

## The Concept of Power in the Vision of Michel Foucault

RALUCA MARINELA SILAGHI  
PhD Student in Philosophy  
Babeş-Bolyai University, Cluj-Napoca  
Romania

### Abstract:

*Foucault criticizes the philosophico-juridical discourse centered on sovereignty, on law and on absolute power, through its main representative, the contractualist theory of Hobbes, proposing another type of discourse as being more pertinent: a historical and political one, based on the concept of real war as principle of the analysis of power. Power is not a substance that may be embodied either in an individual or in an institution, it is not an attribute that may properly or improperly belong to them, but always a relation between distinct antagonist sides. As such, Foucault starts his analysis of it from the disciplinary techniques based on surveillance and control, and from the mode of functioning of the institutions established for applying such techniques (the prison, hospital, asylum, police, correction school). The purpose of these institutions is to assure order in society by taking measures against those who trespass against the law and also to educate them. The concept of war as a principle used for the analysis of power relations was present during all of our history, although under different forms. If until the XVIII-th century, in the discourse properly belonging to the paradigm of sovereign power, war was considered as the natural relation between individuals, being the function of sovereignty to establish the peace, with the development of the paradigm of biopower, around the XIX-th and the beginning of the XX-th century, the antagonist sides in the war mentioned in the discourse aimed to legitimize the use of power are races.*

**Key words:** absolute power, disciplinary power, disciplinary techniques, the contractualist theory of Hobbes, the concept of war as a principle used for the analysis of power relations.

## **Introduction**

Michel Foucault aims his critique of the philosophical and juridical discourse on sovereignty and law, especially on the contractualist theory of Thomas Hobbes. He argues that its discourse constitutes an inadequate model for an analysis of power relations and proposes the replacement of it by a historico-political discourse centered on the reality of real war, of violence. If in the filosofico-political theories on sovereignty, the emphasis was on who had power (power being conceived of as a substantial attribute that inherently belonged to a person or an institution, for example the absolute monarch), Foucault will base his analysis of power starting from the identification of mechanisms, effects, relations, institutions and apparatuses of power that act at the level of society.<sup>1</sup> Thus he will make a non-economical analysis of power, considering that power is not something that may be given, traded or taken back, power existing and being able to be exercised only in its act. Power is a relationship of forces, established in a historical moment, by war and through war, a mechanism of repression and of resistance that should be analyzed only in terms of struggle.

### **1. The critique of “the war of all against everybody” as fundament of the institution of the absolute power of the sovereign**

In order to criticize the philosophico-juridical theory of sovereignty, Foucault brings into discussion the contractualism of Hobbes, which describes the transformation of the natural

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<sup>1</sup> “In what does this power consists of, the eruption, force and absurdity of which had left themselves be felt concretely during the last forty years, simultaneously on the line of the fall of Nazism and on the recoil line of Stalinism?” Foucault, *Trebuie să apărăm societatea*, 26.

individual, subject of natural right, into a citizen subject to the authority of the sovereign. This passage is mediated through a social contract,<sup>2</sup> whose purpose is the establishment and legitimization of sovereignty,<sup>3</sup> and implicitly of law as a fundamental manifestation of power. Foucault emphasizes the fact that the state of nature, defined by Hobbes as a state of war, is not actually a real state of war,<sup>4</sup> but a fictive war, without any direct confrontation between individuals, without bloodshed, without dead, consisting only in representations, manifestations, signs, emphatic expressions, trickeries, feints. The fictive character of war in the state of nature is explainable through the reciprocal equality of natural individuals, an equality giving rise to uncertainty and fear, due to the conviction that the weak may always defeat the strong, either by trickery or by banding together. Foucault remarks here the instauration of a relationship of force between the individuals: each one tries to hide his own fear and to unbalance the other through intimidation, making the other doubt his own force, making him become uncertain of himself. The natural rights that Hobbes pretends confer power to the individual are actually capacities, possibilities and not powers in a political sense, since even according to the Hobbesian theory, the state

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<sup>2</sup> “The theory of sovereignty necessarily leads towards what I would call a cycle, the individual-subject cycle, showing the manner in which the individual, understood as an individual naturally endowed with rights and capabilities, may and must become a subject, understood this time as an element that is subjected to a power relation.” Foucault, *Trebuie să apărăm societatea*, 47.

<sup>3</sup> “To say that the problem of sovereignty is the central problem of right in western societies means saying that the discourse and technique of right have the essential function of making domination dissolve itself into the interior of power, in order to determine two things to appear in its place: the legitimate rights of sovereignty and the lawful duty of obeying. The system of right is centered exclusively on the king, meaning that he represents, in the end, an eviction of the fact of domination and of its consequences.” Foucault, *Trebuie să apărăm societatea*, 35.

