
LAUGHTER AS A STRATEGY OF RESISTANCE TO THE PUNITIVE POWER¹

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ABSTRACT. This article is a result of theoretical analyses from a doctoral research, in essay format, which brings contributions of Philosophy, Psychology and Society to discuss laughter, revenge and justice. Punitive practices, in addition to the medical and juridical knowledge that sustains them, are called into question. It addresses interventions of laughter in the politics of truth, which crosses resentful subjectivities eager to judge, monitor and punish. Interrogating the relationship between medical order and law as to punishment in defense of society is an important contribution of this theoretical text, which makes laughter a political weapon through which irony and tragedy call into question justice as judgment. The criticism of subjection to penalties as revenge due to a break with the social contract is suspended. In this sense, this study proposes a reflection, albeit provisional, on a problem that seems to be essential in Nietzsche's and Foucault's thoughts: the ties between laughter and punishment.

Keywords: Laughter; punishment; subjectivity.

O RISO COMO ESTRATÉGIA DE RESISTÊNCIA AO PODER PUNITIVO

RESUMO. O artigo é resultado de análises teóricas de uma pesquisa de doutorado em formato de um ensaio, na interface das contribuições da Filosofia, Psicologia e Sociedade, para problematizar o riso, a vingança e a justiça. As práticas punitivas, os saberes médicos e jurídicos que as sustentam são colocadas em questão. Também são abordadas as intervenções do riso, na política da verdade, a qual atravessa subjetividades ressentidas, ávidas em julgar, vigiar e punir. Interrogar a relação entre ordem médica e lei, no castigo, em defesa da sociedade é uma importante contribuição desse texto teórico, o qual faz do riso uma arma política em que a ironia e o trágico colocam em questão a justiça como juízo. A crítica à sujeição da pena como vingança face à ruptura com o pacto social é colocada em suspensão. Nesse sentido, é proposta uma linha reflexiva, ainda que provisória, de um problema que me parece essencial no pensamento de Nietzsche e Foucault: os laços entre riso e punição.

Palavras-chave: Riso; punição; subjetividade.

LA RISA COMO ESTRATEGIA DE RESISTENCIA AL PODER PUNITIVO

RESUMEN. El artículo es el resultado de un análisis teórico, una investigación doctoral, en la forma de un ensayo, en la interfaz de las contribuciones de Filosofía, Psicología y Sociedad para discutir la risa, de la venganza y la justicia. Prácticas punitivas y el conocimiento médico y legal que las sustentan se ponga en duda. También las medidas de la risa se abordan a política de la verdad, que se ejecutan por intermedio de subjetividades resentidos; deseos de juzgar, controlar y sancionar. Interrogar la relación entre la ley y el orden médica, en el castigo, en defensa de la sociedad, es una contribución importante de este texto teórico, lo que hace la risa un arma política en la ironía y la trágica en duda la justicia y el juicio, y el juicio. La crítica del sujeto de la oración como una venganza en contra de la ruptura con el pacto social se suspende. En este sentido, se propone una línea de reflexión, aunque sea provisional, un problema que me parece esencial en el pensamiento de Nietzsche y Foucault: las relaciones entre la risa y el castigo.

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Palabras-clave: La risa; castigo; subjetividad.

Introduction

This article is a theoretical essay derived from an ongoing doctoral research in education. The work conducted aims to study Nietzsche, Foucault and education in articulation with justice, subjectivity and society, taking laughter as a strategy of resistance that allows analyzing the history of juridical and educational practices in contemporary times.

In Bergson (2001), laughter is the enemy of emotion in the sense that it enables the creation of questioning rationalities and not only expresses a feeling of approval, rejection or joy. The purpose of this article is to outline a reflection, albeit provisional, on a problem that seems to us crucial in Nietzsche's and Foucault's thoughts: the ties between laughter as resistance to punishment.

Laughter as a criticism of punitive revenge

According to Nietzsche, men have turned into more ferocious and evil animals due to an old superstition: the belief in their ability to judge, since they have been defined as animals that judge, as stated by the philosopher in one of his posthumous fragments (Nietzsche, 2013). It is possible that Nietzsche thought about that phrase using a semantic game between the German verbs *urtheilen* (judge) and *heilen* (save), although in the end judging and saving would be based on the same misconception: the belief that by judging it is possible to save, correct and educate someone. That is, a culture in which one no longer knows who is the healer or the executioner of the souls.

