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POLITICS OF CRIMINOLOGY: PUNITIVE POWER AND LINES OF INSURRECTION

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Abstract

The article seeks to put the criminological criticism in check and produce a "politics of criminology". The criticism of punitive power stems from three indispensable perspectives. First, assuming punitive power as a device that conveys knowledge, power, and subjectivities. Second, imploding the statist focus of its exercise, analyzing the modes of visibility that justify it and inquiring about the ways of life subjectively forged through punitive forms. Finally, questioning what it means to "punish", oblivious to mere repression, but as a production, above all, of freedoms ready to be governed, to reach the central question of how the society punishes today. The article aims to expose the immediate struggles of autonomous movements such as those that make the government's punishment strategies more visible and, above all, demonstrate other possible ways of life that never forsake destabilizing punitive power.

Keywords

Post-critical criminology, policy, punitive power, resistance, Michel Foucault.

Resumen

El artículo pretende poner en jaque la crítica criminológica y elaborar una "política de la criminología". La crítica al poder punitivo parte de tres perspectivas indispensables. Primero, asumiendo el poder punitivo como un dispositivo que vehicula saberes, poderes y subjetividades. Segundo, implosionando el enfoque estatista de su ejercicio, analizando los modos de visibilidad que lo justifican e indagando sobre los modos de vida forjados subjetivamente a través de las formas punitivas. Por último, cuestionando lo que significa "castigar", ajeno a la mera represión, sino como producción, sobre todo, de libertades dispuestas a ser gobernadas, para llegar a la cuestión central de cómo castiga hoy la sociedad. El artículo pretende exponer las luchas inmediatas de movimientos autónomos como los que visibilizan las estrategias de castigo del gobierno y, sobre todo, mostrar otras formas de vida posibles que nunca renuncian al poder punitivo desestabilizador.

Palabras clave

Criminología postcrítica, política, poder punitivo, resistencia, Michel Foucault.

Introduction: politics of criminology

Needless to repeat the very long discussion about the relation between criminology and politics, overcoming the fact that it is no longer possible – if it ever was – to separate the criminological practices of politics (especially, criminal in the strict sense of a state-engineered plan to fight against crime). Furthermore, it is evident that any criminology, to some extent, is always concerned with reinforcing or criticizing political acts, that is, *there is no apolitical criminology* (Zaffaroni, 2011, 1-19). In short, this introductory reflection could be thought of, as already suggested (Cuáron, 1987), a "criminological policy", which would express the bond between any produced criminology (academic or not) and the political agenda. This does not seem to sufficiently serve our intentions.

Therefore, in what sense could one speak of a *politics of criminology*? Preliminarily, a limited chance of thinking about it would be through the meaning derived from its objective genitive: "politics *of* criminology", considering, for instance, what is generally done in universities, in which criminology is forged as a space for knowledge, as an official, marginal or counter-hegemonic discourse. A kind of political study of criminological knowledge would be in place, in which research could be done on which authors are studied instead of others, the options made in the construction of the curricula of the criminological course historically colonized by law schools, the political choices of codification, the historiographical approaches, methods, and schools of greater circulation, types of relations that are established with the legal field and with others, etc. In general terms, *to analyze criminological ideas* and the formation of criminological thinking in its varied spatial and temporal spectrums. The production in this context is abundant and relevant.

Nevertheless, if the *subjective* genitive is considered, "politics *of* criminology", as suggested by Sandro Chignola in his studies on Foucault's "politics of philosophy", of express inspiration in this article, its semantics emerge much richer. Attentive to the fact that the criminologists are part of the circulation of power through their action, *a politics of criminology as a place of permanent intervention* starts to be produced, which means *to make politics through criminology*. A place for *taking a stand*, producing a critical stance towards the present that confronts us, in other words, an engaged *critical* effort that distances itself from the mere capture of the *Political* (everything related to the encounter, affectation between ways of life, perception, contact that reaches a certain intensity) through politics (converted into a noun, a substance subsumed to the juridical-sovereign aspect and fed by its representative dynamics) (Invisible, 2007, 9).

In sum, a position of intervention is taken, *which opens a gap as wide as possible between politics and political[1]. A trace produced by permanent political intervention in punitive power relations. Thus, never in a totalized way, programmable or theory-bound manner, a politics of criminology is expressed more properly, fragmentary, local, contingent, multiplying, dealing with the incisive path of the critical posture on the practices of punitive power.*