<sup>4</sup> “The state of bestial wildness in which the individuals would devour each other cannot in any way characterize the initial state of war as envisioned by Hobbes. What characterizes the state of war is a kind of infinite diplomacy of rivalries that are naturally egalitarian.” Foucault, *Trebuie să apărăm societatea*, 81.

and the political as such appear only after the ratification of the social contract. Foucault considers the war of the state of nature as a permanent one, continuing even after the establishment of the state, although with different belligerents: it is no longer a war between individuals, but a war between states/races. The enemy of the Leviathan is conquest, real historical war.<sup>5</sup>

### **The solution proposed by Michel Foucault**

Foucault argues that the philosophico-juridical theories of sovereignty should be replaced by historico-political ones, in which the essential element is war as the cipher of peace. War is not an exceptional event, but the permanent basis under which social relationships are organized in our society, therefore it should be the principle of the analysis of power.<sup>6</sup> Peace itself covers a state of hidden turmoil that may pass the boiling point at any moment. The only way out of war is to fight and triumph. Contrary to the philosophico-juridical discourse, the historico-political one affirms that political power, together with the state institutions and its organization appear not from an end of war, through a freely established peaceful contract that institutes a sovereign, but that law, right, peace are born from the winning sides of real battles, and not from a fictive state of war as that described by Hobbes to have existed in the state of nature.

This new type of discourse brings with it the image of a new paradigmatic counterpart to the citizen, a counterpart that in the discourse about the state of nature was the savage, and now

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<sup>5</sup> "... war as a permanent feature of social relations, as weave and secret of institutions and mechanisms of power. And I believe that this is the great enemy of Hobbes." Foucault, *Trebuie să apărăm societatea*, 96.

<sup>6</sup> "War is the driving force of institutions and of order: peace, even in its smallest cogwheel, wages silently war. In other words, we should decipher the war from underneath peace: war is the cipher of peace. We find ourselves, consequently, in war one against the other; a battlefield traverses all society, continuously and permanently, and this battlefield places each of us in one camp or in the other. There is no neutral subject. Everyone is with necessity someone else's adversary." Foucault, *Trebuie să apărăm societatea*, 53.

is the barbarian, a figure that first appeared in public discourse during the XVIII-th century. If, in the previous type of discourse, natural man was savage only while remaining in the midst of savage nature, and changed his status with his entrance in society, the barbarian cannot be tamed by civilization, he is its implacable enemy, as an outsider that wants only to violently conquer its rewards while despising the rules that make them possible.<sup>7</sup> The image of the barbarian is not that of a founder of a new society, but that of a ruthless conqueror of a society that already exists. The difference of the savage from the barbarian is that while the former yields his freedom in exchange for having his rights protected by the sovereign, the later yields nothing, being a creature of history, of plunder, of domination, whose only freedom lies in the lost freedom of his enemies.<sup>8</sup>

Historico-political discourse is the discourse of war and history, the discourse through which the state narrates about itself (establishing its legitimacy by appeal to the two functions of history: to justify and to strengthen power through the remembrance of the heroic deeds of the past that lie at the foundation of the values of the present, through the enunciation of the ancientness of right, especially demonstrating the uninterrupted character of the right of the sovereign, and through the narration of exemplary deeds).<sup>9</sup> This kind of discourse gained prominence short time after the end of the religious wars and at the beginning of the great bourgeois struggle of XVII-th century England, as a discourse of the puritans and in the XVIII-th century France as a discourse of the struggle against Louis XIV. It may be illustrated by the

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<sup>7</sup> "The barbarian is the man always prowling the boundaries of the state, the one who has thrown himself against the city walls." Foucault, *Trebuie să apărăm societatea*, 159.

<sup>8</sup> "These adventurers do not breathe other than war... the sword was their right and they exercised it without regrets." Foucault, *Trebuie să apărăm societatea*, 160.

