

# FOUCAULT'S DISCIPLINED SOCIETY IN THE LANDSCAPE OF PUNISHMENT THEORIES

<sup>1</sup>Harold P. Pareja\*

---

## Abstract

*Studying punishment theories in the context of criminal law and justice has practical significance since it affects the rendering of magistrates' decisions and in the administration of criminal justice. This paper traces the evolution of punishment along the state of action towards the criminal. Also, it identifies the different penal theories and locates the views and perspectives of Foucault's penalty in its large body of philosophical, sociological and criminological literature. It further examines the contribution of Foucault to the study of punishment. To answer these objectives, it utilizes the review of related literature as the main tool of gathering necessary data. This paper has shown the fresh insight of Foucault in the body of knowledge related to punishment. His sociological and post-Marxist disciplinary penalty provided a critique on contemporary punishment theories and expanded the landscape of which a scholar in this field can hardly ignore.*

*Keyword: foucault, punishment, criminality, justice*

---

\*Corresponding Author: Harold P. Pareja, peaceloreto@gmail.com

## 1.0 Introduction

Theoretical penal studies are rich with ideas, disciplines and perspectives of punishment. Though numerous, they can be classified into two major categories: these are the past- and future-oriented punishments. Hudson (1996) observed that the debate between the various philosophies of punishment will never be resolved because all the reasons for punishing offenders are functions which members of a society look to their penal system to fulfill.

Studying punishment theories in the context of criminal law and justice has practical significance. It affects the rendering of magistrates' decisions and in the administration of criminal justice by penal officers. Since law's moral authority is derived from its claims to fairness and equality and that the state is given the right to punish offenders, punishment policy and frameworks need to be examined to ensure proper use. Also, it is imperative to advance the legitimacy of penal institution in order to be perceived as morally justified. This is to answer a basic moral question on punishment: "What justifies the infliction of punishment on people?"

In chapter 1 of Cavadino and Dignan's *The Penal System: An Introduction*, it summed up that challenges and controversies in penal institutions centered on the crisis of legitimacy. It posited that "riots, staff unrest, the malaise in the probation service and the political problems caused by the penal system are not the direct result of a high prison population or a lack of money or of decent prison buildings, but result from what people believe and how they feel – from the moral reactions of people within and outside the penal system to the material situation." It added that the three different sets of actors in a penal system (public, penal staff, penal subjects) may have different and distinct sense of what justice is and unless these groups of people will change their ideas about punishment – the crisis of legitimacy will continue to fester.

It is important to note that this paper deals on the government's action towards the criminal; hence, a state punishment in the context of criminal law. This action encompasses all individual members of society for each can be a potential subject of state punishment and even potential or actual actors in the institution of the state's action.

It bears stressing that this paper believes on the assumptions as advanced by Lacey:

- a. The justification of punishment is incurably relative; it is relative to the justification of the content of the standards in response to the breach of which it is inflicted; it is ultimately relative to the justification of the existence of the state itself; and it is relative, in a somewhat different sense, to type of society in which it functions.
- b. A set of justifying arguments for punishment in theory is no guarantee that punishment can in fact be introduced and carried on in a morally acceptable way in any particular society.

This paper traces the evolution of punishment in the context of state action towards the criminal. Also, it identifies the different penal theories and locates the views and perspectives of Foucault's penalty in its large body of philosophical, sociological and criminological literature. Also, it examines the contribution of Foucault to the study of punishment. Review of related literature is main tool of gathering data in response to the objectives of this paper.

### *Roots and Definition of Punishment*

According to Adamson (1954, as cited by Bittner and Platt, n.d), legal punishment is a recent phenomenon. However, it cannot be discounted that there were punishment arrangements and even litigations were evident in the most primitive societies but not sophisticated

compared to the contemporary legal punishment systems. These societies were noticeable to have an absence of a formal law enforcement apparatus and the absence of specialized organs of all kind. In explaining the official passivity of the society in the matter of executing its judgments, however, the following provides a succinct explanation:

"Weber argued that the lack of concern for implementation was related to the belief that the judgments have been arrived at 'by the interpretation of oracles or other magical devices, or the invocation of magical or divine powers, [which] carried with it sufficient magical authority to enforce itself, so that disobedience constituted a kind of serious blasphemy'. When this mechanism of quid pro quo justice broke down recourse was open to other kinds of retribution involving untempered and unmitigated violence. It is important to emphasize, however, that the procedures involving direct reciprocity made up the bulk of the routine administration of justice. The relatively sterner measures, though not infrequent, were certainly extraordinary. The feature of ordinary administration of archaic justice which we wish to emphasize is that it encompassed the principle of proportional punitive sanction and that it provided for the conveyance of the benefit of the sanction to the aggrieved party. This is true even in cases where in cases where the injured party obtained no material compensation but merely the satisfaction of inflicting commensurate pain on the assailant."

As claimed by Bittner and Platt, the establishment and development of an official machinery for the prosecution of delicts and the execution of punishment is extremely difficult to trace historically. Until the 17th century, punitive practices was described as having disinterested tendency to inflict punishment but beginning 18th century – the attack was not directed against punishment as such but mainly against the existing forms of punishment.

On the other hand, Becera offered a different view as to the origin of punishment. The following is the excerpts of his version:

"Laws are the conditions by which independent and isolated men, tired of living in a constant state of war and of enjoying a freedom made useless by the uncertainty of keeping it, unite in society. They sacrifice a portion of his liberty in order to enjoy the remainder in security and tranquillity. The sum of all these portions of liberty sacrificed for the good of everyone

constitutes the sovereignty of a nation, and the sovereign is its legitimate depository and administrator. The mere formation of this deposit, however, was not sufficient; it had to be defended against the private usurpations of each particular individual, for everyone always seeks to withdraw not only his own share of liberty from the common store, but to expropriate the portions of other men besides."

The quest for a universal definition of punishment is so difficult, complex and varied as there are proponents of differing models and theories on punishment. But this paper has taken the definition as advanced by Lacey:

"Legal punishment is the principled infliction by a state-constituted institution of what are generally regarded as unpleasant consequences upon individuals or groups adjudicated, in accordance with publicly and legally recognised criteria and procedures, correctly applied, to have breached the law, as a response to that breach, as an enforcement of the law and where that response is not inflicted solely as a means of providing compensation for the harm caused by the offense."

It is important to note that this paper interchangeably uses the terms legal punishment and state punishment.

#### *Theories of Punishment*

For Lacey, the most obvious reason for a need to justify punishment is that it involves, on almost any view of morality, prima facie moral wrongs: inflicting unpleasant consequences and doing so irrespective of the will or consent of the person being punished. J.L. Mackie adds the following:

"... that first-order moral theories may be divided into those which are right-based, those which are duty-based and those which are goal-based. On any of these views, it is not difficult to see what is prima facie objectionable about punishment. On a right-based view, it violates some very basic rights of the subject of punishment, personal integrity and liberty being the most obvious. On a duty-oriented approach, the inflicter of the punishment would be seen as violating duties of restraint and non-interference with others. On a goal-based position, the immediately obvious consequence of punishment is the infliction of pain or disadvantage, consequences to be avoided in the absence of compensating goods on almost any conceivable goal-based moral theory."

But finding adequate justification for punishment, specifically state punishment, needs for have further moral arguments as to why the state will represent an individual in the exercise of punishment; thus, making more problematic in an attempt to have a complete political philosophy.

This paper used the definition of the "theory of punishment" (Grupp, 1971) as the guiding rationale for dealing with the adjudicated criminal as implemented by the state's formal system of criminal justice. Also, it adds that punishment theory considers the various points of view regarding the desirable objectives of punishment and the rationale that should sustain the sentencing and correctional system.

The set of punishment theories considered in this paper includes the following: retribution, deterrence, social defense, and rehabilitation. Its theory building is approached anchoring on the goals of punishment.

