

Review Articles



A More Marxist Foucault?

Reading La société punitive

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Abstract

This article analyses Foucault's 1972–3 lecture course, *La société punitive*. While the course can certainly be seen as an initial draft of themes for the 1975 book *Surveiller et punir* (*Discipline and Punish*), there are some important differences. The reading here focuses on different modes of punishment; the civil war and the social enemy; the comparison of England and France; and political economy. It closes with some analysis of the emerging clarity in Foucault's work around power and genealogy. This is a course where Foucault makes use of Marxist language and categories, engages with historical materialism, and offers a complementary and at times corrective focus.

Keywords

Foucault – punishment – discipline – political economy – Marxism – historical materialism

Michel Foucault, *La société punitive: Cours au Collège de France, 1972–1973*, edited by Bernard E. Harcourt, Paris: Seuil/Gallimard, 2013

Between late 1970 and his death in 1984, Michel Foucault delivered thirteen courses at the prestigious Collège de France.¹ The third of these courses, *La société punitive*, appeared as the eleventh volume of the series in late 2013. A course from the early 1980s, *Subjectivité et vérité*, appeared in mid-2014, and the last has recently been published in French. The English translations, all but one of which have been made by Graham Burchell, are following in sequence: *The Punitive Society* appeared in late 2015.² Alongside these Collège de France lecture courses, a number of other lectures and texts have been published. What we know of Foucault's work has transformed quite radically in the last twenty years, beginning ten years after his death with the collected shorter writings in *Dits et écrits* in 1994.³ Almost everything we now have is based on what Foucault said in public or published, somewhere in the world, in his lifetime: the notes and manuscripts of his archive remain to be catalogued and assessed, but this is moving closer with the deposit of his papers at Paris's Bibliothèque Nationale.

In English we lack a complete translation of the shorter writings, and the lecture courses, while being translated in full to very high standards, have been treated unevenly in secondary literature. The 1977–8 and 1978–9 courses on 'governmentality' – *Security, Territory, Population* and *The Birth of Biopolitics* – have received a great deal of attention across a wide range of fields.⁴ Other courses, such as the 1980s courses on *The Hermeneutic of the Subject* and *The Government of the Self and Others* have enhanced what we know of Foucault's late interest in Greek practices of the self;⁵ and his interests in sexuality's constituent subjects are developed at length in the courses of the mid-1970s.⁶ More-recently published courses, some of which are as-yet untranslated, still await a balanced assessment.⁷

1 An early version of this article was given as lectures at Monash University and the University of Melbourne in March 2014.

2 Foucault 2015b. This translation appeared too late to use for this essay.

3 A full account of the implications of all this material for an assessment of the last ten years of Foucault's work will appear in Elden 2016, and for the earlier period, Elden forthcoming.

4 Foucault 2004a (English translation: Foucault 2008c); Foucault 2004b (English translation: Foucault 2008d).

5 Foucault 2001 (English translation: Foucault 2005); Foucault 2008a (English translation: Foucault 2010); Foucault 2008b (English translation: Foucault 2011b).

6 Foucault 2003a (English translation: Foucault 2006); Foucault 1999 (English translation: Foucault 2003b); Foucault 1997 (English translation: Foucault 2003c).

7 Foucault 2011a (English translation: Foucault 2013b); Foucault 2012 (English translation: Foucault 2014b); Foucault 2014a; Foucault 2015a.

Foucault's attitude to Marxism has long been a source of interest.⁸ Without rehearsing all of the critiques, counter-critiques and reassessments, a few things can be said. The most plausible reading of the relation was that Foucault saw much of his work as offering broadly a complementary analysis to Marxism, even if his explicit objects of analysis were rather different from the narrowly-conceived economic. He made few direct references but suggested this was in part to avoid partisan interpretations. His understanding of power relations was to include, but not be reducible to, the political-economic; class was only one fracture within society; and the state not the only locus of power. His work arguably has more in common with Marx's historical writings, though in one interview he suggests he is closer to the later chapters of *Capital* and its historical study of the development of capitalism than the better-known chapters on the commodity-form.⁹ He was much less sympathetic to Marxism, especially in its contemporary French varieties. In the first volume of *The History of Sexuality* though, Foucault explicitly challenges well-known Marxist accounts of the topic, such as those of Herbert Marcuse and Wilhelm Reich.¹⁰ In some of the lectures there are some critical reflections on Althusser, and some interviews also include critiques. This 1972–3 course adds much detail to a reading of Foucault's relation to Marxism.