<sup>9</sup> Historical discourse is "a kind of spoken or written ceremony that aims to bring about in reality both a justification of power as well as a strengthening of same power." Foucault, *Trebuie să apărăm societatea*, 63.

discourses of Coke and Lilburne in England, and respectively by Boulainvilliers in France. The situations of XVII-th century England and that of XVIII-th century France present both similarities and differences. They both have in common the historical theme of the invasion – analyzing its forms, causes and consequences – that has become a pertinent historical problem, due to the juridico-political stake contained by it: it was a question of establishing “in what consisted the nature of the rights and limits to the power of the monarch”<sup>10</sup>, which are the king’s counsels, what rights has the nobility against the king and the people, and what should be the principles of public law. If in the England of Hobbes they were searching for the rules for establishing a state of law based on natural rights, in the contemporary France there was taking place an investigation on the origin and validity of already established rights. The fundamental difference of the situation of these two states is that while England was characterized by national dualism<sup>11</sup> – the heterogeneousness of Norman and Saxon law systems, the co-presence of an absolute right claimed by the invaders with the claim of the fundamental liberties that were guaranteed to the old inhabitants of the country, liberties that were to be useful also to the rising bourgeoisie – in France, society was nationally homogenous: the Gallic, Roman and Germanic cultural heritages had melted together. This homogeneousness was described by Boulainvilliers, the historian of the French nobility, whose theories date from the half of the XVII-th century. He analyzed power in terms of domination, of interplay or relation of forces – in these consisting the very being of history, its substance, and the determining factors of what events will be recorded by history

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<sup>10</sup> *Foucault, Trebuie să apărăm societatea*, 106.

<sup>11</sup> Augustin Thierry introduced the concept of national duality, defining it as the apparition of hostile groups that will constitute the permanent structure of the state. Thus the problem is not one of the public right that has to guarantee a continuous genealogy of kings and of their power, but how can power be transmitted through generations, since even states happen to disappear through conquest, through invasion by other states.

and in what manner. Power is always that of the greatest force, and it can be superseded only by violence, by war. Boulainvilliers, while studying the history of the conquest of Gaul by the Frankish invaders, emphasized the importance of war as the driving-force of history. Against the utopian character of the theories of natural right, as was that of Hobbes, he argued that war trumps any right, be it even a natural one, revealing it as an unreal, abstract, fictive concept. In the whole of history there is no natural right to be found, no positive right to equality and freedom, only inequality and violence – the attributes of war (if there was such a thing as a natural right, this would have been only fictitious, since any equality must be overthrown by a freedom that can manifest itself only as inequality); there couldn't have been any primitive freedom prior to domination; the conceptual couple equality-freedom is meaningless, lacking any content, any force; freedom itself represents nothing else than the power to appropriate, to profit, to command and obtain submission, the first expression of freedom being the right to deprive the others of their own freedom.<sup>12</sup>

## **2. The critique of the absolute power of the sovereign**

The philosophico-juridical theory, centered on sovereignty and law, dates from the time of the reactivation of Roman law. It is a theory focused on the problem of sovereignty, on the monarch as the key person in the juridical edifice. This centrality of the sovereign is confirmed also in the contractualist theory of Hobbes, the lack of a monarch being the main reason for which the state of nature is “a war of all against all”. Sovereign power is legitimized through the social contract, therefore what we are dealing with here is an instituted sovereignty. The sovereign is

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<sup>12</sup> Freedom is the opposite of equality, being “that which exercises itself through difference, through domination, through war, through an entire system of power relations.” Foucault, *Trebuie să apărăm societatea*, 131.

a fabricated person, but nevertheless a real one<sup>13</sup>, made up from the totality of the individuals who have yielded him their rights of self-determination, offering him absolute power.<sup>14</sup> The essence of the absolute power of the sovereign is his power over the life and death of his subjects, “the power of letting live or of making to die”. With this capture of life and death by the field of power, the subject becomes neutralized, he is rendered unable to decide over his own life or death, these being placed in the hands of the sovereign, whose power becomes effective with the realization of his right to kill. This exclusivity of the right to kill is the key of sovereign power – in the definition of sovereign power as “the power to let live or to make die”, the accent is placed on the active verb, making to die –, the right to kill including in itself, as clemency, as a permission to continue to live that may be taken away at any moment, the right over the lives of his subjects.

Foucault problematizes sovereign power as the right to let live and to make die, by asking questions such as: Is life the right of the sovereign? Shouldn't it be the very thing on which these rights are founded upon? Is life not something outside the field of the social contract, as something prior to it, the protection of life being the very reason for which the social contract was established in the first place? His conclusion is that the legitimacy of sovereign power should not be interpreted in terms of right. Power and right must be analyzed from the perspective of the relations of domination, of forms of subjection and of knowledge apparatuses. Not being a substance or a substantial attribute, power is not something that properly speaking can belong to someone or to something –

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<sup>13</sup> “The individuals thus represented will be present in their representative, and what the representative – meaning, the sovereign – will do, it will have been done actually by each one of them. In his quality as a representative of the individuals, the sovereign is modeled exactly after the individuals themselves.” Foucault, *Trebuie să apărăm societatea*, 82.