2. Punitive Power: practical device, strategic situations, and resistance to the government of punishment

Despite the possibilities of intelligibility capable of deconstructing the "universals" of a *politics of criminology*, that is, its multiple possible entries, given the polymorphism of elements and relations that may converge, in our view, this does not prevent us from being undoubtedly involved with the "punitive power". However, it would be worthwhile to produce an oblique look through it and invest in the consequent lines of flight from this relationship – even if hastily. In this sense, this article is also an open invitation waiting for a countersignature. It will never be a question of legitimizing or giving palatable contours to the punitive power, but rather, it is about investigating the forms of rationality that are inscribed in it. This article aims, above all, to *problematize* the punitive power differently. This should be done through at least *three perspectives.* The first one, assuming *punitive power* as a *practical set*, as an *interpretive scheme.* The second designating what *power* means for a *politics of criminology.* And the third perspective analyzing otherwise the correlative *punishment* that the sense of *punitive power* must convey. Thus, the study of *problematization* (Foucault, 1984, 43) modes, convened here by a *politics of criminology* does not lend itself to the construction of a theory or doctrine about punitive power, but to the way of analyzing questions of general application. Therefore, to analyze the punitive practices from which these same problematizations are formed (Foucault, 2012a).

   a.   *Primarily*, to assume punitive power as a "practical set", a heterogeneous reference domain of what men do (technologies) and how they do it (strategies). In Foucauldian terms, "the forms of rationality that organize their ways of doing things (this might be called the technological aspect) and the freedom with which they act within these practical systems, reacting to what others do, mod-

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1 "Il faut être aveugle pour ne pas voir tout ce qu'il y a de purement politique dans cette négation résolue de la politique." (Invisible, 2007, 9).

ifying the rules of the game, up to a certain point (this might be called the strategic side of these practices) (Foucault, 1984, 47). This "practical set", which is a kind of coordinated bundle of relationships called punitive power, in this first dimension, corresponds to three major axes – *knowledge, power, and subjectivation* – that make it visible as a *dispositif*[2]. So that one does not fall into another abstraction, one should honor facing the domination of things (knowledge), the action upon others (power) and the action upon oneself (ethics). The old concept of "punitive power" (a product of the penal system, an unorganized effect of the activities of criminalization agencies or even a coercive power of the State in the form of a penalty) (Zaffaroni, 2003, 43-59) takes on a more complex feature – as per Foucault, but beyond him. To speak of *punitive power* now is to have it as a *device* that curves, intertwines different strategies, composed through different knowledge and that forges subjectivities. It opposes, composes, overlaps, and thus produces permanent effects. As per Foucault, "this is what gives the resulting apparatus (*dispositif*) its solidity and suppleness" (Foucault, 1991, 81). A problematization that seeks to study the dispersed rationality imposed by the reality of punitive power.

Therefore, *punitive power* seen as a *device* requires a *historical analysis* (Foucault, 1981), strictly understood within the genealogical impossibility of objective history. It is not to imply that it does not exist or that it is a mere invention, but that, when practicing fiction, a politics of criminology emphasizes the character of transformation that even the lexicon of law reminds us: *fictio*, as reminded by Chignola (2019, 152), denotes an action by which a thing intervenes over another and modifies it. This transformation when problematizing the "punitive power" must produce a displacement effect so that it has immediate reflexes and modifies the social perceptions of the phenomena that it encompasses. To problematize *punitive power* as a *device* is to be able to experiment with modes of impacting vital needs, as a result of what can be mobilized from the present to produce an event. "The endeavor to know how and to what extent it might be possible to think differently, instead of legitimating what is already known", writes Foucault (2019, 9). More directly, under the impetus of multiple and

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2 In short, it would be a network formed by heterogeneous elements that, at their intersections, have a strategic function inscribed in the relations of knowledge-power (see M. Foucault, 2014, 44-77). For Deleuze, we find, in Foucault, a "philosophy of apparatuses". Therefore, asking "what is a dispositif", he adds a skein, a multilinear whole, that has as components "lines of visibility, utterance, lines of force, lines of subjectivation, lines of cracking, breaking, and ruptures that all intertwine and mix and where some augment the others or elicit the others through variations and even mutations of the assemblage (Deleuze, 1992, 159-168).

critical forces, to tension the denaturalization of the practices exercised by the punitive power.

This happens initially, as a first movement, which, in short, implodes the concept and fragments the *punitive power* to see it as a *device*, as a *practical set* that is not universal or even reducible to State level. As a network formed between heterogeneous elements (discursive and non-discursive), which has a strategic function, inscribed in the intersection of knowledge-power relations, and produces lines of subjectification that affect each other, causing lines of flight.

Aiming to be clearer, from a second perspective, it is pertinent to ask what *sense "power" takes on here,* then to examine its qualification as "punitive" deeply interconnected to the first. To speak of *power*, in the sense proposed in this article, is to see it as a *strategic situation* and not as a general system of domination. There is no general theory of power here, there is no "outside" of power, an external position that would make it possible to locate a privileged place for its concentration.

