Michel Foucault: Law, Power, and Knowledge

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> The judges of normality are present everywhere. We are in the society of the teacher-judge, the doctor-judge, the educator-judge, the 'social-worker'-judge; it is on them that the universal reign of the normative is based; and each individual, wherever he may find himself, subjects to it his body, his gestures, his behaviour, his aptitudes, his achievements.[1]

Michel Foucault's writings challenge dominant approaches to the analysis of law.[2] For Foucault, law is neither a condition for the liberation of the individual, nor is it solely the result of class domination. Law cannot be adequately comprehended from the standpoints of subjects of action – whether they be based on individualism, class, or gender – or from the general structures through which everyday life is produced and experienced. Foucault claimed that liberalism, Marxism, and standpoints rooted in knowing subjects of action are inadequate because they share a 'juridico-discursive model of power'.[3] This model limits the analysis of law and power because it formulates them as things that are possessed by agents of action, as repressive, and as centralized in core structures such as legal institutions and the state.

By contrast, Foucault conceptualized power as it is exercised, as multiple and decentralized, and as productive of social structures and knowledge. Law is an element in the expansion of power – or, more accurately – powers. In modern society, law combines with power in various locations in ways that expand patterns of social control, knowledge, and the documentation of individuals for institutionally useful ends. Ultimately, legality and associated techniques of knowledge and control expand to define and to provide empirical knowledge of every aspect, every fibre of society. Most especially, legality combines with other discourses to form the individual as the *locus* of ever greater networks of administrative control.

Foucault's contributions to critical inquiry defy classification. He was very much opposed, for example, to being pigeon-holed as a Marxist or as extending Nietzsche's critique of knowledge despite his acknowledgement of

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This article is part of a series which deals with the work of theorists who have substantially influenced contemporary understanding of law and society. Each article provides an effective introduction to the ideas of a major theorist, along with a scholarly appraisal of the writer's significance. The series will be of interest to both students and specialists.

the crucial importance of their works for his own studies.[4] He used the works of other scholars for developing his unique line of enquiry without being especially concerned with establishing consistency with them. For this reason, while his studies use Marxian categories of class, ideology, capital accumulation, and the labour process, he was not only scornful of the official Marxism that was congealed in the French Communist Party, but he also faulted Marx's political economy for its continuity with liberalism and its tendencies to view liberation in economistic terms. In a similar vein, while he shares structuralism's search for underlying social forces, the importance of form and language, his work stands in opposition to structuralism's claims about universal categories and its incapacities to analyse social change and transformations in knowledge and power. His historical studies are aimed at opening up those points of transformation in organization, power, and knowledge that demonstrate the contingency rather than the universality of categories of knowledge, law, and morality. His work undermines modernist notions of the centrality of the individual, of formal law, of progress, and that emancipation can be realized through the growth and application of scientific knowledge. Yet his studies contribute to establishing critical knowledge that opposes domination, especially in its rational legally-administered forms that assert power through claims to knowledge. He viewed opposition, revolt, and the possibilities for liberation in specifically located struggles.[5]

Michel Foucault's analysis of the law/power relationship is complex and often startling due to its rich descriptions and literary force. He focuses on particular institutions and specific historical changes. His studies demonstrate that the interrelationships among legal discourses, various forms of knowledge, political economy, techniques of power, and institutions of social control form a logic of power that is most fully grasped by analysing its detailed applications. This approach is developed through particular studies of philosophy, psychology, medicine, criminal law and punishment, and sexuality. To adequately understand Foucault's approach to law, however, an appreciation of its location in his wider methodological framework and his analysis of power is necessary.

REASON, SCIENCE, AND EXCLUSION

Michel Foucault (1926-1984) was born in Portier, France, the son of a surgeon. As is often the case with highly original intellectuals, Foucault's academic career did not follow a conventional path. He studied in France's most prestigious institutions of higher learning, including the Lycée Henri IV and L'École Normale Supérieure. He received degrees in philosophy and psychology, travelled widely, and worked in a variety of academic positions in Sweden, Poland, West Germany, Tunisia, and the United States of America. In 1970, at the age of forty-four, he received a position at the Collège de France in Paris, one of the most prestigious and lofty academic positions in France. Prior to this, his academic appointments in France were modest.

1. *Philosophy and Science*

Foucault credits Friederich Nietzsche's literary power and genealogical method as inspirational for his own work. 'It was Nietzsche who specified the power relation as the general focus, shall we say, of philosophical discourse – whereas for Marx it was the production relation.'[6] Based on Nietzsche, Foucault formulated power as the core relation from which morality emerges rather than from universal principles of truth or transcendental values. The truth of morality is to be found in the particular conditions that give rise to it. The circumstances of everyday life at particular moments in history must be investigated to demonstrate sources of moral claims and ethical definitions. Moreover, Nietzsche inspired his belief that enquiry should not formulate universal truths, that studies should not yield congealed ethics or moralities but, rather, demonstrate the contingency of power and claims to truth by transgressing that which is assumed and taken for granted.

Yet Foucault's approach to law and power also grew out of a more general dissatisfaction with philosophical reason and science. He sought to overcome contemplative philosophy first through a commitment to political action by joining the Communist Party and, later, through the study of psychology and psycho-pathology that included observation of psychiatric practices in mental hospitals. This led to the publication of *Maladie Mentale et Personnalité* in 1954. After this study, Foucault's critical approach to philosophical reason and the sciences became more focused around their capacities to exclude experiences, practices, and languages that fell outside of their logics. He sought to reveal that ranges of experience were 'forced to be silent' through categories and methods of analysis that either excluded or redefined them in terms consistent with reason and science.[7] Part of his concern was to recover that which was silenced in a way that enabled the understanding of experiences before they were shaped and redefined by socially sanctioned science and philosophy.

For Foucault, the philosophy and the sciences that emerged during the Enlightenment and that have developed through the modern epoch radically exclude forms of thought, language, association, action, and experience that are deemed to be aberrant. Allied with processes of differentiation, exclusion, physical and social isolation, and various regimes of purification, reason and scientific enquiry generate discourses of domination. Most centrally in the institutionally based knowledges of mental illness and crime, but also in the social arenas of the military, education, work, medicine, and sexuality, rules of classification, of truth and falsity, of individuality, and, most generally, of coherence are established. These rules are the grounds for conceptualizing and operationally defining standards of normality. Based on these normalizing standards, the pathological, the criminal, and the deviant are defined. Normalizing discourses, grounded in dominant institutions, rationality and science, combine with juridical categories and state power to form interlinking patterns of knowledge and control.