<sup>14</sup> “The thusly constituted sovereign will be the integral equivalent of the individuals. He will not detain only some part of their rights, but will be really in their place, with the totality of their power.” Foucault, *Trebuie să apărăm societatea*, 82.

as an institution – and it can never be actually absolute: in Foucault’s theory power is a relational process, always circulating and always disputed. The individuals are the relays of power, its effects and never its sources or its targets, an affirmation that Foucault demonstrates in his analysis of disciplinary power and of its institutions: prison, army, hospital, asylum, correction school.

### **The solution proposed by Foucault**

Foucault argues for giving up on the juridico-philosophical theories of sovereignty<sup>15</sup>, where emphasis is placed on whom has power, on the sovereign as key character in the edifice of sovereignty, and for replacing these with historico-political theories, that consider sovereignty as being established by real forces, by real war. The question is not who is in power, not the necessity of sovereignty as the source of law, but how and upon whom is power exercised, what are its effects, through what techniques it is applied, in what kind of institutions and by what instruments, how do the individuals become constituted as subjects of the effects of power. The emphasis is not placed anymore on the genesis of the sovereign, as it was in the Hobbesian theory, but on the way in which the relations of subjection construct subjects that cannot be considered as neutral any longer, as simple spectators and docile followers in front of the manifestation of absolute power, but as actors involved in the struggle of power, demanding a right that is anchored in history and des-centered in relation with sovereignty. It is a question of analyzing power from the ground upwards, from the lowest level of the techniques and mechanisms of power, to the higher ones that result from their

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<sup>15</sup> “We must rid ourselves of the model of the Leviathan, of this artificial man, at the same time autonomous, fabricated, unitary, that would join together all the real individuals, whose body are its citizens, but whose soul is sovereignty. We must study power outside the model of the Leviathan, outside the field delimited by juridical sovereignty and the institution of the state; we must analyze it starting from the techniques and tactics of domination.” Foucault, *Trebuie să apărăm societatea*, 40-41.

extension and modification, from the relations of power/dominance to the constitution of the subject.<sup>16</sup>

The role of the sovereign is taken up by an apparatus of disciplinary power, the architectural and topological model of which is the Panopticon of Bentham. This was imagined as an enclosed environment – an asylum for the insane, a hospital, a prison, a factory, a correctional school – where to isolate troublesome subjects – madmen, the sick, convicts, laborers, undisciplined children – with large windows opening towards a central tower, where the silhouette of an overseer may be glimpsed, representing the permanence of uninterrupted and absolute control.<sup>17</sup> The guiding principle is “to see and to be seen”.<sup>18</sup> The purpose of the Panopticon is to determine, through its specific architectural layout, the emergence of an articulated interior control, based on the permanent visibility of those inside it, that makes them objects of knowledge and of power. The difference from a usual prison lies in the fact that it does not just keep the principle of continuous surveillance, but augments it, renouncing to deprive the inmates of light (thereby allowing for better surveillance, since it is difficult to oversee someone in the dark). The privation of freedom, the isolation, the continuous surveillance – all aim to avoid plots, the escape of convicts, the contagion from the sick, disorderly conduct in the case of children or of the insane. The major effect

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<sup>16</sup> “The Leviathan, as a fabricated man, is nothing else than the coagulation of a certain number of separate individualities, reunited by a series of constitutive elements of the state. But in the heart, or better yet, in the head of the state there is something that constitutes it as such, and this something is sovereignty, about which Hobbes says that is the very soul of the Leviathan. Well, instead of posing the problem of this central soul, I believe that we should try to study the peripheral multiplicity of bodies that are constituted, through the effects of power, as subjects.” Foucault, *Trebuie să apărăm societatea*, 37.

<sup>17</sup> “In so many cages, so many little theatres, in which each actor is alone, perfectly individualized and permanently visible.” Foucault, *Trebuie să apărăm societatea*, 284.

<sup>18</sup> “The Panopticon is an apparatus destined to dissociate the couple to see – to be seen: in the outer ring you are seen in your entirety without ever seeing; in the central tower, you see everything without ever be seen.” Foucault, *Trebuie să apărăm societatea*, 286.

of the Panopticon is that it renders obsolete, as inefficient, the means of brute force, punishment, torture, by making the one that is under surveillance become aware of the fact that every movement of his is seen, that he is under constant surveillance, that nothing that he does escapes the watch of the overseer. The Panopticon is an instrument for the internalization of order: being aware of the permanence and inescapability of the watch, the inmate will strive all the time not to transgress the norms of the respective institution. Thus the Panopticon guarantees the effectiveness of power. In the world of Hobbes, although the subjects are aware that they should obey by their own will the laws dictated by the sovereign – since they had subscribed to the social contract of their own free will – the imperfections of their natural state cannot be surpassed overnight. To maintain the order necessary for the functioning of society, the sovereign has to enforce his laws through punishment of disobedience.