The course provides a number of crucial analyses. Foucault begins to think seriously about the emergence of the prison as a form of punishment, but his analysis is never entirely centred on the institution alone, and develops a number of themes concerning social relations more generally. He ranges freely across English and French social and political history to understand a series of linked questions, and this was to be very important for his subsequent work. He makes use of explicitly Marxist language and categories, in a way he would move further away from, and has clearly been reading widely in historical-materialist accounts, even if few are explicitly referenced. The most obvious way to read the course is as an early draft of *Discipline and Punish*, published in February 1975, and there is a lot of connection, but some crucial themes are not highlighted here. Foucault elaborated many aspects that would form part of that book in the 'Truth and Juridical Forms' lectures given in Rio in May 1973

8 See, among others, Smart 1983; Barrett 1992; Poster 1994. For a rereading of *Discipline and Punish* with this relation in mind, using this course in typescript, see Legrand 2004.

9 Foucault, Gordon and Patton 2012, p. 100. Foucault says 'Book 2', but this is dependent on the French arrangement of materials.

10 Foucault 1976, for example p. 16 (English translation: Foucault 1979, p. 18).

and the *Psychiatric Power* course in 1974.¹¹ Yet while this course can be read as a first draft, or at least as a first public draft, there is much more going on.

The course was delivered shortly after the dissolution of the *Groupe d'information sur les prisons*, a political pressure group Foucault had co-founded in 1971. The point of the group was not to suggest reform, but rather to gather and present knowledge about the state of prisons and punishment in France at the time. Foucault co-authored their brief manifesto, and was involved in the compilation and editing of various reports. While explicit references to contemporary events are minimal in the course as delivered, several comments would inevitably have been heard by his auditors as having a present-day resonance. As Foucault says in *Discipline and Punish*, he is not interested in writing a history of the past, but of the present.¹² This course can be seen as part of this same inquiry, beginning the lectures the month after the *Groupe* had been formally wound-up, but with its claims and campaigns very much still a topic of contemporary interest.

Foucault was also delivering these lectures to an audience that would, at least in part, have followed his previous two courses. This is especially important as he studies the relation between three concepts: 'measure' (treated in *Lectures on the Will to Know*);¹³ the 'inquiry' (a focus of the recent *Théories et institutions pénales*); and the 'examination', which is introduced here. Measure was surveyed in relation to the Greek city-state; the inquiry in the context of the European Middle Ages and the emergence of the state; and the examination was seen as a mode of power-knowledge that was crucial to modern industrial societies. The second of these courses moves from the seventeenth century back to the Middle Ages and discusses punishment in some detail. The best place currently to look for Foucault's presentation of the measure-inquiry-examination relation as a whole is the 'Truth and Juridical Forms' lectures, in which Foucault provided an overview of his Collège de France courses to date, presenting, summarising and developing material previously given in France.¹⁴

The examination would take on a significant role in *Discipline and Punish* and some of Foucault's later courses. Here it is described as a continual inquiry without either an initial offence or a final outcome, but allowing the permanent control of individuals (p. 200). Such an argument is familiar, but

11 Foucault 1994, Volume II, pp. 538–646; Foucault 2000; Foucault 2003a (English translation: Foucault 2006).

12 Foucault 1975, pp. 39–40 (English translation: Foucault 1977, pp. 30–1).

13 Foucault 2011a (English translation: Foucault 2013b).

14 Foucault 1994, Volume II, pp. 536–646; Foucault 2000.

here it is linked to a political economy that is so often muted in Foucault's work: 'Thus we can see born, at this precise point of the relation of the body of the labourer to the forces of production, a form of knowledge which is that of the examination' (p. 200). This relation to Marxism is a central theme of the course.

1 Modes of Punishment

Foucault wants to map out four ways that society has punished, broadly conceived: exclude; make atonement [*rachat*], impose a compensation; mark or brand [*marquer*]; and imprison (pp. 8–9; see p. 256). These models are presented in different ways in different texts, but it is important to note the first two as alternatives to the simple binary that *Discipline and Punish* might be seen to be suggesting. Foucault confesses he is unsure that this typology is valuable, and that objections could be raised, but he wants to examine them with a specific focus: how they relate to the question of property (p. 10). In his discussion of exclusion he trades on the analyses of Greece that he made in the *Lectures on the Will to Know*; describes the figure that Giorgio Agamben would come to analyse as the *homo sacer* (pp. 11–12);¹⁵ and links this to the early modern 'classical age' (p. 8, n. 12). When he discusses the idea of atonement or compensation (pp. 12–13; p. 12, n. a), it is clear that this trades on a more detailed analysis in the previous year's course.