The methodology adopted by Foucault in the first volume of his *History of Sexuality: An Introduction* (Foucault, 1990) could be summarized as follows: a) power is not something that is acquired, seized or shared, kept or let slip. It is *exercised* from innumerable points and amid unequal and mobile relations; b) power relations are *immanent* and not external to other types of relations, such as social, sexual, economic, among others. They are the immediate effects of these imbalances and the internal conditions of these differentiations; c) power comes *from below*. The relations of multiple forces that are formed and act serve to support the wide cleavage effects that cross the social body. There are lines of force that generate the hegemonic effects of great domination by intensity; d) power relations are *intentional*, not exactly subjective. Power is exercised by a series of targets and objectives. The rationality of such power is that of tactics linked together, which are supported, conditioned, and propagated, finally outlining joint *devices*. Although clear, there appears to be no one to conceive of this logic – the character of the great anonymous tactic strategies whose "inventors" are in no way hypocritical; e) where there is power, never in relation to its exteriority, there is *resistance* – this is the third point of this analysis. Power relations could not exist except because of a multiplicity of points of resistance, which means that there is no *single* locus of the great Refusal. This is the other term of the relation, however, which does not leave one in a merely passive position (Foucault, 1990).

In 1976, Foucault explained his analytical caution for power. However, it will be at two other times that his "Analytic Philosophy of Politics" is presented, avoiding misunderstandings. One in the 1978 Japanese conference, already discussed, and the other in the text published in English by him in 1982, called *The Subject and Power*. Basically, what matters to Foucault, asking what power relations consist of, is to affirm that power is not properly evil and, as he said elsewhere, it consists more in "strategic games" (Foucault, 1987, 129). And if the role of philosophy is to "make visible what precisely is visible" (Foucault, 2018, 192), this is the proposed direction (following the philosophy of language in Wittgenstein), to bring to light what is going on daily in power relations, what they are about, what their forms, articulations, and objectives are. Within this daily strategic scheme, freedom and control fight, and therefore, something and some escape and others are subjugated. In sum, the task is to see how power relations *work*. If it is not possible to escape power relations, it is always necessary to study their *games, tactics, and strategies*: "Rather than studying the state's grand game (…) I've preferred (…) dealing with much more limited, lowly games of power" (Foucault, 2018, 193). It is crucial to highlight that, contrary to what an accommodated reading might imply, it is *a refusal of the game itself*. In this weft of everyday life, of enormous materiality (not for certain academic Marxisms[3]), it is not a question of assuming such rules as destiny within these games, nor of capitalizing them for efficient purposes, "but rather that of resisting the game and refuse the game itself" (Foucault, 2018, 194) – these are characteristics of fights and struggles – called, as proposed by (Deleuze & Guattari, 1988), "lines of escape" – of certain movements.

If, at a first point, with the assumption of *punitive power* as a *device*, the focus of analysis is broadened, while it is defined through the direction of the knowledge that forges it and that it forms, in close correlation to the strategies and tactics implemented, as well as, in this intersection, by the diverse ways of life that it produces, the subjectivities that act in these relations, an analytical philosophy of politics leads us to realize that *power* is, above all, *exercised*, having the virtue of visualizing how these practices occur.

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3 About the universe of approximation and distensions between Marx and Foucault, libraries have already been written. However, even so, it should be noted: Negri, 2017; Negri, 1979; Macherey, 2013; Chignola, 2019, 45-70; Cuccorese, 2001; Leonelli, 2010; Leonelli, 1999; Tellman, 2009; Zanini, 2010; Poster, 1984; Legrand, 2004; Dardot & Laval, 2012. Directly from Foucault about Marx, cf.: Foucault, 2012b, 1972, 1997a, 1991, 1994a, 1994b, 1994c, 1983. Furthermore, see the lectures at the Collège de France, Foucault, 2003, 2016

In this way, studying power reveals at least three important disconnections: a) implosion of the focus of the state of the exercise of power. As a practical set, its exercise takes place at infinite points that are not privileged by reading it through the State[4]; b) analyses of knowledge on power, its modes of visibility that justify, feedback, or intend to limit it in relation to the position it establishes, that is, the force fields undertaken there; c) the node, in the end, of why studying power, is the very question of the *subject*. Therefore, a special moment is found in investigating the ways of life subjectively forged through these forms of rationality, far beyond the dynamics of the legal actors, that is, how, in our punitive culture, the subjectivation techniques of punishment take advantage over others.

But, for our purposes, it is essential to ask what "punishing" means in this context. It already seems clear that the sense of punishment here is by no means restricted neither to the idea of repression, nor state repression[5]. Power is not repression or domination, it is *production*: a key point for Foucault. Power *produces* things (Foucault, 1990, 88-89). This perception is elementary to our interests. When contemporaneity increasingly imposes on us the profusion of practices that convey invested power relations through the instigation of our *freedom* – after all, government always requires *freedom* as a condition – it is worth investigating the "government of punishment". Freedom here is understood as something to be produced, raised, permanently framed, that incites to live dangerously and implies to establish security mechanisms, which justifies Foucault's interest in the study of liberalism, in the 18th century, as the condition of intelligibility of biopolitics (Senellart, 2008) and above all, in the "crisis of governmentality" (freedom and security) of the 20th century that caused the neoliberal revisions (German ordoliberalism and American anarcho-liberalism) of harmful reflexes until today (Foucault, 2008).