The positive effect of the panoptical apparatuses of surveillance and control consists in the possibility of perfecting the use of power – a possibility lacking in the theory of Hobbes: the anonymous sovereign from his tower watches the behavior not only of the inmates, but also of the personnel of the institution (physicians, orderlies, guards), and thereby can control the efficiency of their actions, improving the way they do their jobs. The disciplinary apparatus encapsulates a diversity of functions: educative, productive, punitive, therapeutic, whereas in the Hobbesian theory one can find only the punitive one: the sovereign, holding the right of life and death over his subjects, upholds the rule of law by punishing those who trespass against it. At the limit, the law proclaimed by the sovereign, having its primary source of its legitimacy in the social contract that manifests the will of all the individuals that compose society, is not a law imposed against them, but for them. As such, it has also an educative value, being instituted exactly in order to control human behavior, to determine it to

be governed by laws instead of the passions that dominate it under the state of nature.

If in the case of the theory of Hobbes, a single person has absolute power, the emphasis being placed on sovereignty, in the Panopticon of Bentham, which Foucault considers that it represents the paradigmatic model for the disciplinary society, there is no absolute power: the overseer from the central tower is anonymous, he may be replaced by any member of the disciplinary society, for example someone wanting to get proof of how this apparatus functions.<sup>19</sup> As such, it may function as a safeguard against the ancient threat of tyranny. The Panopticon constitutes the model for the disciplinary societies from the end of the XVIII-th century and the beginning of the XIX-th. The emergence of this new type of society was required by the demographic explosion from the XVIII-th century, the increase of nonresident workforce displaced by industrialization, also the increase of the population of hospitals, schools etc, which brought with them the need for wider reaching modalities of control than those available in the arsenal of techniques of the ancient model of sovereign power used during feudalism. These changes include: the functional reversal of the forms taken by the mechanisms of discipline (if previously these had the role of establishing what part of the population was useless, to neutralize dangers and large concentrations of people, now they had to increase the usefulness of individuals, to coordinate their abilities, to train them physically and morally), the dissemination of these mechanisms (as the disciplinary institutions are developing, their mechanisms are de-institutionalized through the appearance of external surveillance: the individual is no longer being kept under surveillance only in closed environments – prison, hospital, factory etc. – he is being watched also while in the environment outside specific institutions), their

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<sup>19</sup> The Panopticon is “a transparent edifice, in which the exercise of power may be controlled by the whole of society”. Foucault, *Trebuie să apărăm societatea*, 292.

nationalization (their functions – including the function of social disciplining that was previously been held by private religious groups – being taken up now by specialized public institutions: prison, army, police, asylum, correction school, hospital). The scope of disciplinary techniques covers the usage of time (absenteeism, lack of attention), the specific activity itself (un-attentiveness, neglectful conduct) and general behavior (impoliteness, rudeness, indecency).

From between the specialized institutions that will function as disciplinary apparatuses, Foucault analyzes in detail prison, considering it to detain a paradigmatic role by the fact that it sums up all the functions and activities performed by the other institutions previously mentioned. Until the XIX-th century, prison has had only punitive functions, but not properly speaking disciplinary ones. The paradigmatic model of the medieval penal system was the spectacle of the public execution, which included the infliction of physical torture. The suffering of the condemned had to be measurable for its spectacular effectiveness, existing a hierarchy of possible punishments, not all kind of punishments being sufficient for the publicity of the execution. The punishment was chosen in relation with the gravity of the crime, ranging from lashings, branding with hot iron, plain beheading and hanging, breaking on the wheel, burning on stake, dismemberment, etc. The spectacular nature of the public manifestation of the function of punishment held by absolute power – that usually took place in the public market – had a well defined purpose: to publicize the image of the torture, of the agony inflicted on the condemned, in order that all possible transgressors know what will happen if they defy the law. A secret execution could have given rise to suspicions that the punishment was not severe enough. The people was compelled to watch the execution, as a guarantor of the punishment that it was witnessing and as subjects of the absolute power of the sovereign. The sentencing of an individual was based on accusing declarations made by his fellow citizens (the declarations of vagrants and beggars not

being accepted). The role held by publicity in the act of punishment was that the condemned had to confess his crime, had to support the mockery of the public and in the end to offer counsel to the public<sup>20</sup> – as part of the exemplary function held by public executions. The absolute power of the monarch was embodied in the headsman, who played the role of the instrument of the king's justice. In the case of beheading, he had to cut off the head of the condemned with a single stroke, then hold up the severed head, showing it to the applause of the public whose role was to celebrate the avengement of the crime and the re-establishment of order. Any crime being committed is considered as detrimental to society through its quality as negative example and, simultaneously, as a direct attack against the dignity and authority of the king, who is the source of all secular law (the very reason for which the monarch has absolute power).

