

BOOK REVIEW

THE PUNITIVE SOCIETY: LECTURES AT THE COLLÈGE DE FRANCE 1972–73.
BY MICHEL FOUCAULT, GRAHAM BURCHELL (transl.), Bernard Harcourt (ed.)
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In 1970, Foucault was elected to a chair at the Collège de France, a great accomplishment for someone whose work was not in keeping with any of the established disciplines, or even the established interdisciplinary fields, of the time. Soon after, he decided to devote a great deal of time and energy to political work aiming to give publicity to the injustices and cruelties suffered by prison inmates. Foucault's activism was oriented neither to correctional policy reform nor to prison abolition (at least, not directly). Its aim was simply to enable prisoners' experiences to be known to the broader public—a practical goal in harmony with his theoretical critique of the traditional French tendency to let intellectuals (not victims of injustice themselves) assume the role of publicly telling truth to power.

As Bernard Harcourt points out in his brief but superbly researched 'Course context' commentary included in the book under review, Foucault may not have been able to gain access to French prisons but he did visit New York state's Attica prison in 1972, a few months after the famous riot that culminated in the death of 29 prisoners and 10 correctional officers. Thus, although French prisons also experienced revolts around this time, with Foucault and his small group of activist comrades doing support work for the prisoners, it may be that the Black Panthers and other prison activists in the United States, to which he refers in the lectures reproduced in the book, were more important in motivating Foucault's intellectual work on punishment than has previously been thought.

Foucault's prison activism was designed as time-limited: once the activism had achieved its modest aim and prisoners' associations had been established in France, the group (whose French acronym was GIP) was disbanded, a few weeks before the first of the lectures under review was given. The 1973 lectures are hugely important for criminologists: they constitute a kind of rough draft of *Discipline and Punish*—a draft containing many gems that were eliminated from the book manuscript in order to streamline the argument.

Asking why the penitentiary, an institution that failed to meet its stated purpose from the start, quickly became 'best practice' in criminal punishment, Foucault came to an analysis of the actual (as opposed to intended) effects furthered by the proliferation of penitentiaries and reformatories. As readers of *Discipline and Punish* know, the techniques perfected in penitentiaries—surveillance, hierarchical observation, examinations and normalization—were shown to serve to create not so much rehabilitated prisoners as a broader society: a 'disciplinary' society. And as is also well known, what makes Foucault's account of 'the birth of the prison' relevant well outside of criminology is that Foucault argued that disciplinary projects may have been most easily put in place in correctional institutional contexts but that, in less total form, disciplinary

techniques and rationalities pervade and give shape to modern social organization, from the kindergarten to the welfare office, from corporate headquarters buildings to refugee camps. But as we shall see, in this set of lectures, ‘discipline’ only emerges as a key concept towards the end. Since ‘discipline’ is very familiar to this journal’s readers, in the remainder of this review I will focus mainly on other themes explored in the lectures, themes that are not very visible in the well-known book and indeed were not well developed in any of the work published in Foucault’s lifetime.

The Limits of the 1968 Generation’s Focus on ‘Exclusion’ and ‘Transgression’

The anarchist spirit of 1968 made much use of the rather abstract notions of ‘exclusion’ and ‘transgression’ (the latter term being especially associated with Georges Bataille). By contrast to Marxism’s focus on ownership of the means of production, ‘exclusion’ was a term overcoming the differences not only between class, race and nationality but also between socio-economic marginalization, on the one hand, and cultural and moral regulation, on the other.

Denunciations of exclusion in general were usually followed by calls for ‘transgression’. In his work of the mid- and late 1960s, Foucault went along with this framework.¹ Soon after 1968, however, he began to question the utility of such abstract notions. But although exclusion and transgression recede far into the background in his later work, giving way to concrete analyses of particular forms of power, up until the publication of these lectures we had no explanation of how Foucault became disenchanted with the 1968 naive notion that all authority should be contested and that all transgressions are creative. We now have this autocritique, in the very first lecture: ‘I think that the notions of exclusion and transgression should now be considered as instruments that were important historically: for a given period they were critical reversers in the sphere of juridical, political, and moral representations; but these reversers remain pegged to the general system of representations against which they are turned’ (p. 6). Foucault goes on: ‘It seems to me that the directions indicated by the analyses conducted in terms of exclusion and transgression should be pursued in new dimensions in which it is no longer a question of the law, the rule, the representation, but of power rather than the law’ (p. 6).