Foucault's outline of the third form is quite detailed, discussing a whole range of ways that bodies are marked by the exercise of power, with an emphasis on the sign, the wider social value of this. Some of these punishments link back to the idea of compensation, with the hands of thieves cut off, for example; but they are more about making visible, and especially making visible the power of the sovereign. Foucault claims 'it is this tactic of branding [*marquage*] which is preponderant in the West from the end of the high Middle Ages until the eighteenth century' (p. 9).¹⁶ Foucault only uses the word *supplice* – a concept which would become so crucial to *Discipline and Punish* – once in the course as delivered; and once more in manuscript pages he did not read (p. 12 and pp. 15–16, n. a). The term captures a physical form of punishment or torture, perhaps conducted or displayed publicly. It seems likely that the previous year's course had contained a much more comprehensive analysis of this form

15 Agamben 1995. See Harcourt's note on p. 21, n. 18.

16 This is a theme that is developed at length in Groebner 2009, though with little reference to Foucault.

of torture. Here he simply indicates that 'such a lavish variety of *supplices*' is required because of the way they were calibrated to a whole series of variables including the culpable, the act and the victim: 'there is the stake for heresy, quartering for traitors, the cropping of ears for thieves, pierced tongues for blasphemers' (p. 12). He then discusses the death-penalty, using the example of Damians the regicide and his spectacular public execution (p. 12), noting that this penalty continues to exist (it was abolished in France only in 1981).

There are thus various principles of punishment including social utility and societies with different needs; fine gradation of penalty to achieve social goals; infallible surveillance during the punishment; and the exemplary nature, the public face, of this punishment to dissuade (pp. 68–9). These different principles can be found in earlier punishments such as infamy – making a public example of someone; compensation [*talion*] or amend; and slavery – 'forced and public labour [*travail*]' (pp. 69–71). But imprisonment, which is common today and has been since the nineteenth century, is 'not collective like infamy, graduated in its nature like *talion*, reforming like forced labour' (p. 71). In prison – 'an abstract, monotonous, rigid punitive system' – the only graduated variable is time (pp. 71–2). There is an economic parallel here: 'Everyone is given a salary for labour time, and inversely, time at liberty is taken as the price for violation [*infraction*]. Time is the only property possessed, it is bought for work or it is taken for violation' (p. 72).

Foucault makes the claim that prison and wage-labour are 'historical twins', though he insists that he is not suggesting there is a causal relation with the socio-economic model directly changing penal practice (p. 72). Nonetheless it is striking that both the system of capitalist power and the system of penalty both show 'time-exchange against power', and it is striking how imprisonment parallels 'the organisation of worker-time [in] the factory, the distribution and calculation of time in salary, the control of leisure, the life of the worker, savings, retirement, etc.' (p. 73). This is what he calls 'the global hold of power over time... this species continuity between factory clock, the chronometry of the chain-gang and the prison calendar' (p. 73).¹⁷ The relation to Marx is obvious, though this is not the same as the labour-theory of value. Rather it might be described as the time-theory of labour and punishment. Foucault's rethinking of temporality is one of the potential avenues for future work opened up by this set of lectures.

17 Some of these points are elaborated in Melossi and Pavarini 1981.

2 Civil War and the Social Enemy

The army is a key theme in *Discipline and Punish*, and arguably the true model of the disciplinary society in that text. It receives some discussion in this course, but what is striking is the quite lengthy discussions of civil war, in a way that anticipates the 1976 course '*Society Must Be Defended*'. Foucault suggests that we need to think about penal tactics within a wider understanding of power, asking what forms of power were there that led to tactics such as exclusion, branding, amend and imprisoning (p. 13). The analysis of these tactics is in order to shed light on power, not on juridical representations, morals or ideology (p. 14). Further, he wants to examine struggle, conflicts and political protests within this notion of power, which can be conceived within the frame of civil war. He suggests that the idea of 'the obscuring, the denegation of civil war, the claim that civil war does not exist is one of the first axioms of the exercise of power' (p. 14). In Hobbes and Rousseau civil war is seen only as something that existed before the social contract, and is actually natural, rather than civil, war. Foucault counters that civil war is a permanent state, which allows us to understand 'a number of tactics of struggle, of which penalty is the privileged example. Civil war is the matrix of all struggles for power, all strategies of power and, as a consequence, also the matrix for all struggles concerning, and against, power' (p. 15).¹⁸

This universal and constant war within society shows that the penal system is not equally applied to all, but operates in the interests of some against others (p. 26). Foucault's civil war is 'the war of the rich against the poor, the propertied against those who possess nothing, the masters/employers against the proletariat' (p. 23). He provides a long discussion of Hobbes's state of war here (pp. 26–9), but he wants to reject a number of the claims Hobbes makes, especially the idea that this war precedes the establishment of power, or is exterior to power. For Foucault it is precisely a struggle of power (pp. 30–1, 33). Some of the events Foucault uses as indications of these struggles include collective movements, and he examines market riots, the Nu-pieds and the Luddites – peasant revolts in Normandy, and machine-breakers in England (pp. 31–3).

