

# RESPONSIBILITY: CONCEPT, SOCIAL FACT OR POLITICAL TECHNOLOGY? GUEST EDITOR'S PREFACE

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## **ABSTRACT**

This preface shows the possibility of analyzing responsibility in three different ways: as a concept (legal or moral), as a social fact, as a political stake and technology. It thus highlights the complexity behind the essays contained in this special issue, which aim to cast a historical and theoretical light on how we are redefining – in keeping with the transformations in the legal, political and moral rationality of our societies – our responsibility towards ourselves (responsibility for our acting and being) and others (someone or something), therefore our being subjects.

## **KEYWORDS**

Responsibility, Accountability, Law, Government, Subject.

What does it mean to be responsible? What does responsibility mean? It is difficult to identify a concept which, following the social, legal, political, economic and scientific transformations of our societies from the 18th century onwards, has been long debated, being the subject of endless controversies involving individual subjects, collective bodies, impersonal processes. It seems that what Nietzsche said about the concept of punishment can be said about responsibility, namely that it has no meaning but a whole synthesis of contradictory meanings due to the history of its use, which is why only by depriving it of its history could it be defined<sup>1</sup>. For example, we have not yet solved the contradictions generated by the redefinitions of responsibility produced by the impact of the human and social sciences on the legal field. And again recently, echoing the title of Ronald Dworkin's famous work<sup>2</sup>, Mireille Delmas Marty and Alain Supiot felt it necessary «Prendre la responsabilité

<sup>1</sup> F. Nietzsche, *Zur Genealogie der Moral: eine Streitschrift* (1887), in *Sämtliche Werke. Kritische Studienausgabe*, hrsg. von G. Colli, M. Montinari, München-Berlin-New York, 1980, Bd. 5, § 13.

<sup>2</sup> R. Dworkin, *Taking Rights Seriously*, Cambridge, 1978.

au sérieux»<sup>3</sup>, questioning the need to reconnect the places where power is currently exercised with responsibility for paying the costs of its exercise.

Given the complexity of the issue, in this preface I will try to sketch three ways to think of responsibility: as a concept (legal or moral); as a social fact; as a political stake and (or) technology.

In defining the concept of responsibility, an often noticed first difficulty is the semantic breadth of the notion, which does not help to bring order into the matter. From the Greek *σπένδω*, responsibility has the essential function of a guarantee, in Latin *respondeo*, it is a legal capacity to answer for one's actions to another or to a third party. However, over time the concept has acquired meanings irreducible to its etymology, as in the case of political responsibility, responsibility for the deep will of the individual, no-fault liability or environmental responsibility or towards future generations<sup>4</sup>.

As Carla Bagnoli recently pointed out, understanding the concept of responsibility presupposes an analysis of the functions it performs within communities governed by norms<sup>5</sup>. It is therefore necessary to understand how norms work in a society. If one thinks that norms are reasons for action, for example in the wake of Joseph Raz<sup>6</sup>, one can go beyond the model of norms based on sanctions, show how the subject uses norms as the premises of his practical reasoning, but nothing can be said about the role that norms exercise on subjectivity, as if forms of subjectivity existed before norms. That is to say, one cannot account for the ways in which the norms structure subjectivity, constituting matrices of judgement, principles of perception, cognitive schemes, as Pierre Bourdieu would say<sup>7</sup>. After all, a rule of responsibility exists socially because there are individuals who subjectivize themselves with respect to it, who bind themselves to it and invest themselves in it psychically, reproducing and transforming it through their conduct.

<sup>3</sup> M. Delmas Marty, A. Supiot (sous la dir. de), *Prendre la responsabilité au sérieux*, Paris, 2015.

<sup>4</sup> See M.G. Foddai, "Responsabilità: origine e significati", *Diritto@Storia, Rivista Internazionale di Scienze Giuridiche e Tradizione Romana*, 10, 2010-2011: <http://www.dirittoestoria.it/10/contributi/Foddai-Responsabilita-origine-significati.htm>

<sup>5</sup> C. Bagnoli, "Natura e funzioni della responsabilità. Intervista a Carla Bagnoli", *Diritto penale e Uomo/Criminal Law and Human Condition*, 11, 2019: <https://dirittopenaleuomo.org/interviste/natura-e-funzioni-della-responsabilita-intervista-a-carla-bagnoli/>. See also C. Bagnoli, *Teoria della responsabilità*, Bologna, 2019.

<sup>6</sup> J. Raz, *Practical Reasons and Norms*, Oxford, 1975. Raz develops the approach of H.L.A. Hart, *The Concept of Law*, Oxford, 1961. On the concept of responsibility see in particular H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law*, Oxford, 1968. See F. Santoni de Sio, "Responsabilità", in M. Ricciardi, A. Rossetti, V. Velluzzi (a cura di), *Filosofia del diritto. Norme, concetti, argomenti*, Roma, 2015: 117-130.

<sup>7</sup> See P. Bourdieu, "Le force du droit. Éléments pour une sociologie du champ juridique", *Actes de la Recherche en Sciences Sociales*, 64, 1986: 3-19.

One should therefore start not from the concept of responsibility, but rather from the concrete practices of attribution of responsibility – how they have historically been implemented. At a first level, the question may be related to how responsibility is socially established.