2. *Reason, Madness, and Confinement*

Foucault's methodological approach to studying these issues was initiated in *Madness and Civilization*. This study focuses on how reason and science came to exclude, redefine, and dominate aspects of social life as 'madness'. Foucault's central concern is to recover that point of historical transition when reason and science became dominant forms of recognition and discourse over the range of human behaviours and individuals that would become 'mad'. By capturing this historical turning point, it is possible to reveal the pattern of social relations and the nature of experience before they became categorized and organized through the discourses of psychology, psychiatry, and law. By utilizing sources that show the before, during, and after discourses and understandings that characterized the emergence of madness as a psychiatric and legal category, it is possible to demonstrate how observations, facticity, and objective reason emerged. In addition, it is possible to locate these categories and discourses in the broader society of which they were part.

The critical moment for the transformation of madness occurs in France during the middle of the seventeenth century, indeed, 'a date can serve as a landmark: 1656, the decree that founded, in Paris, the Hôpital Général'.[8] Prior to this time, fools or mad people either roamed from one place to another, were feared or scorned, were viewed as having a peculiar wisdom, or were considered to be rather harmless and entertaining. But it was at this point, as had been the case with lepers in the Middle Ages, that mad people were confined. The Hôpital Général was established by the King to serve between 'the police and the courts, at the limits of the law: a third order of repression'.[9] It was a 'semi-judicial structure, an administrative entity which, along with already constituted powers, and outside of the courts, decides, judges, and executes'.[10]

Initially, confinement was a matter of policing populations that were disorganized and rendered idle by patterns of labour utilization that were developing with new manufacturing economies. 'A population without resources, without social moorings, a class rejected or rendered mobile by new economic development' was fed, prevented from precipitating social disorders, and subjected to physical and moral constraint through confinement.[11] Yet, after being transformed into a resource for securing labourers and inculcating the habits of labouring activities, confinement was overtaken by the enormity of the social dislocation of which it was a part. Confinement came to be both too gross a pattern of constraint and too limited to meet the problem of dealing with massive unemployed populations.

Madness emerged out of the more general category of idleness. It was constructed through social institutions and moralizing discourses that valued labour both as a source of wealth and, even more importantly, as moral redemption and penance. Madness was 'perceived through a condemnation of idleness', and it was increasingly used to categorize the individual who 'crosses the frontiers of bourgeois order of his own accord and alienates himself outside the sacred limits of its ethic'.[12] More specifically, madness and insanity combined idleness with features of scandal and dishonour. Madness

defined a combination of unreason and uselessness. It is behaviour that is 'deranged, demented, extravagant', and that displays features of the inhuman and a retreat from civilization to animality that is as shameful as it is potentially contagious.[13] Most particularly, the dishonouring of religion and of families were grounds for confinement.

Once madness was confined, it would also be put on public display through visitations and exhibits. It was always shown, however, 'on the other side of bars; if present, it was at a distance, under the eyes of reason that no longer felt any relation to it and that would not compromise itself by too close a resemblance'.[14] The mad person had become the brute, the animal other, the negative standpoint, and was defined by reason as the counterpoint to reason. As civilized individuals became more and more removed from natural communities and dependency on nature, they became more prone to madness, the breakdown of societal rationality. The display of madness in its neutralized, confined form would check these tendencies in the spectators.

3. *Madness, Law, and Medicine*

Madness was a way of excluding actions and individuals and making them into negative others because they *unreasonably* violated rules that were developing in the seventeenth and eighteenth centuries.[15] 'Libertine' beliefs and actions that violated sexual codes of the bourgeois family, violations of sacred family responsibilities, violations of the proper relationship between passion and thought were the boundaries for differentiating mental alienation as as unreasonable, sick, and abnormal condition that distinguished it from crime and other forms of nonconformity and deviance. As such, madness was subject to a combination of juridical and medical authority. It was treated as a physical, animal disorder that demanded a reconstitution of the subject at very deep levels. With the failure of general confinement by the late eighteenth century and the differentiation of madness as a disorder requiring medical attention, the segregation and treatment of insanity became more specialized. The establishment of asylums by Pinel at the Bicetre and the Quakers led by Samuel Tuke in York were efforts at reforming the treatment of insanity. These reforms were rooted in a therapeutic approach that sought to instil responsibility and the recognition of guilt in the insane person. They sought to establish:

> . . . for the madman a consciousness of himself. . . . From the acknowledgement of his status as an object, from the awareness of his guilt, the madman was to return to his awareness of himself as a free and responsible subject, and consequently to reason.[16]

The asylum was anchored in laws that categorized the insane as minors whose treatment required specialized parental protection in the asylum, an institution modelled on the patriarchal family. Legally sanctioned reforms modelled on patriarchal familialism sought to inculcate reason and moral uniformity into the insane by combining the values of family and work. Most profoundly, the asylum and its criteria of success required a deep complicity of the patient in an act of mental redefinition of the self that was an internal analogue to criminal law and punishment:

> The asylum . . . was a juridicial space where one was accused, judged and sentenced, and from which one was released only by the version of the trial that took place at a deeper, psychological level – that is, by repentance. Madness was to be punished inside the asylum, even if declared innocent outside of it. . . . It was to be imprisoned in a moral world.[17]

In *Madness and Civilization*, Foucault demonstrated how forms of human expression, social relations, and activities deemed unproductive, beyond reason and shameful were encapsulated morally, spatially, and cognitively in juridico-psychological practices and languages. Similarly, in *The Birth of the Clinic*, Foucault analyses the transformation in medicine in the late eighteenth century. Especially significant are the changes in medicine from a system of classification that relied on the rapport and shared culture of physicians and patients, both predominantly from the privileged classes, to the establishment of science as an anatomo-clinical method. The democratization of medical practice and education, especially through the legal changes and state formation during the French Revolution, led to the establishment of clinical hospitals as the site of medical practice. Here, disease took on a new aspect as doctors, generally not sharing the cultural assumptions and language of patients, focused more on the physical display and symptoms on the body of the patient, and 'opened up a few corpses' to observe the interior of diseased bodies.[18] In clinical practice, new relations became visible, new knowledges about disease became possible.[19] The whole notion of 'public health' and, indeed, of the social as a knowable object, was largely based on the collection of health statistics gathered from clinics. These data, when rendered into facts, were formative for policy-making and the legal regulation of nutrition, sexuality, the workplace, housing, and, not coincidentally, concepts of social pathology as formulated by Emile Durkheim.[20] Here we see the coming together of the state, law, and medicine in reformulating the body and disease. The institutionalization of the clinical hospital located the patient in a quasi-scientific juridical space similar to the asylum.