Politics is conceived as the continuation of civil war and serving specific purposes. There is a very strong sense here of the purpose *behind* discipline and incarceration, of whose interests it serves. The supposed absence of this

18 Harcourt provides detailed notes on how the analysis trades on *Théories et institutions pénales*, especially lectures 8 and 9 (for example pp. 18–9, n. 6; p. 20, n. 13, n. 14; p. 21, n. 17).

explanation would be one of the critiques Henri Lefebvre, among others, would level at Foucault's work.¹⁹ It is therefore interesting that *Discipline and Punish* offered only a partial view of what Foucault's initial researches on this topic were pointing towards. As Harcourt notes, Hobbes and Clausewitz almost completely disappear from the book, only to reappear in a course delivered about a year after it was published (p. 312).²⁰ We can therefore re-read *Discipline and Punish* in light of the analyses in these courses on the advent of the disciplinary or punitive society as one of the strategies within a wider civil, or class, war. Foucault's civil war is not simply a class war, but a war directed against the social enemy – here, the criminal, but extended in later courses to the perverse, the insane, and others who do not fit the mould. But while the direction of the analysis is, here, towards the end of better productive relations, this is not something that can be reduced to class struggle. Foucault here, as elsewhere, wants the focus to fall more on struggle than class, and suggests that class is not the only, or even the primary, division within society.

He then discusses the status of the criminal as a social or public enemy – we might say 'the enemy within' – and juridical practice as the declaration of public war (pp. 34–6), especially through the use of the jury in which criminals are 'judged not by their peers, but judged in the name of society by its representatives' (p. 36). He looks at the effect of privileged knowledges or sciences [*savoirs*] such as psychopathology and criminal or deviance psychiatry. These have 'epistemological effects', the 'sociology of criminality as social pathology' (p. 37). He later notes that 'the problem of the *connaissance* of the prisoner as such becomes a central problem . . . the criminal as an object of *savoir*'. 'This institution therefore opens up an entire field of possible *savoirs*'; a parallel with the hospital (p. 93): 'what the hospital is for the body, the prison is for the soul' (p. 93).

This discussion of the criminal as the social enemy is a major theme, and has effects on 'penal practice, psychopathology of delinquency and sociology of criminality' (p. 38). Foucault begins with a focus on a 1789 proclamation of the National Constituent Assembly, which describes an offence being committed as one where 'society as a whole is injured by one of its members' (p. 45). More than being merely like begging or idleness [*mendicité, oisiveté*], vagabondage is a matrix of crime and delinquency, 'a scourge [*fléau*] for the economy' (p. 45), someone who disrupts production, because 'the vagabond is fundamentally someone who refuses work' (p. 51). Along the way he says something of how the Physiocrats saw this question, seeing the turning of paupers into vagabonds,

19 Lefebvre 1976–8, Volume 1, pp. 162–3.

20 Foucault 1997 (English translation: Foucault 2003c).

by detaching them from their home area. Four kinds of measure are used to address this: enslavement [*la mise en esclavage*], outlawing [*la mise hors le loi*], ‘the self-defence of the peasant community’ through constituting an armed force which could work alongside the police against vagabonds; ‘and mass conscription [*la levée en masse*]’ (pp. 51–3). One of the discussions touches upon the use of a worker’s booklet that they need to present to employers or show to the police: ‘the booklet [*le livret*] is at the same time a contractual act between the boss [*le patron*] and the worker, and a police measure: there must be an economic and moral control over the worker. The booklet is one of the institutions which are not exactly penal, but which make it possible to ensure the continuity of the punitive and the penal’ (p. 199). Another indication of the criminal as social enemy comes in the analysis of the debate about the death penalty in 1791 (pp. 63–4), but this is most striking when Foucault references Marx’s articles on the theft of wood (p. 64).²¹ These examined the way in which the right to gather wood was curtailed as landowners asserted their complete right to landed property.

3 England and France

There is a footnote in *Discipline and Punish* where Foucault says his investigation is going to be in relation to France and that a comparative analysis would be too burdensome and any analysis as a whole too schematic.²² But here there is a lengthy discussion of England as a counterpoint to France. There are only a few indications of the very different historical-economic transformations of the two countries. Foucault examines the relation between a whole set of wider questions and the shift to ‘a new punitive tactic: imprisonment’ (p. 64), which he finds applied in England around 1790–1800, and in France between 1791 and 1820. He notes that imprisonment, somewhat surprisingly, was not a major focus before – prisons existed, but not within a general penal system (pp. 65–7). One striking issue is that discourses on punishment do not, initially, work within the prison – it was a largely lawless space. Louis XVIII’s advisor, Decazes, apparently wrote to say that ‘the misfortune is that law does not penetrate prison’ (p. 67). Prisons existed, not to punish, but to guard or guarantee – you might imprison a political enemy, or a debtor. But this changes with the new penal theory, which suggests that prison punishment is a mode of social defence, social protection (p. 68).

²¹ Marx 1975; see Linebaugh 1976.

²² Foucault 1975, p. 40, n. 1 (English translation: Foucault 1977, p. 309, n. 3).