A great classic, *La responsabilité. Étude de sociologie* by Paul Fauconnet<sup>8</sup>, has made responsibility the institution that accounts for human existence as a symbolic existence, distinct from a natural existence. In order to seize it as a living institution, thereby avoiding its disintegration into more or less vague concepts, Fauconnet deems necessary to observe «la vie juridique et morale en plein mouvement», that is, its specific sanctioning system. In extreme synthesis, responsible is the predicate of an entity attributed by a social judgment aimed at fixing the point of application for a sanction. Responsibility is only the consequence of punishment.

Starting from Durkheim's reflections<sup>9</sup>, Fauconnet distinguishes between a restitutive responsibility, proper to restitutive sanctions, and a retributory responsibility, proper to repressive and remuneratory sanctions. While the former applies to the act and its consequences through annulment procedure, in the criminal field annulment procedure is impossible. The point of application for the sanction should be the crime and its consequences; yet since it is not possible to go back in time through the annulment procedure, the different societies have raised from time to time – in order to give themselves satisfaction – symbols or signs, i.e. entities able to replace the past crime<sup>10</sup>: «La destruction d'un symbole remplacera la destruction du crime qui, en lui-même, ne peut pas être détruit. Ce sont les êtres jugés aptes à servir de substituts d'un crime et à supporter comme tels la peine de ce crime qui deviennent responsables»<sup>11</sup>.

Fauconnet therefore argues that the main function of responsibility is to make the punishment possible by providing a point of application. Punishment plays in this way its fundamental role, which is to confirm society's confidence in itself by dint of reaffirming the intangibility of the rule violated by the transgressing act.

It should be noted that nothing strictly circumscribes the framework within which societies choose the entities who will play the role of substitutes of crime and become the points of application of punishment: «tous les êtres sont aptes à jouer éventuellement le rôle de patients. L'aptitude de l'homme adulte et normal est prééminente, mais il s'en faut qu'elle soit exclusive. Individus, collectivités, enfants, fous, cadavres, animaux, choses, les sanctions peuvent tout atteindre»<sup>12</sup>. It follows

<sup>8</sup> P. Fauconnet, *La responsabilité. Étude de sociologie*, Paris, 1928. This work derives from an in-depth study of the *Cours sur la Théorie des sanctions*, held by Durkheim in Bordeaux in 1894 and whose manuscript had been entrusted to Fauconnet by Durkheim himself.

<sup>9</sup> É. Durkheim, *De la division du travail social*, Paris, 1893.

<sup>10</sup> P. Fauconnet, *La responsabilité*, op. cit.: 234.

<sup>11</sup> *Ibid.*: 317.

<sup>12</sup> *Ibid.*: 224-225.

that responsibility does not have a necessary relationship to the specific qualities of patients; there are many ways of being responsible. What is necessary is simply to be in relation to the crime<sup>13</sup>.

This thesis leads one to question the ways in which the choice of substitutes for crime takes place. Fauconnet argues, however, that formulating such a question would imply to perceive the possibility of choosing. It is only necessary that «un corps de règles, explicites ou non, et proprement morales, commande le choix du patient légitime, c'est-à-dire de l'être qui symbolise vraiment le crime au regard de la conscience morale ou juridique»<sup>14</sup>. The relationship between symbol and symbolized thing solely depends on «conscience qui le pose le perçoit et le tient pour valable»<sup>15</sup>.

For example, indeterminism and determinism, which assume as responsible respectively the author of the past crime and the author of the future crime, are based on two different kinds of causality that are contradictorily superimposed: «La causalité qui légitime moralement l'application de la sanction n'est pas celle qui, du point de vue utilitaire, légitime la prévention»<sup>16</sup>. Both these forms lead to extreme inapplicable consequences and fail to account for how responsibility is normally judged, nor how it has been established historically. The only causality related to responsibility is a social causality, such that there is, historically, no natural subject who bears responsibility; the responsible subject is the effect of a symbolic framework and a specific social consciousness.

The rules and judgements of responsibility are therefore social facts, falling within the scope of collective representations which, as such, impose themselves on individuals. In this sense, an objective responsibility is given in a way that it transcends the responsible individual. The latter is only an effect of a process of responsabilizing, which takes place out of him; whose only real cause is a specifically social causality. Subjectivity is the metaphorical effect of the way in which a society shifts the points of application of punishment, and punishment symbolizes the morality of society and achieves an imaginary gratification of its unity (expiatory meaning).

Similarly, from a psychoanalytical point of view, Jacques Lacan states that: «La responsabilité, c'est-à-dire le châtement, sont une caractéristique essentielle de l'idée de l'homme qui prévaut dans une société donnée»<sup>17</sup>. And that «l'ethnographie

<sup>13</sup> *Ibid.*: 225.

<sup>14</sup> *Ibid.*: 246.

<sup>15</sup> *Ibid.*: 234.

<sup>16</sup> *Ibid.*: 185.