Poor society that excessively believes in the rhetoric of the executioner! By the way, in *Thus Spoke Zarathustra*, Nietzsche avidly satirizes the figure of preachers. Executioners are this type of preachers who bring honey in their tongues and gall in their hearts, and a culture is dangerously established on hatred when it believes too much in the executioner's perspective; that is why Zarathustra is also an "anti-preacher", because preachers must be unmasked as "liars" (Salaquarda, 1997).

Nietzsche's satiric view opens a spectrum of practices resistant not only to punishment but equally to the sense of justice, based on a reasoning about the subject of knowledge and the politics of truth, in the dimension of moral valuation of the world and each act. The very same Nietzsche adverts that every long belief eventually becomes stupid (Nietzsche, 2013). Stupidity, stupid, mediocrity: here is a theme that haunted not only Nietzsche but the entire nineteenth century and, of course, also contaminated the justice sphere. The central question for Nietzsche is to know whether our justice and modern democracy has actually managed to break with the "slave morality" (Marton, 2010).

Because, broadly speaking, what we still call "good", as juridical and political categories, is still spanned by the model of a man of "good character", but this man of good character is, above all, one who is "easy to deceive" or, as Nietzsche says, one who should seem good and be stupid; in short, a "harmless" and fragile man to some extent.

Already, the stiff and starched formality of any ceremonial suggests to us an image of this kind. For, as soon as we forget the serious object of a solemnity or a ceremony, those taking part in it give us the impression of puppets in motion. Their mobility seems to adopt as a model the immobility of a formula. It becomes automatism. (Bergson, 2001, p. 34).

For these reasons, Nietzsche, in *The Dawn*, did not let out the fact that concepts such as justice and politics are still permeated by plebeian and idealistic categories, that is, they want to take us up but end up dragging us down (Nietzsche, 2004). In fact, our ideals of education were confused with the ideals of punishment, sanction and surveillance. Punishing has become a way to educate by punishment, avenging a depreciated act in the valuation field of a given society.

The pedagogy of punishment has been secularly thrilling educators, jurists, moralists, religious people, doctors, psychologists, orthopedists of the instrumental reason alienated by the relentless pursuit of a civilization amidst what is classified as crime and injustice. A social deviance has become

the target of an endless educational task aimed at preventing this deviance from becoming a crime and social insecurity at some point.

Nietzsche (2004, p. 21) also says in *The Dawn*: “Indeed, they have gone so far in their madness as to demand that we feel our very existence to be a punishment- it is as though the education of the human race had hitherto been directed by the fantasies of jailers and hangmen!” For this reason, Nietzsche nourished a deep aversion to the Anglo-Saxon political empiricism. He looked at it with suspicion, especially at Hobbes.

And with this political rationalism he did not see anything but what he regarded as an Anglo-mechanistic stupefaction. Using science, notably political science, to stupefy, discipline, seduce, moralize and humanize to rule was the real project of the Hobbesian political philosophy: politics as “devotion”. For Nietzsche, the political Christianity thus arises, which would not be entirely found in Judaism but rather in what Nietzsche ironically called “Anglomania”. Nietzsche also saw in this political philosophy trends of the “dark” and the “sensual”, but, in any case, the bestial figure emerges with its vulgar gestures (Nietzsche, 2003).

In this way, a formula of relation of power seems to have arisen from this apparently strange alliance between the critique of truth and laughter. “I am much too right” and, therefore, I will always “laugh best” (Nietzsche, 2006) is a sentence that is both ironic and threatening in Nietzsche’s *Twilight of the Idols*. The possibility of making the history of truth and describe its sordid invention is part of an analytical procedure performed by means of questions about the constitution of political rituals of the knowledge that sustains juridical practices (Foucault, 2011). The critique of power by laughter is so powerful that it begins to be combated and hostilized, as shown by the censorship of cartoons, cartoonists and artists who dared to make people laugh and laughed at civilizing practices throughout history.