Here, the State is seen more like a simple "incident" (*peripétie*, writes Foucault) of more general processes that have produced it, which have crossed its legal contours and its institutional dimensions, and which exceeds it to continue to overflow it – State as an

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4 See, in particular, the class of January 7, 1976, in (Foucault, 2003).
5 It is worth pointing out the self-criticism made by Foucault since the aforementioned class of January 7, 1976 (Foucault, 2003, 25), the same year of publication of the first volume of the History of Sexuality: an introduction. The fact that some mechanisms used in certain power formations "are something very different from repression" and that it "is totally insufficient to demarcate them" is the direction taken, in the following years, for the study of governmentality and biopolitics.

incident of the government, and not as an instrument (Foucault, 2007). Therefore, it is the "age" of *governmentality*. In direct terms, in Foucault's words:

> by this word "*governmentality*" I mean three things. First, by "governmentality" I understand the ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument. Second, by "*governmentality*" I understand the tendency, the line of force, that for a long time, and throughout the West, has constantly led towards the pre-eminence over all other types of power – sovereignty, discipline, and so on – of the type of power that we can call "government" and which has led to the development of a series of specific governmental apparatuses (appareils) to the development of knowledge (savoirs). Finally, by "*governmentality*" I think we should understand the process, or rather, the result of the process by which the state of justice of the Middle Ages became the administrative state in the fifteenth and sixteenth centuries and was gradually "*governmentalized*". (Foucault, 2007, 144)

What is at stake, among other things, is the displacement of the sphere of overvaluing the problem of the State ("cold monster" or, for example, reduced "to the development of productive forces") from its privileged position that it invariably ends up occupying in many analyses, mainly criminological. The State does not create the system of conditions that organizes the relations between the subjects, foreseen in legal forms, as in a view that can be perceived from Hobbes to the French Revolution, rather, it launches its mechanisms in a fleeting and opaque environment according to irreducible and unavailable randomness. Thus, it is important to understand power not only as a domain but as production. In addition, it is about producing, above all, subjects. In a nutshell, all production and subjection technologies are interconnected, this can be seen in the way that the *sovereignty* strategy, even investing in death, *produces subjects*, individuals, being the factory of the subject of law. Likewise, *discipline*, linking to the body of the living beings, *produces docile bodies*, a productive training that enhances an efficient function, converting lifetime into work time. One should not forget that the "criminal" and the "mentally ill", for example, are also produced here. But, if *biopower* ends up investing not in the body, not in the system of laws, but *regulating* the population in the reality of securitarian practices, a government art that guarantees the "government of the living" imposes that we think of the "punishment" in a very different way.

If *punitive power* is best combined as an *interpretive scheme* to analyze modern penalties, as a *device* that makes it subsume far more than the repression of state apparatus itself, but programs, practices, strategies that can produce subjects of rights (and also those that do not align with this legal scheme), disciplined bodies that will amalgamate punishment traditionally ("anatomo-politics of the human body"), what stands out here are *governed bodies, through the "biopolitics of the populations"* (Foucault, 1990, 130). Let us remember how *control* presents itself as a determinant trace, expressed, for example, in the subjective formations of an indebted man, a subject psychically exhausted, etc., as Deleuze points out[6].

Naturally, the breadth of such an "object" could be criticized. Ordinary, when one wants to go beyond conventional criminology and take the power damage to the social aspect seriously[7] – not that our intention is the same. Nevertheless, *a politics of criminology* does not adduce the search for a scientific unity, to take credibility from transcendental theology, a global history of totalities, or a strict epistemological orientation. On the contrary, it is a *focus*, an adjustable *frame* (Butler, 2009: 08-09), a node of changing problematizations, with varied possibilities of entries and exits, and not the attempt to build a "social and political totalization" of insurmountable knowledge. (Zaffaroni, 2011, 289)

This article is not intended to observe a method, which is precisely why – illuminated by the overriding question that is: *what does it mean to punish today?* — one does not escape from the battlefield and power must be taken seriously, as a non-autonomous exercise that includes an analysis limited to a predetermined field. In other words, it is to extend the question about the permanent transformation of the ways of governing punishment to an extreme, insisting on the question: *how does one punish?* (Foucault, 1991, 74). Precisely to understand the immediate real suffering conveyed in power relations, the concern, for a *politics of criminology*, is not with an encompassing scientific aspect, under the penalty of paying for the omission of not facing such power relations practically as one should. The common thread, the re-updatable focus for a position-taking is the *exercise of punitive power*, the penalty beyond the mere exercise of violent repression.

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6 See (Cohen, 2001) and (Hillyard, Pantazis, Tombs & Gordon, 2004).

7 Since the classic study by Deleuze (Deleuze, 1990) pointing out some of these fruitful perspectives of analysis, essential entries to a politics of criminology, for example, we can also find in: (Chignola, 2018), (Lazzarato, 2012) and (Gago & Cavallero, 2019).