And following his own advice in sidelining the binary of authority/law vs. transgression, Foucault turns away from philosophical generalizations about punishment and instead gives a brief comment on the widely different forms that criminal punishment has taken. These practices include not only scarring the body, confinement and expulsion from the community but also—an important penal sanction that remained unmentioned in *Discipline and Punish*—imposing fines (p. 7). Pat O’Malley has recently argued that progressive criminologists’ exclusive focus on imprisonment and its penumbra (probation or parole) and their consequent neglect of the fine—the most common form of punishment—has created theoretical as well as empirical distortions.² In this

¹Foucault’s ‘Preface to transgression’ was originally published just after Bataille’s death, in 1963, and it is translated with some slight changes as ‘A Preface to Transgression’ in Michel Foucault, *Essential Works*, Volume II, pp. 69–87 (ed. James D. Faubion; New York, New Press, 2000). Footnotes 7 and 8 on p. 17 of the volume under review provide a thorough and erudite account of Foucault’s writings on transgression and their context.

²See Pat O’Malley, *The currency of justice: fines and damages in consumer society* (London, Routledge, 2009).

lecture, Foucault does not go on to discuss fines in detail, but he opens up avenues for research as he notes that fines are ubiquitous because they serve different purposes depending on the overall logic of the particular punishment assemblage in which they exist (pp. 8–9).

But if abstract exclusion and equally abstract transgression are said to be deficient, what frame can be used to think about power and authority? Addressing this question brings Foucault to a lengthy discussion of ‘civil war’ as the default setting of social relations, a discussion wholly missing from *Discipline and Punish*.

Civil War as the Default Setting for Social Relations—and as the Frame for Punishment

In the second part of the first lecture (3 January 1973), Foucault argues that concrete forms of punitiveness should not be used as data to ‘reconstruct the set of juridical and moral representations that are supposed to support and justify these penal practices’ (p. 12). Instead, penal practices are best regarded as ‘tactics’ deployed in the constant ‘play of conflicts’ that makes up social relations generally. That Foucault falls within what sociology would call a conflict perspective is hardly news. What is interesting here is that Foucault speaks not merely about conflict but specifically about civil war. Civil war, here, constitutes what governmentality scholars would call a general diagram of power but is said to apply specifically to penalty: ‘it is the notion of civil war that must be put at the heart of all of these analyses of penalty’ (p. 13).

The civil war frame (which clearly is meant to include all manner of cold civil wars between the rich and powerful, on the one hand, and the disempowered, on the other, not only armed civil wars) allows Foucault to distance himself from the main three perspectives used then (and now) to theorize the coercive power of the state. First, and most explicitly developed, a contrast is drawn with social contract theory. Social contract thought begins with the premise that the default setting for human relations is individualist competition. For social contract theory, the only two ‘normal’ states of political affairs are, first, the state of nature, a lawless pre-political society in which the family is the only organized social form and, second, a proper ‘commonwealth’ in which sovereignty has been achieved and is constantly defended and justified. Even those social contract theorists who do not share Hobbes’ cynicism about human nature (Rousseau is mentioned, though without any explicit differentiation from Hobbes) are covered by Foucault’s critique, since they, too, see civil war as a contingent disastrous event: ‘civil war is the accident, the abnormality’ (p. 13).

Taking civil war as the default setting displaces and disrupts contract theories but also Durkheimian theories of punishment and social cohesion, as Foucault outlines in notes for the lecture for which he did not have time in the oral presentation. Punishment, Foucault says in the handwritten notes, is best seen as one of the tools by which one group dominates or controls another; he casts aspersions on the notion that punishment is the expression of ‘society as a whole, en masse, in obscure consensus’ (p. 14).