Foucault is interested in various religious dissenters, including Quakers and Methodists and societies for the 'reform of morals' and suppression of vice – respect Sunday, close gambling-houses and brothels, prevent indecent literature (pp. 105–6). He also discusses 'self-defence groups of a paramilitary character', later making use of the poorest members of society to constitute a police, which demonstrates the importance of their economic function: a private police to protect bourgeois fortunes – which could be in warehouses, docks, routes (p. 107). This last theme is situated within a much wider range of economic transformations – population movements, new uses of capital, the division of labour and the circulation of merchandise. As 'the capitalist mode of production develops, capital finds itself exposed to a certain number of risks which were more controllable than before. Capital is exposed, in effect, not only to brigandage or pillage, as before, but to everyday depredation' (p. 108).

The political regime in England did not provide sufficient guarantees, and so, 'because of the weakness of centralised power, there is on the one hand a micro-territoriality of judicial bodies and penal instruments... and, on the other, a penal code of extreme rigour' which had been set up by the crown but which was inadequate to the new situation (p. 108). The new system of control that emerges occupies the limits of morality and penalty; its aim is not so much for the detection and punishing of crime, but rather to address its conditions, to instil norms of behaviour, moralising and controlling [*maîtriser*] of the 'lower classes' (pp. 109–10). Foucault notes that some important theorists of penal right such as Bentham and Beccaria had separated fault and infraction: 'laws, for them, were not to punish the moral conduct of people; they were only concerned with the utility of society and not the morality of individuals' (p. 111). But the moralisation of these issues came from these other groups at the same time, who mobilised the state on behalf of 'the higher classes, as they controlled power... The state is required to become the instrument of moralisation of these classes' (p. 111).

Central among these figures is Patrick Colquhoun, and Foucault remarks that it is unfortunate that Kant's *Foundations of the Metaphysics of Morals* is more commonly a focus when we teach and study the history of morals. Foucault suggests that Colquhoun's 1797 work on the police of the metropolis offers a stark contrast with Bentham and Beccaria on the break between law and morality. For Colquhoun there are three key principles: 1. Morality as the foundation of the penal system; 2. The necessity of the police; 3. The police target is the lower classes (pp. 111–13). From all of this Foucault suggests that the state acts as an agent of morality, using the police to control everyday life; that this is linked with the development of capitalism, with the 'progressive application of this control from only the lowest classes to, finally, workers'

(p. 113); that it requires 'a permanent and fundamental surveillance as instrument' to enforce this (p. 114); and that pressure comes from non-conformist religious groups as much as from the bourgeoisie: 'they statise [*étatisé*] morality and make the state the principal agent of moralisation' (p. 115).

It is important that England is given such detailed treatment here, with Foucault spending some time discussing the prison reformer John Howard and the jurist William Blackstone. The Panopticon is briefly mentioned only once (p. 66), and appears in some notes prepared but unread (p. 118) and again in the course summary (p. 264), even though Bentham is discussed much more. In those unread notes, Foucault stresses the role of the Panopticon 'as a form of power, but also a type of *savoir*' (p. 118). Foucault's neologism 'panopticism' appears in some additional notes that were prepared but unread until Foucault lectured in Rio later in the year (pp. 224, 265). What is interesting is that Foucault discusses the spatial characteristics of the prison late in the course, but in relation to the star design: the specific text of Bentham's *Panopticon Letters* and the explicit design of the Panopticon are missing – they will appear in the Rio lectures and in the following year's course and seminar. Nonetheless Foucault makes the point that 'this prison-form is much more than an architectural form, it is a social form' (p. 230). By this, Foucault means that it indicates a wider set of practices and knowledges; ones that can be illuminating for the structure of political community as a whole. A key concern here is the relation of the system with wealth. Towards the end of the eighteenth century, it is increasingly merchants and aristocrats – 'people linked to power' – that promote this form of control, and, crucially, the target changes. 'It is no longer so much marginal or irregular individuals, but the class of workers . . . one social class over the other' (p. 125).

In France, things are somewhat different, which may explain why the comparative element was dropped in *Discipline and Punish*. In France it is not so much 'a bourgeois revolution as in England, but a monarchy which finds itself faced with specific problems of control'. It shifts away from the army and justice as its 'two instruments of control and repression', and towards the use of new apparatuses of *quadrillage*, 'an apparatus both administrative and para-judicial: justice, police and finance *intendants*'; on the other part, a police apparatus, directly in the hands of the king, and taken over by the lieutenants of the police' (pp. 126–7). Foucault mentions the kinds of mechanism that may be needed to make repression work, especially through the social utilisation of powers at the capillary level, and gives the example of the *lettres de cachet* as a crucial element of this. He suggests that, while they are often seen as 'the symbol of an autocratic, arbitrary power' (p. 129), the key issue is the power of the kinds of people who ask for them – 'individuals, families, religious groups,

esteemed citizens [*notables*], legal persons (notaries, etc.), corporations' (p. 130). They are not just an expression of royal, state power, but a 'circular process' between people, more lowly administrators, etc., an example of 'localised micro-powers' (p. 131).