*The retributivist.* Justification for punishment is aimed to exact retribution from the offenders for their crimes and that the central idea is to place moral blame on the offender for the offence s/he has committed, and that the future conduct of the offender or other members of his/her society is not the proper concern of punishment. Also, "the primary justification of punishment is always to be found in the fact that an offense has been committed which deserves punishment, not in any future advantage to be gained by its infliction" and that the gravity of the offense should roughly dictate the extent of the sanction; and above all, that the offender must suffer because he is responsible for the his evildoing, i.e., he could have done otherwise but chose not to. Thus, in the words of Grupp (1971), it can be surmised that the retributivist "defends the desirability of a punitive response to the criminal by saying that the punitive reaction is the pain the criminal deserves, and that it is highly desirable to provide for an orderly, collective expression of society's natural feeling of revulsion toward and disapproval of criminal acts." Thus, the retributive response to the criminal means placing him in a lower status than that of a law-abiding citizen.

According to Gerber and McAnany, the retributivist's earliest formulations can be traced in the ancient biblical dictum or the *lex talionis*: "an eye for an eye, a tooth for a tooth". Aristotle posited that the freedom of the will and voluntariness and the man's power to be good and to do what is right makes the offender responsible for his actions and that his evil acts deserve punishment, rewards for his good ones. For St. Thomas Aquinas, he maintained the Aristotelian defense of retributivism but added a humanistic flavour by balancing metaphysical scales of justice and giving the offender his "due". Strengthening the metaphysical foundation of this theory, Emmanuel Kant (in his *Philosophy of Law*) discussed that punishment "can never be administered merely as a

means for promoting another Good either with regard to the Criminal himself or to Civil Society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a Crime". The great Russian novelist Fyodor Dostoyevsky points out the "difficulties of making punishment fit the moral guilt in the commission of the same crime and inequalities of moral guilt in the commission of the same crime and inequalities of suffering from the same punishment." Thus, it can be deduced from the foregoing that even in few cited authorities on the philosophy of punishment, there are even varied justification and explanation in the phenomenon of punishment specifically in the retributivist model. To add, J.D. Mabbott boldly advances his retributive theory of punishment from a legalistic bent, Professor Jerome Hall argues for the connection between morality and law, Pius XIII added Hall's morality-law nexus with a purely religious dimension to the sphere of retributivism.

Forms of retribution can be solitary confinement and complete isolation and that these are relative within the cultural context. Lately, the trend on punitive response in the light of retributivist's perspective is towards humane treatment or the criminal. Quoting Morris Cohen (as cited by Grupp, 1971), he observed the following:

"An enlightened society will recognize the futility of severely punishment unavoidable retrogression in human dignity. But it is in vain to preach to any society that it must suppress its feelings. In all our various relations-in business, in public life, in our academic institutions, and even in church – people are rewarded for being attractive and therefore penalized for not being so."

On the other hand, some issues raised the theory's philosophical challenges. According to Cavadino and Dignan, retributive principle can hardly provide a moral grounding which may be based on moral gut reactions that these may merely irrational vindictive emotions (akin to vengeance) which we ought to curb rather than indulge and that it is not clear how this principle relates to any general notion of what is right or wrong.

Also, the phenomenon of sustained stigmatization which is one of the indicators for retribution has moral challenge. In an interrogative statement of Grupp (1971), is sustained stigmatization of the criminal inconsistent with the view that retribution should be tempered with restraint and understanding?

Moreover, practical objection can be raised for penalty of murder or mutilation may seem doable but how can state inflict pain for fraud, perjury or blackmail.

*The reductivist.* The aim of this theory is the reduction of the crime. Its justification is anchored on the norm which is prevention of crime by threat and emphasized

that punishment is not itself a threat but a consequence of failure of the threat and only when the threat has failed in a particular case do we apply punishment. It is because that the overriding objective of punishment is the achievement for the greater number and that the focus is on the assignment of that appropriate penalty, no more, no less, which will deter potential offenders from committing crimes. Also, it is posited that the threat of punishment has a generally deterrent effect on potential offenders, such that the saving in pain from reduced crime and additional happiness from increased security, outweighs the pains and costs of punishment and for threat to be effective, punishment must actually be inflicted in accordance with the threat.

Advocates of reductivist (deterrent) model present this compelling argument:

"... that while it is apparent all persons are not deterred, the deterrent objective, which in fact helps to support our entire structure of law enforcement, is still desirable. Regardless of the prevailing crime rates, it is assumed that many persons are in fact deterred; were it not for the operation of the deterrent machinery, the crime rates would be still higher. While there are certainly many who disagree with this position, it can be argued that deterrence is the primary purpose of the state's sanctions."