4. *Of Archaeology, Space, and Time*

While the studies of madness and medicine are analyses of particular historical changes that implicate law in patterns of controlled exclusion, Foucault developed a general perspective on reasoned exclusion in both *The Order of Things* and *The Archaeology of Knowledge*. *The Order of Things* formulates the differences in knowledge between the classical period and modern knowledge that emerges at the end of the eighteenth century and the beginning of the nineteenth century. The classical period ordered knowledge through structures that located elements in spatial relations with one another, that generally emphasized the ways in which things were reproduced through rules of representation which fostered resemblance, that stressed permanence over change, and that related things through expansive analogies.[21] By contrast, since the end of the eighteenth century knowledge has been ordered through concepts of organic relationships, organic processes, functional relations, temporal relations, the invisible connections among parts rather than their

most visible representations, and, perhaps most importantly, a historical ordering of reality:

> From the nineteenth century, History was to deploy, in a temporal series, the analogies that connect distinct organic structures to one another. This same History will also, progressively, impose its laws on the analysis of production, the analysis of organically structured beings, and, lastly, on the analysis of linguistic groups. History *gives place* to analogical organic structures, just as Order opened the way to *successive* identities and differences.[22]

In this light, Foucault analyses more particular transitions in knowledges from the classical period to the modern. For example, in political economy, there is a change from how elements are represented in exchange to the underlying relations of the processes of production. Problems of forms of production, of scarcity, the organization of labour, and utopias that envision an end of history become prominent. This transition is demonstrated by changes in the analysis of labour from the role of labour in representing value in the writings of Adam Smith to the role of labour in producing value as analysed by David Ricardo. Ricardo's analysis of labour 'singles out in a radical fashion, for the first time, [how] the worker's energy, toil, and time are bought and sold, and the activity that is the origin of the value of things'.[23]

Increasingly, the notions of process, of history, of function, of organism come to define humanity itself. Humanity, through the self-imposition of these categories of knowledge, becomes an 'operational concept in the sciences and philosophy that emerged in the early nineteenth century' and becomes a body that is known through technical sciences like physiology and a history rooted in social, economic, and political conditions.[24] Humanity becomes an object of knowledge through categories of knowledge that stress self-production, reproduction, and humans as 'living, labouring and speaking beings'.[25] Increasingly, 'modern thought is advancing towards that region where man's Other must become the Same as himself'.[26]

5. *Discourse and Exclusion*

These analyses of the transformation of knowledge show the qualitative differences between classical and modern thought. Knowledge is constructed through discourses which define and envelop aspects of the body, experience, and thought that are initially excluded from reason and science. Now, the process of knowledge formation can itself become an object of knowledge. Once knowledge forms humanity as both the subject and object of enquiry, the discursive practices through which aspects of human activity and thought become excluded, aberrant, and deviant can themselves become topics of enquiry and articulation. Foucault conceptualizes these discursive practices as both procedures and as conditions of communication.[27]

First, there are 'procedures of exclusion' which limit and control discourse through its internal relations. Included here are procedures that place certain topics and objects of knowledge outside of major locations of discussion and analysis. This marginalizes these topics and objects of knowledge to the

peripheries of discourses. In addition, that which is marginalized is also divided-off from other objects of enquiry so that it can be rejected as either unreasonable or as having a peculiar magical power. Madness is a primary example of this. Moreover, that which is marginalized, divided-off, and rejected becomes excluded from determining the criteria of what is true and false. The criteria of what is true and false are, initially, bound up with the purposes of knowledge. Yet these criteria are differentiated from the locations where they were formed and the power relations within which they were embedded. They are distanced from the contexts where knowledge is created and articulated and, most importantly, sought after. Each speciality of knowledge – jurisprudence, criminology, sociology, geography, economics, and so on – seeks to establish its own rationality and range of empirical validation.[28]

Second, there are procedures within discourse that impose limits and controls. There are practices which classify, order, and distribute discourses as well as make them seem unpredictable. First, there is commentary on the primary texts, such as constitutions and key rulings of courts. These commentaries facilitate discourse by providing multiple meanings to such things as statutes, constitutions, and court rulings, thereby making them problematic and worthy of further discourse. At the same time, by repeating the primary text, commentary delimits the range of legal discourse. Another source of internal control is the notion of the author, not necessarily as an individual person, but, rather as a boundary of consistency and limitation that is shaped through identity. The 'author' makes discourse appear as activity, as originating in an entity with an identity that forms a core and partial reference to discourse, thereby providing a boundary to it. Similarly, the more collective identity of disciplines as anonymous systems of rules, techniques, and instruments that serve to both make new discourses possible at the same time that they limit the legitimate range of enquiry. Disciplines dissociate the world into objects of enquiry that are knowable through particular practices. Knowledge is compartmentalized as the world is dissociated.

Third, discourses are controlled by the conditions that restrict access to communication and shape the process of communication, limiting discourse to speakers who are deemed 'qualified' in terms of formal education and professional certification, patterns of language and gestures that delimit discourse, communications through specialized languages and journals, and the particular groups to which discourse is restricted. These last aspects of control combine with the others that we discussed at the point of discursive action, at the point where discourse occurs. In effect, discourse becomes a form of exclusive communication and interaction. It evaluates languages, individuals, and patterns of interaction from the standpoint of disciplines which combine identities of authors with quests for truth that are divided off from practical purposes. For Foucault these aspects of knowledge can be overcome by a method that criticizes discourse as an 'imposition' of knowledge practices on things.[29] The 'pure' knowledge-seeking of discourses results from a differentiation that elevates discourse above objects of enquiry, making them

into fields that have either no or limited meanings prior to discourse. The meanings that discourse generates are the effects of discursive practices and must be seen as such. Meanings and the discourses that generate them should be analysed as discontinuous events. Meaning and discourse shift with the relations that characterize historical periods. They must be analysed as material relations that are formative for subjects.