The civil war trope may well have been borrowed from Nietzsche—though in Nietzsche these discussions often end in denouncing ‘weak’ or ‘slavish’ groups or peoples and praising conduct that is ‘Dionysian’, and Foucault certainly does not follow Nietzsche there. In Foucault’s work, the civil war trope plays mainly a critical function.

And having critiqued both social contract theory and sociological functionalism by invoking civil war, what Foucault does not need to tell his audience (given that it was 1973 and that he was speaking in Paris) is that the civil war frame also displaces ‘class struggle’, then the dominant frame in left-wing social and political theory.

In the last lecture (28 March), in which Foucault finally presents a fairly coherent critical discussion of Marxism, despite having frequently used Marxist language in the earlier lectures, the audience heard that ‘power is never entirely on one side ... power is not monolithic’ (p. 228). This, as Bernard Harcourt notes, would have been heard as a direct critique of Althusser in particular and Marxist views about ‘the bourgeois state’ in general. Of course, these remarks about power are familiar from *Discipline and Punish*. But what is new in these lectures is the invocation of civil war: ‘Power should not be assimilated to a wealth possessed by some; it is a permanent strategy that should be thought of against the background of civil war’ (pp. 228–9).

The Punitive Society or the Disciplinary Society?

The notion of ‘discipline’ emerges clearly only in the last two lectures. As we turn the pages, we see the thought process that over the eight weeks of lectures led to the well-known criminological revolution—or more accurately, one can see the portion of Foucault’s intellectual production process that he chose to make visible, or rather audible. In keeping with what I would argue is a general tendency to paper over changes in intellectual direction, Foucault claims, towards the end of the lecture series, that what he initially called ‘punitiveness’ and ‘the punitive society’ is actually synonymous with what he now wants to call ‘the disciplinary system’ (p. 231).

One virtue of the term ‘discipline’ is that it clearly zooms out from penalty to encompass larger social processes. In the later book, Foucault could have retained the 1973 meaning of ‘punitiveness’ and proceeded to document the micro-punitive practices of workplaces and households: but the term ‘punitiveness’ (unlike ‘discipline’) is difficult to detach from the realm of criminal law and from the state in general. Perhaps for that reason, in a brief discussion that has no parallel or even faint echo in *Discipline and Punish*, the term ‘discipline’ is deployed to simultaneously critique both Althusser’s notion that the nuclear family is an ideological apparatus of the state and Engels’ opposing, pro-feminist view that it is the rise of the property-owning family that leads to the bourgeois state. Without naming names, Foucault tells his audience (which would have been familiar with these Marxist debates) that ‘really, it matters little whether the family reproduces the State or the other way around. The family and the State function in relation to each other, by relying on each other, possibly confronting each other, in a system of power that, in a society like ours, may be characterized as disciplinary in a homogenous way ...’ (pp. 230–1). Then, Foucault declares: ‘Where was I wanting to go [with the lectures]? I wanted to analyze a certain system of power: disciplinary power. It seemed to me, in fact, that we live in a society of disciplinary power ...’ (p. 237).

In my view, it is important for us now to note that in his oral presentation Foucault did not acknowledge that the term ‘discipline’ had played little or no role at the beginning of the lecture series. The shift from ‘punitiveness’ to ‘discipline’ is explicitly noted in the manuscript notes, helpfully included by Harcourt, which state that his aim in the lectures was ‘the analysis of the form of power I have called punitive, which it would

be better to call disciplinary' (p. 237). But that was not said out loud. Thus, audience members present in the last two lectures who had not been present at the start, or who did not pay attention to the title of the series, would not have clearly seen that 'disciplinary power' was an after-the-fact label for what had been previously described as 'the punitive society'.

The shift—insofar as there is one—from punitiveness to disciplinarity is particularly intriguing for English-speaking readers, given that the book *Surveiller et punir* had *Discipline and Punish* as its English title, a title that does not encourage thinking of punishing and disciplining as coterminous. To add difficulties, English-speaking criminologists who ponder the significance of Foucault's belated use of 'discipline' in lectures entitled 'the punitive society' will have to grapple with the fact that in *Discipline and Punish* 'punitiveness' still appears but (mainly) in a rescaled form. The book has a section entitled 'the punitive city'. This describes not the penitentiary, or confinement, or criminal law but rather some early 19th-century experiments in public displays (mini-theatres, as Foucault puts it) of legal punishment; mini-theatres of citizenship (or the plans for them that were not necessarily implemented) in which highly symbolic practices of punishment were meant to educate the public about the meaning of specific crimes and the specific guilt of different criminals.