Foucault had a potential criticism in mind, which was the objection that religion made a link between prison and sin, but he has a number of distinctions to make, including that prison as a canonical punishment had been abolished in the early seventeenth century in France and, at other times, elsewhere, and definitely when imprisonment became the key punishment (p. 73, n. a). But the organisation of monasteries is more complicated, and he sketches the relations between cells in convents or monasteries and in prisons, noting that this model is best found in Protestant practice, especially in the Quakers: 'If there is a religious model for the prison, it is certainly in Calvinist theology and morality, and not in the monastic institution' (p. 74, n. a). He stresses that 'the prison is not the convent of the industrial age', and its religious lineage is derived from English Protestant dissenters and American Quakers (p. 88). In particular the rejection of the English penal code and the death penalty is important, and he suggests that the root of the prison is in the 'Quaker conception of religion, morality and power' (p. 89).

All this perhaps makes sense of why *Discipline and Punish* – concentrating largely on French history – also made use of English debates and theorists. Key elements within the story told by this course, such as the Quakers and English dissidents, are only present in a minor role in *Discipline and Punish* (see p. 308). That element of the course makes explicit the 'genealogy of morality' that Foucault claimed to be making a contribution towards.

One point worth noting is the almost complete absence, here, of references to Foucault's contemporaries or others who examined these questions before him, and it has taken Harcourt's bibliographic labours to fill in some of the missing details, especially Foucault's reading of E.P. Thompson.²³ Of course, reading a text that has its basis in the transcript of Foucault's verbal presentation necessarily lacks the references that might have been provided had he worked this up for publication himself. Yet the manuscript that Foucault used as the basis for his lecture delivery was consulted by Harcourt, and this provides only minimal detail. Even the classic work *Punishment and Social Structure*, by Frankfurt School historians Georg Rusche and Otto Kirchheimer, which is briefly discussed in *Discipline and Punish*, is absent from the course

23 Foucault references Thompson 1971 in the typescript, and Harcourt notes that Foucault knew *The Making of the English Working Class* (Thompson 1980) well (p. 42, n. 20). For a discussion see also Harcourt on pp. 287–92.

as delivered.²⁴ Perhaps Foucault thought his audience would fill in some of these missing references for themselves. For us now, some forty years on, the course is read in a very different context, following the work of people such as Ignatieff on prison architecture and Linebaugh on social conditions and punishment.²⁵ Harcourt's references are invaluable for beginning the work of making connections and drawing contrasts. This is one of the avenues that the course opens up for future research.

4 Political Economy

It should be clear that the political-economic aspect of Foucault's analysis is especially striking in this course. He situates his argument within a wider set of historical transitions from feudalism to capitalism (pp. 212–13, 235). As Harcourt suggests, 'the 1973 course reads as a challenge to the great texts on the history of capitalism' (p. 290), and it should be read as a text in relation to Marx rather than as a commentary, and in juxtaposition with Weber's *The Protestant Ethic and the Spirit of Capitalism* (p. 290). Harcourt makes explicit a point that should be obvious but is often neglected: that 'the Marxist theory of the accumulation of capital' is, for Foucault, 'dependent on disciplinary techniques (themselves intimately linked to capitalist production) to make "productive bodies"' (pp. 299–300). *Discipline and Punish* obviously has a discussion of the 'political economy of bodies',²⁶ but the stakes are not as explicit as in this course; with the recurrent discussion of the body of the worker and the body of wealth [*corps de la richesse*] (pp. 178, 191–2). There is also much more on the state (with some unspoken allusions to Althusser) than in *Discipline and Punish*.

Perhaps the most explicit development of themes in this course – as opposed to more explicit statements of otherwise well-known themes – concerns the treatment of popular insurrections and illegality. In this, Foucault draws on events from England to France. His concern is both with the way that these movements are suppressed, but also in how they are utilised. His key term is the control of popular illegality, which he suggests is a more useful and a rather broader term than 'seditious mob' (p. 144). The control of these may commence

24 Rusche and Kirchheimer 1939; discussed in Foucault 1975, pp. 32–3 (English translation: Foucault 1977, pp. 24–5). See Harcourt's note in this course, p. 248, n. 21, picking up on what may have been an oblique reference.

