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The new penology: a grid for analyzing the transformations of penal discourses, techniques and objectives

Introduction

- 1 Over the last 15 or so years criminologists have become increasingly acquainted with the concept of « new penology »¹. The concept was presented for the first time in a 1992 article entitled « The New Penology: Notes on the Emerging Strategy of Corrections and its Implications » by Feeley and Simon.
- 2 Feeley and Simon (1992, 1994, 2003) presented the « new penology » as an analytical grid seeking to give meaning to the transformations that have emerged in the field of American penality over the last 25 years. Increasingly, researchers have been wondering about the suitability of the analytical model to the analysis of penality in other areas, such as Canada and Europe (or certain countries in Europe).
- 3 In order to distinguish the various aspects of new penology while at the same time emphasizing their interconnections, our article will successively present the transformations in the discourses on crime (1), in the discourses on the criminal (2), in the objectives of penality (3 and 5), and in the instruments employed to attain these objectives (4 and 6). The example of parole will regularly be utilized to illustrate these different elements².
- 4 This manner of presenting the new penology reflects a desire to respect the complexity of the Foucauldian triad of « knowledge-power-subject »: in order to respect this complexity, it is necessary to show how the modifications, conflated under the term « new penology », reinforce each other and comprise the mastery of useful knowledge, the techniques of power to be implemented and the representation of individuals at whom this « knowledge-power » is targeted³.
- 5 Although this article uses the notion of new penology in quite a classical manner, i.e. as a set of criteria to analyze a series of changes in penality, three provisos need to be voiced at this stage.
- 6 Firstly, this recourse to the new penology does not mean that it is the only discourse, nor even the dominant discourse seeking to explain these transformations. Consequently, our use of the new penology as an instrument to approach transformations in penality only allows us to analyze one part of these transformations.
- 7 Secondly, even if Simon and Feeley speak of an « analytical grid », or « model » to refer to the « distinctive features of the new penology and their implications » (2003, 78 and 80), they do not consider that conflating the changes under the label of new penology should be viewed as the outcome of a deliberate decision by a group of « strategists ». In that respect, they adhere to a Foucauldian conception of power relations, which are at the same time « intentional and non-subjective »; for even if there is no « power that is applied without a series of aims and objectives [...] this does not mean that it results from the choice or decision of an individual subject » (Foucault 1976, 124-125, our translation).
- 8 Finally, and this will nuance what has already been said, it seems to us that there is in Feeley and Simon (mainly in their article from 2003), a certain ambivalence about the status of the new penology, as it seems to have acquired the status of a performative discourse. This is the case when Simon and Feeley wonder whether the new penology provides a « compelling or culturally satisfying story about crime and how to deal with it » and when they conclude that

it « has not (yet) succeeded in producing a viable ‘truth’ about crime » or in becoming the « language of the public, the media or the politicians » (2003: 81, 93)⁴.

Whatever this ambivalence in status (analytic grid vs. performative discourse) may suggest, there is no doubt that the new penology is not a doctrine that prescribes « musts » in the domain of punishment and, as reflected in the title of the 2003 article, that Simon and Feeley (2003, 75) do not regret these existing « limits ».

1. The Conception of Crime

Crime is mainly approached as a normal and socialized risk and as a technical problem.

1.1. Crime as a normal risk

Crime is relieved of its moral connotations, in a view close to the Durkheimian vision of criminality, where crime is an inevitable and accepted phenomenon. Delinquency is seen as a normal risk, of the same type as other risks covered by social security such as illness or unemployment (Feeley and Simon, 1994, 173). This normalcy finds its source in the « crime-accident » conception, where crime is a risk⁵ whose occurrence must inasmuch as possible be predictable and whose negative impacts must be minimized.

1.2. Crime as a “technical” problem

Traditionally, the researchers who have analyzed the causes of crime have insisted either on its voluntary or on its structural character (Scheingold, 1984 and 1991, cited by Simon and Feeley, 2003, 81 and 102). In order to act on crime, the former sought to modify the factors that influence the individual calculation of the offender, whereas the latter researchers believed that inasmuch as the causes of the crime are to be found outside the penal process, it is these external causes that must be acted upon.

The new penology operates outside these two traditional conceptions. In the new penology, crime is not approached structurally, because it focuses on the act committed without reference to the exterior context; nor voluntarily, because it does not concern itself with individual behaviors but rather with the management of groups (Simon and Feeley, 2003, 102-103).

Crime is considered less an individual or social problem than as a technical problem whose effects are more important than its causes. Crime is conceived of as a statistical probability rather than as a transgression. The penal process’s aim is not to respond to individual deviance or to social problems, but to regulate the levels of deviance, to minimize the occurrence and negative consequences of crimes, and thus to render crime tolerable through systemic management (Feeley and Simon, 1992, 452 and 455 ; Chantraine, 2004, 3 ; Robert, 2001, 77 ; Lynch, 1998, 842).

1.3. Crime and actuarial or prudential logic

As stated above, new penology presents crime as a normal risk whose occurrence must be foreseen and its negative impacts minimized.

When Feeley and Simon state that crime may be dealt with through an actuarial logic, they are indicating that the penal system has moved from a language based on the morality of the offender to a language based on probability and statistical distribution within the population (1992, 452). However, the same Simon and Feeley (1992, 1994, 2003) do not limit themselves to saying that governments manage crime as a risk: they also specify that governments redistribute the management of this criminal risk over both individuals (victims and offenders) and communities (Pratt, 2001 ; Robert 2001). Simon and Feeley are thus equally sensitive to that which they agree to call, with O’Malley, a prudential logic⁶ (1992 ; 1999).

New penology refers to actuarial logic in order to show that the agencies of the penal system have been colonized by a probabilistic language for the management of criminal risk; by the

same token, it refers to prudential logic to indicate that these agencies are no longer considered to be the only ones responsible for the management of criminal risk.

1.4. Conclusion: the difficulty of producing a “truth” on crime

- 18 A penological model « succeeds » when it congrues with the dominant ideological model regarding crime and its control within a given society. In order for a penological model to be genuinely effective, it is necessary to reduce to a minimum the gap between the discourse of experts and that of the public. Thus, the rehabilitation model « succeeded, » not because it managed to normalize offenders and reduce the number of crimes committed, but rather because it agreed with the « pre-theoretical » conceptions of crime that prevailed during the period (Simon, 1993, 99 and 229); which amounts to saying, in the terms of Edelman (1977, quoted by Simon and Feeley, 2003, 82), that « words can succeed even though policies fail ».
- 19 The position now⁷ taken by Simon and Feeley (2003, 81, 93 and 106) is clear: new penology has not (yet) produced a viable « truth » about what crime is and how it should be dealt with.
- 20 Simon and Feeley point to the present gulf existing between the discourses of experts and those of the public. The new penology is a way of highlighting the transformations of penality that can be recognized in the discourses of penal system professionals and the academic world, but not (yet) in the discourses of media, politicians and the public, for whom the amorality of crime remains a central issue⁸. On the one hand, there is a conception of crime as a « systemic phenomenon », untrammelled by any moral specificity, and on the other hand, an insistence upon emotion and morality (Simon and Feeley, 2003, 78-83 and 101).
- 21 These two sets of discourses are not addressing the same issues. What distinguishes them is not differences in their views of what is crime (and the criminal; *cf. infra*), but rather an absence of interest in the issues raised by crime (and the criminal) in the discourses influenced by the new penology. For indeed, the new penology is less a discourse about the truth of crime than a discourse about the truth of the penal system and its management of crime. It is in this sense that one must understand the assertion of Feeley and Simon (1992, 466) to the effect that actuarial criminology « is not a criminology at all, but an applied branch of systems theory ». Its technocratic interest in the functioning of the penal system is susceptible to limit the possibility of producing a useful knowledge about crime, but also to fill the void left by the abandonment of discourses focused on the social purposes of punishment (*cf. infra*) (Simon and Feeley, 2003, 107 ; Mary, 2001, 44).