Thus, as Foucault went on to draft a book focusing on 'the birth of the prison', rather than undertaking a more systematic genealogy of modern punishment (as had been envisaged in the first few 1973 lectures), 'punitiveness' was no longer the general term used to describe methods for governing the bodies and souls of the 'dangerous classes'. In *Discipline and Punish*, as just mentioned, the section 'the punitive city' describes a short-lived series of largely unsuccessful projects promoting the public display of convicts as object lessons to normalize and educate the law-abiding. Intriguingly, this semi-otic experiment in criminal justice is specifically said to belong to the scale of 'the city' (perhaps because only cities contained the crowds for whose edification the punishments were made public). How 'the punitive city' of the book squares with the state-level punitiveness of the lectures is a question that I hope scholars of punishment will take up.

Let us now move on to a (related) theme that figures very largely in these lectures but was largely cut out of the later book and that reflects Foucault's deep reading of the then lively field of 19th-century working-class history: the constitutive role of moral regulation in the formation of European working classes.

The Key Role of Moral Regulation in the Formation of Bourgeois Society

Within most, if not all, Marxist traditions, moral regulation tends to be seen as 'ideological' and derivative. Those influenced by Gramsci do make room for the relative autonomy of the cultural sphere, but by and large Marxist thinkers fail to critique Marx's scathing and downright moralistic comments about the political untrustworthiness of the 'lumpenproletariat', comments that presuppose that the revolutionary working class is made up of respectable families.

Influenced by the spirit of 1968, by Bataille's work on transgression, and by Nietzsche's critique of Judeo-Christian morality, Foucault parted company with the communist respectable family ethos. And in these lectures, he reflects on the theoretical and

political importance of the tendency of the 19th-century working classes to spend their wages right away, get drunk, take Monday off work and so on, instead of ignoring or minimizing these activities. Resisting the Protestant/capitalist ethic is discussed by Foucault under the banner of ‘illegalisms of dissipation’ (see pp. 188–92), which he distinguishes from other forms of resistance to early industrial capitalism. The somewhat awkwardly named entity ‘illegalisms of dissipation’ is worth discussing here because it shows Foucault using his reading of social historians’ work to start opening a path towards post-Marxist critiques of capitalism.

Foucault tells us that in the early days of capitalism, bourgeois writers denounced those who hunted game illegally in the face of privatized commons and forests and also those who continued to benefit from traditional forms of income supplementation, such as the London dock workers’ entitlement to collecting the sugar, coffee and grain spilled during loading and unloading ships. (Incidentally, Patrick Colquhoun’s treatises on police that were not generally known to criminologists at the time are mined to great effect.) These forms of economic resistance to capitalist wage labour, often based on older notions of ‘the moral economy’, are called, in these lectures, ‘illegalisms of depredation’. Property-centred ‘illegalisms’ were of course bread and butter for the Marxist historians of Foucault’s time (and also for Althusser, who apparently always made his students read Marx’s articles on German peasants’ theft of wood in the 1840s). By contrast, the illegalism of dissipation, which does not directly challenge property but rather challenges the ideal of the sober family-based working class, was not treated seriously or positively by mainstream Marxism.

If groups of working men refused to marry and spent much of their pay on Saturday night pleasures, how should this refusal of conventional morality be regarded? Foucault argues that the ‘illegalism of dissipation is more dangerous than [that of] depredation’ (p. 190), because while the customary entitlements to goods or opportunities that capitalism turns into ‘theft’ remain largely individual, there is a collective revolutionary potential in activities such as celebrating ‘Saint Monday’ (a 19th-century French tradition not specifically named as such by Foucault). In Foucault’s eyes, the collective refusal of moral regulation ‘confront[s] bourgeois wealth with more serious dangers’ (p. 191) than better known property illegalisms such as poaching game.