The relationship between the Judiciary Power and the medical-psychological practice in correction, in punishment and in the social defense logic is organized by the management of society and control over subjectivities through the sieve of the norm and the law, within the sphere of the emergence of the juridical sovereignty of the State and social medicine as the main tactic for managing bodies, carried out as the government of conducts, in the securitarian arts of watching and punishing (Foucault, 2008).

Laughing at philosophers, judges, politicians and artists is something that reveals another perspective of truth, in the sense that the seriousness of punitive rationality always allows laughing at the hypocrisy operated by the vengeful logic. Now, it is clear that laughter is relevant as dissidence and strategy of criticism of the punitive and normalizing power of the sciences, justice and the enslaving moral of those living at the service of the bureaucracy of judgment. Nietzsche did not fool himself as to the present authoritarianism and dominations in the inflamed attempt to make the faculty of judgment activate the just and true judgment. According to the author, the sense of punishment is not that of preventing by inspiring fear, but demoting someone in the social hierarchy so that he is no longer part of a certain group. Any measure that carries with it these effects suffices. The penal system must develop in this direction (Nietzsche, 2009).

Thus, Nietzsche laughed at Socrates as the teacher of dialectics. According to Nietzsche, dialectics was no unanimity among the Greeks. Dialecticians were seen as excessive men with “bad manners”. For this reason, Nietzsche saw Socrates more like a judge than a philosopher, a judge of consciences. But what is the effect that the judge of consciences produces in individuals? Nietzsche sought to understand how the moral of punishment is both the moral of healing and redemption: because the one who punishes introduces himself with the sinister disguise of a doctor.

Nietzsche, however, in section 84 of chapter *The Wanderer and his Shadow*, tells a strange tale of *prisoners*. The prisoners do their daily job while others do nothing, even though noticing that the guardian is absent. But a prisoner then says that he is the son of the feared and rancorous guardian who watches everything. He offers salvation to all who believe in him and to the skeptics just the promise of the worst misfortunes.

An older prisoner says that if he intercedes for them he will be seen as a kind man, but that he is totally indifferent to belief or disbelief; a younger prisoner says that those things were all in his head, just fantasies; a third prisoner, however, announced that the guardian is dead and so is with him all the promise of salvation. The alleged redeemer keeps boasting about his power to heal, and instill fear

stating that the guardian is still alive. The scene ends with the prisoners showing indifference and apathy to any form of freedom built by a messianic leader of the enslaved people (Nietzsche, 2008).

Laughter, the norm and punishment in Ubu-like notes

Apathies, indifferences to freedom. Here is what Foucault, in turn, diagnosed in the 1970s of the twentieth century, indicating that the experience of the Stalinist terror left deep marks in the political life of people and forged effects of terror and fear of a massacre as the paradox of a promise of authoritarian security to a leader and subdued masses. Indeed, there was no more desire for revolution (Foucault, 2008).

Laughter, after being captured by the entertainment media, was emptied of the resistance tactics and usefully transformed into social anesthesia in the capitalism of the pastiche culture. The control over the masses by the cultural industry has worked and still triggers thousands of apathetic subjectivities to reproduce the severe judgment along with the laughter of the destructive humor of difference, which can make one fall into the trap of being a step away from the terror caused by mass entertainment.

In fact, the very act of rethinking desire as a new way of doing politics was emphasized several times by Foucault as a totalitarian practice. Revolution under the aegis of terror and the search for purity were terms that walked side by side in the traumatic Stalinism and communism experiences, almost like Siamese twins. In any case, another question seemed to be kept opened by Foucault's thought, namely: the desire to punish survived authoritarian regimes, even in democratic periods marked by an apparent social tranquility (Foucault, 2008).

In this sense, we would like to make a brief digression. After Stalinism, Europe saw the emergence of a literature that had every reason to be resentful, but opted for a narrative that was somehow comic or at least interested in reflecting on laughter. Artists from Eastern Europe worked seeking to make satire and scorn an aesthetic weapon for them to question politically the punitive practice.