LAW AND DISCIPLINE

In the early 1970s, Foucault began to write directly on how power and knowledge shape crime, criminal law, and the relationships among legal, medical, and social science discourses. Compared with his earlier work, there was a shift, or, at least, a pronounced difference in emphasis in these writings. He became less focused on processes internal to discourse and more concerned with the transformation of relations between power and knowledge. This shift is partially explained by changing historical conditions.

The upheavals that began in May 1968 in France transformed the political and intellectual terrain. Demands for participatory democracy by student activists who pronounced the need for and initiated the self governance of educational institutions, the occupation of factories by workers, the formation of common political associations and strike support committees by workers and students, and the emergence of issues of women's liberation, the environment, and minorities opened up political action and discourse.[30] In particular, there were sharp criticisms of dogmatic Marxist formulae of political economy, class, and the élitism of the Communist Party leadership. The role of the intellectual as representing revolutionary consciousness through universalistic scientific and moral discourse was challenged.

New approaches to knowledge and politics were being created that stressed themes raised by Foucault: there are a multiplicity of networks of social control and struggles are localized. Under these conditions, the intellectual should participate in specific struggles and engage in concrete actions. Emancipatory knowledge must reveal specific mechanisms of power and serve the development of local strategies. Foucault was associated with movements for prisoners' rights that were begun by hunger strikes by political prisoners in 1970. He was active in the Prison Information Group and other efforts to create situations through which prisoners could articulate their own needs. This led Foucault to study issues of knowledge and power in the arenas of politics, criminal law, criminology, and penology.

For Foucault, knowledge cannot adequately be analysed either as an expression of power or as purely an instrument of power. To be sure, these relations between knowledge and power have some validity: discursive knowledge requires forms of power that enable classification, record keeping, accumulation, and systematic communication. Yet power and the exercise of power require the formation of useful knowledge. Power and knowledge are mutually dependent, intersect with one another and, often, are so interpenetrated as to form a unity:

> We should admit . . . that power produces knowledge (and not simply by encouraging it because it serves power or by applying it because it is useful); that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations. These 'power-knowledge' relations are to be analysed, therefore, not on the basis of a subject of knowledge who is or is not free in relation to the power system, but, on the contrary, the subject who knows, the objects to be known, and the modalities of knowledge must be regarded as so many effects of these fundamental implications of power-knowledge and their historical transformations.[31]

1. *Law, Truth, and the Body of the Accused*

In keeping with themes and frameworks developed in his earlier works, *Discipline and Punish* describes changes in punishment, penology, and criminal law from the classical period through the nineteenth century. Yet, the core problem shifts from discourse to the power-knowledge complex. With this shift, moreover, comes a new conceptualization of the body: the body becomes the point at which power is exercised and knowledge is generated. It is the key object upon which criminal law, state power, penology, and allied social sciences are inscribed. Moreover, the juridical subject emerges from relations of power, from technical manipulations and moral discourse focused on the body.

'The Body of the Condemned', the first chapter of *Discipline and Punish*, contrasts two regimes of punishment, 'a public execution and a time-table'.[32] In the first, the execution of Damiens the regicide in 1757, Foucault provides a four-page description of the sentence and how, according to contemporary observers, it was carried out. The following indicates the severity and excessive use of violence applied to the body of the condemned:

> Bouton, an officer of the watch, left us this account; '. . . Then the executioner, his sleeves rolled up, took the pincers, which had been especially made for the occasion, and which were about a foot and a half long, and pulled off first at the calf of the right leg, then at the thigh, and from there at the two fleshy parts of the right arm; then at the breasts'.[33]

In the second, punishment takes the form of a daily regimen as drawn up by Leon Faucher in 1837. For example:

> Art. 17. The prisoners' day will begin at six in the morning in winter and at five in summer. They will work for nine hours a day throughout the year. Two hours a day will be devoted to instruction. Work and the day will end at nine o'clock in winter and eight in summer.[34]

A key shift between these regimes of punishment and law is their physical and social location. In the first form of punishment, torturing the body of the condemned is a public spectacle. In the second, the punishment is withdrawn from public view and is located in the institutional space of the prison. The reverse is the case for legal proceedings. In the classical period, the investigation and judgment of the accused was accomplished out of public view. Legal proceedings used torture in an effort to get at the truth. Through gradations of pain applied to the body of the accused, a confession could be obtained. The criminal was taken as responsibly supporting the secret

procedures of the investigation. By contrast, the trial in modern legal proceedings is a distinctly public attempt to get at the truth. It relies on procedures of public argumentation and evidence which demand that violence not be exercised against the accused to extract information or a confession. The characterization of the body is also transformed. In the first regime of punishment, punishment is directly inflicted on the body so that pain can be registered on the criminal for public view. The punishment of the body accords with punishment of a criminal action. In the second regime, the punishment inflicted on the body plays more of a mediating role for a legal regime that seeks to get at some essence of the criminal. Punishing the body is a means of affecting an interior of the criminal: the soul, the heart, the mind, the will.

Knowledge plays an increasingly important role in making judgements about crime and the criminal: 'knowledge of the offence, knowledge of the offender, knowledge of the law: these three conditions make it possible to ground a judgement in truth'.[35] What is most distinctive about the change initiated in the early nineteenth century is the extent to which legal categories become intertwined with psychological, psychiatric, criminological, and sociological knowledges. These knowledges are used to diagnose, to prognosticate and to judge criminals and criminal acts that go well beyond the legal proscriptions about the application of punishments to offences. These knowledges are concerned with reforming, rehabilitating, and shaping the future behaviour of the criminal. Criminal law becomes embedded in discourses of clinical sciences and an array of regimes that seek to treat the criminal, to cure the criminal.