I am not sure whether social historians agree with Foucault that the refusal of moral norms did actually threaten the bourgeois order more than helping oneself to game or to some of the master’s property. But the point here is that in these lectures, the emerging bourgeois order is presented as more vulnerable to moral-regulation critiques than to socialist economic critiques—against the grain of any of the Marxisms of Foucault’s day (except Marxist feminism, which Foucault seems to have avoided or neglected, and which was not a major force in France, unlike in Britain). And importantly for this journal’s readers, the Herculean ruling-class effort to prevent the eruption of a counter-morality among the working classes is said to owe a great deal not only to Christian leaders but also to criminology (though Foucault means not academic criminology, which did not yet exist during the relevant time, but rather the work of prison reformers, prison doctors and so on).

Before addressing the question of penal reformers’ moralizing role, we need to return to a point made halfway through the lectures, one that sheds new light on Foucault’s view of the Enlightenment reform of criminal justice. Beccaria and his contemporaries, Foucault explains, courageously attempted, for the first time in the Christian world, to

separate religion and law and to construct a rational criminal justice system that would operate on the assumption that people should be considered as rational in the economic sense of the word. Beccaria (and Bentham as well) makes a radical break from the ancient (and Blackstonian) moralization of offending and deviance: with utilitarianism ‘there is a break between moral wrongdoing and infraction’ (p. 107). This is in keeping with the rationalistic side of the Enlightenment, but of course a real danger for bourgeois society emerges if it turns out that people are not in fact economically rational subjects—as was the case with workers engaged in ‘dissipation’.

So what happens, according to Foucault, is that Beccaria’s pure form of rationalism is sidelined, as the 19th century wears on, and is overlaid with moralisms of different kinds (Catholic as well as Quaker or mainstream Protestant, we could add, though Foucault does not deal with religious differences here). In Britain, Patrick Colquhoun devised an intricate system of hybrid economic–moral ‘police’—meaning municipal and administrative regulations—that would supplement the criminal law through local regulation and licensing (p. 108). And in Britain too, one also sees the overtly religious Quakers take pride of place in the reform of criminal justice; interestingly, the Quakers play a far more prominent role in the elaboration of the penitentiary system in these lectures than is the case in *Discipline and Punish* (see p. 87 and Harcourt’s ‘Course context’ commentary). The Quakers perhaps feature more largely than Bentham because these lectures spend a great deal of time thinking about the illegalism of dissipation, a discussion that pushes his audience to go beyond the economism of Marxist critiques of criminal justice.

In a passage that was not included in *Discipline and Punish*, Foucault goes on to argue that criminology’s importance for the formation of bourgeois society (with ‘criminology’ again meaning 19th-century reformers) is precisely that the science of punishment did not follow Beccaria’s model but rather returned to a more or less Christian view of the importance of instilling good habits. This argument about the importance of moral regulation—which goes in and out of view as the lectures progress—is perhaps most clearly laid out in the 7 March lecture. The offender, Foucault states, might be considered a rational citizen at trial; but once declared guilty, the offender becomes a criminal soul/body, a deviant in need of moral reform. Thus, ‘a kind of research claiming to correct, to regenerate the individual’ (p. 177), a social–moral–medical frame emerges to take over the post-verdict space—and its emergence allows criminal law theorists to continue focusing on rationality along Kantian or Beccarian lines (to this day). This is ‘the essential duality of the [modern] penal system’ (p. 177).

Criminology (meaning administrative knowledge of criminality and rehabilitation) is, therefore, not the opposite of modern rational criminal law but rather the essential supplement to it. The process by which guilt is determined may be run on a Beccaria-style rational-choice basis in the best of courts, but those who are found guilty are immediately turned over to a system that uses old-fashioned moralization. Foucault does not specifically say that criminal law and correctional systems constitute different, complementary but incompatible, jurisdictions—but that would be how I would rephrase his analysis.

