profound submission’ and changing ‘morality’ and not just changing an attitude through disciplined training. One could compare with the idea of the soldier or the school child. The creation of a moral being—this is exactly what Rawls desires for the just society. The ideal ambition of the penal system is to create self-authority akin to moral powers so that a human being can regulate himself as much as he can his relation with others. Foucault states: “coercive individualization, by the termination of any relation that is not supervised by authority or arranged according to hierarchy.”<sup>23</sup> Eventually the prisoner will become his own warden: the prisoner develops his own radical individuation because solitude is radically individualized penalty performed on an individual that brings him - the prisoner - closer to conscience, time and death. The prisoner is free but not quite because the non-relational individuality is completely held in suspense and controlled by the invisible authority of the prison.

To this isolation, Foucault adds the dimension of a labor. He states: “work is defined, with isolation, as an agent of carceral transformation.”<sup>24</sup> Here we can come back to Marx and Hegel on labor, particularly the nature of transformation and self-consciousness when consciousness is consciousness of a self at work. Work plus isolation occurs in the prison. But in the external capitalist economy (within which the prison exists as its own industry), the worker has work plus alienation of self when labor is objectified and externalized from the worker’s body and product and becomes an object of his own reflection. But this is witnessed by others- both the capitalist and worker alike in a process of social recognition because individual being is social being. The work does not own his labor and hence self, and he does not own what his labor produces, only the capitalist does: indeed the capitalist owns both the laborer and the production of his self qua work. In Foucault’s model, we have work plus isolation, which makes possible the transformation sought by the social contract—the convicted is reformed into a moral being, regular social routine, a productive work-life. The worker in a free capitalist society and economy is physically free, but his soul is unfree and self as labor alienated from itself. The prisoner does not have to care about reproducing the basic subsistence necessary for reproducing the conditions of his existence. Such reproduction of the conditions of existence is done for him in the prison without ‘exterior or gap’ as Foucault says, which is pure continuity of reformation of conscience in making the socially acceptable and moral being. The worker struggles to reproduce the subsistence necessary for the reproduction of the conditions of existence; and his alienation from his true essence (to truly become what he values in the life) succumbs to perpetual alienation until finally his physical life and income are utterly annihilated. The worker works himself to death whereas the prisoner imprisons himself for life.

Here we must examine the relations between work, punishment, alienation and the attempt to perfect a moral existence. We can compare the modern prisoner, the monk, master-slave, and the worker in capitalist societies and economies. Penal existence, incarcerated life as another alienated mode of labor, and reform of conscience as explicated by Foucault can be contrasted with these other categories and these can allow us to shed light as to what the deepest motivation is for all those who pursue a theory of justice with Rawls being paramount among all others. If convicts must be reformed through work without wages and thus the work not reproducing the conditions of existence in the prison (taxpayers do that), then workers are rewarded through the wage for reproducing their conditions of existence as they are continuously alienated from themselves. The convict and the worker have an inverse relation: the convict can stay alive as long as he wants while trying to improve his conscience and self in relation to a dreamed of sociality of freedom that he will never achieve, and the worker has to die to maintain his freedom in a sociality that continuously exploits his labor and threatens his very existence from one day to the next. The monk has both the isolation of work and self in the perfection of conscience but also the encounter with a self-induced alienation, called guilt, which can only be rectified through a process of reunification with God.

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<sup>22</sup> Foucault, p. 238.

<sup>23</sup> Ibid., p. 239.

<sup>24</sup> Ibid., p. 240.