For example, law and psychiatry are blended in judging whether the perpetrator of a criminal act was of sound or unsound mind at the time of the act. While law plays a dominant role in defining the act, a combination of law and psychiatry determines the degree of responsibility of the perpetrator. If the perpetrator was mad, then treating her or him as a criminal would be inappropriate since the criminal is defined as a rational, wilful, and self-determining actor. For this reason, the examination of the criminal for possible insanity came to precede judgment. It was 'external and anterior to the sentence' and it 'loosened the hold of the law on the author of the act'.[36] On the one hand, the higher the degree of madness, the lower the degree of guilt. On the other hand, the higher the degree of madness, the lower the degree of rationality and the greater the danger posed by the perpetrator. The perpetrator who is mad is 'someone to be put away and treated rather than punished'.[37]

The interpenetration of legal and non-legal knowledges has generated an incredibly complex, incoherent, and confusing array of concepts. As the non-legal elements of criminal law have expanded, the role of judge has expanded from a focused concern with the criminal law and its application to judgments about the character, the underlying nature of the perpetrator, and the complexity of the circumstances of the act. Moreover, the judge is not alone in judging:

> Throughout the penal procedure and the implementation of the sentence there swarms a whole series of subsidiary authorities. Small-scale legal systems and parallel judges have multiplied around the principal judgment: psychiatric or psychological experts, magistrates concerned with the implementation of sentences, educationalists, members of the prison service, all fragment the power to punish. . . . The whole machinery . . . creates a proliferation of the authorities of judicial decision-making and extends its powers of decision well beyond the sentence.[38]

2. *Law, Political Economy, and Political Technology*

What approach is best suited for comprehending these transformations of law and punishment? Foucault rejects Durkheim's analysis of penal evolution because it studies 'only the general social forms' and attributes the apparent development of leniency of punishment to the development of individualism. Durkheim, with his emphasis on law as an index of social organization and morality, virtually neglects analysing changes in punishment from the standpoint of 'new tactics of power'.[39] Rusche and Kirchheimer, on the other hand, are viewed as pivotal. Foucault views Rusche and Kirchheimer's 'great work', *Punishment and Social Structures*, as providing 'a number of essential reference points'.[40] Rather than rooting punishment in the 'illusion' of beliefs regarding morality or as an effort to reduce crime, Rusche and Kirchheimer 'relate the different systems of punishment with the systems of production within which they operate'.[41] Slavery, feudalism, mercantile capitalism, and industrial capitalism each had a distinctive pattern of punishment that enhanced the supply and control of labour under alternative conditions of production.

While there is considerable merit for this approach to law and punishment, Foucault argues that political economy does not go deep enough. It is too general, too macrosociological. A perspective is needed that gets at the ways in which the body is fully mastered, fully controlled, and fully prepared for socially useful tasks, including production. This perspective must link particular institutional contexts to knowledges of the body and techniques of its control. It must capture the 'political technology' of the body, the 'micro-physics of power' that includes but goes beyond political economy in analysing the 'strategy' – the 'dispositions, manoeuvres, tactics, techniques' – through which power is exercised so that 'domination' can be analysed not only as appropriation, but as particular practices.[42] Criminal law, criminal justice, and punishment must be analysed as a highly 'complex social function', as a 'political tactic', as an 'epistemologico-juridical formation' through which the penal system has been humanized and knowledge generated, and a way in which the body has become both the site for the realization of power and as a mediator of power.[43]

3. *Law, Punishment, and Representations of Power*

Foucault's concrete historical study elaborates on this methodological approach. In keeping with his analysis of the differences between the classical

period and modern times, Foucault characterizes public executions through the end of the eighteenth century as a form of representation in which the power of the sovereign monarch overwhelms the criminal. This serves to demonstrate the power of the monarch directly on the body of the condemned in a public spectacle. Torture reproduced:

> ... the crime on the visible body of the criminal.... It also made the body of the condemned man the place where the vengeance of the sovereign was applied, the anchoring point for a manifestation of power, an opportunity of affirming the dyssymetry of forces.[44]

The power of the sovereign radiated through the body of society and, through the court and the executioner, was directly demonstrated to the populace as it was pitted against the criminal.

A variety of factors led to the transition from public torture to a greater reliance on the prison. The spectacle of public punishment, for one, increasingly became an occasion for the crowd to support the criminal rather than the power of the monarch. Protests at the site of public execution forced 'tyranny to confront rebellion' in a manner that weakened rather than enhanced monarchical power.[45] This tactical change, along with the view developed during the Enlightenment that humanity – including the humanity of the criminal – ought to be respected, supporting the view that criminal justice should punish rather than revenge.

Also, there were massive shifts in the types of crime that were taking place. Overall, crime was becoming more directed at property than at persons. 'A general movement shifted criminality from the attack of bodies to the more or less direct seizure of goods.'[46] Crime was being conducted more by individuals or small groups rather than by large organized armed gangs. Criminality was becoming both more marginal to society and more skilled, more professional. This changing pattern of crime required a less intense but more detailed and interventionist form of punishment.

Another source of change were movements for reform located within the legal profession and the criminal justice system. Lawyers, criminal justice administrators, legal scholars, and political activists had developed critiques of criminal law and punishment. They argued that the law and its implementation were confused because of a multiplicity of courts and overlapping of different legal systems. Overall, this constituted a 'bad economy of power' in which there was too much power concentrated in lower jurisdictions, too much discretion for judges, and 'extreme power' allocated to prosecutors.[47] The need for reform was largely a result of the identity of sovereignty with the king and the discretion of judges and the power of prosecutors that followed from it. The hallmark of the arbitrariness of this legal order was the use of the pardoning power by the king that was integral to all proceedings in criminal law and punishment. Reformers demanded more homogeneity of justice, its better distribution, and a rearrangement of power that made it more regular, more detailed, more effective, and more consistent.

4. *Sovereignty, Capitalism, and Labour Control*

The locus of the transformation in criminal law and punishment was the

conjoining of the struggle against the 'super-power' of the sovereign and the legal transformation associated with the growing distinction between illegalities of rights and illegalities of property that went along with the development of capitalism. As capitalism developed, the notion of detailed rights of peasants came increasingly into conflict with the capacity of landowners to use their property for economic purposes as they saw fit. Increasingly, old obligations derived from rights were abandoned. Disputes and illegalities that had been articulated through discourses of legal rights were replaced by discourses of illegalities of properties which 'then had to be punished'.[48]

Moreover, as wealth increasingly took the form of capital that was invested in industrial enterprises, both the control of labour and the requirement that the property of the owner be secured – the machinery, the tools, the raw materials, the product, the inventory – became basic to the production process. While workers acting on the legacy of feudal rights often viewed it as a right 'to collect bits of iron or rope around ships or to resell the sugar sweepings', the security of capitalist relations of production necessitated that such acts be rendered into illegalities of property.[49] There was, in effect, a class-based 'redistribution of illegalities' that disadvantaged the workers and advantaged the bourgeoisie. Workers were increasingly subjected to criminal law grounded in property while the bourgeoisie retained laws that defined illegalities through rights:

> This great redistribution of illegalities was even to be expressed through a specialization of legal circuits: for illegalities of property – for theft – there were ordinary courts and punishments; for the illegalities of rights – fraud, tax evasion, irregular commercial operations – special legal institutions applied with transactions, accommodations, reduced fines, etc. The bourgeoisie reserved to itself the fruitful domain of the illegality of rights.[50]

The challenge to monarchical sovereignty combined with changes in production and property led to changes in criminal law and punishment. The direction of change was to make 'punishment and repression of illegalities a regular function, coextensive with society . . . to insert the power to punish more deeply in the social body'.[51] What was required was not only a more regular, less arbitrary criminal law and punishment, but a pattern of control that was as detailed as the new relations of production. This transformation, moreover, was conducted through a social discourse that stressed the need to defend and maintain society rather than a discourse that pitted the criminal against the sovereign. It stressed the humanity of the criminal, and the notion that the individual, acting on the basis of will, entered into a contract with society: 'In accepting the laws of society the citizen is also accepting the laws by which he may be punished.'[52] The discourse had a utilitarian standard that made the pain of punishment sufficient to exceed the gains derived from illegalities so that the likelihood of repetition of the crime by the criminal be prevented, that the crime not be imitated by others, and that the future of social order be secured. Criminal law, in line with this, must be codified and rationally organized both in terms of the nature of crimes and their

punishments. Criminal proceedings must disavow the use of torture and proceed on the basis of common reason, rational argument, and evidence that seeks to demonstrate the truth in ways consistent with philosophy and principles of science. Also, and of great importance to Foucault's analysis, the determination of punishment 'must take into account the profound nature of the criminal himself, the presumable degree of his wickedness, the intrinsic quality of his will'.[53] Sentencing becomes an individual matter, raising the dilemma of 'how one is to apply fixed laws to particular individuals'.[54] Ultimately, it is something internal to the criminal, that is, criminality that is the focus of criminal law and punishment. The criminal law and punishment becomes a technology, an application of power to the body as a mediator, as a method of getting at the interior, at the soul.

5. *Docile Bodies, Knowledge, and Social Usefulness*

The prison, the characteristic form of punishment that emerges through the nineteenth century, works both as an 'apparatus of knowledge' that develops a 'whole corpus of individualizing knowledge' around the criminal potential within the individual, and as an institution that attempts to change the behaviour, the habits, and the very attitude of the inmate through therapeutic regimes.[55] In this endeavour, the prison shares with other institutions – the school, the hospital, the asylum, the factory, the military – the formation of techniques and knowledge that discipline the individual for socially useful ends. While there are a variety of 'disciplines' that are institutionally located, they share a common logic, a common approach to the individual that was emerging in the eighteeenth century and that has been elaborated and carried through into the present:

> Discipline produces subjected and practiced bodies, 'docile' bodies. Discipline increases the forces of the body (in economic terms of utility) and diminished these same forces (in political terms of obedience). In short, it disassociates power from the body; on the one hand, it turns it into an 'aptitude', a 'capacity', which it seeks to increase; on the other hand it reverses the course of the energy, the power that might result from it, and it turns it into a relation of strict subjection.[56]

There are innumerable particular sources of discipline that influence and borrow knowledge and institutional practices from one another: in secondary education, in military training, in the organization of the detailed division of labour in the factory, in the organization of space in the hospital, in the regimen of prison life.[57] All of these particulars contribute to making discipline 'a political anatomy of detail', a 'micro-physics' of power that analyses and reassembles specific behaviours, gestures, and movements of the individual through repetitive training and detailed scrutiny from the standpoint of political control.[58]

Discipline is partially accomplished through reordering space and time. Spatially, individuals are enclosed, confined in specialized locations: the school, the workshop, the prison. Here, they are set off from one another, each given a specific location where they can be observed, supervised, compared,

judged. Moreover, the variety of institutional controls tend to support and reinforce one another. Military control over a territory, for example, facilitates the supervision of contagious diseases. Administrative space and therapeutic space overlap, serving to 'individualize bodies, diseases, symptoms, lives and deaths'.[59] Individuals have significance primarily in terms of their institutional classification, as in the case of a particular disease or, as in the case of the military, the school, the workshop, their rank. Classification is both a technique of knowledge and of power.

The organization of time also enables the control of individual activity. The time-table enables repitition, for example. The redefinition of action through detailed movements, each of which has a standard duration that is to be co-ordinated with other movements having standard durations and with objects such as machinery or guns, makes time a modality of control. 'Time penetrates the body and with it all the meticulous controls of power.'[60] As the body is reinvented through temporal sequencing, through the administration of detailed motions each timed to co-ordinate with other motions and things, it is increasingly constructed as a resource to be mined, but a resource that may have limits, that may become resistant before it becomes exhausted.

Discipline is constructed through knowledges that are themselves products of the disciplinary practices. Discipline is exercised through a 'hierarchical observation' in which space is constructed and individuals are located in a manner that facilitates surveillance of them by observers that are either their supervisors or in ways that they cannot know whether they are being observed. Indeed, observation is a core architectural theme in designing workshops, prisons, schools, hospitals, asylums, and military barracks:

> . . . to permit an internal, articulated and detailed control – to render visible those who are inside it; in more general terms, an architecture that would operate to transform individuals: to act on those it shelters, to provide a hold on their conduct, to carry the effects of power right to them, to make it possible to know them, to alter them. Stones can make people docile and knowable.[61]

The creation of spaces of observation that isolate the individual, opening up the details of her or his conduct to scrutiny, is a characteristic of all disciplinary, institutions. The conduct of work in the factory and education in the school, for example, combine the accomplishment of useful tasks with surveillance. Indeed, the conduct of the activity is designed so that it can be observed.