2. Conception of the criminal

- 22 Several changes in penality conflated under the label new penology refer to the conception of the criminal. The criminal is approached less as a rational and morally responsible individual than as the support of risk profiles and member of a sub-group, as reflected in the ideas of « career criminal » and *underclass*.

2.1. The offender as bearer of a risk profile

- 23 The transformations of penality do not call into question the fact that those responsible for crimes are physical persons; but this persisting individualization of the criminal question must be viewed in relation to the change in the status of the crime (*cf. supra*).
- 24 Because dangerousness is a social construct rather than an ontological entity, it is not surprising that its components should « vary based on timing, needs, the state of society », nor that the instruments used to evaluate it should change (Ewald, 1988, 317, our translation ; Pratt, 2001, 106 ; Castel, 1983). The dangerousness of an individual is actually measured less in relation to his criminal habits or to the criminal acts he committed in the past than with regard « to the type of crime that [he] (...) could commit in the future » (Pratt, 2001, 108, our translation). This conception of dangerousness, focused on the future, i.e. towards prevention, is connected to the present concern for the protection of society⁹.

- 25 This conception of dangerousness is given tangible substance by actuarial evaluations (*cf. infra*). The use of these evaluations is the source of the uneasiness felt by the new penology has with regard to the concept of humanity. There is a dissolution of the subject, of the individual, who comes to be replaced by a combination of factors (Castel, 1983, 119 and 123 ; 1981, 145). By focusing on the identification of risk profiles, the new penology fails to build representations of the subjectivity of criminals. There is a replacement of a « criminal identity » by a subject fragmented into a series of risk factors (Quirion, 2006, 157). In order to draw attention to this replacement, some researchers prefer the idea of « risk of violence » (Pratt, 2001, 116), of « risk profile » (Mary 1999, 6 ; 2001, 35) or of « a combination of factors likely to produce risk » (Castel, 1983, 123) to that of « dangerousness », the latter phrase being too closely linked to an attribute of the individual. The only possible reconstruction of the individual is a probabilistic reconstruction in which the subject is directly generated by figures, as is the case with concepts like « high risk offender » or « career criminal » (Simon, 1988, 786 and 790-792 ; Feeley and Simon, 1992, 466 ; 2003, 107 ; Robert, 2001, 77).

2.2. The career criminal

- 26 The use of the concept of « career criminal » illustrates that the criminal problem is connected to the behaviors of a sub-group that is less numerous and more easily identifiable (Simon and Feeley, 2003, 94).
- 27 This concept is reminiscent of older concepts such as « habitual offender » or « professional criminal » (*ibid.*). While it is true that there are similarities, the differences between the two need to be pointed out as well. The concept of « career criminal » dispenses with research into the causes of crime (*cf. supra*). The use of this concept demonstrates that transformations in penalty have rendered it « agnostic » with regard to the causes of crime. It is no longer a matter of diagnosing and treating the causes of crime but rather of identifying the rate of risk of the offender and of determining the penal measure that corresponds to it (*cf. infra*).

2.3. The offender as a member of a population (sub)group

- 28 The acts committed and the dangerousness of the individual offender are less important than the overall crime rate of the population. It is the population, subdivided into groups according to their risk potential, that becomes the target of power¹⁰. Groups are thus qualified as dangerous, undesirable, and/or undisciplined¹¹. (Feeley and Simon, 1992, 455 ; Brion, 2001, 421 ; Chantraine, 2004, 5).
- 29 This interest in the population, however, does not cause the disappearance of the individual from the knowledge-power complex found in the new penology, since the individual is conceptualized as a member of a particular sub-group. The individual is not described through his moral or clinical characteristics, but via statistical distributions applied to sub-populations (Feeley and Simon, 1992, 452 ; 1994, 177-178 ; Simon, 1993, 183 ; Mary, 2001, 42 ; Taylor, 1997, 311).
- 30 At the source of this classification of offenders into groups lies the use of actuarial techniques¹². Whenever a « crime-accident » occurs, it is now to be managed, not as a unique event caused by a person but rather as a predictable statistical event in which the responsible agent is part of an identifiable group identifiable through a given set of characteristics. The model for the allocation of penal resources according to risk profiles is the structure of (civil) insurance¹³.
- 31 Statistical analyses demonstrate that certain groups within the population come in more frequent contact with the institutions of penal justice than other groups. The use of stereotypes¹⁴ in the application of penal law¹⁵ allows the penal process to be more efficient and to develop distinctions that can easily be represented as objective, because they are « scientifically produced ». Actuarial techniques have played an important role in the acceptance of the concept of « fair discrimination » » (Feeley and Simon, 1992, 466 ; Simon, 1988, 781).

- 32 This insistence on the idea of group allows us to approach the reactualization of the concept of an *underclass*.

2.4. The Underclass

- 33 The term *underclass* refers to a segment of the population that is perceived as definitively poor and marginal¹⁶. Lacking both competence and education, this class does not constitute a reserve of man-power but is rather qualified as a useless population composed of the superfluous¹⁷ (Castel, 1995, 645 ; Simon and Feeley, 1992, 467 ; 2003, 96 ; Mary, 2001, 33 ; 1999, 7).
- 34 The *underclass* is also perceived as dangerous. Its members are readily attributed a genuine culture of violence. The ability of some communities to even maintain a minimal degree of order among its members is called into doubt. As a consequence, the *underclass* is perceived as a high-risk group, not only in terms of the possible actions of each of its individual members, but above all in terms of its collective potential for crime (Feeley and Simon, 1992, 467 ; 1994, 192 ; 2003, 97 ; Vacheret *et al.*, 1998, 38).
- 35 As a consequence, the concept of an *underclass* encourages low-cost collective penal responses, i.e. primarily exclusion and surveillance measures. This in addition casts discredit on those correctional penal responses which aim at the reintegration of the criminal into his community (Castel, 1995 ; Chantraine, 2004 ; Mary, 2001, 47 ; Feeley and Simon, 1994, 193).
- 36 Thus, as an individualized measure which focuses on the reintegration of the criminal into his community and entails investments in a dangerous class, parole is « conceptually less coherent ». Parole becomes primarily a low-cost management measure for those convicted and objectivized as « waste » with no effort being made to make them « fit in » (Simon, 1993, 142 et 259 ; Simon and Feeley, 2003, 99 ; 1994, 193 ; Lynch, 1998).
- 37 The idea of the individual being set free without supportive resources makes the control of that person a risky, not to say impossible operation. Controlling parolees who have no fixed residences, no work or no fixed place of work, is not an easy task. The first problem the parole officer is confronted with is simply locating the parolee. In such a context, monitoring of the parolees is « artificial », that is to say, it no longer depends on the social world of the parolee him/herself, but rather if forced to rely on surveillance techniques to be created from scratch by the penal system itself (Simon, 1993, 145-146, 168 and 181).