<sup>17</sup> J. Lacan, M. Cénac, "Introduction théorique aux fonctions de la psychanalyse en criminologie", *Revue Française de Psychanalyse*, t. IV, n. 1, 1951: 18, now in J. Lacan, *Écrits*, Paris, 1966: 137. Before Fauconnet, John Stuart Mill claimed that «responsibility means punishment» (J. Stuart Mill, *An Examination of Sir William Hamilton's Philosophy*, London, 1867: 464). See also L. Lévy-Bruhl, *L'idée de responsabilité*, Paris, 1884: 36.

comme l'histoire nous témoignent que les catégories du crime ne sont que relatives aux coutumes et aux lois existantes. De même que la psychanalyse vous affirme que la détermination majeure du crime, c'est la conception même de la responsabilité que le sujet reçoit de la culture où il vit<sup>18</sup>. Re-reading Freud and relying precisely on the sociological research of Durkheim, Fauconnet, Lévi-Strauss, Mauss and Tarde, Lacan will radically oppose the criminal anthropology that intends to objectify the subject in an instinct, a conception that «ne s'en inscrit pas moins que les précédentes dans une structure de la société»<sup>19</sup>. The psychiatric objectification of a criminal instinct, which is pendant of a police humanism and goes hand in hand with the utilitarianism of the group, is reflected in an imaginary tendency of our societies. This tendency is such that, in order to «obtenir le redressement de Caïn», puts «dans le parc concentrationnaire exactement le quart de l'humanité»<sup>20</sup>. This objectification produces a real dehumanisation for the condemned person, because it deresponsabilizes the subject, denying his relationship with the symbolic and not considering the autonomous symbolism<sup>21</sup> of pathological criminals (criminals from a sense of guilt identified by Freud). It follows from this the need to *subjectify* the criminal by responsabilizing him in relation to the unconscious logic of the crime, that is, allowing the subject to integrate his effective responsibility through punishment, according to the famous Lacanian aphorism: *unrealize the crime* (inscribing it in its symbolic and imaginary coordinates) *without dehumanizing the criminal* (therefore, making him responsible)<sup>22</sup>. This does not mean that the punishment would have a therapeutic function in itself, but that the criminal passage to the act can be based on an unconscious need for punishment<sup>23</sup>, such that the subject can take responsibility not for what he has done, but for what he is and does not know<sup>24</sup>.

<sup>18</sup> J. Lacan, "Intervention du 29 mai 1950 lors de la discussion des rapports théorique et clinique à la 13ème conférence des psychanalystes de langue française", *Revue Française de Psychanalyse*, t. XV, n° 1, 1951: 87, later reprinted with the title "Prémises à tout développement possible de la criminologie", in Id., *Autres écrits*, Paris, 2001: 124.

<sup>19</sup> *Ibid.*: 124.

<sup>20</sup> *Ibid.*: 124.

<sup>21</sup> Lacan's reference is C. Lévi-Strauss, "Introduction à l'oeuvre de Marcel Mauss" (1950), in M. Mauss, *Sociologie et anthropologie*, Paris, 1999: XVI: «Il est de la nature de la société qu'elle s'exprime symboliquement dans ses coutumes et dans ses institutions; au contraire, les conduites individuelles normales *ne sont jamais symboliques par elles-mêmes*: elles sont les éléments à partir desquels un système symbolique, qui ne peut être que collectif, se construit. Ce sont seulement les conduites anormales qui, parce que désocialisées et en quelque sorte abandonnées à elles-mêmes, réalisent, sur le plan individuel, l'illusion d'un symbolisme autonome».

<sup>22</sup> J. Lacan, M. Cénac, "Introduction théorique aux fonctions de la psychanalyse en criminologie", op. cit.: 135.

<sup>23</sup> S. Freud, "Einige Charaktertypen aus der psychoanalytischen Arbeit", *Imago*, 4, 1916: 317-336, now in Id., *Gesammelte Werke*, vol. 10, Frankfurt am Main, 1967: 364-391.

<sup>24</sup> See J. Lacan, "Prémises à tout développement possible de la criminologie", op. cit.: 122-123: «Encore est-il que, si la reconnaissance de la morbidité de ces cas permet de leur éviter heureusement

This sanitary concept of punishment stigmatized by Gabriel Tarde<sup>25</sup> is coeval with a fundamental change in the concept of responsibility that took place in the transition from civil law to social law between the end of the 19th century and the beginning of the 20th. It is the process of objectification of risk that occurs with the birth of the notion of no-fault liability and that determines the crisis of the civil code, or rather, the articulation of the civil code and social science: the law is no longer in the codes, but in the effective life of the institutions and in the jurisprudence that has the task of detecting it<sup>26</sup>. As the problem of liability for work-related accidents shows, the code was in fact only a network of abstractions that had no relation to effective life. Starting from the famous ruling of the Cour de Cassation of 16 June 1896, Raymond Saleilles thus developed an objective theory of liability which made the subjective fault theory of the civil code (which considered the individual as an isolated individual and not as a member of a whole) obsolete and scandalous, and according to which the accident must not be related to the subjective fault of the owner, but must be understood as a risk inherent in the complex activity of modern work.<sup>27</sup> The consequence has been that any activity risky for others is a source of liability even in the absence of subjective fault.