On the other hand, this theory is beset with moral dilemmas: the principle of selection and the need for empirical proof. As cited in Hudson's *Understanding Justice*, Bentham emphasized that "unless punishment will deter further crime, then it is adding to, rather than subtracting from, the sum of human suffering". He said:

"If we could consider an offence which has been committed as an isolated fact, the like of which would never recur, punishment would be useless. It would only be adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent but also to those who may have the same motives and opportunities for entering upon it, we perceive that punishment inflicted on the individual becomes a source of security to all. That punishment which considered by itself appeared base and repugnant to all generous sentiments is elevated to the first rank of benefits when it is all regarded not as an act of wrath or vengeance against a guilty or unfortunate individual who has given way to mischievous inclinations but as an indispensable sacrifice to

the common safety."

To add, a judge made mention in the case of *State v. Chip* (Supreme Court of Ohio, 1984: 304 Ohio 106) that the deterrent effect of sentences remains speculative, and reform probably must begin with the inner determination of the convicted person to change his ways and that this inner determination may or may not be fostered by confinement.

*The social defense.* This theory holds that criminals are to be punished to protect society thus making it fitting to most of any system of punishment most reasonable people to accept. It is characterized as collectivistic considering that it views the offender as dangerous to society as a whole. The wrongdoer is identified as a man with dangerous tendencies and that using what he did as a main predictor to what might he do in the future. Its justification is anchored on the belief others in society will commit crimes similar to those committed by the criminal unless they are deterred by fear of punishment made effective by actual imposition in this case and that this man will commit certain acts unless prevented. This model views the offender as dangerous to society as a whole and that it is not what he did that interests but using what he did to predict what he might do in the future; thus, prediction, then, becomes the vital key to understanding – and justifying – social defense. On the other hand, this theory has found loopholes for some and one of which is the practice of *preventive suspension*. When judges decided to extend prison sentence, it is as if the wrongdoer is prejudged. It is important to note that social defense is differentiated from the reformist (rehabilitation) model of punishment. According to Gerber and MacNany,

"It may seem that in many aspects social defense is really nothing more than another version of rehabilitationism. But this is misleading for several reasons. First of all, rehabilitation looks to the good of the individual and not of society. Risks can be taken where it will benefit the individual's recovery. Not so with social defense theory. Further, rehabilitation is concerned with restoring the individual to social health. Although social defense is not opposed to this approach, incapacitation rather than restoration now becomes primary. Finally, though most rehabilitationists are not strong on using punishment as the means of helping the individual, they do not exclude it from their thinking. On the other hand, punishment fits very poorly with social defense's view of control."

*The reformist.* The dawn of the 20th century witnessed

the rise of the rehabilitative theory of punishment. This perspective is anchored on the idea that crime is "caused" by psychological or physiological predisposition, or by social factors such as poverty, unemployment or coming from certain types of family, which has called forth the most argument about reform/rehabilitation as a penal aim. It is argued that not recognizing the influence of such factors makes punishment impersonal and, by assuming all crime to be the result of a freely taken decision, imputes to offenders greater culpability and responsibility that is often the case. It is because environmental factors cause criminality; thus, this suggests the same legal consequence – irresponsibility for one's criminality. It even goes to the extreme in claiming that punishing incompetent person is a crime. Thus, it is safe to note that the zest of this model is the individualization of punishment (or treatment) so the criminal may become useful to the society after he leaves the penal institution, that it can be characterized as "anti-punishment" and that rehabilitating the offender is the rubric of this model.

On the other hand, it is criticized for its deterministic view of human behaviour held by positivist reformists treat people as less than fully human, morally rational citizens. Prominent of such views were Dr. Sholam, Dean Francis Allen and Professor Toby. Dr. Sholam would see the rehabilitative ideal as at best a mixed blessing, at worst a device for forcing men to do good at the expense of doing it freely. Also, for Allen, the following is the direct quotation:

"... the rehabilitative ideal has been debased in practice to such an extent that the therapeutic language has disguised but not eliminated many of the vindictive practices of corporeal punishment. Whereas court sentences for "normal" offenders are becoming shorter and more individualized, Allen observes that the rehabilitative ideal tends to encourage increasingly long periods of incarceration. Allen's remarks raise such critical questions as, first, should rehabilitative "punishment" pretend to "fit" the crime, especially if the crime is less severe than the disease it reflects, and secondly, what is to be done to an individual who, perhaps because of his own voluntary refusal, cannot or will not be rehabilitated?"