2.5. Rationality and responsibility of the criminal: prudential and actuarial logic

- 38 The use by Simon and Feeley of combined actuarial and prudential logic already met with in the assessment of criminality, is also applied to the criminal.
- 39 Actuarial logic is not fundamentally concerned with questions relating to the rationality and responsibility of the criminal: rather, it considers the criminal as an « inert » individual whose decision-making process is not to be manipulated. The hopeless view of poverty (*cf. supra*) is not foreign to the presentation of the criminal as unresponsive to the economic signals of punishment.
- 40 On the other hand, prudential logic grants more importance to the criminal's rationality and responsibility. He is seen as an *homo economicus* who decides to offend, by rational choice, in order to maximize his profits. In the classical style, it proposes to « conduct the conduct » of individuals by capitalizing on the deterrent powers of punishment (*Law and Economics*). According to the prudential logic, if deterrence does not bear fruit, the conjunction of individual responsibility and the objective of risk management, warrants a severe reaction because it is both deserved (= *Just Desert*) and linked to the risk profile of the criminal (Feeley and Simon, 1994, 175 and 189 ; 1992, 454 ; Robert, 2001, 78 ; Mary, 2001, 41 ; Taylor, 1997, 312).

2.6. Conclusion: the difficulty of producing a “truth” about the criminal

As with crime, the new penology meets with some difficulty in producing a « truth » about the criminal. The new penology leaves public opinion without a tangible representation of crime because of its interest in the management of a purely systemic phenomenon; by the same token, it leaves public opinion without a clear picture of the criminal because of its focus on the management of risk groups.

The change in the iconography of justice, in which the blind woman holding the penal scales is transfigured into the funnel of justice, is an apt reflection of this double problem. It would not be much of an exaggeration to say that both crime and the criminal have now come to be formally defined as mere elements entered into the penal system.

The resulting transformations in penalty transform it into to a power lacking any real theoretical knowledge of man; hence its difficulty with (= to give a clear content to) ideas like « criminal identity » and even « humanity » (*cf. supra*) (Simon, 1993, 230 ; Feeley and Simon, 1994, 188).

3. First objective: ensure the protection of society through management (surveillance and control) of risk groups

What Feeley and Simon label as the old penology is knowledge-power focused on correction of the criminal. This objective of correction translates into actual practices of punishment and normalization (Feeley and Simon, 1994, 173 ; Brion, 2001, 420).

This leads us to feel that the expression « old penology » might have been more favourably used in its plural form, since the phrase is used to describe practices that relate as much to retributive judgement as to a clinical diagnostic (Feeley and Simon, 1992, 450). In their latest article, Simon and Feeley (2003, 101) seem to be attentive to the diversity which is covered by the phrase, because they use the plural (oldest penologies) when they indicate what the new penology is opposed to.

The old penology lost its force because of the weakening of the traditional social goals traditionally attributed to penalty and especially because of a widespread « disenchantment » with the treatment of criminals. The legitimacy of the objective of the normalization of punishment has been called into question for two reasons: both in terms of capacity and in terms of its usefulness (Simon, 1993, 105 ; Brion, 2001, 422 ; Pratt, 2001, 107 ; Mary, 2001, 43).

In the new penology, the objective of punishment is no longer the correction of the criminal but the management of the risk which crime represents for society (Feeley and Simon, 2003, 79 ; Vacheret et al., 1998, 43). As very clearly described by Quirion (2006, 146), the objective of the penal system would no longer be « to reduce the gaps between the marginal individual and the ambient norm, but rather to classify the individuals or the groups with regard to these normative gaps, without real concern for individual transformations » (our translation)¹⁸.

The new penology implements this protection of society primarily through the surveillance and control of risk groups. The question of « how to monitor » has become a central issue. The institutional means of more or less intensive control are planned for the criminals by virtue of the social risk which they represent (Robert, 2001, 77 ; Mary, 1999, 6).

4. Tools implemented in order to reach the first objective

The offenders are categorized into groups based on their risk and needs profiles. This categorization, produced through the use of actuarial techniques, allows the adequate allotment of penal resources.

4.1. The identification of and categorization of risk groups

The identification and classification of offenders into groups is based on their respective dangerousness. This interest in classifying offenders did not first emerge with the new

penology but the objective pursued by the classification is changing. It no longer seeks to define adequate methods of treatment and to adjust them to each criminal, but rather to optimize the allocation of penal resources among the whole penal population by virtue of risk levels (Feeley and Simon, 1992, 452 ; 1994, 173-175 ; Chantraine, 2004, 5).

The operations of classification within penal justice are so numerous and varied that they represent the essential task of the penal enterprise¹⁹ (Feeley and Simon, 1992, 454 and 461 ; 1994, 175 and 180 ; Robert, 2001, 77). Profiling is already carried out from preventive interventions onwards²⁰. Profiles are introduced into police work²¹ and thus condition the input fed into the penal system. The legal decisions taken during the preliminary phase of the penal process, principally those relating to preventive detention, are also influenced by the creation of risk profiles (such as not showing up at trial). By the same token, the risk profiles influence the decisions made during the sentencing phase of the trial, when they are used to draw up the *guidelines*. Finally, the risk profiles are used in the execution of sentences²².

The media play a significant role in the determination of the crimes supposed to be subject to categorization in terms of dangerousness. Two elements are deemed to be particularly significant: the perceived seriousness of the facts and the perceived probability of recidivism attached to these facts. These two elements combine to rate « sexual offenders » among the primary targets of current identification techniques (Simon and Feeley, 2003, 98 ; Pratt, 2001, 111 ; Lynch, 1998, 851).

4.2. Identification of needs

The categorization of offenders into groups depends mainly on their risk profile but also on their needs profile. In order to ensure the best protection of society, offenders are assigned a level of surveillance corresponding to their risks and needs score (Simon, 1993, 130 and 174-176 ; Lynch 1998, 855-856).

« Criminogenic needs » (or dynamic factors) are the needs of the offender which, if they are satisfied, allow to reduce the risk of recidivism²³. Only those needs which can be targeted by a program are taken into account²⁴. The needs which will be targeted by an intervention²⁵ are not those which the person involved perceives and identifies him or herself, but those that are considered as relevant by the statistical techniques which classify the individual in a population for which these needs seem to play a role in recidivism. The main needs targeted involve domains such as employment, social interaction, emotional orientation, substance abuse, or the ability to function within the community (Hannah-Moffat, 2005, 35). Limiting the needs to be targeted to the objective of reducing recidivism allows one to correlate the notions of needs and risks, as a proper management of risks becomes tantamount to the reduction of the level of the offenders' needs.

This interest in the offender's needs does not obviate the fact that the control activities of penal agents prevail over their activities of assistance to the offenders²⁶.

4.3. Adequate allocation of penal resources

The effort to ensure optimal improvement of the security of society requires an adequate allocation of penal resources, that is, one based on the offenders' risk profile (and needs profile) and on available penal resources²⁷.

The priority given to surveillance measures as well as the hopeless view of the situation in which a significant part of offenders live (*underclass*) allows us to understand the value accorded to the prison sentence and its neutralizing potential.

What is here favoured, according to Foucault's (1974), is the « exclusion-prison » or « warehouse-prison », that is to say, not the prison which deters, rehabilitates or punishes, but rather that which neutralizes. It is perceived as a way to postpone the commission of new crimes. Incarceration promises the reduction of the effects of crime not by acting upon the context of the offender, and even less upon the general social context, but by rearranging the

distribution of offenders in society: the criminal is neutralized for a time in order to postpone the reappearance of criminal behaviors. The duration of the prison term is not supposed to depend on the nature of the criminal act, nor on the personality of the criminals, but rather upon their risk profile (Feeley and Simon, 1992, 458 ; 1994, 174-175).