Now, reflecting on the contemporary redefinitions of the concept of responsibility, Paul Ricoeur stressed that these two conceptualizations of responsibility, i.e. imputation (restitutive or retributive) and no-fault liability, could not account, except in a contradictory and aporetic way, for the new forms of moral responsibility by which we are challenged, i.e. responsibility for the vulnerable other (responsibility for the environment or for future generations), which becomes a true principle in

avec la dégradation pénitentiaire le stigmate qui s'y attache dans notre société, il reste que la guérison ne saurait y être autre chose qu'une intégration par le sujet de sa responsabilité véritable, et qu'aussi bien est-ce là ce à quoi il tendait par des voies confuses dans la recherche d'une punition qu'il peut être parfois plus humain de lui laisser trouver. [...] Seule la psychanalyse, pour ce qu'elle sait comment tourner les résistances du moi, est capable dans ces cas de dégager la vérité de l'acte, en y engageant la responsabilité du criminel par une assomption logique, qui doit le conduire à l'acceptation d'un juste châtement ». See also J. Lacan, *De la psychose paranoïaque dans ses rapports avec la personnalité* (1932), Paris, 1975: 303.

<sup>25</sup> See G. Tarde, *La philosophie pénale*, Paris, 1890: 478.

<sup>26</sup> See in this regard E. Lévy, *Les fondements du droit*, Paris, 1933, which argues the revolutionary scope of jurisprudence in so far as it plays the role of bringing the principles of the functioning of the institutions to consciousness. See B. Karsenti, "La vision d'Emmanuel Lévy: responsabilité, confiance et croyances collectives", *Droit et société*, 1, 2004: 167-195. Lévy's reflections on the revolutionary quality of the thinking of institution and jurisprudence should be related to those of Gilles Deleuze on jurisprudence. For a problematic view of Deleuze's theses, see G. Brindisi, "Il tenore etico o morale del giudizio. Note su diritto e filosofia nella riflessione di Deleuze sulla giurisprudenza", *Etica & Politica / Ethics & Politics*, 3, 2016: 163-182.

<sup>27</sup> See R. Saleilles, *Les accidents du travail et la responsabilité civile. Essai d'une théorie objective de la responsabilité délictuelle*, Paris, 1897. See also F. Ewald, *L'État Providence*, Paris, 1986. Saleilles will also play a decisive role in the elaboration of the concept of the individualisation of punishment: see R. Saleilles, *L'individualisation de la peine. Étude de criminalité sociale*, Paris, 1898.

Hans Jonas's<sup>28</sup> and Emmanuel Lévinas's stances. Ricoeur went so far in his view that, in the early 1990s, he described the contemporary history of the concept of responsibility as apparently anarchic<sup>29</sup>.

In order to account for the moral inflation of the notion of responsibility for the other, it was necessary, according to Ricoeur, to try to put order through an extension of the semantic analysis from *respondere* to *imputare*, i.e. the judgment of imputation. In this judgment, in fact, resides an original relationship with the obligation which has nothing to do with praise or blame, and which makes the obligation to repair a damage or to suffer the penalty secondary.

The origin of moral responsibility for the fragile and vulnerable other (*autrui*), the shifting of the object of responsibility from action to the other, derives from the promotion of intersubjectivity as a philosophical problem<sup>30</sup>. It is this responsibility for the vulnerable other that extends unlimitedly in the direction of the future vulnerability of the human being and its environment, linked to the space-time effects of our actions.

In the gap between retributive and individualizing imputation and socialized and anonymizing responsibility<sup>31</sup>, Ricoeur believed that the original sense of imputation, i.e. the simple attribution of a prospective task, was the only way to understand the new forms of responsibility for the environment or for future generations. The legal conception of the demand of the other – in the sense of retribution or risk – would lead to a contradiction: the subject made responsible by the claim of the other would carry on its head the uncontrollable consequences of its action (with the effect of blaming itself for everything), while the spatio-temporal extension of the scope of responsibility would lead to socialize the risks at the expense of the imputation of the action. Ricoeur resolved this contradiction in a mutual reinforcement, insofar as in a preventive conception of responsibility, the uncovered risks would be (morally) attributable to us. It follows from this his call to the *phronesis*, to the practical moral judgment, to maintain an idea of imputability that was not supplanted by that of risk or retribution<sup>32</sup>.

<sup>28</sup> H. Jonas, *Das Prinzip Verantwortung*, Frankfurt am Main, 1979.

<sup>29</sup> P. Ricoeur, "Le concept de responsabilité. Essai d'analyse sémantique", *Esprit*, 206 (11), 1994, now in P. Ricoeur, *Le juste*, Paris, 1995: 42-43.

<sup>30</sup> Ricoeur refers to E. Lévinas, *Totalité et Infini. Essai sur l'extériorité*, Paris, 1961.

<sup>31</sup> Ricoeur argues that the inflation of the moral concept of responsibility must not be put in relation to the shift that has occurred in the legal field with the invention of no-fault liability, which has taken liability beyond action and its harmful effects, in the direction of precautionary policies able to prevent risk and insure against it. At the very least, no-fault liability, in addition to removing responsibility for the action, could have a perverse effect of a vindictive nature, so that the more the sphere of risk is extended, the more cases in which it is possible to consider oneself a victim increase, the more urgent is the search for a liable party capable of compensating. In short, the ethical nobility of solidarity is transformed into the paranoid need for security.

<sup>32</sup> *Ibid.*: 69-70.

We can certainly say that the concept of responsibility proposed by Ricoeur intends to represent a form of ethical nobility linked to the becoming of concrete morality. If it is true that a concept of responsibility is itself, with Fauconnet, a social fact belonging to the system of collective representations, that of Ricoeur is an attempt to interpret in an adequate way the moral tendencies expressed in existing institutions. But Fauconnet himself recalled that concepts do not necessarily adequately represent the exact image of positive institutions.