The punitive celebration of the public character of the punishment inflicted upon the body of the condemned disappears around the end of XVIII-th century, punishment having become a pure procedural or administrative act that has to take place in an enclosed institution, away from the eyes of society. The primary aim of the procedure is no longer the exemplary punishment of the criminal by torture and death, but his reformation, his recuperation as a useful member for society. The place of the executioner is taken over by the priest, the psychologist, the educator, who become as sovereigns of the prison, their task being the recuperation of the prisoner through education. The official declaration of prison as a system of proportionate punishment to the crime (XVIII-XIX century) is an important moment in the history of penal justice and of the evolution of disciplinary mechanisms enshrined in the new institution. The paradigmatic example for the new functions

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<sup>20</sup> “Fathers and mothers who hear me, keep watch over your children and teach them what is good; in childhood I was lazy and a liar, I've started by stealing a two-penny knife... I've robbed traveling merchants and that's why

that were to be realized by the new type of prison is the architecture of the Panopticon, the prison having to be a place for the observation, surveillance, study and education of the punished criminals. The carceral system combines the art of education with the right to punish, based on its fixed goals: to repair the crime through privation of freedom, through the acquittal of the convict's debt to society and through the education of the guilty. Because it does not aim solely for the punishment of the guilty, but also for his re-education, the prison is a total disciplinary apparatus.<sup>21</sup> The two functions of the prison are: the privation of freedom (freedom being an universal good, one that has equal value for all people, the act of taking it away should constitute an effective means of punishment;<sup>22</sup> it is being considered that a crime affects not only its direct victim, but the whole of society, therefore the criminal has a debt to pay towards the whole society; the criminal being by definition a dangerous person, society gains security by having him locked up, isolated from society) and the education of the convict (the correction of his behavior through his conditioning in an isolated environment). Labor and isolation are "the agents of carceral transformation"<sup>23</sup>. In order to facilitate that the convict learn from his mistake, the prison has to eliminate risks (conflicts, revolts, plots that may be made possible through the gathering together of prisoners; what the prison authority has to avoid at all times is that the prison population should become homogenous and solidary) and to transform solitude into an positive instrument of reform,

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I'm here. Tell all these to your children, that at least this serves them as example." Foucault, *A supravagheea și a pedepsi: Nașterea închisorii*, 103.

<sup>21</sup> "Prison has to be the strongest machine of them all in order to be able to impose a new form to the perverted individual: its mode of action has the coercive character of total education." Foucault, *Trebuie să apărăm societatea*, 350.

<sup>22</sup> "How could the privation from freedom not be the par excellence punishment in a society in which freedom is a good that belongs in the same measure to all, and to which each one feels himself tied to through a universal and constant feeling?" Foucault, *A supravagheea și a pedepsi: Nașterea închisorii*, 344.

making the convict reflect upon his crime and triggering regret, in order that he may realize by himself the evilness of his deeds.<sup>24</sup>

Between 1840-1845 there were brought numerous critiques against the presupposed beneficial effects of prisons, mainly on two broad directions: that prison does not succeed in correcting behavior, and that by wanting to be corrective, it loses its punitive force.

a) In France, there arose a polemic on the salary received by any prison inmate for the work he performed. The offering of monetary rewards for a labor that the convict had to perform as part of paying his debt to society may lead to considering this work more as a privilege instead of a duty, something outside of punishment, the prisoner being able to refuse to perform it. One cannot reward the work performed as part of punishment, it was argued, because the earning of money through work belongs to a reward of capacity, of the dedication and of the passion with which the worker performs his job. Also, paying for the work of convicts is unfair, because they take over the jobs of honest working men, the producers being willing to go get their workforce from the workshops of prisons, where the price of labor is cheaper than on the market.<sup>25</sup> Despite their revolts, the free workers have gotten no favorable replies from the government, governmental policy being to encourage the use of convict labor. The policy was justified as necessary for the reformatory activity of the penal system, the performance of work having the capacity to build

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<sup>23</sup> Foucault, *Trebuie să apărăm societatea*, 355.

<sup>24</sup> "Thrown into isolation, the condemned meditates. Alone in front of his crime, he learns to hate it, and if his soul is not already disgusted by the evil he has committed, only in solitude will he be overcome by remorse. Solitude assures a kind of self-regulation of the punishment and allows for a spontaneous individualization of it: the more the condemned may reflect, the more he may feel guilty for the crime he has committed." Foucault, *Trebuie să apărăm societatea*, 351.