25 See, among others, Ignatieff 1978; Linebaugh 2006.

26 For example, Foucault 1975, p. 33 (English translation: Foucault 1977, p. 25). See also Guéry and Deleule 1972 (English translation: Guéry and Deleule 2014).

with the direction of state apparatuses by the bourgeoisie, but Foucault contends that the notion of 'a certain popular illegality is not only *compatible* with, but *useful* for the development of the bourgeois economy' (p. 144). The bourgeoisie seizes the judicial apparatus to clamp down on popular illegality; on the other hand he takes Paul Bois's *Paysans de l'Ouest* to show the case of the weavers of Maine, which helps the bourgeoisie in their struggle against feudal systems and laws (pp. 144–8).²⁷ To make sense of these different uses or tactics he proposes a historical divide. While the bourgeoisie was trying to triumph over feudal structures, the working class might be a strategic ally; once in a position of power themselves they may become the new social enemy, the target of 'the entire repressive system of the bourgeoisie' (p. 154).

These shifts run alongside the move to imprisonment as the dominant penalty, with the 'birth of industrial society' partnered by the way 'the bourgeois responds by a gigantic operation which constitutes the penal and penitentiary clampdown [*le bouclage*] on popular illegality in general' (p. 165). This was not simply in terms of the perceived threat to bourgeois wealth, but that more and more resources previously held in common were becoming owned. One example is 'the forest, which had been a place of refuge and survival, [but] became exploitable property and thus surveyed' (p. 161); these techniques applied as much to the urban as the rural; the worker and the peasant (p. 164).

Different means might be used to address these concerns, either through the use of prison, the army, legal regimes or mechanisms, or through labelling and the work of the sciences. Some of this – anticipating themes Foucault would elaborate in much more detail in *Society Must Be Defended* – bought into racial categories, with the 'lower class' described as a 'bastardised and primitive' race (p. 168). Some of it links to the labelling of particular kinds of behaviour in negative ways, such as the emergence of the delinquent as someone who is savage, immoral, but can be reformed through surveillance. Some of it was on more straightforward class-based lines. Foucault provides the example of Guy Jean-Baptiste Target's moralisation of the two classes: 'one as the bearer of virtues, the values of property, and the other characterised by vices which animate it, its immorality, by the fact it can be considered as (a) stranger to the same body of society, as forming a sort of connected [*branchée*] nation exterior to the real nation ... a division of society into two classes' (p. 175).

Foucault argues that the fear at the beginning of the nineteenth century is not just of urbanisation and the new modes of production but also a fear of the

27 Bois 1960.

worker, their desire and their body; and fear of the working (labouring) class. This fear has a foundation, in that bourgeois wealth is under threat from the working class and the limits of its poverty (pp. 176–7), with the working class portrayed as the ‘dangerous’ class (p. 177). Foucault’s point, made very explicit here, is that the bourgeoisie establishes the penal code to support property, providing a framework for the regulation of the body of the worker in relation to wealth, profit and law; not so much a contract as a habit [*habitude*] (p. 178). As such, the capitalist regime is supported through law and war; through the penal system watching over the body, desire and needs of the worker, and criminal-law codes with their direction towards the social enemy (p. 182); and through the use of military force, to directly protect the apparatus of production (p. 180). Much of this concerns the training of the body, to ensure that bodies are available for work, and that their force is applied in the right direction for the necessary task, but also to ensure that bodies are used for the reproduction of the workforce.

Along the way he makes some interesting comments about a history of laziness, from the classical idleness of the seventeenth to eighteenth centuries, to the collective and organised refusal to work in the nineteenth century (pp. 193–4). There are various mechanisms used to deal with this – in the first it is local pressure, almost on an individual level; in the second, ‘at the state level’, it is tied up with ‘the obligation to put everyone to work to augment production as much as possible – the police, intendants and their instruments’ (p. 194). He discusses how dissipation and degradation go together, and the three institutions of dissipation – festival, gambling, and cohabitation (p. 197). Different means may be used to address each of these, but broadly the mechanisms are those familiar from Foucault’s other works: a graduated, continuous, cumulative system; with the continuity and ‘capillarisation’ of justice into everyday life; general surveillance; the form of the examination. What is explicit here, though, is just what the purpose of all this is. If the dominant example in *Discipline and Punish* is the army, then the key reference here is the factory, the workshop, and the figure of control in those institutions – the boss in the factory and the foreman in the workshop (p. 211). Foucault spends a lot of time examining different work institutions. He discusses a whole range of institutions of imprisonment – pedagogic ‘crèches, colleges, orphanages’, corrective institutions such as ‘agricultural colonies, reformatories, prisons’, and therapeutic institutions of ‘hospitals, asylums’ (p. 209). In sum, there are the explicit instruments of ‘prison, colony, army, police’; the construction of the ‘social enemy’; and the moralisation of the working class (p. 154).