The priority given to the neutralizing effect legitimizes this punishment because it almost automatically achieves its purpose; it is the most certain means of incapacitation, after the death penalty. The good prison becomes the one difficult to escape from. The Panopticon utopia is challenged by the utopia of « Pelican Bay », a prison with no activity or distraction, almost automated, reducing to a minimum any contact with the prisoner (Foucault, 1975 ; Chantraine, 2004, 4 ; Bauman, 1999, 171).

The objective of neutralization does not entail the monopolization of the prison as a resource. Neutralization is bound to be a selective procedure, as the prison sentence can be assigned only to offenders with high risk rates.

The new penology is characterized by a continuum of different measures rather than the monopoly of a single one, namely imprisonment. Indeed, such a monopoly would, on the one hand, prove to be very costly²⁸ and therefore less efficient ; and on the other hand, would fail to take into account the distribution, produced by the actuarial tools, of offenders into a series of groups based on their risk profile.

The corrective continuum which characterized the old penology will be replaced by a continuum of control or a continuum of surveillance (Feeley and Simon, 1992, 459-461). All these alternative measures to prison must facilitate the control of offenders with lower risk profiles. There is, then, no contradiction between simultaneous recourse to prison and to community measures (Brion, 2001, 421).

In synchronic terms, the idea of a continuum of control means an array of penal measures aiming to control the offender and whose allocation is determined by the risk profile²⁹. In diachronic terms, the same idea is viewed as the permanent adaptation of surveillance to risk. This objective of social risk management modifies the time-frame of the penal procedure, which becomes cyclical and continuous. Shuttling back and forth between prison and community measures is perceived as penal recycling of populations with a risk profile. (Feeley and Simon, 1992, 465 ; Brion, 2001, 422 and 426).

A penalty aimed towards the protection of society could potentially have led to the abandonment of all measures of crime management in the community and thus to the abolition of parole³⁰ (Simon, 1993, 205). This objective of protecting society and controlling the offender allows us to make sense of the transformation, observed mainly in the United States, of parole release into a form of parole supervision (Simon, 1993, 48 and 205 ; Normandeau, 1996, 17).

The concern to control those released and to protect society allows us to explain a decrease in the number of parole releases granted, paroles granted more tardily (closer to the date of definitive release), as well as an increase in the number of revocations (Vacheret et al., 1998, 47).

According to analyses carried out mainly in North America, the increase in the number of revocations³¹ alters the relationship between prison and parole release. Parole release is defined less as a period of transition between imprisonment and full release than as an interim period of surveillance before a (quasi) inevitable return to prison (Simon, 1993, 128, 201-207 ; Feeley and Simon, 1992, 461).

This work of penal recycling is representative of the intensive surveillance programmes initially worked out in the United States³². These programmes, which were prior to the changes in penalty subsumed under the concept of new penology, are no longer viewed in the perspective of social reintegration of the persons released, but rather with a view to surveillance allowing early detection of the risks that they create³³. Intensive surveillance is

not an individualized normalization technique but an instrument for the stabilization of the parolee through close monitoring of his daily life. This becomes manifest when the success of the parole release can be measured by the number of weeks by which it has delayed the parolee's return to prison (Simon, 1993, 80-84, 227 and 239-245 ; Mary, 1999, 6).

Parole release (and parole supervision) are viewed as interim measures in the surveillance continuum. They are aimed at offenders with a medium risk profile. Indeed, parole release is aimed at those offenders for whom neutralization by imprisonment used to be, but is no longer, necessary³⁴.

4.4. Actuarial techniques

The modification of the conception of dangerousness, moving from a series of previous criminal facts to a type of « crime that an individual could commit in the future » (*cf. supra*) is not unrelated to the use of actuarial techniques in the evaluation of dangerousness. Indeed, the technical progress in statistics (the complexification of models thanks to, among other reasons, the development of information technology) have altered the conception of dangerousness³⁵.

Actuarial techniques determine the risk profile (and the needs profile) of the offender and, as a result, seem susceptible to adequately distribute the available penal resources. Adequately because, by categorizing the individuals into different sub-populations in a scientific manner based on their risk level for future crime, the actuarial techniques seem to protect society in the most rational way possible (Simon, 1988, 772 and 779-780 ; Brion 2001, 423).

The actuarial techniques offer at the same time a regime of truth, a way of exercising power and a method for ordering social life (Simon, 1988, 772). In practical terms, actuarial logic consists in collecting information concerning the offenders in a set of preselected categories (predictors), to weight the various answers using a multiple regression model and finally to attribute a score to offenders, thus allowing them to be classified into a sub-group to which is attached a risk level (with a corresponding penal resource). The predictors used in the regression equation are derived from observation of the behaviors of earlier offenders. These predictors are often behavioral elements (Feeley and Simon, 1994, 177 et 183).

The context in which these actuarial techniques were adopted was marked by the doubts concerning the diagnostic capacities of clinical psychologists and, more fundamentally, by disenchantment regarding the treatment of criminals. In this manner the *treatment* of individuals has given way to the *processing* of statistical data (Simon, 1988, 772 ; 1993, 172).

The decision to grant parole assumes a questioning of the criminal's capacity to respect the law after he has been freed. Simon (1993, 171-174) specifies that actuarial techniques use, among other things, variables regarding the number of earlier incarcerations, the type of offence, the « race » of the prisoner, the number of escapes and the presence of psychological problems in order to decide whether to grant or refuse parole. Simon (1993, 130 and 225-226) gives an example where these evaluations of risk and need have given rise to the distinction between « control » files for released prisoners presenting high risk rates, « service » files for released prisoners having high need rates and « minimum supervision » files for released prisoners with weak risk and need rates. The work expected from the parole officer is determined *a priori* for each of these three types of files.

5. Second objective: to ensure the protection of the penal system by managerial control

Given the crisis faced by the ideal of rehabilitation³⁶, the legitimacy of the justice model in general and of punishment in particular have come to be called into question³⁷.

The changes in penalty will seek to regain legitimacy by focusing on the issue of « how to punish », leaving aside the question of « why to punish » (Kaminski, 2002, 89 and 96).

In order to answer the criticism about the irrationality and dysfunctions of the penal system, the new penology is characterized by a decreasing weight given to its *substantive social*

ends/social purposes of punishment which focus on the offender (these are reduced to surveillance and control, *cf. supra*) and by a special focus upon an endogenous objective, i.e. the functioning of the penal system itself. Penal action is no longer put to the service of a final objective, but rather, the management of the penal system becomes an objective in itself (Freitag, 1996, 181 ; Simon and Feeley, 1992, 457 ; 2003, 79).

This « internalization of ends » is a type of technocratic or managerial response, whose function is essentially to protect penal justice from criticism by presenting it as a rational system independent from moral values.

With a penal system focusing upon itself, it is not surprising that the « good practices » concern the activities of the system's professionals themselves. In order to stave off criticism of the penal justice, changes in penalty will be characterized, among other things, by an evaluation of performance based on the system's processes and output, by scientifically supported decisions, by a legitimization based more on effectivity and effectiveness than on an efficiency, by a standardization of practices, and by a stringent demand for accountability.

The protection of the penal system also involves the responsabilization of the criminal with regard to the execution of the punishment. This responsabilization permits a transfer of responsibility onto the individual in case the measure should fail.

6. Tools implemented to achieve the second objective

The protection of the penal system takes place via a systemic presentation, efficient allocation of penal resources, increased uniformity and visibility of the practices of penal officers, use of actuarial techniques and responsabilization of the criminal.

6.1. Systemic approach and internalization of ends

Systems theory, while developed initially in the domain of the natural sciences (essentially mathematics and physics), has progressively been extended to human sciences and has allowed penal justice to be also conceived of as a system (Simon, 1993, 130-132 ; Feeley and Simon, 1992, 187). We have already emphasized the impact of this idea on the iconography of penal justice (the « penal funnel ») and more fundamentally upon the manner in which viewing criminology as « an applied branch of systems theory » may misrepresent its very nature.