We quote, first, a passage from the political novel by Czeslaw Milosz, *The seizure of power*. Humor and tragedy could exist there, but only privately as a feeling of shame and as an attempt to justify something (Milosz, 1988). It is, among other things, the "humor of inanity", as Wolin says, who is a character of said novel and speaks of a shameful laugh, of the laugh experience in oppressive systems. Thus, we see how disruptive it is to laugh in the political field that creates an aesthetic and ethics of the powerful critique of totalitarian regimes and authoritarian ways of living.

Only serious people know how to laugh: the more a man is capable of an entire seriousness, the franker his laugh will be... Laughing well takes being a man of conviction, firmly believing in something and realizing, suddenly, that he was wrong. (Minois, 2003, p. 516).

In this narrative by Milosz, the characters always hear the expression "I will teach you to laugh". Laughter always comes from a police or juridical authority – in this aspect Milosz shows that the juridical, police and political devices of the Communist Regime in Poland were not so different from what happened in *Auschwitz* as well as in any other Military Dictatorship. Laughter also tortures; the torturer's laughter echoes on the victim's memories.

Milan Kundera, more famous than Milosz, wrote a beautiful novel called *Immortality*. In this novel he speaks of the social function of laughter. The character mocks the worker's smile, who smiles while holding his hammer on a communist advertisement, when he was then living in the former Republic of Czechoslovakia, but also mocks, while walking down the streets of Paris, the liberal advertisement of a white man reaching out his hand to a black man as the peace dove flew. But when the heads of advertising of communism and capitalism are asked if they believe in justice and in the law they burst into laughter (Kundera, 1990). Laughter, appropriated by the cultural industry, generates oppression instead of resisting to it. Thus, it is fundamental to make a criticism of the entertainment of comedies and soap operas, movies and plays trivializing politics and life. Laughter in the critical power cannot be emptied and reduced to the anesthesia of a mass society, in the culture and plane of subjectivities.

These are some works that help us understand the relationship between an oppressive laughter arising from totalitarian regimes which left indelible marks on individuals, and a liberating laugh to keep people lucid, despite all the traumatic experience. We made this brief digression for understanding that Foucault was attentive to the matter of laughter and power, of laughter and punishment. It is curious to note that Foucault shows that the relationship of men with laws is a tragic relationship of intense humor, in which laughter allowed Foucault, on several occasions, to make the reverence to science and to the courts a kind of ridiculous practice to be the target of laughter for so many absurd things they were capable of doing in the name of justice.

Greek tragedies, according to Foucault (2011), are always stories of Law. This does not mean, however, that tragic writers did not use irony, parody, comic scenes to show how laughter is evil and serves to explain the paradox of the linear relationship between justice and the Judiciary Power, between legislation and Law. Foucault (2008) emphasized the difference between justice in the context of cultural values and of a Philosophy of the history of Law, especially of the distinction between jurisprudence and juridical.

A tragic artist as Sophocles rather parodied the poet Homer. He shows in the play *Oedipus the King* how the tyrant Oedipus and the clairvoyant Tiresias humiliated themselves through ironic expressions. Oedipus says that Tiresias is the clairvoyant who knows nothing: that his interpretation of the flight of birds nothing clarifies. Tiresias, in turn, says that Oedipus is the blind king, the riddle decipherer who cannot decipher himself (Foucault, 2014).

In *Abnormal* Foucault (2010) says exactly that. Juridical discourses provoke laughter and are reproduced in the plane of laughter. Foucault laughs at these rituals of justice and their punitive, vengeful and medical-psychological rationalities which entangle with the grotesque. Indeed, as shown by Foucault, the court and the hospital entangled in a complex web where the criminal and the mad mingle, where escaping from psychiatric webs is not easier than escaping from prison; this unfolds another type of power, the medical-psychological power in its effects of truth and imprisonment.

Foucault speaks exactly of the junction of powers between the judge and the doctor, which leads us also to Foucault's critique of the figure of Oedipus as a tyrant (a mix of judge, savior, purifier) who, when putting into operation his knowledge, also reveals his violence and derision in the face of juridical mechanisms and the political production of truth (Foucault, 2010, 2011). The relationship between evidence, witness examination and inquisition is given a medicalizing tone by the law through the articulation of the latter with social norms in defense of society.