6. *Norms of Behaviour and Examinations*

The observation of disciplined activity gives rise to norms of behaviour that are natural precisely because they are observed, because they are averages drawn from what people do.[62] Correct behaviour is normal behaviour precisely in the sense that it is what is in the range of what observation tells us people do. As such, both punishments and rewards are designed for correction: to get individuals, in particular ranks and specialities, to behave in ways that adhere to a norm. Individuals are differentiated from one another,

compared to one on the basis of a norm, an average that is constructed from observations of their behaviours. They are induced to meet that norm and, at the margins, to be deemed incompetent, abnormal. Normalization, 'one of the great instruments of power', makes people both formally equal, since they are judged by the same standards, and individuated, since they are see as different in terms of this standard.[63]

The examination most fully and most immediately combines surveillance, control, and differentiation over the individual in the very constitution of disciplinary activity. In education, for example, the examination, 'a constantly repeated ritual of power . . . enabled the teacher, while transmitting his knowledge, to transform his pupils into a whole field of knowledge'.[64] It is through examinations – in the prison, the hospital, the school, the asylum, the barracks – that the individual is made into an object of knowledge in localized disciplinary activities. The combined effects of examinations is to render the individual 'into a field of documentation', into a 'case' suitable for control and domination.[65] In this light, individualism is not a privileged status, as may have been the case under feudalism, but a construct of disciplinary regimes:

> As power becomes more anonymous and more functional, those on whom it is exercised tend to be more strongly individualized; it is exercised by surveillance rather than ceremonies, by observation rather than commemorative accounts. . . . In a system of discipline, the child is more individualized than the adult, the patient more than the healthy man, the madman and the delinquent more than the non-delinquent.[66]

Jeremy Bentham's *Panopticon* embodies the disciplinary regime. It is, essentially, an observation tower that is surrounded by a vertical bank of cells. Each cell has a window facing outside and a window facing the observation tower. A light shines from the tower in such a way as to illuminate each cell while making it impossible for the person in each cell – a madman, a patient, a condemned man, a worker, or a schoolboy – to observe the observer.[67] Here 'visibility is a trap', the inmate is rendered into an 'object of information, never a subject of communication'.[68] The Panopticon is a situation in which 'surveillance is permanent in its effects' because the inmate is in 'a state of conscious and permanent visibility that assures the automatic functioning of power'.[69]

7. *Why Prison?*

Yet what needs to be explained is why the prison, the institutional extension of disciplinary logic into the area of criminal law and punishment, which was recognized as a failure in both reforming criminals and reducing crime from its inception and, despite this, has been constantly extended and complimented by less total forms of surveillance, halfway houses, parole, and so on.[70] Foucault points out that the 'monotonous critique of the prison always takes one of two directions: either that the prison was insufficiently corrective, and that the penitentiary technique was still at a rudimentary stage; or that in attempting to be corrective it lost its power of punishment'.[71] These criticisms have invariably been met by proposals aimed at strengthening the prison's disciplinary techniques and associated patterns of knowledge accumulation.

The persistance and, indeed, the elaboration of the prison must be explained on grounds other than its success in reducing crime and in reforming criminals. It can be partially explained by the fact that the prison extends a more general pattern of disciplinary power. Its consistency with other disciplinary institutions – the factory, the school, the asylum, the hospital, the military – is a source of support and development. Similarly, criminology and related scientific discourses of crime are largely derivative of knowledges that are established in the prison. A complex of knowledges is established, including criminal law, which originates in and is bounded by the institutional context of the prison.

From the standpoint of capitalist political economy and class conflict, the prison has been perpetuated because it 'has succeeded extremely well in producing delinquency, a specific type, a politically or economically less dangerous – and, on occasion, usable – form of illegality'.[72] Criminal law, the prison, and associated discourses transform workers' resistance to labour discipline and to private ownership of the means of production into illegalities, subjecting them to extensive and detailed surveillance. Moreover, illegalities are changed into delinquencies, into pathologies:

> The delinquent population made crime predictable, could be used to provide illegal services for the ruling class (hence the Marxist disdain for the *lumpen-proletariat*), and by their very forms of sociality and conditions of life functioned as a negative reference point for the working class as a whole.[73]

As resistance is criminalized and rendered into delinquencies, the capacities for collective working-class actions are weakened. Criminalization and the production of delinquencies are historically-situated tactics of power.

SEXUALITY AND THE DISCOURSE OF REPRESSION

The History of Sexuality is Foucault's last major work. As in his earlier studies, he analyses transformations in the social meaning of sexuality as resulting from combinations of legal, medical, social scientific, and administrative discourses. These discourses on sexuality constitute the regime of truth of a historically emergent constellation of power relations that differentiate sexuality into particular institutional practices, formulating a detailed knowledge of the individual as a sexual subject and as an object for disciplinary control.

Beyond this critical history, Foucault argues against the view that the twentieth century ushered in an era of sexual liberation after a sexual regime of repression in the Victorian era. He calls this view the 'repressive hypothesis': the sexual licence of the seventeenth century was followed by an increasing reign of repression that culminated in the nineteenth century which has been followed by the lifting of repression. For Foucault, this version of sexuality is fundamentally flawed because it does not reveal how the discourse of sexual repression has served to strengthen legally legitimated forces of observation, discipline, and administrative control. Not only is the repressive hypothesis

questionable in terms of its account of the actual history of sexual activity, but it misses the effect of organizing knowledge about sexuality through the category of repression. The repressive discourse of sexuality assumes the pervasiveness of sexuality, it demands that sexuality must be discovered through social life, that sexuality is central to personality, that sexuality must be made explicit, and that sexuality is not so much about discrete actions as it is a core feature of individual identity.[74] The discourse of sexuality is everywhere because sexuality is assumed to be repressed everywhere, in manifold details of individual experience and behaviour. The discourse of repressive sexuality stimulates the elaboration of sexuality in the forms of expert knowledge, supported by beliefs that such knowledge is liberatory.

Foucault maintains that 'sex was driven out of hiding and forced to lead a discursive existence'.[75] Through much of the eighteenth century, sexual practices were controlled by canon law, Christian pastoral teaching, and civil law. These codes focused overwhelmingly on the conduct of sexual acts within the confines of marital relations. Sexual improprieties were formulated in ethical-legal terms. By the late eighteenth century, the centrality of ecclesiastical authority and the legal concern with sexual acts was undergoing a transformation. Increasingly, the focus of the confession was less on acts and more on the individual's feelings, beliefs, desires, and sensibilities. Sexual discourse was looking into the subjective interior as a realm of truth. Increasingly, instead of legal and ecclesiastic discourses and institutions dominating sexuality, medical, psychiatric, and psychological discourses and practices combined with legal categories to define sexuality. Moreover, while marital relations still served as the standard for sexuality, marriage was increasingly coming to be defined through rights to privacy and confidentiality. Increasingly, it was the individual outside of marital relations that was the focus of scrutiny.