Finally, Professor Toby expressed his reservations on the rehabilitative ideal. He acknowledged the while punishment may serve in preventing crime and in sustaining the morale of conformists, rehabilitation may be ultimately successful only if preceded by more traditional forms of punishment, much in the way that shock treatment makes certain types of psychotics

accessible to psychotherapy. He even suggested that paramount questions are still to be answered about rehabilitative treatment in theory and in practice.

Accordingly, disillusionment with the rehabilitative ideal can be traced in two things. These are the following: 1) a societal belief that human character and behaviour can be changed, and 2) a societal consensus of values sufficient to allow agreement on what it means to be rehabilitated. But for Brumbaugh (2001), the existence of both of these is in doubt. He adds the following:

"... the family is a less significant force; confidence in the public school system is declining; psychology seems more interested in making people comfortable than in bringing people together to accomplish goals. Of equal importance is wide disagreement as to what our goals in rehabilitation and broader areas should be."

The aforementioned theories justifying punishment, according to Lacey, provided unsatisfactory rationale though presented persuasive arguments. Retributive theories failed to draw to rebut the charge of pointlessness and vengeance. Reductivist and deterrent perspectives both suffered from the general defects of aggregative hedonistic utilitarianism, notably the lack of adequate principles of distribution.

#### *Foucault's Theory of Punishment*

By the last quarter of the 20th century, the practice of punishment was reconceptualised as gleaned from the works of Michel Foucault. It viewed that the punishment practice reflect the dominant forms of social and political power – the power to threaten, corce, suppress, destroy, transform and presented a deep suspicion of humanizing punishment forms.

Prior to the discussion of Foucault's views on punishment and discipline, below are the quoted statements from Cavadino and Dignan's *The Penal System: An Introduction* as to his historical and philosophical influences:

"Michel Foucault (1926-1984), who studied under Althusser, took the step this teacher never did and distanced himself from Marxism while remaining politically radical. Perhaps even more than Althusser, Foucault represents a decisive move away from economic determinism. Like Althusser, Foucault was once called a structuralist, but although he shows great interest in structures (including the structures of thought and of 'discourse' in different ages) he differs significantly from both Althusser and other structuralists, often being

described consequently as 'post-structuralist'- and 'post-Marxist' and 'post-modernist' as well. He shares structuralism's anti-humanism, but has a much more dynamic conception of structures. The structuralist account portrays structures as relatively unchanging and self-producing; the post-structuralism of Foucault discerns and investigates a continual flux and change in society and in structures themselves. As Alan Sheridan (1980:90) says, 'there is a sense in which his work is profoundly anti-structuralist. Far from wishing to "freeze" the movement of history in structures, his whole work has been an examination of the nature of historical change.'

He introduced the concept of bio-power – power of and over the body of which he believed that the western society has developed this new kind to power. It is a new system of control by encouraging people to resist the welfare state by developing individual ethics in which one turns one's life into something that others can respect and admire. Citing Sparknotes (2006) in the Foucauldian Discourse on Punishment, it states the following:

"It is noteworthy that the power and technologies of punishment depend on knowledge that creates and classifies individuals, and that knowledge derives its authority from certain relationships of power and domination."

Foucault approached his disciplinary penalty in a different methodology as compared to other texts. "Durkheim and the Marxist sociologists are structuralists following the deductive methods to positivist sociology. That is to say, their accounts are top-down: they look at societies in large-scale, abstract terms, with any references to actual penal institutions, policies or practices included as evidence for, or examples of, their hypotheses concerning the general nature and functions of punishment. Foucault, on the other hand, develops a bottom-up account, deriving generalizations and theoretical propositions from a detailed examination of penal practices. This is the phenomenological method. Simply, phenomenology means to describe things – phenomena – themselves, and from such descriptions to gain a sense of their common characteristics and their differences, their relationships to each other and to the contexts in which they occur, building theory and explanation out of commonalities and patterns they emerge. Although he is by no means the first author to apply phenomenological method to punishment—Garfinkel (1956), for example, is a well-known phenomenological study of courtroom proceedings, described in Chapter 5 – Foucault was certainly the first major scholar to connect

(inseparably, seemingly, from the way in which his ideas have dominated subsequent sociology of punishment) the analysis of punishment to the mainly French tradition of phenomenological social and political philosophy, represented by writers such as Bachelard (1968), Merleau-Ponty (1962) and Sartre (1958; 1974).