The question of what punishment represents, that is, how it is currently being disseminated, in the widest possible way, is undoubtedly a problem that pushes intellectuals to analyze the different familiar forms of life that adhere to perceptions and behaviors. It is imperative to avoid the serious symptom of "criminological chatter". Foucault warns about the punitive system in one of his last interviews:

> (…) and for a hundred and fifty years now, the same notions, the same themes, the same reproaches, the same critical observations, the same demands have been repeated, as if nothing has changed and, in a sense, nothing has changed. In a situation where an institution presenting so many disadvantages and provoking so much criticism gives rise only to an endless repetition of the same discourses, "chatter" is a serious symptom. (Foucault, 1994f, 385)

Thus, the sore point of this third dimension is presented. If *power produces*, above all, ways of life, different forms of subjectivation, its exercise takes place in a *relation* in which the presence of a non-passive *resistance* is irreducible, reaching a decisive point for Foucault within our intentions. Objectively, concerning power, *resistance comes first,* (Foucault, 1997c, 167), hence, it is what forces power relations to change. Therefore, it is of interest to investigate – in the centrality of the *subject* issue (far from that conscious "sovereign subject" that would animate, from the outside, with their *logos* the inertia of the discourse) that is highlighted in this new economy of power relations suggested by Foucault – how the forms of resistance are articulated, capable of producing lines of flight from the dynamics of punitive power. If philosophy is a *reactive*, a *counterpower*, an *intensifier*, a *thickener*, nothing more logical than the practices of resistance to be, on the one hand, the most capable of bringing out the power relations that constitute us, and, on the other, the most capable of also producing ways of life that cannot be captured by the strategies of the "government of punishment". They are the ones that can allow, not that the punitive game is not played in this way, but, above all, that "impede the game from being played". Foucault emphasizes in this direction:

> it is not up to us to tell you the sauce with which we want to be eaten; We no longer want to play this game of penality; we no longer want to play this game of penal sanctions; we no longer want to play this game of justice. (Foucault, 2018, 194)

For a *politics of criminology*, more objectively, in this third direction, it is interesting to follow the Foucauldian indication of "taking the forms of resistance against

different forms of power as a starting point". Here, the famous anticipated metaphor that consists of using resistances as chemical catalysts, "to bring to light power relations, locate their position, and find out their point of application and the methods used" becomes fundamental. Therefore, it is not a matter of pursuing an internal rationality of punitive power (or any other form of power), but of analyzing its *struggle* relations, says Foucault (1982, 790). Rather than antagonisms, it would be better to speak of a single "agonism". To understand power relations, for Foucault, is to "investigate the forms of resistance and attempts made to dissociate these relations". This is how, instead of addressing reformist practices that, in the field of punishment, only have the role of stabilizing a system of power after several strategic changes (often only of symbolic effects), the struggles are perpetually open, they "are anarchic", says Foucault (2018, 186). Immediate struggles, which do not have a strict morphology (or determined program, which has nothing to do with disorganization, lack of true reflection on what happens or even lack of concern aimed at the impossible[8]) and which are not pleased with a future of revolutionary liberation, or a moment, in our case, of abolishing the penal system because they have always been a constantly renewed demonstration of other ways of life that never tire of destabilizing punitive power and inventing other possible forms of power relations.

Movements of perpetual and immediate struggle against *punitive technology*, whose objective to attack "not so much 'such or such' an institution of power, or group, or elite, or class, but rather a technique, a form of power" (Foucault, 1982, 781). It is through the analysis of their practices that it is possible to understand how the exercise of punitive power occurs and how new strategies to subvert it are produced. Such diffuse and decentralized phenomena, which are the effect of these autonomous movements, are not only aimed at political or economic power necessarily, as Foucault says about the feminist movement. This type of resistance is essentially concerned with the facts of power, that is, the question "is the fact that a certain power is exerted, and that the mere fact that it is exerted is intolerable" (Foucault, 2018, 195).

If no power exists without resistance, without an "eventual inversion", every relation implies a *confrontation strategy*. And so that it constitutes a possible point of

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8 Not having a program for Foucault, as he refers to when talking about the achievements of the political movements of the sixties and seventies, can be something very useful, original and creative. These practices of the absence of a program as an organized practice are extremely fruitful precisely because they are based on the strategic game of the present and are animated by courage of truth. Escaping the confiscation of the process of creating politics by political programs confirms the virtue that must be preserved at every moment, in other words, the existence of forms of political innovation, creation, and experimentation outside political parties that prove the real transformation in our lives: "These social movements have really changed our whole lives, our mentality, our attitudes, and the attitudes and mentality of other people – people who do not belong to these movements. (...) I repeat, it is not the normal and old traditional political organizations that have led to this examination" (Foucault, 1997b, 173).