For indeed, the penal system is no longer seen as a means of achieving substantial social ends (such as the rehabilitation of the criminal) but rather as an end in itself. The smooth functioning of the penal system has become a central objective. By concentrating on its own functioning, the penal system technocratizes, « managerializes » itself (Simon, 1993, 108 ; Feeley and Simon, 1992, 454 ; Mary, 2001, 35 ; 1999, 17).

The evaluation of the penal system is based on internal system performance, rather than on the attainment of social objectives. This evaluation is thus endogenous; it is based more on the *outputs* than on the *outcomes* of the penal system (Feeley and Simon, 1992, 459 ; Mary, 1999, 6 ; 2001, 35 ; Kaminski, 2002, 95 ; Cauchie and Chantraine, 2005, 4). Two illustrations will help illustrate this. The use of drug tests is symptomatic of the progression from a substantial evaluation (is the treatment effective? can the offenders manage their consumption?) to a formal evaluation (is the test positive³⁸ ?) (Simon, 1993, 109 and 184). By the same token, whereas the old penology viewed recidivism as a central criterion for evaluating the treatment of the offender, the new penology will assess it as a test of the effectiveness of penal control.

This modification in the semantics of the concept will entail an eventual shift in word choice as well, since the word « recidivism » is now challenged by the phrase « rate of return ». In this manner, penology proceeds from a notion of recidivism connected to the objective of reintegrating the criminal into his community towards a rate of return conceived of as a rational indicator of classification within risk groups. An high rate of return is felt to vindicate the success of the penal system in its attempts to control, while recidivism reflects the failure

of rehabilitative efforts (Feeley and Simon, 1992, 455 ; 1994, 179 ; Simon, 1993, 163 ; Mary, 1999, 6 ; 2001, 35).

85 Isolated from social purposes that allow it to evaluate its efficacy, the penal system sees itself firstly in terms of effectivity and efficiency. It should be ascertained that « things are well done » rather than that « the good things be done » (Mönks, 1998, 87, cited by Kaminski, 2002). This technocratic shift in the penal system staves off criticism by isolating its evaluation from societal demands that are vague and difficult to control. By reducing exposure of the system to criteria that lie beyond its control, the penal managers ensure that the problems will find a solution (Feeley and Simon, 1992, 456 ; Robert, 2001, 78).

6.2. Adequate allocation of penal resources

86 Seeking to take into account the liberal fear of a government that is « non-frugal » (that is, the fear that the government should govern too much ; Foucault, 2004a, 31), the changes subsumed under the term « new penology » make allowance for the fact that penal resources are limited. The penal system must consider the costs of drawing on these resources (Simon, 1993, 199 ; Brion, 2001, 422). Displaying strategic skill in the distribution of these resources allows the penal system not just to protect society (as indicated above) from the social risk connected to crime, but also to stave off criticism of « non-frugality » or irrationality.

87 In the context of the managerial approach which characterizes the new penology, the idea of rationality is narrowed down to economic rationality (Castoriadis, 1997 cited by De Gaulejac, 2005). Thus, incapacitation must proceed selectively because it is the only one that is economically viable and which allows the penal system to present itself as rational.

88 By the same token, the surveillance continuum is conceived of as a series of penal measures with different costs. In a synchronic perspective, the penal system proves to be rational when, among all the available measures in the surveillance continuum, it attributes the one which, while ensuring sufficient protection of society, entails the least cost. There is thus a search for the most efficient measure (Feeley and Simon, 1994, 187 ; Kaminski, 2002, 95 ; Chantraine, 2004, 3). In this manner, measures are developed that are inadequate for the criminal but useful for the penal system. This is the case with « shock imprisonment », where the delinquent spends a short term in a boot-camp-like situation.

89 This measure, based on a military disciplinary model, is anachronistic because the « soldier » turned out by the system is not enrolled in a military company (Feeley and Simon, 1992, 464). The rationality of this measure is not to be sought with regard to the criminal but rather to the penal system. Shock imprisonment may impress public opinion by virtue of its visibility while at the same time reassuring it with the measure's low cost due to its short duration.

90 In a diachronic perspective, the penal system will remain rational if it adapts the measure and, in parallel, its cost, to the demands of the criminal's situation (i.e. risks and needs). The changes in penal measures relate more to the penal system (showing its capacity to be and remain rational) than to the criminal (seeking to adapt his treatment).

91 The penal system bases itself on its own surveillance measures to adapt the penal resource to be assigned to the case (Brion, 2001, 426). The surveillance measure chosen will allow the penal system to gather information about the evolution of the criminal's situation at low cost.

92 The information gathered must be standardized, univocal, and susceptible to have a predictable value. The penal system will « artificially³⁹ » (*cf. supra*) multiply the encounters with the criminal and use the results of these encounters in order to appear rational in the allocation of penal resources. The recourse to drug tests is, in this respect, a perfect example. These tests seem to furnish the type of information that is perfect for the rational adaptation of the penal resource to the evolution of the criminal's profile. Frequent tests will be used as a pretext for the encounters between the criminal and the penal officer. These tests give meaningful content to these meetings: without them, the control of offenders who are perceived as rootless

and loose of significant attachments (i.e. without work or community support), would be very difficult to achieve (Simon, 1993, 187, 197 and 244).

Simon (1993, 228) indicates that in the United States, parole is has become increasingly autonomous and independent from control procedures connected to the criminal's work or community attachments, notably because the social context gives the penal officers only a reduced possibility to differentiate the evaluations of the parolees. In other words, parole serves to « conduct the conducts » but at the same time it produces the procedures by which this « conduct of conducts » is to be evaluated.

The procedure that is most often used and formalized is the revocation for « technical violation », that is, a revocation linked to the functioning of the parole process itself (Feeley and Simon, 1992, 455 and 460-462 ; Brion, 2001, 424). Elements such as the collaboration of the parolee or his submission to minor bureaucratic constraints (example: showing up for appointments) become central to the evaluation of the progress of the parole procedure.

The parole officers come to see their work as a proactive search for technical violations (Lynch, 1998, 853) as they come to act on criteria which they can easily control and interpret, which is essential in order to guard the penal system against criticism (Simon, 1993, 226-228).

6.3. Standardization of the activities of professionals in the penal system

If normalization is no longer the central objective, individualized penal decisions lose their legitimation. Individualized decisions are perceived as discretionary⁴⁰. In order to prevent the penal system from being called into question, it becomes necessary to develop procedures through which the activities of penal system professionals are standardized and standardized (Simon, 1993, 126-135 and 197 ; Feeley and Simon, 1992, 459 ; Vacheret et al., 1998, 40).

Simon and Feeley (2003, 91) speak of « taming » of the American penal system when they discuss the introduction of management techniques to reduce the discretionary power and increase the efficiency of the system's agents. The power of these agents is placed under supervision. Different techniques have been implemented to achieve the standardization of practices.

The data gathered by professionals must be computer coded. More and more these professionals see their work formatted by addition of computerized tools. The professionals must, under threat of sanction, respect the encodings prescribed by the data bases which they are supposed to feed (Feeley and Simon, 1992, 454 ; Lynch, 1998, 850-851). For example, the administration of drug tests can be used to supervise the work of the penal agent. This is particularly the case when it is planned that the result of a test will directly reach the supervisor of the penal agent. (Simon, 1993, 189).