For Foucault, in describing penalty – one has to describe what he calls "technologies of power". He is concerned primarily in the internal workings of the institutions brought forth by the structural imperatives of capitalism, in particular, he seeks to demonstrate the way in which power is exercised within these institutions.

In his *Discipline and Punish*, Foucault highlights 'discipline' as the key element in modern punishment and linking penal forms to the capitalist mode of production and it is the defining characteristic of social control in modern society. It is in this work that the idea of punishment as part of a discourse on power is made explicit and that his concern with discipline and surveillance becomes even more pronounced.

Histories of political philosophy has witnessed as to how the government progressed from being autocratic to increasingly popular and democratic modes of rule. Also, the transition from the decline of monarchs' sovereignty to the rise of citizens in public governance has also shifted penal practices. The mutilation of the body and the spectacle of public execution are now replaced by the suspension of rights and the timetabled regime of modern prison. Punishment as a public and violent spectacle centered on the infliction of pain to the body disappeared and surveillance of the soul emerged; public executions gradually disappeared and punishment instead became hidden and concealed. As cited in Foucauldian Discourse on Punishment, the following is an excerpt of an interview with Foucault:

"What I wanted to show is that the fact that, starting from a certain conception of the basis of the right to punish, one can find in the work of penal experts and philosophers of the 18th century that different means of punishment were perfectly conceivable. Indeed in the reform movement... one finds a whole spectrum of means to punish that are suggested, and finally it happens that the prison was in some way, the privileged one."

But regardless of the shift of the approach, Foucault believed that aim to control is much similar to the ancien regime. In fact, the nineteenth-century prisoner must follow a strict timetable of improving activities, and is under constant observation while doing so which gives rise to panopticism and Big Brother dystopia. Foucault even argued that this panopticism is not just of the imprisonment in modern society but of the exercise of

a wider power outside the prison. He posited that the modern penalty was not necessarily a transition to a more lenient and more humane punishment but:

“to make of the punishment and repression of illegalities a regular function, coextensive with society; not to punish less, but to punish better; to punish with an attenuated severity perhaps, but in order to punish with more universality and necessity; to insert the power to punish more deeply into the social body.”

Thus, one can notice that his was not specifically confined on discipline (or punishment) in penal institutions but this “dispersal of discipline” has broadened into a wider political economy of power. Foucault even made a bold assertion that this is part of modernist project of “normalization”. He further emphasized the mutual involvement of law and social sciences in this project; thus, this gave rise to what he called the government rationality – governmentality.

“Nineteenth-century imprisonment did not exclude criminals to make them invisible, however: the prison was not a dungeon, an oubliette. Foucault describes how the newly developing social sciences were enlisted to make the criminal into an object of knowledge – a delinquent. Disciplinary punishment was not aimed at punishing the crime, but at changing the offender, and change was dependent on knowing the offender. Hence the development of criminology (Pasquino, 1991), the body of knowledge concerned with the diagnosis, classification and correction of the types of criminal and the causes of their criminality.”

In fact, social science's production of 'delinquents' fused with the legal specification of crimes thus creating the concept of 'disciplinary partitioning'.

What can be controversial are his claims that prison failed if the rationale of punishment is correctionalism and that modern prisons cause recidivism. He disagrees that the basic function of penal sanctions such as imprisonment is to reduce crime but managing crime to bolster the legitimacy of power. It is because Foucault believes that penal systems are techniques of repression.