Should one therefore return to Fauconnet, for whom the attribution of responsibility is an imaginary and real satisfaction of the collective consciousness? Responsibility understood as a social fact, that is, as a living institution, is functional to guarantee the representative trust of a society in itself: the role of the procedure is to give back to the representation of the transgressed rule its foundation of belief, which exercises a function generating behaviour appropriate to the order<sup>33</sup>. The individual feels responsible, in short, because society is present in him. But what Fauconnet maintained in relation to concepts can be turned against this representative thesis of responsibility. Fauconnet believed, in fact, that one of the functions of punishment was the deresponsibilization of individuals towards the sociogenesis of crime. That is, the punishment would be a real sacrifice of the criminal through which society frees itself from guilt. As Frédéric Gros has shown, Fauconnet makes a passage that Durkheim, on the other hand, had precluded himself: just as responsibility, crime is an ideal construction that societies create in order to free themselves from their painful irritation. Well, if this is the case, then one may ask whether the symbolization of crime is functional not so much to the affirmation of the fundamental values of a society, but to the ideal image that a society gives of itself, in order to disregard what it really is: «La punition a moins pous sens alors d'exprimer les valeurs fondamentales d'une société que de les afficher au mépris de la réalité et de se tailler une bonne conscience sur le dos des criminels. Le problème essentiel n'est pas d'exprimer des valeurs, mais d'y faire croire»<sup>34</sup>.

If this the case, then, in the separation between ideal consciousness and effective practices, legal and moral concepts and representations should be radically questioned starting from concrete practices of attribution of responsibility. Concepts and representations, in fact, do not correspond to actual practices of attribution of responsibility in the overall political game.

Furthermore, the emphasis on order, interiorization, representation and social conscience does not explain how the substitutes for the criminal act historically follow one another, i.e. how the points of application of the punishment are shifted. It

<sup>33</sup> P. Fauconnet, *La responsabilité*, op. cit.: 231.

<sup>34</sup> F. Gros, "Les quatres foyers de sens de la peine", in A. Garapon, F. Gros, T. Pech, *Et ce sera justice. Punir en démocratie*, Paris, 2001: 72.

does not account for the practical and effective field in which good and bad judgments are made, as Nietzsche would put it; or, to use Pierre Bourdieu's terminology, we could speak of the field in which the social struggle is played out to impose schemes of perception. Nor does it account for the material practices that make responsibility a real political stake and a political technology to conduct the conduct of others in a social conflict.

How then can we understand, beyond the notion of social consciousness as the cause of responsibility, beyond the model of interiorization, the way in which, historically, the selection of the elements that constitute a responsible subject is made?

It would be necessary to carry out a political problematization of the institutions, an analysis of the power relations that preside over the institution, to understand responsibility not as a social fact, but as a process of a political nature. In order to achieve this aim, we need to insert the social conflictuality into the historical production of responsibility and to go beyond the sphere of collective representation to enter into that of the materiality of the procedure. Responsibility thus appears more as a stake in a political and material relationship than as a moral and representative institution.

In this synthetically described problematization we can seize one of the stakes of the Foucauldian reflection of the 1970s, in which punitive technologies, forms of judgment of responsibility<sup>35</sup> are not representative of a social consciousness, but have a productive sense in relation to forms of subjectivity, games of truth and social conflictuality. In extremely synthetic terms: being responsible is the correlate of a political technology.

We can look at *La société punitive*. Here Foucault carries out a dialogue not only with Marxism, but also with the current that from Durkheim to Fauconnet and Lévy-Strauss analyzes the ways of punishment in order to find the norms to which punitive technologies obey and in relation to which one is subjectified. If the notion of exclusion could represent a critical instance with respect to a sociology such as the Durkheimian one, here Foucault maintains that this notion is configured as «l'effet représentatif général d'un certain nombre de stratégies et de tactiques de pouvoir», and does not allow to «analyser les [luttres], les rapports, les opérations spécifiées du pouvoir à partir de quoi précisément se fait l'exclusion»<sup>36</sup>. In fact, it leads to shifting the responsibility for exclusion onto society as a whole and also risks – with its implicit reference to a sort of social consensus that excludes – not grasping the historical mechanisms of power and misleading about the instance that excludes. Punishment understood from its representative level masks the difference

<sup>35</sup> See M. Foucault, “La vérité et les formes juridiques” (1974), in *Dits et écrits I. 1954-1975*, Paris, 2001: 1408-1409.

<sup>36</sup> M. Foucault, *La société punitive. Cours au Collège de France. 1972-1973*, éd. B. Harcourt, Paris, 2012: 5.

in the roles that a certain punishment can play in one system or another<sup>37</sup>. Foucault therefore speaks of penal tactics, so defined because they are characterized not by their representative content, but by the way they are used as tools of a war within society.

Subsequently, while in Fauconnet subjectification occurs in relation to a representative framework to which punitive techniques are functional, in Foucault it occurs in relation to a material system (*dispositif*) of power-knowledge. Judicial procedures and punitive technologies are not at the service of a collective consciousness or representation, but are a factor of historical transformation of forms of subjectivity in the framework of the struggles of social groups. They are functional to the analysis of the relationship between power, knowledge and subjectivity.