On the other hand, the technocratic rationality of the penal system affects the work of professionals by increasing their administrative tasks (Feeley and Simon, 1992, 454 ; 1994, 179-180 ; 2003, 79 ; Lynch, 1998, 850-851).

Furthermore, the coordination techniques are multiplied in order to standardize, from the top down, the work of the members of the penal system. The coordination leads towards the development of detailed and rational « best practices ». In this manner, the types of decisions that are affected by the guidelines are multifarious (Simon, 1993, 130-136, 176 and 231-232). As a consequence, the work of the agents of the penal system becomes a matter of applying the proper procedures rather than one of interpreting actual situations.

Finally, the reduction of the penal system professionals' discretionary power also materializes in a scattered division of tasks. A task that used to be handled by one penal agent will be spread over a number of successive interventions by many agents (Simon, 1993, 131 and 190).

The analysis made by Simon (1993) of parole in the U.S. aptly illustrates this standardization. The imposition of « best practices » is realized through the introduction of manuals (*Parole*

Operations Manual) and computerized procedures. These manuals and data bases are devised to monitor the activities of agents as much as (if not more so than) the activities of the parolees. These manuals give diverse instructions about the relationships the agent must engage in with the parolee. The interactions between the agent and the parolee are supposed to be reduced to a simple verification of information (address, prospects of employment, sampling for drug tests...). An individualized follow-up (casework) and a solid personal relationship between the agent and the parolee are clearly not among the goals to be pursued (Simon, 1993, 191-193 ; Lynch, 1998, 847-849).

Whenever there is a technical violation, the parole agent's room to manoeuvre is narrow. To the extent that parole draws its rationality from actuarial techniques, an agent's decision to be tolerant would challenge this rationality. This attitude of tolerance is even less likely if the violations are committed by parolees whose liberation calls into question the role of parole (as is the case with sexual offenders).

As a matter of fact, the violations are even less tolerable in that they lay the agents' decisions open to identification and criticism (Simon, 1993, 225 ; Lynch, 1998, 852). The parolee increases the risk of revocation if his behaviour exposes the penal system to criticism.

Simon's analysis (1993, 131) shows that parole has undergone a significant division of tasks over several agents (assessment of risks and needs, follow-up and control, assistance, decision to revoke...).

These different techniques for the standardization of the work of professionals protects the penal system from external criticism by producing information which is standardized and therefore easily objectivable, transmissible and defensible. In addition, these different techniques protect the penal system from internal criticism (coming from penal agents themselves) by reducing their ability to voice critical conclusions about their own activities (Simon, 1993, 137 and 171).

6.4. Visibility of the activities of professionals in the penal system

In connection with the standardization of the practices of professionals in the penal system, Simon (1993, 135 and 195) mentions their visibility⁴¹. The responsibility of professionals is measured less by the results of their work than by their respect of the procedures of standardization, which must be given maximum visibility. These professionals are summoned to give account of their activities. They must report in essentially bureaucratic terms, in order to achieve optimal internal efficiency (Simon and Feeley, 2003, 92 and 135).

This requirement of visibility has tangible consequences for the activities of agents in the penal system: even the slightest activity must leave a written trace. These written traces are required to be complete and submitted within the allotted time. The penal system is increasingly seen as a public service which has to provide reports of its activities. The development of statistics describing these activities not only increases their visibility, but also facilitates their standardization because they can henceforth be subjected to comparison.

This requirement of visibility especially concerns the activities of the agents of the penal system when it comes to « soft » measures on a continuum of control; for it is there that it is most important to take decisions which are defensible (Simon, 1993, 130-133, 196 and 235). Simon (1993, 130) explains that parole, because it was perceived as « soft », had to explain its objectives and methods.

IT tools control the standardization of the practices of parole agents by making them visible. These managerial techniques of control have given birth to a jargon. Thus, « *specs* » are the activities conducted in the context of the follow-up of parolees which the parole agents must encode in data bases (Lynch, 1998, 849). This work of encoding produces information about the parolee (i.e. the data collected by the agent) but also about the agent himself, because it can be verified whether he has properly followed the procedures (pre-determined by the manuals)

which vary with the risk profile of the parolees under surveillance. (Simon, 1993, 167-169 and 177).

- 112 From a managerial perspective, the encoding of « specs » is subjected to essentially
quantitative evaluations. In this manner audits, which assess the rate of erroneous, late or
missing data, will ensure that the rate of error of « specs » remains below a given percentage.
113 This type of evaluation of the work of parole agents facilitates the protection of the penal
system, for a low error rate is an « objective » measure of quality, whereas a high error rate
can impute the failure of the parole to a culpable violation of instructions by the parole agent
(Lynch, 1998, 857).
114 In general terms, this requirement of visibility regarding the activities performed by agents
of the penal system facilitates protection of the system in case of a problem, because it
displaces the onus of responsibility onto the agent, who cannot prove that he followed the
standardization procedures. This visibility again allows an individual to be held responsible
for a crime; though not the criminal ... but the negligent parole officer. (Vacheret et al., 1998,
38 ; Lynch, 1998, 857).

6.5. Actuarial Techniques

- 115 Actuarial techniques will ensure the protection of the penal system in different ways.
116 Recourse to numbers (equations, algorithms) provides penal decisions with a strong scientific
credibility. And even though this scientific credibility is contested, the actuarial techniques
offer the political advantage of making penal decisions clear, precise and simple, and
their rationality seems immediate, since actuarial techniques are simple, almost mechanical,
because they do not require the judgement of a qualified clinician, but are reduced to the direct
application of an equation to a set of data. Whereas the clinician's decisions attempted to
« care for » the criminal, the computer-induced decisions of the criminal justice consultant
aim to « care for » the penal justice system⁴².
117 Actuarial techniques also protect the penal system inasmuch as they facilitate a certain degree
of low-cost standardization of the penal system. Thanks to actuarial techniques, the decisions
appear to be objective and standardized.
118 Finally, actuarial techniques allow penal decision makers to easily report on their actions,
without additional difficulties for the penal system. The visibility of the decisions is no longer
a problem because actuarial techniques claim to dispense with the discretionary power of the
decision-makers (Simon, 1993, 174-176 ; Pratt, 2001, 115 ; Vacheret et al., 1998, 39).

6.6. Responsibilization of the criminal

- 119 If the question of the penal responsibility (in the sense of culpability) of the criminal for the
acts committed is not a central concern, the same cannot, be said regarding his responsibility in
the context of the execution of punishment. As neutralization can only operate selectively (*cf.*
supra), there is a whole series of control measures that can call into play the responsabilization
of the criminal (Simon, 1993, 196). This responsabilization is achieved by demands to
participate (Cauchie and Chantraine, 2005, 7). In a liberal model, the government of others
rests upon the government of oneself. By the same token, this model is based on the criminal's
capacity for self-management (Simon, 1993, 196).
120 Even if this responsabilization of the criminal stands in contradiction with the « passive»
conception of the offender (*cf. supra*), it plays a useful role in protecting the penal system ;
for this type of responsabilization precludes any criticism of the penal system by attributing
the failure of the measure to the offender who was impelled to give it his consent. The
responsibility of the offender, understood in this way (attributing the failure of the measure
to him), is forced and formal. By accepting a favor, the criminal is made responsible for his
potential future classification in a higher risk group and thus for the reinforcement of the
degree of control he is subjected to.