*Criticisms.* For critics, they contested to those claims made by Foucault. Their arguments center on the issues of periodicity and overgeneralization. As to periodicity, Foucault failed to account as to when and where various penal changes occur. Spierenburg (as cited by Hudson, 1996) presented that the decline of physical punishment was more gradual and even more patchy especially when he cited the restoration of corporal punishment by the

Napoleonic regime. Even in the current regimes, there are those including some of the most advanced states which have explored the retention and restoration of capital punishment. As to partiality, criminologists and sociologists criticized Foucault's overgeneralization. His characterization of the shift of penal practices as depicted in his *Discipline and Punish: The Birth of Prison* seemed to provide an accurate representation but a closer look revealed that his was generated from the European context and that his analytic framework may work well with adult male prisons but not necessarily for a young offender's institution. One case of prison state does not represent the global prison system.

Admittedly, though much has been analyzed and criticized on Foucault's works based on historical and theoretical grounds, even his critics in the field of penal sociology have been profoundly influenced by him.

## 2.0 Conclusion

Foucault provided fresh insights in the body of knowledge related to punishment. His was very novel in presenting the agenda of the western society in the industrialized age by utilizing punishment as a tool for social control; thus, making psychologically orientated science criminology developed and enlisted in the state project of a correctionalist penal strategy and broadened the concept of punishment. His has been used to criticize excesses in penal institutions and also in analyzing punishment and control of women. Simply put, his sociological and post-Marxist disciplinary penalty provided a critique on contemporary punishment theories and expanded the landscape of which a scholar in this field can hardly ignore.

Foucault's disciplinary has its share of criticisms and controversies but in no doubt a truly scholar in criminology and in penalty will never fail to consider its legacy by tracing the industrialist's social control agenda through punishment of which it is totally missing in the four major punishment theories discussed. His may have diverse reception even in western society but it will never fail to serve in spurring debates that concern in examining crimes and critiquing state punishment.

## References

- Beccaria, C. (1986). *On crimes and punishments*. Hackett Publishing Company. USA.
- Bentham.A. (1992). *The principles of penal law*, in Von Hirsch and Ashworth, 63 as cited in Hudson's Understanding Justice.
- Bittner, E. & Platt, A. (n.d.). *The right of the state to punish from the book on contemporary punishment: Views, Justifications, and Justifications*. In Gerber and McNany (ed.): University of Notre Dame

- Press: London.
- Brumbaugh, J.M. (2001). *Criminal law and approaches to the study of law: case and materials*. (Third Edition). Foundation Press: New York.
- Cavadino, M. & Dignan, J. (1992). *The penal system: an introduction*. Sage Publications: London.
- Deacon, R.A. (2003). *Fabricating foucault: rationalizing the management of individuals*. Marquette University Press, Milwaukee, WI, USA, 12/2003 (Accessed at Ateneo de Davao University Libraries – March 2, 2013.)
- Deflem, M. (1999). *Power/knowledge, society and truth: notes on the work of Michel Foucault*. <http://deflem.blogspot.com/1999/08/powerknowledge-society-and-truth-1999.html>. Retrieved last March 16, 2013.
- Gerber, R.J. & McAnany, P.D. (n.d.). *Contemporary punishment: views, explanations, and justifications*. University of Notre Dame Press: London.
- Grupp, S.E. (1971). *Theories of punishment*. Indiana University Press: London.
- Hudson, B.A. (1996). *Understanding justice: an introduction to ideas, perspectives and controversies in modern penal theory*. Open University Press: Philadelphia.
- Lacey, N. (1988). *State punishment: political principles and community values*. Routledge: London. <http://plato.stanford.edu/entries/punishment>. Retrieved last March 16, 2013.
- Lotringer. (1989) as cited in <http://www.ukessays.com/essays/philosophy/foucauldian-discourse-on-punishment.php>. Retrieved last March 16, 2013.
- Microsoft Encarta Encyclopedia De Luxe 2000 – Michel Foucault.
- Parsons, T. (1964). Evolutionary universals in society. *American Sociological Review*, 29, 339-357.
- Routhledge. (n.d.). *Reassessing foucault: power, medicine and body*. Routhledge. (Accessed at Ateneo de Davao Universities last January 2013).
- <http://www.ukessays.com/essays/philosophy/foucauldian-discourse-on-punishment.php>. Retrieved last March 16, 2013.