Was not a division of labour organised in the 19th century for the exercise of judgment of responsibility between judges and psychiatrists, between the legal field and the medical field? Is not this movement at the origin of the historical redefinition of the object of judgment and punishment, which ceases to be the crime and becomes the being of the accused, his passions, his anomalies?

As punishment is transformed into a practice of correction of the individual, the substitute of the criminal act, in the terms of Fauconnet, is no longer the legal subject, but the individuality in its criminal nature, represented by a specific subjective matter: the profound will of the individual. The substitute of the crime is the way of being, the nature of the individual, which must be sanctioned and corrected: a psychological-moral double of crime no longer metaphorical but physical and psychic. Psychiatry shifts the point of application of punishment from the criminal act provided for by the law to the psychological and moral nature of the individual. This involves a redefinition of the judicial process of responsabilization and punishment, because one judges a nature and not an act, corrects a pathological nature and does not punish a crime.

But this scientific concept of deep will and natural dangerousness is nothing but the psychiatric recodification of what Foucault defined as the practical, administrative and police jurisprudence of the extra-judicial power of internment typical of *lettres de cachet*. The practice of *lettres de cachet* established a kind of knowledge, discourse and individualization irreducible to that of a judicial inquiry, which required not to know what an individual had done or to legally qualify him/her, but to know what an individual was and to qualify him/her morally. This mechanism of material power constituted a space of observation and knowledge from which derived the set of those categories (including danger, repetition, will as a profound substance of the individual) that would have determined the meeting point of psychiatry and criminal justice during the 19th century.

<sup>37</sup> *Ibid.*: 13.

The logical and theoretical antinomy between determinism and indeterminism and their practical compromise in judgments of responsibility, which Fauconnet referred to as the «incertitudes de la conscience collective»<sup>38</sup>, which Lévy-Bruhl recognised as an «embarras dans l'ordre judiciaire» (recalling the «troubles dans l'ordre moral»)<sup>39</sup>, which Lacan described as an ideological antinomy in which the bad conscience of the dominants was reflected<sup>40</sup>, thus finds a different solution in Foucault. Foucault often speaks of an embarrassment of justice, of an epistemological contradiction at the level of the statements (*énoncés*), as well as of a practical articulation between legal norm and psychiatric norm whose evidence is due to the medical-legal system (*dispositif*)<sup>41</sup> of power-knowledge. This has led to transformations not only in the functioning of medical and legal institutions, but in the whole institutional network of society. Normative registers fundamentally incompatible (legal norm, psychiatric norm, moral norm, biological norm, etc.) are functionally fungible in practice, because their articulation has allowed a reciprocal translation of roles, discourses, institutions and practices by a plurality of instances of power (not only psychiatry and justice, but also doctors, families, prison guards, police, etc.), constituting a technology of government based not on law, but on norm, and again because our effective morality is an effect of this new kind of government of conduct, which Foucault defines as the power of normalization<sup>42</sup>. In short, Foucault has shown that the relations between power and knowledge continually shift the point of application of norms from one subjective matter to another<sup>43</sup>.

What Lacan says in the wake of Fauconnet, that is, «La responsabilité, c'est-à-dire le châtement», is then certainly right, on condition, however, that we move away from the representative frameworks, the symbolic and the Law, and turn to the technologies of power. With Foucault one can say 'responsibility, that is, punitive technologies, that is, power relations'<sup>44</sup>.

<sup>38</sup> P. Fauconnet, *La responsabilité*, op. cit.: 319-320.

<sup>39</sup> L. Lévy-Bruhl, *L'idée de responsabilité*, op. cit.: 13-14.

<sup>40</sup> J. Lacan, M. Cénac, "Introduction théorique aux fonctions de la psychanalyse en criminologie", op. cit.: 18.

<sup>41</sup> On the differences between Foucault's analyses, centred on power systems, and those of Durkheim and Fauconnet, centred on the empirical variety of forms of solidarity, see B. Karsenti, "«Nul n'est censé ignorer la loi». Le droit pénal, de Durkheim à Fauconnet", *Archives de Philosophie*, 67, 4, 2004: 557-581. On the concept of norm in Durkheim and Foucault, see S. Legrand, *Les normes chez Foucault*, Paris, 2004: 3-7.

<sup>42</sup> M. Foucault, *Les anormaux. Cours au Collège de France. 1974-1975*, éd. V. Marchetti, A. Salomoni, Paris, 1999: 37-150. See the analysis of S. Legrand, *Les normes chez Foucault*, op. cit.: 236-269.

<sup>43</sup> For a more in-depth examination of this perspective, see P. Macherey, *Le sujet des normes*, Paris, 2014.