Indeed, Foucault himself compares juridical and medical discourses as a kind of revival of narratives of children's stories, power discourses which bring dark, evil figures that disturb the quiet night of children and begin to be analyzed by the biographical investigation of the emerging figure of a criminal and a pathologized body, concomitantly (Foucault, 2008). It is a view of psychological subject, due to his life story, which is narrated in a memorial of production of the subjective truth of the alleged offender, who is convicted socially and judicially (Foucault, 2010).

We shall not forget that Foucault himself knew that the stories by Pierre Rivière were told to scare peasant children (Foucault, 2012). The biographical construction of the delinquent individual occurred through the criminalization of Rivière's subjectivity, articulated with his life story marked by deviances against social norms. More than judged by the parricide crime, Rivière was punished by the violation of many social norms prior to the crime committed.

When punishing, one needs to provide evidence that someone has caused pain and violated the social contract (the role of juridical discourses). Every punishment comes with a categorization, which operates by disqualification and, thus, produces a pathological discourse that reduces the individual to puerility, to weakness, as it is the case of medicine and the psychiatric power (Foucault, 2006). The more present childhood is in the adult, the more it will represent the notion of a juridical and pathological danger about to emerge at any time in the form of crime and violence, death and irony of the medical and psychological judgment, articulated with the Right to punish (Foucault, 2006).

It is also possible (there are few studies in this sense) that Foucault is thinking about the Danish philosopher Kierkegaard, who speaks of infant distress as something ambivalent: the child is afraid and lets himself/herself be seduced by the dark; from this dark background one can see the perversity in subjectivity. Would this scene by Kierkegaard, about the child who has an aversion to and is and at the

same time attracted by his/her dark room, not refer to that very same relationship of punitive powers (medical and juridical) with the dangerous individual?

The dangerousness view had in the construction of a criminal subjectivity that is the enemy of society its securitarian support, in the bureaucracy of the modern Rule of Law. Virtuality started to be judged and feared by the bureaucrats of punishment (Deleuze & Guattari, 2013). Risk becomes a probabilistic category arbitrarily calculated in the name of protection, justice, security and social defense, being quickly associated with danger (Beck, 2011).

An answer that Foucault finds to this question is directed, however, to a curiously comical figure. His laughter is his power; he is a puerile, mediocre character which forges, however, power effects. It is the figure of *Ubu*, the famous theatrical character by Alfred Jarry. Foucault (2010) speaks exactly of Ubu-like and grotesque contents of the penal discourse, which is a reference to this character, and of how fierce they are when articulated with medical-psychological discourses.

Minimum social deviances, disobediences or violations will be subject to the penal rationality, in the articulation between norm and law. The penal typification will be added to the criminal politics supported by the Criminal law of the social enemy, in which the punishment of the psychological, medical and juridical figure of the criminal is built by forensic examination within the criminal process as a dangerousness device (Foucault, 2011; Zaffaroni, 2011).

By the way, we can mention the hilarious question by Ubu mother, wife of the wicked King Ubu, who says: "Who made me such an animal" (Jarry, 2007). The scene is funny because the grotesque is in power. A disqualified man who, however, has the power to disqualify others is in power and seeks to learn in order to judge and govern. It is a parody of the famous speech of *The Prince*, by Machiavelli, in which advices given to the prince were founded on his juridical figure of sovereignty, on its ownership of the land and his assets and on the preservation of the latter (Foucault, 2008).

We shall not forget that Machiavelli praised Homer's *The Iliad*, especially the education of Prince Achilles, who had been educated by the centaur Chiron (a half-horse half-man mythological creature), which had taught this Greek prince the moment of power and the moment of diplomacy. However, King Ubu is not this type of balanced ruler: even his laugh is a death sentence, and he points with scorn and tyrant laughter at that which he aims to judge impartially.