inversion, it cannot lose its specificity and be confused with the power relation itself. To put more simply, a strategy against punitive power cannot, wanting to subvert it, act with the same tactic, which invigorates or renews, for example, some symbolic effect sought through it[8]. It cannot be used as a purpose to establish power relations, to replicate the very action (Foucault, 1982). The functioning of power relations is not exclusive to the use of violence. As Foucault precisely says about the exercise of power, "it incites, it induces, it seduces, it makes easier or more difficult" a way of act-ing – "a set of actions upon other actions" (Foucault, 1982, 791) – there will always be a possible margin of freedom for practices that subvert certain forms of power that, like punitive power, are intended to "conduct and guide men during their entire life (...), a power that consists in taking charge of the life of men (...) to constrain them to behave in a certain way" (Foucault, 2018, 197). In summary, in a more organized way, the insurgent power of these anti-authoritarian movements is found, in the words of Foucault, above all because they are: a) "transversal" struggles, not limited to one country and not confined to a particular political or economic form of government; b) anarchistic "immediate" struggles because they look for an immediate enemy, they criticize instances of power which are the closest to them, and they do not expect to find a solution to their problem at a future date (revolutions, end of class struggle); c) they are struggles that question the status of the individual, which means, "who we are" and are against the "government of individualization", against the techniques of pastoral power that subjugate us (Foucault, 1982, 780-781).

Movements that teach to live the time differently (Foucault, 1994e, 88), promoting a somehow continuous uprising. An affirmative "art of living", which is constantly found in feminist, environmentalist, lgbtiq+, native peoples' movements, among oth-ers, and that is not based on any essentialism. As Foucault writes, when producing the new "anti-pastoral" (Foucault, 1981) forms of life, they do not assert themselves as an identity, but as a "creative force" (Foucault, 1997c, 164). In our view, identity, contrary to the hegemonic uses that can be made of it in the criminal matter – in particular its forms of boosting criminalization demands – it should, in this sense, be nothing more than a mere instrument for demonstrating the circuits of violence related to punitive power, not a fuel that replicates its actions. If punitive power has been crystallized in institutions and has fortresses that are very difficult to break down (identity will be useful, for example, to identify how their differential games of illegalities are exer-cised, how their unequal, misogynistic, and racist practices occur), the strategic situ-ation that disposes of any power relation always allows changes and transformation.

Finally, the possibility of producing experiences that bring the instant, the fracture, and the interruption of the logic of punishment is always present[9].

Voluntary insubordination and lines of insurrection...

As mentioned in the first part of the introductory session, since *critique* is not a state, but a *task*, *punitive power* is also not a natural condition. It is, though, a stabilized *device* of credulities that must constantly be fought. For this reason, the imperative to reframe it,

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9 Despite the legitimate fallacies of the punitive power that could be found in the function of *positive general prevention* widespread recently (ER Zaffaroni will say about the systemic conception of Roxin and Jakobs: seeks positive effect on the non-criminalized, not by intimidation, but by symbolic value, therefore, supposed producer of consensus and confidence-building in the social system in general, the penalty functioning as if it were part of a communicative process, ready to be an instrument of neutralizing publicity), whether from the social reality (use of criminalized people as scapegoats and reinforcement of privileged positions) or even from the theoretical level (an unequal penal system as the only asset to be protected, eliminating any limiting consideration but its effectiveness, in addition to mediating the criminalized, using his pain as a symbol, this never eliminated the tonic adopted until today by much of the criminological criticism in adhering, in not failing to point out the need to punish, to use punishment as a means, even if it is to protect human rights - for all, reference is made to Alessandro Baratta's classic position of a theory of human rights as the object and limit of criminal law (Baratta, 1986), something that always populates the belief in shifting criminalization processes to an *effective penalty* (Baratta, 1982) – for the most diverse movements called "emancipatory". The myth of the symbolic value of the penalty, its strategic use, is an almost irreducible index when the subject is an "alternative criminal politic". Even if they are updated, they continue to lead back to the old ethic versions of those same positive general prevention theories of the mid-20th century, as in Welzel and Jellinek, who intended to strengthen the legal awareness of the population, in which the task of criminal law would be to the protection of legal assets through the protection of securities. Striking falsehood, to say the least, which links, in terms of social reality, a certainty, and firmness of punishment, ignorant of the exceptionality of secondary criminalization and the same lack of any limit; and, at the theoretical level, such weakening of value leads to an injury that is impossible to measure, tending to pure retribution for disobedience to the State (Zaffaroni et. al., 2003, 124-125). However, in our opinion, in addition to everything we have been raising, the problem is even greater and deeper. In the analysis of an institution, as is the penalty, for legal purposes, understood as "coercion, which imposes a deprivation of rights or pain, but does not repair or restore, nor does it stop the ongoing injuries or neutralize imminent dangers" (Zaffaroni, 2003, 99 [our translation]) it is necessary to distinguish, as Foucault refers, its *purposes/objectives* (rationality), its effects, and its *strategic use*. In other words, it is necessary to differentiate the program from what it produces as an effect, which is rarely coincident. There are several purposes for the penalty, but effectively, as is known, its product is the reverse (see the classic example of resocialization). But what is important to underline are the possibilities that arise from this: the reform or these effects themselves are taken in another sense and with another use. This, Foucault calls "use" or "strategic configurations". For example, if the prison was ever intended to amend, it served more as an elimination mechanism; other uses that are rebuilding new "rational" practices and, above all, spaces in which "games between different social groups can find their place" (Foucault, 1994f, 383). But what does that mean anyway? In our opinion, at least three questions:1) the objectives of the penalty, even if it could overcome its social or theoretical reality, are not controllable; there is an elementary dissociation between its purposes and its effects; 2) but this dissonance is functional for punitive rationality, as its "unforeseen" effects are invigorated and can always be transformed, used strategically, and become new purposes—this is a bit of the miscellaneous fiction of power legitimation theories punitive through the penalty that we find over time: "It is. These are effects that are taken up in different uses, which are rationalized, organized according to new purposes" (Foucault, 1994f, 384), and 3) as the most relevant conclusion, therefore, it is important to analyze the construction of the different strategies, the different possibilities of using these effects, as this was, as Foucault warns, the prison solidified, despite all the criticisms because different strategies are permanently produced and made available so that different groups can adhere to it functionally. Some call for a "strategic use of the penal system" that has nothing to do with a relationship between middles and ends (using it as a means for purposes beyond it). Strictly speaking, yes, on the contrary, it is paying attention to how it operates, manufacturing ways of adhering to these types of objectives never achieved, so that the other real effects are permanently fed back, organized, and rationalized.