<sup>25</sup> "Thieves are making hats and ebony furniture while sheltered at warmth, while the unemployed hat-maker has to go to certain death while fabricating

character, teaching the convict proper orderly conduct and obedience, making him become active and industrious where he was lazy, a docile worker earning a honest wage. Such change to the character of the inmates may be achieved only through use of material incentives, hence the necessity of paying them wages.<sup>26</sup>

b) Detention leads to relapse and when the prisoner is released it is extremely probable that he may easily find his way back inside<sup>27</sup>, because even if he becomes free, he nevertheless remains a marked man, bearing with him for the remainder of his life the stigma of infamy with which the penal system has branded him in his documents. The control of the police, to which he is subject, is not limited to the place and time of the prison sentence, following him permanently outside. The ex-convict had to carry always on his person a permit describing his crime and the sentencing he received for it. Does such extension of control not reveal a contradiction between releasing a convict for having done his sentenced time, having paid his duty to society and having improved upon his conduct, while simultaneously keeping him under constant surveillance and suspicion? Does such surveillance not render permanent his status as a delinquent? These aspects make extremely difficult for the former delinquent to get a legitimate job since there is social stigma associated with the status of a delinquent, many potential employers will turn him down, and he is forbidden by law to search for work in other places than his locality of residence, his right to free movement having being lifted. Effectively he is condemned again, this time to the

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white lead for two francs per day.” Foucault, *A supraveghea și a pedepsi: Nașterea închisorii*, 356.

<sup>26</sup> “If there is something that may give rise in the spirit of the condemned to the notions of right and wrong, something that may provoke moral reflection and elevate them even if only by a little in their own eyes, this can be nothing else than the possibility of earning some rewards.” Foucault, *Trebuie să apărăm societatea*, 362.

<sup>27</sup> “In consequence, the prison, instead of freeing individuals brought back to the straight and narrow path, releases into the population dangerous delinquents.” Foucault, *Trebuie să apărăm societatea*, 388.

ignominious death of the poor, lacking any means of supporting a home for himself or even his own life. Being thus marginalized, he will be forced by necessity to commit petty crimes like small thefts in order to support his life, but owing to the restriction imposed on his freedom of movement, he may do this only in his area of residence, where he is registered with the police. In consequence, delinquency effectively functions as a form of controlled illegality. Many of the ex-convicts also become informants of the police, snitches, thereby the police gaining the possibility of an improved surveillance and control over the marginal, underground aspects of society, the institution of delinquency also having the function of “a political surveillance system”<sup>28</sup>. A tight link is established thus between police-prison-delinquency: the surveillance of the police provides convicts for the prisons, that turn them into delinquents, who after having been released contribute as informants, either for monetary rewards or for having been threatened with another incarceration, to the surveillance of other criminals that will end up also in prison. It is a closed circuit, a vicious circle, because the police cannot fulfill its purpose, to engender an absolutely law-abiding society, there always appearing discontents who turn to crime in order to reach their goals.

Based upon such critiques, in 1945, there were established the seven universal principles that are to guide the prison system: the principle of correction (penal detention should have the essential function of transforming the behavior of the individual subjected to it, his re-education and reintegration in society), the principle of classification (the inmates have to be classified, distributed in function of the penal gravity of their deeds, and also of their age, inclinations etc.), the principle of modulating the punishment (the exchange of sentence, conditional parole, in function of the progress or regress of the convict's re-education), the principle of work as

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<sup>28</sup> Foucault, *Trebuie să apărăm societatea*, 407.

both an obligation and a right (work constitutes the basis for the transformation and of the socialization of the inmate, serving also as grounds for reducing the time he has to spend in prison, and as the acquirement of useful skills to be had even after his release)<sup>29</sup>, the principle of penitentiary education (education is a penitentiary instrument because the individual gets in prison foremost because an educational deficiency), the principle of technical control of detention (the function of control and surveillance of the inmates should be realized by qualified technical personnel, their qualifications including high moral standing, that have to keep watch over the re-education of the inmates) and the principle of annex institutions (the release of the former convict has to be followed by police surveillance and by help given by the state for his reintegration in society).