<sup>44</sup> Another discourse on Foucault and Lacan should be made starting from what Lacan affirms in the wake of Tarde, that is, the relationship between transformations of punishment, modes of proof

In this way the process of subjectification is not resolved in representation, but in a material framework of power relations that has a relative autonomy with respect to the representative frameworks. This has important reflections in relation to the critique of psychiatric discourse. In *Les anormaux*, Foucault says that psychiatric discourse in criminal law does not establish an «autre scène», i.e. the scene of the unconscious, but splits «les éléments sur la même scène. Il ne s'agit donc pas de la césure qui marque l'accès au symbolique, mais de la synthèse coercitive qui assure la transmission du pouvoir et le déplacement indéfini de ses effets»<sup>45</sup>. Although there are some points of contact between the Lacanian text of 1950 and Foucault's reflection – for example in the critique of humanism which results in utilitarianism of the group, in the medicalisation of punishment, in the relationship between psychiatric objectification and internment, etc. –, here Foucault is criticizing Lacan. For the psychoanalyst the role of psychoanalysis, unlike psychiatric objectification, is to unrealize the crime by inscribing it in the symbolic and imaginary coordinates of the subject, in his autonomous symbolism, which is exactly the other scene in which desire is placed. Here we do not discuss the respect of psychoanalysis for human suffering (the passage to the criminal act is an individual's solution to his or her own suffering), nor the fact that psychoanalysis «rend possible une cure où le sujet n'est point à lui-même aliéné, et la responsabilité qu'elle restaure en lui répond à l'espoir, qui palpite en tout être honni, de s'intégrer dans un sens vécu»<sup>46</sup>. Nevertheless, psychoanalysis does not show what is happening on the judicial scene, since it does not question the politics of justice, the power system in which it functions, the division between what must be punished and what must not be punished. Moreover, although it does not objectify the subject in an instinct, it falls within the modern system aimed at producing «une subjectivité qui entretient à son crime une relation signifiante»<sup>47</sup>.

If what we have said is reasonable, then the question to be addressed to responsibility is not so much what it is, but how it is exercised historically in relation to the production of subjectivity: the object of the analysis will therefore be the historical redefinitions of the objects of judgement and of the subjects of knowledge, and therefore the becoming of the forms of responsibility in the field of power relations.

Just think of the processes of responsabilization within the framework of neoliberal governmentality. Here we can recognize at least three strategies of government that aim at giving responsibility to the subjects and taking responsibility away from the instances of power (market, capitalist production process and dominant actors):

and forms of subjectivity (J. Lacan, M. Cénac, “Introduction théorique aux fonctions de la psychanalyse en criminologie”, op. cit.: 126-128), but it is not possible to do so in these pages.

<sup>45</sup> M. Foucault, *Les anormaux*, op. cit.: 15.

<sup>46</sup> J. Lacan, “Prémises à tout développement possible de la criminologie”, op. cit.: 125.

<sup>47</sup> M. Foucault, *Mal faire, dire vrai. Fonction de l'aveu en justice*, éd. F. Brion, B.E. Harcourt, Louvain, 2012, p. 211.

1) the economic responsabilization of the subject as human capital; 2) the genetic responsabilization of the criminal; 3) the ethical responsabilization of the subject towards the vulnerable other.

From the first point of view, analyzing the Foucauldian description of neoliberal rationality, Stéphane Legrand spoke of a social extension of the market that succeeds the social extension of the norm. In fact, neoliberalism intends to multiply the enterprise form within the social body, making the market and competition the power that informs society of itself. The market-enterprise structure becomes the principle of intelligibility of reality and an actor of government and normalization. Thus, criminal policies abandon the anthropological framework and are based on an objectification of delinquency as a phenomenon no longer individual and psychological, but global biopolitical, in order to identify an optimum criminal activity for a given society, identifying profiles of people at risk of crime. This, however, cannot shift away our attention from the fact that the grid of economic intelligibility of behaviour entails an excess of responsabilization for the individuals, who, thought of as entrepreneurs of themselves, are referred to a sort of infinite debt towards the capital that they are<sup>48</sup>.

From the second point of view, what we have just said does not mean that there has been an obsolescence of criminal anthropology, nor that it does not aspire to an infinitesimal control of the individual. In fact, through the concept of genetic vulnerability, neuroscience and behavioural genetics are renaturalising and depoliticizing a questionable concept such as dangerousness, legitimizing themselves as a new criminal humanism. Beyond the transformation of the division between normal and pathological, neurocriminology, in particular, medicalizes violence and doubles the criminal with his genetic makeup, making genetic vulnerability not something to be cured and protected, but something to be protected from. At the same time, by medicalizing dysfunctional behaviors with respect to optimal performance parameters, behavioural norms are naturalized and society is made deresponsible with its instances of power in relation to the subject's dysfunctioning<sup>49</sup>.

From the third point of view, Grégoire Chamayou has shown that a fundamental tactic of neoliberalism is precisely the moral responsabilization of citizens<sup>50</sup>. This tactic reverses Ricoeur's thesis that we have mentioned above: the removal of responsibility from the legal and political sphere, the responsabilization for the vulner-

<sup>48</sup> S. Legrand, "L'extension sociale du marché dans le néolibéralisme", *Raisons politiques*, 4, 2007: 43-47.

<sup>49</sup> See G. Brindisi, "La ricodificazione neuro-genetica degli individui pericolosi. Problematizzazione epistemologica e analisi storico-politica del primo caso giudiziario europeo di perizia neuropsicologica e di genetica molecolare", *Democrazia e diritto*, 1, 2019: 97-127.