Perhaps that is why the figure of the specialist, of the expert for Foucault (rather than being seen as an epistemologist) resembles too much the *Ubu the King* character. Foucault (2010), in this sense, speaks of the psychiatry expert (as the one who rehabilitates the Ubu-like strength) who needs to use the discourse of fear, which needs to mobilize puerile discourses and, finally, needs to ridicule. With regard to this aspect, Foucault states:

... through a childish discourse that disqualifies him as scientist at the very moment he is appealed to as a scientist, and through a discourse of fear, which makes him ridiculous as soon as he speaks in court about someone accused of a crime who is in the dock and consequently deprived of any power. The scientist, who is sheltered, protected, and even regarded as sacred by the entire institution and sword of justice, speaks the language of children and the language of fear (Foucault, 2010, p. 31).

As Foucault himself explains, the grotesque figure arises in *Abnormal*. This image is very complex as it is permeated by both the tragic and the comic. Tragedy and comedy have this common core in their pretensions to disqualify a character. But Foucault (2010) says that these grotesque figures are not just literary figures, they are concrete in politics and in Law.

In *Truth and Juridical Forms*, Foucault (2011) points out precisely how much the law articulates with the norm at the moment when the juridical and psychopathological figure of the dangerous individual is tragically constructed as one who deviates from social norms and breaks the social contract, becoming the target of the kidnapping of his body by quasi-juridical and juridical apparatuses. Justice, linked to revenge, is grounded on the resentment to be expiated by punishment, in which penalty operates through the guilt of a conscience examined by juridical rituals (Prado Filho, 2012).

The examination, in fact, of those seen as virtual dangers to society is a medical and psychological practice of modernity, organized by a diagnostic evaluation based on biography, with highlight to moral

and normalizing criteria for conducts, in the sphere of the psychosexual development process and family relations (Foucault, 2006). Morality, sustained by good and evil as values of a society, fosters reactive and resentful attitudes that bring about revenge, in conjunction with crime and punishment (Nietzsche, 2008).

The confession of an alleged truth would be the production of a subjectivity to be penalized for its guilty psychosexual construction that is morally and judicially judged at the intersections between the social norm, the medical order and the juridical sphere, which would bring about security amidst the calculations of the political economy by means of a normalizing policing and a normative judgment tied together by the evaluation of the relationship between subjectivity, truth and punishment (Foucault, 2008).

In these galleries of museums that categorize criminal and psychopathological types we can find decrepit and powerful employees, such as those built by Kafka. We can find underground employees forged as sick and evil, such as those by Dostoyevsky, or vengeful characters such as Shakespeare's. Foucault speaks of how the grotesque has been assimilated by the engineers of power (Foucault, 2010).

The main obstacle to a comic effect is the existence of a painful affection: pain or any harm, psychic or moral... Humor prevents the painful affection from being triggered, it spares us an emotional exhaustion, and therein lays the pleasure it provides... Our everyday humor, most of the times, is of this type: it spares us the anger (Minois, 2003, p. 526).

One should be careful with the myth of justice; for Nietzsche (2003, 2008), it may become a revenge fable; for Foucault (2006; 2010), a parody recognized as a scientific discourse instrumentally applied to the field of the Judiciary Power in the preparation of reports and supporting decisions of judges and doctors, in criminal and psychopathological trials. In this sense, there is a triangle of knowledge, law and power, in the relationship between discipline and juridical sovereignty, concurrently with the operation of the Democratic Rule of Law, based on the coordination of security with freedom (Foucault, 2008).

Medicine enters Law by questioning about the motive for a crime to be committed and, thus, should explain that which the Judiciary Power could not articulate between the events analyzed in a process. The abnormal will be placed under the baton of medical, psychological and juridical knowledge and power, the corrective discipline of the normalizing punishment of the vengeful controls of a disciplinary society (Foucault, 2011).

Discipline is the first step to correct and prevent the penalty with the punishment in the educational sphere to forge obedient subjects. Punishment has also become juridical and medicalizing, in the case of risk management, in the face of social deviances. The creation of the abnormal to be ruled and subjected to medical, juridical and psychological correction has updated punitive relations under the educational and social spectrum supported by the psychobiological and medical-juridical approaches and the forensic psychopathology (Foucault, 2011).