## **Conclusion**

Based on the development of the institutions and techniques of discipline, during the XX-th century there appeared a new configuration of power: biopower, its principle being “to make live and to let die”. This new type of power, centered on controlling the life-processes of society, deals with the handling of issues such as epidemics as phenomena that may affect the whole population, threatening the life of the society itself, like death arising from the very midst of the life-processes, environmental problems, the statistical balance of birth and death rates, public healthcare and hygiene etc. Biopower includes mechanisms of regulation, aiming to provide for the security and optimization of life. While life is considered as the highest good, death is the limit and cessation of all power. From a sumptuous public spectacle (as was the case in the medieval

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<sup>29</sup> Here a problem mentioned earlier had to be addressed, that of the former convict being unable to find work after his release. This change implied both changing how society judged former convicts, in order that they no longer be

public execution), death has become something more than private, has become a taboo (people don't tend to die at home anymore, surrounded by loved ones, as it was in traditional societies, but in hospitals, asylums, retirement homes for the senior citizens). The mechanisms used by this new type of power are those of regularization, of security, of optimization of life and of generally of prevention of everything that is harmful to life. Biopower is no longer aimed at man as body (as it was in the case of the disciplinary power) but at man as species, at the population in its entirety. With the advent of biopower, the relation of identity between the people and the monarch disappears, historical discourse changes into a discourse of the struggle between races or classes, a discourse of oppositions, of the oppressed and the oppressors, while history itself becomes impossible as a universal history, the victory of a people meaning necessarily the defeat of the other.

The main issue facing a political system that functions in the mode of biopower, as distinct from the paradigm of sovereign power, is that it would lack a legitimate means for using violence, and especially for waging war: "How can the power of death, the function of death be exercised in a political system centered on biopower?"<sup>30</sup>, "How can one render biopower functional while simultaneously exercising the right to wage war, the right to kill and the function of death, in any other way than by passing through racism?"<sup>31</sup> asks Foucault. This is the condition under which the right to kill may be employed by a mode of power that professes that it desires nothing else than to provide for the security of life. Racism produces a rupture serving as criteria for distinguishing between people who deserve to live and people who deserve to die. It legitimates strategies of ethnic cleansing or purification – these very terms being taken from the vocabulary of medicine or hygiene,

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socially stigmatized, and the imposition of laws that favor the hiring of such persons, through tax deductions etc.

<sup>30</sup> Foucault, *Trebuie să apărăm societatea*, 200.

<sup>31</sup> Foucault, *Trebuie să apărăm societatea*, 206.

betraying the link of such strategies with biopower. The body of the population, which was considered as homogenous in the contractualist theories of sovereignty, is segregated in distinct segments corresponding to the concept of races, ordered in a hierarchy of value. Members of the dominant race, regarding society as their own, consider the other races that are present as useless on the body of society and hence the public health of society requires their elimination. Racism fragments the species into a hierarchy of races, aiming to legitimize the large-scale use of violence against a sub-group of the population, under the guise of a war aiming for the purification of society from the so-called “inferior” elements. The health of society is equated with racial purity (notwithstanding that racial purity is an impossible ideal, at least in an Europe that has seen during its history huge movements of migratory populations: Goths, Huns, Vandals, Mongols, Slavs etc., all leaving some of their genetic legacy behind in their wake). The aporia is that the function of biopower does not include the taking of life, only the preservation of it. Killing was always the prerogative of the sovereign, a distinct, older type of power than biopower. What racism introduces in equation is that it makes one’s own race ascend to the throne of the sovereign, by considering it as superior to all the other races present in society. And as sovereign, it has the right to kill. As biopower, it has the duty to do so, in order to protect the health of society, its racial purity. Having both right and duty, power is free to let loose its murderous instincts. And these instincts are rationalized as functions of the affirmation of life: the death of the other and of the other’s race serves the higher purpose of purifying and healing one’s own life, therefore the more you kill of these people who do not even deserve to live, the more you and your true people will live. If you want to live, the other must die. This is how racism functions. Its principle states only that one’s own race is inherently superior to others, thereby genocidal war is its consequence, as the logical means of purifying and affirming one’s racial superiority. This principle may legitimate

anytime the start of a war, in the name of purifying and regenerating one's race through the destruction of others, in the name of the superiority of one's people and of the historical right deriving from that superiority. Through this principle, racism becomes interwoven tightly with war as means of justifying it. Racism is the only means proven until now (by the Nazi state; class-hatred seems to be only a variant of it that replaces somatic criteria with economic ones) to be able to legitimize the waging of war, and hence the sovereign right to kill, by a state apparatus that functions in the mode of biopower.

## **BIBLIOGRAPHY**

Foucault, Michel. *A supraveghea și a pedepsi: Nașterea închisorii*. București: Editura Humanitas, 1997.

Foucault, Michel. *Trebuie să apărăm societatea*. Cluj-Napoca: Editura Idea, 2009.