tension it, bend it, above all, given the resistances that destabilize its practices. Therefore, the *position-taking* that a *politics of criminology* imposes puts *resistances in the first place*.

They are *minority* forms of resistance that are not passive at all. "Its existence is eminently a resistance", as Eduardo Viveiros de Castro condenses in the neologism *rexist* (Castro, 2019, 14*)*. They are production machines of life forms that not only can delineate how the relations of punitive power work, but that can also subvert it, fabricate lines of flight that cannot be captured by the knowledge, powers, and subjectivities of the punishment government.

Certainly, the notion of a *minority* here has little to do with a statistical and quantitative condition. Frequently, countless national minorities – racial, gender, sexual orientation, etc. – have expressive and sometimes majority populations. Nevertheless, these resistances say, of the opposite, of a *becoming-minoritarian*, as Deleuze and Guattari refer: "all becoming is minoritarian" (Deleuze & Guattari, 1988, 106). They are "minor" modes of expression in relation to the "Majority" administrative machine called *punitive power*. Minor here is qualitatively opposed to a pattern, it is a variation to the constant of the Majority, which supposes a stabilized state of domination. If the circuit forged by punitive power governs channeling affections to its constant pattern, these *movements of rexistence* de-territorialize such flows and update powers of political desire in a different direction from punishment[10].

The lucidity is in remembering that the *majority*, assuming a pattern, turns out to be *Nobody*, whereas the *minority is the becoming of everyone*, it is the variable difference of everyone. There is always the potential trajectory of each one – multitude. In this sense, the government of punishment "is always Nobody" (Deleuze & Guattari, 1988, 126), not anonymous, but it is always a pattern ready to capture everyone in its homogeneous system. Thus, the power of a minority is always to be an active middle for a becoming, that is, there is a work of "active micropolitics", indifferent to the teleology of a revolutionary future or past because their becoming is molecular. They do not "organize binary distributions within the dualism machines" (Deleuze & Guattari, 1988, 292), as is the case with the punitive power itself when conducting its productions of guilt, criminality, violence, etc., governed by the central point of the punishment that is distributed throughout space, but, on the contrary, they are the potential trajectory of its variation.

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10 Beyond any suspicion, a beautiful and rigorous expression of a politics of criminology can be found in this singular effort, which is the spectacular thesis of the "criminological feminisms" proposed by Fernanda Martins. The author indicates, in summary, the subversion of punitive ways of thinking, present mainly in "feminist criminologies", investing in plural resistance strategies through gender studies and practical experiences arising from political vulnerabilities in an alliance of autonomous manifestations in various parts of the world. See (Martins, 2021).

They are "spheres of insurrection", in the concept of Suely Rolnik (Rolnik, 2018), among the points of the machine that produces new assemblages, perpendicular lines of flight that, without reconverting or imitating the flows to which punishment leads to, tear up its greater identity. Blocks of coexistence *between* these schemes which, being *a middle*, "not an average; it is fast motion, it is the absolute speed of movement" (Deleuze & Guattari, 1988, 293). This politics is elaborated, in sum, in assemblages that are neither that of the family, nor that of religion, nor that of the State, by multiplicities of movements composed of heterogeneous terms that do not cease to transform (Deleuze, 2006). Demonic alliances, of course, subject of witches, mainly for the punitive power. And, clearly, these *lines of insurrection* experienced by these movements attract the enemy's attention, which is why they "always risk abandoning their creative potentialities and turning into a line of death, being turned into a line of destruction pure and simple" (Deleuze & Guattari, 1988, 506) – here is the great bet of the punitive power that will never stop trying to capture the ways of life.