Conclusion

- 121 The transformations of penalty presented in this article reveal a certain coherence even if they are not the object of a « strategy ». We have already had occasion to emphasize how the conception of the criminal as a member of the underclass is compatible with the regression from the penal objective of normalization to a basic stabilization through surveillance. We have also indicated how the adequate allocation of penal resources and actuarial techniques serve as tools shared by both objectives.
- 122 We wish, in this concluding paragraph, to nuance the cohesion between these elements. Indeed, it seems important to indicate that the two objectives can come into conflict. Let us illustrate this tension by means of the case example of the parole measure.
- 123 The second objective is attained when the parole officer uses minor violations such as a positive drug test or missing an appointment to decide upon a revocation. However, the first objective is not met when the internalization of the goals induces the parole officer to focus exclusively on the detection of those minor violations.
- 124 The second objective encourages the parole officer to give an irreproachable account of his activity. The administrative workload (encoding, activity reports) may induce the parole officer to classify some criminals at a low level of risks and needs in order to limit the meetings with these criminals and thus enable him to keep up with the requirement of recording all of his control activities. There is, then, a contradiction between the two objectives because in order to protect the penal system, the officers will opt for a lesser degree of control than the one that would have been determined by the actuarial techniques. The protection of the penal system is conducted to the detriment of the protection of society.
- 125 Hitherto this article has adopted a position not unlike Feeley and Simon's, whose papers, written in a descriptive register, do not seem to take an ethical stand on the benefit or the risk of adopting the principle of the new penology in penal justice. However, an ethical reflection is necessary when considering the new penology. We can only start sketching this kind of reflection here.
- 126 Like all scientific disciplines, criminology, is « determined less by its object than by its objective » (Fourez, 1988, 82, our translation). By insisting on the dangerousness or risk profiles of criminals, new penology does not radically call into question the fundamental or paradigmatic concepts of objectivist criminology, i.e. the protection of society, crime as a natural fact, or the criminal as a dangerous individual (Debuyst, 1984). However, the new penology ventures beyond the notion of the offender's dangerousness to focus more closely on the classification of offenders into risk groups. Whereas the concept of the offender's dangerousness has already raised ethical questions, the new penology, by focusing on risk groups, adds to this first issue a lack of « humanity ».
- 127 The second ethical reflection concerns the technocratic turn taken by the two objectives. The new penology displays its technocratic potential from the first objective onwards, i.e. the protection of society, which is left to the experts and their actuarial techniques. But it becomes absurdly technocratic when, in pursuing the second objective, scientific knowledge is no longer called upon to determine which policies should be followed, but comes to take their place as the eventual objective (internalization of ends). In this context, we are bound to conclude, paraphrasing de Gaulejac's words (2005) that the new penology makes society ill through an excess of management.
- 128 Finally, the last ethical reflection concerns the impact of this article itself⁴³ : one may wonder whether this article, by analyzing the new penology in such a manner as to observe (and be pleased by) its present limitations, does not in its own way contribute to the success of « the sovereignty test⁴⁴ » of an actuarial power-knowledge in the penal sphere: indeed, if this article has not succeeded in « disgusting ⁴⁵ » the readers of the power-knowledge presented, it is the

author who will most likely be « disgusted » to have devoted an article trying to denounce this power-knowledge without causing an epistemological break.

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Notes

- 1 The author would like to thank the two anonymous reviewers from *Champ Penal/Penal Field* whose remarks and criticisms have led to a definite improvement of this article. He would also like to thank Fabienne Brion, Professor at the Catholic University of Louvain, Dominique Deprins, Professor at the Catholic University of Louvain and at the Facultés universitaires Saint-Louis, Xavier Rousseaux, Professor at the Catholic University of Louvain, and Sonja Snacken, Professor at the Vrije Universiteit Brussel, for their relevant remarks and criticisms, which obviously do not diminish his own responsibility for this work.
- 2 Such a measure, when studied over a relatively long span of time (and in both European and North American contexts), lends itself well to the charting of “moves” that might indicate a transition from an old to a new penology. For an illustration of the tensions between the finalities of social reintegration and those relating to risk control which affect parole in California, see Lynch 2000.
- 3 For a clarification of the concept of power-knowledge in Foucault, see Foucault 1975, Foucault 1976, Foucault 1982, Boullant 2003, Rouse 1994, Lacombe 1993. Let us simply recall that the apparatus of power conditions the development of knowledge and that reciprocally, the knowledge will influence the apparatus of power. There is no disinterested knowledge, all knowledge being linked to the exercise of power.
- 4 Can this concern for the performative character of the discourse be understood by the status of the article, which was “commissioned” for a collective volume whose introduction recalls the importance of relations between ideas and the policies, between intentions and consequences, and the gulf that always exists between the two (Blomberg and Cohen, 2003a, 8-9)? Is not the introduction of the first part of this work also enlightening, when it declares that Feeley and Simon will reassess their univocal statement that “the new penology was emerging”? (Blomberg and Cohen, 2003b, 17.)?
- 5 This conception of crime as a risk may lead to a reification of crime; all the more easily inasmuch as the notion of risk seems to be predisposed (since a risk is calculated in a cold and neutral manner) to obscure its constructed character (Mary, 2001, 42).
- 6 It seems to us that the evocation of prudential logic is essential to understanding the present appeal (mainly in North America) of the theory of “just desert” and a “tough and severe” penal policy. This attraction to the theory of “just desert” can be analyzed as a manifestation of the conservative orientation suggested by O'Malley (1999).
- 7 In his doctoral thesis ten years earlier, Simon (1993, 229) defended a different position. He believed that the managerial model had succeeded in adapting to the ideology of crime and its control which saw in imprisonment-neutralization the answer to criminal risk. He specified that actuarial techniques had become dominant because they facilitated the effectivity of power (1987; 1988).
- 8 It is not easy to determine the impact of “professional” discourses on public opinion. In this respect, Simon and Feeley (2003, 80) claim but do not demonstrate that there exists a “gulf” between these two groups of discourses, but say nothing about the methods that have allowed them to identify this gulf.

9 Criminal policy is elaborated as a relationship of the society towards itself, that is, in terms of the need for security that it discerns regarding the potentialities of criminals (Ewald, 1988). This objective of protecting society leads to a questioning of the types of situations that can spark future occurrences. The criminals are thus conceptualized in terms of a whole series of risk profiles (foreigners, youths, addicts, sexual offenders...) (Mary, 1998, 755; 2001, 38).

10 One can see a clear connection between the Foucauldian concept of “governmentality” and the changes in the target of penalty (Foucault, 2004b).

11 The objectification of the criminal as a “member of an undisciplined group” is a useful representation for bio-power, understood here as a form of power integrating anatomic-political and bio-political techniques.

12 Actuarial techniques artificially shape groups whose members, not having shared a common experience, have only a weak sense of belonging. The members of these groups do not recognize themselves in the formalized representations that actuarial methods cast them into. The groups created are simple conglomerations of individuals (Simon, 1988, 744, 780 and 789). By classifying individuals in groups with a weak collective identity, actuarial techniques reduce the capacities of these individuals to militate politically for a common cause and therefore to resist a power-knowledge which has actually “constituted” them.

13 The decrease of interest in criminal law circles for a responsibility based on the individual fault of the criminal, to the benefit of a responsibility based on risk, was influenced by an identical and preliminary decrease in civil responsibility. The introduction into penal law of such actuarial language was not as rapid as in civil law because penal law has traditionally focused more on individuals and their morality (Simon, 1987 cited by Simon and Feeley, 1994 ; Simon 1988 ; Simon and Feeley, 2003, 76).

14 The use of these stereotypes shows that the interactionist critique of the stigmatization of the individuals has not been considered (Poupart, 2001). Simon and Feeley (2003, 98) indicate that the profile-based application of penal law has been criticized by movements for the defense of civil rights (mainly regarding non-discrimination); but they have immediately specified that this defensive strategy has met with more reluctance since the threatening events of September 11, 2001.