5 Two 'Methodological' Issues

The course is also invaluable for tracking Foucault's developing thinking on two issues that might be described as 'methodological': first, the understanding of power, and second, the genealogical approach. Concerning power, Foucault continually stresses the relation between knowledge and power. He contends that as a knowledge-power, 'the prison-form is much more than an architectural form, it is a social form' (p. 230). It is therefore an issue of asking 'in which system of power does the prison function?' (p. 231). The detail provided here, especially the wider context of political-economic transformation, provides some interesting new perspectives, especially in relation to how these ideas emerge in his thought.

Foucault wants to reject the idea that power is possessed; that it is located in state apparatuses; that it is subordinate to the mode of production; and that it is itself ideology. Power is, rather, exercised; spread throughout society; in a complicated relation with production, forming one of its conditions and supports; and always in relation to knowledge (pp. 231–8). Foucault is therefore getting closer and closer to his mature view of power, and is beginning to sketch the broad contrast between sovereign power and a type of power he alternatively calls disciplinary power, punitive power, or normalising power (pp. 240–2 and p. 240, n. b). The latter form of power is, in this course at least, very explicitly tied to the wider political-economic frame, suggesting that the apparatus of confinement fixes individuals within the apparatus of production, because it fabricates the norm and produces the normal. 'We therefore have a series which characterises modern society: constitution of a labour force; apparatus of confinement; permanent function of normalisation' (p. 242).

Foucault's overall project here is to trace the constitution of 'a society which links to the permanent activity of punishment a connected activity of knowledge, of registration . . . Recall that we live in a punitive and examining society, *disciplinary*' (p. 201 and p. 201, n. a).²⁸ Of course, the original French title of *Discipline and Punish* was *Surveiller et punir* – more literally, 'survey and punish'. The pairing of these terms, as part of a wider system of discipline, first emerges in this course, albeit within a somewhat broader and more explicitly economic analysis: 'The pair survey-punish is established as the indispensable power relation for the fixation of individuals within the apparatus of production, to the constitution of productive forces, and characterises the society that we can call *disciplinary*' (p. 201).

28 The second sentence was not read but can be found in the manuscript.

There is also some important discussion of the relation between archaeology and genealogy here, among other theoretical asides. The idea of genealogy, being developed here and in previous courses as a complement to archaeology, is seen as the equivalent of a dynastic analysis. Foucault phrases his inquiry in a way reminiscent of genealogical analyses conducted by himself and his followers: 'Now, it is matter of retrieving what are the relations of power which made possible the historical emergence of something like the prison. After an analysis of the archaeological type, it is a question of making an analysis of the dynastic, genealogical type, tracing the filiations beginning from the relations of power' (p. 86). In sum, his analysis is asking: 'why this strange institution that is the prison?' (p. 229).

Crucially Foucault is broadening his analysis of the *episteme* to encompass practices as well as discourses. 'There are therefore two *ensembles*: the penal ensemble, characterised by the prohibition and the sanction, the law; and the punitive ensemble, characterised by the coercive penitentiary system. The first ensemble carries with it a certain theory of infraction as an act of hostility towards society; the second carries with it the practice of imprisonment' (p. 114). He links the first explicitly to 'the state institutionalisation of justice', tracing it back archaeologically to 'the exercise of sovereign political power since the Middle Ages' (p. 114). The second comes 'from a movement of development, not of the state itself, but the capitalist mode of production; in the second system can be seen the mode of production providing itself with the instruments of political power, but also the moral power' (p. 115). His question, however extends beyond an archaeological one. 'Thus the genealogical problem is to know [*savoir*] how these two *ensembles*, of different origins, come to be added together and function inside the same tactic' (p. 115). It appears, on this reading, that the notion proposed here of the *ensemble* is an early version of what he would come to call a *dispositif*, a complicated term in Foucault's work which is developed in *Discipline and Punish*, and, most explicitly, in the first volume of the *History of Sexuality*.

La société punitive is therefore an extremely important course, and for multiple reasons. It is the third part of the initial triptych of courses at the Collège, bringing together the historically related analyses of measure, inquiry and examination. It develops in great detail themes of discipline, normalisation and punishment that would occupy Foucault for the next several years, notably in *Psychiatric Power* and the *Abnormals*, as well as *Discipline and Punish*. In addition, it opens up themes of civil war and the social enemy that will return in later courses. But he encompasses a broader range of events and texts, with detailed discussion of English social and political history. In its examination of the prison and social struggle it adds much detail to Foucault's work of the

mid-1970s, and will perhaps inspire the same kind of work his 'governmentality' lectures of the later 1970s have done. Perhaps most importantly – and the biggest revelation here – all these analyses are read through a much more explicitly political-economic lens. If, in time, Foucault would take issue with the economic reading of some questions – such as he does, for example, in the first volume of the *History of Sexuality* – here he clearly sees his work as offering a complementary and corrective focus to mainstream accounts, rather than challenging their overall validity. It is a course that shows Foucault at his most Marxist, engaging with the work of historical materialism with a depth and generosity not found in other writings.

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