Thus, a politics of criminology will always be a *limit-posture*, an attitude affected by these fruitful areas of contagion produced by *minoritarian-becoming* of feminist, lgbtqia+, black people, native peoples' movements, etc. This is closer to an *ethos*, a certain *virtue* that is both *risky* and *elusive*. Foucault, at a conference at the French Philosophy Society in 1978, well before the classic given at Berkeley in 1983, considered critique as a kind of "art of voluntary insubordination, that of reflected intractability" (Foucault, 1997c, 32). A dynamic position-taking in the face of the game of governmentalization (which causes the subject to be governed in a certain way), an anarchic refusal that carries the *virtue* of taking risks in a critical attitude, in an "art of not being governed in this way" or, further, an "art of not being governed" (Foucault, 1997c, 39). A non-ideal *virtue*, therefore, which, according to Butler, will be "the practice by which the self forms itself in desubjugation" (Butler, 2002, 20).

Therefore, a *politics of criminology* serves as a *counterpower* to *contradict*, to *disturb* the established power. It is the answer that Deleuze advises to give, concerning philosophy, whenever the question arises. Basically, in a derogatory tone, a question that is intended to be ironic and scornful, must always be faced with an aggressive answer: "it serves to sadden". Philosophy does not serve to understand the world, but to take a position, as stated by Foucault, Deleuze insists even more: "philosophy does not serve the State or the Church, who have other concerns. It serves no established power. A philosophy that saddens no one, that annoys no one, is not a philosophy. It is useful for harming stupidity, for turning stupidity into something shameful" (Deleuze, 2006, 106). There would be no other use for a *politics of criminology* that, in every imaginable way, com-

bats *punitive power*, but the task of *demystifying the government of punishment*. To unveil courageously the mystification of the exercise of punishment, demands that the cultural routines (as well as for domestication and selection of critique) renounces to disturb the stupidity that goes through punitive practices. That is, "exposing as a mystification the mixture of baseness and stupidity that creates the astonishing complicity of both victims and perpetrators" (Deleuze, 2006, 106). In this sense, for a politics of criminology, denouncing the mythical belief in punishment, as Deleuze writes, through Nietzsche's untimely considerations, establishes an essential relationship with time, against and in favor of it[11]: on the one hand, about time, always critical to the current world and, on the other hand, always against its time, in an untimely and outdated way in its active task of a *time to come* (Deleuze, 2006, 107).

If the task of thought – *to sadden* – may sound too pessimistic to some unwary spirits, reproducing nausea that is indeed infertile, perhaps one should look to those who have always had to deal with various "ends of the world": the native peoples of Brazil (Danowski & Castro, 2014). They are the purest proof of experience of reality. Creativity and poetry have always inspired the resistance of these peoples. And, in the face of the abyss that insists on being built due to the antics of the punitive spectacle, it is a fall that one must deal with. As Ailton Krenak writes, in his charming prose, recalling the testimony of these *minority-becoming* (in Brazil, approximately 250 ethnic groups who speak more than 150 languages and dialects), perhaps what should be done, instead of camouflaging the fall, is to find a parachute:

> Why do we hate the sensation of falling? It happens that is all we have been doing of late. Falling, falling, falling. Why are we so upset over it now? We feel insecure, paranoid even, because all the other outcomes we can see require the implosion of the house we inherited but live in fear of losing. Let us put our creative and critical capacity to use, making some colorful parachutes to slow the fall". (Krenak, 2020, 34)

Conclusion

Here, finally, a common trace is found, the *position-taking* of a *politics of criminology*. Admittedly, as stated by Marina Garcés, it is a "guerrilla practice" (Garcés, 2016, 9). In the same way that a guerrilla does not have a fixed front, each moment and position

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11 "Perhaps the special situation of women in relation to the man-standard that accounts for the fact that becomings, being minoritarian, always pass through a becoming-woman" (Deleuze & Guattari, 1988, 291).

eventually produces its battlefield. When "every true struggle is a struggle against these laws and their effects on bodies and minds", a *politics of criminology* only emerges as an additional tool for the struggle for freedom, grown on the margins of *punitive power*, touched by life that hurts and with the desire to subvert it.

Each focus of this produced texture must be understood critically as *imaginative sparks*, concerned, not in reproducing judgments about conventional criminology, but in multiplying the signs of other possible modes of existence, to produce ruptures in common, ready to be shared.

Certainly, other sparks can be found; criminological criticisms, in fact, opposed to the threats of technological progress driven by capital and averse to negotiations with a state that can, without any fear of making mistakes, be called *war*. In a sort of almost desert of critical thinking in criminological matters – which can be proved, in part, by its terminological multiplication (a kind of technical reproducibility in the criminological field), that is, by the frightening profusion of adjectives that are currently attached to the label "criminology" – which, to a large extent, does not even scratch the varnish of the penalty and negotiates with the hypocritical management of control strategies, the effort to think in another way, to produce a new way of looking at the relations of the punitive power, it was never a dispensable task for the critical attitude. After all, to become something else, is what pulses in a *politics of criminology*.

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