<sup>50</sup> G. Chamayou, *La société ingouvernable. Une généalogie du libéralisme autoritaire*, Paris, 2018: 191-201.

able other, are functional to depoliticizing the actions of individuals and their psychic investments. The contemporary process of moralization of responsibility, the interpellation of the vulnerable other to which we have referred, are stripped of their ethical nobility, materializing in a technology of government of conduct that takes hold of subjective autonomy.

The moral agency (and the resulting culpabilization) towards the vulnerable environment is in fact the linchpin of a sleek strategy of large global corporations, which have discharged their political responsibilities through a colossal enterprise of «moral re-education», so that we all adopt good environmental behaviour individually.

As large industries started to produce disposable containers – one of the main sources of pollution – divesting the previous delivery system and saving recycling costs, they also started to appeal to the ecological responsabilization of consumers: «Un cas typique de double morale, où l'on proclame une norme valant pour tous sauf pour soi. Responsabiliser les autres pour mieux se déresponsabiliser soi-même»<sup>51</sup>. This strategy, in fact, has relieved companies of their responsibilities in relation to the production process, because the issue of waste has been constructed as a matter of individual responsibility and the costs of recycling have been passed on to public institutions. Through their support for recycling campaigns, polluting companies have not only deactivated attempts to regulate the production process<sup>52</sup>, but, taking on board the rhetoric of ecological movements, have redirected the desire to act ecologically in a non-antagonistic direction compatible with their interests, producing a responsible subject called upon to combat systemic macro-faults through his/her micro-virtue<sup>53</sup>. In the face of all this, the moral dilemma through which neoliberalism governs individuals, that are torn between the imperative to behave as economic agents and to conduct themselves ethically, should be reconverted into political conflictuality<sup>54</sup>.

Finally, it should be noted that the excess of economic and ethical responsabilization has gone hand in hand with democratic deresponsibilization. Wendy Brown was talking a few years ago about a situation where «nondemocrats are housed in shells of democracies, clutched with anxiety and fear», because they are «ignorant of the working of the powers that buffet them» and unable to successfully contest the powers by which they are dominated<sup>55</sup>. This is a similar picture to the one we experienced in the 1930s, and which can still be valid today. The real danger, then, is that the present anxiety will become neurotic and paranoid and that people will

<sup>51</sup> *Ibid.*: 198.

<sup>52</sup> *Ibid.*: 197.

<sup>53</sup> *Ibid.*: 200.

<sup>54</sup> *Ibid.*: 201.

<sup>55</sup> W. Brown, «We Are All Democrats Now...», in G. Agamben et al., *Democracy in what State?*, New York, 2011: 55-56.

react to their insecurities by identifying themselves with the saving authority, wishing to be governed.

We could take this discussion further. In our present day, for example, in the midst of the Covid-19 emergency, the emphasis placed on responsibility for the other that each of us has constitutes the level of ethical nobility that founds the possibility of legal imputation of individual responsibility for the spread of the virus, but on the other hand shamefully covers the responsibilities of political decision making in dismantling the social right to health, the responsibilities of governance processes without government (which think of themselves as a-subjective and irresponsible), the public and private responsibilities of economic processes in the exploitation of nature.

Perhaps today – to get back to where we started – taking responsibility seriously, making power responsible again means making it punishable and precarious. But it also means understanding that historical redefinitions of responsibility imply the recoding of our subjective and social ways of being, and that the transformations of responsibility depend on the world-historical becoming, on the symbolic configurations it assumes and on the power relationships that structure it.

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This special issue<sup>56</sup> of *Etica & Politica / Ethics & Politics* aims to cast a historical and theoretical conscious glance at the contemporary transformations of the concept of responsibility in the legal, political and moral field, addressing: the specificity and difficulty of responsibility in neoliberal political rationality (Bazzicalupo); the possibility of a responsible subjectivity in the contemporary political space (Tucci); the responsive action in relation to a psychoanalytic interpretation of the democratic electoral field (Colangelo); the perspective of a responsibility focused on the collective conceived in relation to Gramsci (Prinzi); the process of objectification of responsibility and the subjectivity of damage in Western legal systems (D'Urso); the normative tools (particularly, fraternal correction) whereby the catholic church has coped with the pedophilia (Napoli); the re-framing of the concept of responsibility taking into account the economic and social realities of post-modernity (Golia); the relationship between responsibility, abuse of law theory and constitutional law (Bifulco); the relationship between economic primacy, political irresponsibility and the absence of democracy in the EU (De Fiores); the necessity of an ethico- and legal-

<sup>56</sup> Most of the essays collected in this special issue were presented at the 12<sup>th</sup> edition of the seminar “Le parole del Novecento”, organized by the journal *Kaiak. A Philosophical Journey* and held at the Istituto Italiano per gli Studi Filosofici in Naples on November, 28<sup>th</sup>-29<sup>th</sup> 2018. The editor would like to thank Prof. Fiorinda Li Vigni and Prof. Geminello Preterossi for hosting the seminar, all speakers for the richness of the exchanges during the days of the conference, as well as all authors who have contributed to the issue.

anthropological revolution in the face of traditional theories tacking with intergenerational responsibility (Menga); the relationship between Jonas, Comte and the sociological thinking in connection with the ethics for technological civilization (De Sanctis); the problem of human responsibility towards the animal in Derrida (Pelgreffi); the opacity of the concept of responsibility between modern philosophical discourse, philosophical reflection and post-Holocaust narratives (Bonito Oliva).