Beyond Marxism—and Beyond Systematicity

Readers today may need to be reminded that all forms of Marxism look at criminal justice and punishment from the point of view of class relations and pay little attention to

such ‘merely’ empirical details as the particular form that punishment takes at a certain place and time (although Rusche and Kirchheimer’s signal work on punishment did pay some attention to specific practices). Foucault was never a real Marxist, of course. But it is interesting that in these lectures Foucault, while speaking in a more Marxist language than in his published books and in subsequent sets of lectures, perhaps to better connect with his audience, nevertheless makes a move that would enable future left-wing criminologists to analyse various forms of punishment from the point of view of how choosing one rather than another method of punishment constitutes not so much a shift in class relations but rather shifts in subjectivities, souls and spatio-temporalities.

Identifying the ‘positive’ functions not only of correctional methods but of power more generally was a move, partly empirical and partly theoretical, of monumental importance (see Harcourt’s ‘Course context’, pp. 265–69). It is difficult for younger readers today, in a world in which there is no established alternative to liberal humanism but rather a multiplicity of progressive perspectives, to appreciate the creativity and courage required, in 1973, to lay the basis for a post-Marxist framework that would remain resolutely on the left and anti-capitalist but would shed the ontologies and epistemologies of Marxism’s many versions.

As he wrote and delivered these lectures, Foucault came to the view that power is best seen not as possessed by a dominant class or even a ruling bloc but rather as fluid and ever-present (including among dominated groups) and perhaps as plural (though the heterogeneity of forms of power/knowledge is not yet very visible in these lectures). The view that power is everywhere and is always fluid and changing is clearly adapted from Nietzsche, though (fortunately) shorn of Nietzsche’s questionable vitalist philosophy. Later, Foucault would push this analysis beyond Nietzsche’s rather monistic perspective: he would reject the idea that one can speak about ‘power’ in general and would emphasize the differences among various power processes (e.g. biopolitics, pastoral power and governmentality). But the heterogeneity of power only becomes a key theme in later years.

In that context, one important feature of *Discipline and Punish* that is lacking in these lectures is precisely the sharp contrast drawn in the book between juridical or sovereign exercises of power, on the one hand, and discipline, on the other. Juridical/sovereign power is mentioned in these lectures but is not at the centre. In the book, by focusing on the dyad of juridical vs. disciplinary power, Foucault does begin to go beyond Nietzsche’s unitary concept of power; but as he moves towards isolating ‘discipline’ and differentiating it from ‘sovereignty’, he also removes from view many interesting ideas presented in the lectures (such as the notion of civil war as default setting for social relations or the complex historical analysis of working-class illegalisms). Therefore, scholars today who want to gain a deeper understanding of the twists and turns of Foucault’s complex and unsystematic work would do well to do close readings of these lectures and compare and contrast them with different texts (and not only *Discipline and Punish*). Different texts on similar topics do overlap, of course; but the apparent inconsistencies caused by the constant effort to rewrite and revise and change terminology are what to my mind provide us today not only with substantive insights but, more importantly, with a model of how to keep thinking, instead of merely repeating or refining what we have thought in the past.

The revising and recreating process is not always made explicit. Like most intellectuals, Foucault tended to overemphasize his own intellectual consistency, especially in

interviews, where he often said disingenuous things along the lines of ‘My work has always been focused on [subjectivity, power, etc.]’. But in these lectures, we can see for ourselves that the ideas presented in *Discipline and Punish*, ideas that have now become mainstays of critical criminology, represent but a partial, simplified version of a complex body of work on the history and theory of punishment that is less elegant and systematic but more wide-ranging, dynamic and in my view far more fruitful for us today than we have previously thought.

Bernard Harcourt, who is fluently bilingual and is a noted Foucault scholar as well as a criminologist, has done a fantastic job establishing the text of the lectures (for other years, audiotapes exist, but not for 1973). He provides us with countless erudite references to Foucault’s unacknowledged as well as acknowledged sources and supplies a clear, fair-minded and modest commentary. The editors of the series and Harcourt’s research assistants also need our thanks as well. But in the end, it is Graham Burchell’s superb translation and Harcourt’s absolutely rigorous editing work (examples of a kind of labour that goes largely unrewarded in today’s production-obsessed academy) that ought to receive our everlasting thanks.

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