Discipline is then placed inside claims for better policing and security as a normalizing modality that manages life and disciplines bodies, conducts. Social revenge began to operate in the face of deviations from the norms through educational discipline and normalizing sanctions, through the preventive surveillance of health and social assistance. However, this social revenge is not the only one working in the securitarian management of life because the organization of discipline along with the sovereignty of the Democratic Rule of Law operated the educational formation of the subject of rights without waiving the liberal political economy.

Freedom in liberalism is part of the functioning of the market and the sphere of rights but, paradoxically, goes hand in hand with social security, oftentimes visiting the punitive and criminal field to allow greater freedom to come and go and buy and sell. Juridical rules and discourses of truth as a system to evaluate the public operation of the machine of Administrative Law and Criminal Law have been defined by psychology, pedagogy and social medicine as well (Foucault, 2008).

In addition to discipline, Law begins to defend society through the management of the population as well. For Agamben (2012), penalties and punishments are tactical operators of the functioning of

liberalism as a political regime, but especially as a style of existence. Revenge is at the basis of the social contract, in the construction of security and social defense against those who break the social contract. As Bobbio (2010) states, the era of rights brings a wide field of search for criminal categorization concurrently to struggles for justice and judgment on social practices, activating a punitive logic of criminal nature of what once was regulated by culture.

The contract is broken by figures that deviate from the norms and the so-called dangerous and delinquent individuals to be punished and criminally subjected to disciplinary and prison penalties. In the management of population, biopolitics arises, the government of life responsible for letting one live or die, in the Rule of Law, by the relationship between order and liberal law. This utilitarian and instrumental aegis of Liberal Democracy in modernity has come accompanied by the constitution of examination, surveillance, hierarchy and social control practices, generating effects such as the formation of corporate subjectivities inflated by law (Foucault, 2008).

Now, one of the penalties of modern society, built by the logic of revenge, was the jail in return and a place of austere disciplinary correction. However, there still the letting one die and killing in the name of life, capital justice, maximum penalty, in which life itself is exterminated as an extreme punishment in the face of the evaluation of a securitarian society that produces alleged enemies to be excluded and not just isolated, in the context of scales of punishment to be applied. Biopolitics has also become a security strategy and, paradoxically, began to justify the greatest massacres in the twentieth century within democracies, operating security for the protection of some individuals and the punishment of others. The defense of society has become a security mechanism, associating discipline, biopolitics and juridical sovereignty (Foucault, 2008).

Final considerations

It is curious to see that modern law loves to invoke the Roman law. But Foucault himself (2010) shows that the most odious of all political and juridical characters of the Roman world was Nero. Much more popular than the great philosopher Seneca. The most terrible diagnosis that Foucault does is that in contemporary societies *Ubu speaks knowledgably*. At this point, what do Nietzsche and Foucault have to teach us about the relationship between laughter and punishment?

The effects of penal practices on the production of subjectivities are tragic, and penal execution, as well as the whole apparatus of criminal politics, crossed by medical, psychological, juridical, pedagogical, sociological, anthropological, statistical, geographical and biological knowledge, are as comic as a belief in the penalty and its alleged ability to expunge the guilt and release the resentment that sustains the deadly machine of penalty and judgment.

Bergson (2001), when stating that automatism is laughable, as the criminal trial works mechanically through the witty and hypocritical bureaucracy approached the analyses of Kafka (2014) on the penal colony and the hard machine of punitive administration. The social defense mechanism was placed at the center of the Democratic Rule of Law and became as laughable as its alleged mission to protect rights and release the market by individual freedoms. Social rights were created in an attempt to make up for the mishaps of the corporate market, but with no major effects in the face of the destruction and the socioeconomic horror of wars, of precarization, social disaffiliation and intense juridical and medical-psychological inflation of crimes and punishments.

Thus, laughing could be a resistance of the humanitarian rationality of the society of rights and justice as an example for the revenge of crime and deviance. However, there is a paradox of laughter due to the fact that those who operate the machine of the State and of the penal micro-politics are also subject to the creation of an alleged cold and scheming monster. Now, the State is not an entity but rather the result of multiple forces in dispute, that is, the one that instigates punishment, and laughing at it might put one in the firing line of the effect of this laugh at any time.

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