15 Feeley and Simon (1994, 180) show that the courts begin to use such stereotypes while, interested as they used to be in individual culpability, they could have acted as a brake on the development of an actuarial justice in the penal system. The authors give the example of a decision of the U.S. Supreme Court which decided in favor of a preventive detention not because there was, in the concrete situation, any evidence of an impending theft, but because the apprehended individual corresponded to the profile of a thief. The court thus accepted the use, in its legal reasoning, of probabilistic data. Not only must the individual not commit a crime (that is not new), but henceforth, he must also not fit into the criminal categories produced by actuarial knowledge.

16 In the American context studied by Simon and Feeley, the underclass is essentially made up of blacks and Hispanics living in the poor sections of the inner city.

17 This hopeless vision of poverty reifies the problem by insisting on the inevitable and permanent fate of a whole sub-group (Feeley and Simon, 1992, 463 and 468-469 ; Simon, 1993, 139 ; Mary, 2001, 36 ; 1999, 7).

18 In a similar vein, O'Malley (1996, 190) evokes the shift from a requirement of “normalization” to one of “accommodation”.

19 The expression “new penology” used by Feeley and Simon may sometimes seem too narrow since these authors are interested in (and illustrate) the presence of an actuarial logic in the whole of penal justice.

20 Situational prevention or techno-prevention measures are measures that focus on groups and situations identified as presenting a risk. These preventive measures seek less to work upon the causes of crime than to chart the groups and the risk behaviors in order to minimize their effects. They consist in identifying the effective predictors and thus achieving rapid detection (Simon and Feeley, 2003, 94 ; Chantraine, 2004, 5 ; Mary, 2001, 37).

21 Thus, the first profiles to have influenced the interventions of police were those of the skyjacker or the carrier of illegal drugs. The combination of a series of behavioral factors served to distinguish these skyjackers or drug transporters from other travelers (Feeley and Simon, 1994, 177 and 183).

22 Thus, American prisons are not categorized on the basis of the types of offenders dealt with (drug users, young adults, mentally deficient,...) but rather in terms of their level of security (normal, maximum, “super-max”...) This level of security refers to the identification of risk groups, because

- prisoners are incarcerated in one or another prison depending on their risk profile (Feeley and Simon, 1992, 461).
- 23 They are different from risks or from static factors (example: age, sex, previous offences) which do not vary, and for which incapacitating measures become the most attractive responses (Hannah-Moffat, 2005 ; Hannah-Moffat and Shaw, 2001).
- 24 Hannah-Moffat (2005, 42) concludes, with a slightly ironic tone, that, “if there's no solution, there's no problem”. In the same vein, Chantraine (2006, 282, our translation) declares that the needs retained are “based on the institutional programs (...) that exist”.
- 25 For a presentation of these “cognitive” interventions, see Andrew & Bonta (1998), Hannah-Moffat (2005) and Quirion (2006). The last two authors develop a critical perspective.
- 26 For the most part, Simon and Feeley base their analyses on the evaluation of risk (in a strict sense or, according to the distinction of Hannah-Moffat (2005, 32), on the “second-generation risk assessment”) and not on the evaluation of risk/need (or risk in the wider sense, also called “third-generation risk assessment”). This is why Simon and Feeley analyze the new phenomena primarily in terms of actuarial logic, of incapacitation and an “inert” subject, and not (or only secondarily) in terms of prudential logic, of hybridization between risk and rehabilitation (by a cognitive “treatment”) and of a careful and motivated subject, who manages his risk and need profile (Hannah-Moffat, 2005 ; Quirion, 2006 ; Cauchie and Chantraine 2006).
- 27 Even if the issue of penal resource allocation arises regularly, we will concentrate on the resources which relate to the execution of punishments.
- 28 Thus, even if the growth of the American prison population is impressive, it is accompanied by a still more important increase in the population placed, one way or another, “in the hands of justice” (Simon, 1993; Christie, 2003).
- 29 The media's emphasis on certain “monsters” may be the source of new measures in this continuum (neighbourhood notification regarding the release of a sexual offender) or of the reappraisal of old measures (putting one at the disposal of the government). Even if these measures are taken in the context of a specific dispute, the risk of seeing them colonize the whole of the penal system is real.
- 30 Indeed, parole connects more tenuously with the idea of prison as neutralizer than with prison as rehabilitator.
- 31 Revocation is sometimes analyzed as a percentage of admissions into prison (Simon, 1993, 208).
- 32 In this context, the efficiency of parole is complex. It certainly allows a less expensive control as compared to that connected with incarceration, but its economic impact connected to revocations and thus to the number of returns to prison is not to be neglected (Simon, 1993, 229 ; Feeley and Simon, 1992, 456). In this regard, the efficiency of conditional supervision is even more problematic than that of parole.
- 33 Thus, the parole officer's will of to know the address of the parolee is not connected to the objective of reintegrating him but is rather used as a tool to help this agent achieve his objective of control.
- 34 In determining the categories of criminals for which parole is “intended”, actuarial techniques create parole not as a right, or as a favor, but as a constraint. Indeed, actuarial techniques are bearers of a “truth” that the governors (*cf. infra*) as well as the governed are supposed to respect.
- 35 In affirming that the evaluation of dangerousness could have modified that concept, we are careful not to commit what Marx (1988, 161, our translation) calls the techno-error according to which “the means never determine the ends”.
- 36 One will remember the impact of the phrase “nothing works” launched by Martison (1974, cited by Brion, 2001, 411).
- 37 This question is posed in a paradoxical context, characterized by a crisis of confidence but also by a greater mobilization of justice (Kaminski, 2002, 103).
- 38 Within the context of the old penology, the penal system was concerned with drug abuse in its effort to treat the criminal whereas within the context of the new penology, the interest is in the identification of drug consumption with a view to its own functioning.
- 39 This need to create moments of “artificial” control is not unrelated to the perception of the criminal as a member of the underclass, that is, as an individual insensitive to the “natural” control of a job or his community.
- 40 This is particularly obvious in Simon and Feeley's analysis, which is based on the American correctional system. Indeed, it was characterized, until the 1970s, by indeterminate sentences.

41 The insistence on the visibility requirement is often linked to an accountability crisis whose origin is a significant social change (for example: crisis of industrial society), which manifests itself overtly in the form of tragic events.

42 They "take care of" the penal system in the sense that their impeccable and meticulous character protects it from criticism.

43 This reflection arises in a particularly acute way, given the easy access to this article.

44 The notion of a "sovereignty test" borrowed, with a slight modification, from Keck and Legrand (2003) refers to the domination of a new power-knowledge with regard to the meaning to be given and the techniques to be applied to a phenomenon. Keck and Legrand (2003, 71) suggest that "a knowledge becomes dominant when it passes a sovereignty test which imposes upon it by a knowledge which until then had been the dominant one".

45 If the gustative expression seems surprising, it is (in the original French text) based on the Latin origin of the French word for knowledge, "savoir", which is etymologically related to "savor", i.e. taste.

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Abstract

"New penology" is the name given to an analytical grid used in the study of current changes emerging in penal discourse, techniques and objectives. The notion was first introduced by Feeley and Simon in 1992. This article explores the new penology by presenting and interconnecting the main transformations in the penal field. We aim to highlight the changes in discourses about crime and about the criminal offender; we also present the transformations that have triggered a redefinition of the aims of the penal system, and we observe how these new aims have led to the development of specific procedures and techniques. To illustrate the various dimensions of the change called new penology, the example of parole will be regularly resorted to.