These transformations in sexuality result from new patterns of power, including the interpenetration of legal institutions and discourses with other administrative centres that encapsulate, regulate and define the body. The proliferation of disciplinary regimes in the school, the workplace, the prison, the hospital, and all the other institutional settings that constitute social life provided the overlapping institutional context for sexual discourse. Contributing to the emerging discourse on the sexuality of children, for example, was a focus on the schoolboy in secondary schools. As in the case of the prison, the spatial arrangement of classes, dormitories, and locations for eating maximized the possibilities for observation by school authorities, as did the regimentation of bedtime and sleep periods.[76]

The sexuality of the schoolboy became a 'public problem' through discourses of doctors, educators, and planners.[77] In the most enlightened schools, close observation of schoolboy sexuality was combined with education in sex, birth, and procreation. The discourse on sexuality that was being taught was as clinical as the discourse of observation. Through similar administrative discourses in other institutions, a whole 'sub-race' of sexual deviants was constructed that ranged from strict legal definitions of

criminality to more medically and psychologically categorized types. Their sexuality, in varying degrees, was judged both unproductive and socially dangerous. The more medicalized the terminology, the more likely that individual perverts were viewed as both victimizers and victims of their condition:

> They were children wise beyond their years, precocious little girls, ambiguous schoolboys, dubious servants and educators, cruel or maniacal husbands, solitary collectors, ramblers with bizarre impulses; they haunted the houses of correction, the penal colonies, the tribunals, and the asylums; they carried their infamy to the doctors and their sickness to the judges. This was the numberless family of perverts who were on friendly terms with delinquents and akin to madmen. . . . In the course of the century they successively bore the stamp of 'moral folly', 'genital neurosis', 'aberration of the genetic instinct', 'degenerescence', or 'physical imbalance'.[78]

The new regime of sexuality shifted the focus of social concern from the conduct of well-to-do husbands to the sexuality of children, the poor, and to problems of homosexuality and unnatural sexuality. This shift signalled a change from a regime of sexual control that sought to maintain family honour rooted in codes of morality and law that represented power in personalized terms to new regimes that sought to enhance public health and to reform society through population policies established in laws and elaborated through regulations. The politicizing of sex and the rendering of sexuality into legal/medical discourses deepened the control of the individual's behaviours and motivations. Most significantly, the new construction of sexuality provided a field of control that linked bodily acts to the wide public problems like population control. The new regime gave rise to:

> . . . infinitesimal surveillances, permanent controls, extremely meticulous orderings of space, indeterminate medical or psychological examinations, to an entire micropower of the body. But it gave rise as well to comprehensive measures, statistical assessments, and interventions aimed at the entire social body or at groups taken as a whole. Sex was a means of access to both the life of the body and the life of the species.[79]

The discourse of sexuality goes beyond even the discourses of criminality and madness to entrench societal administrative controls in the details of everyday life.

CONCLUSION

Foucault's analysis of law leads us away from notions of the autonomy of law. It also leads us away from notions that the law is determined by economic and political structures. Rather, law must be analysed in terms of its internal relations of power and knowledge as well as its relations to other discourses and sources of power.

Foucault's approach to the relations among law, discourse, power, and the state has been partially faulted for not focusing on those core social institutions where power appears to be concentrated: major state bureaucracies, courts, legislatures, and centres of economic power.[80] Foucault's

analysis of law and the state is wanting because it places such heavy emphasis on institutions like the asylum and the prison that are at the periphery of social reproduction. To be sure, the analysis of these institutions is important since they control segments of the population and shape popular discourses that serve to fragment and to weaken opposition to dominant patterns of control. Yet, would it not be more appropriate to conceptualize law and power at the macrosociological level of 'big structures' in order to analyse their importance for social development and broad issues of political organization?

Foucault thought otherwise. For him, the problem of law, power, and the state has been inadequately formulated:

> On the Right, it was posed only in terms of a constitution, of sovereignty, etc., that is in juridical terms; on the Marxist side, it was posed only in terms of the State apparatus.[81]

To get at the root of the problem, the focus must be on the specific material relations of power, of how it is exercised, 'concretely and in detail'.[82] The detailed mechanics of 'the investment of the body by power' must be at the core of inquiry, at the focal point of analysis rather than assumed under juridical and institutional forms.[83]

From this we ought not to conclude that the constitution of society and the state through law and the details of power, discipline, and punishment are unrelated. Rather, they fully interpenetrate with one another. Juridical equality, explicit legal codes, and representative democracy developed along with the disciplinary practices that shape mundane activity:

> The general juridical form that guaranteed a system of rights that were egalitarian in principle was supported by these tiny, everyday, physical mechanisms, by all those systems of micro-power that are essentially nonegalitarian and assymetrical.[84]

The formation of legal rights and legal institutions expand with the detailed exercise of power. Where there are legal rights, there are technologies of power.

Given this analysis of law and power, what role does Foucault see legal institutions as playing in acts of liberation and social reconstruction? We answer this question and end this essay provocatively with a statement Foucault made in a 1971 debate about the formation of a people's court to judge the police:

> In my view one shouldn't start with the court as a particular form, and then go on to ask how and on what conditions there could be a people's court; one should start with popular justice, with acts of justice by the people, and go on to ask what place a court could have within this. We must ask whether such acts of popular justice can or cannot be organized in the form of a court. Now my hypothesis is not so much that the court is the natural expression of popular justice, but rather that its historical function is to ensnare it, to control it and to strangle it, by re-inscribing it within institutions which are typical of a state's apparatus.[85]

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8 id., p. 39.

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10 id., pp.XII–XIII.

11 id., p. 48.

12 id., pp. 57–8.

13 id., pp. 66–7.

14 id., p. 70

15 Sheridan, op. cit., n. 1, p. 27.

16 Foucault, op. cit., n. 7, p.247.

17 id., p. 269.

18 M. Foucault, *The Birth of the Clinic: An Archaeology of Medical Perception* (1973) 146.

19 id., p. 195.

20 See E. Durkheim, 'Rules for Distinguishing Between the Normal and the Pathological', Chapter 4 in *The Rules of Sociological Method* (1938) especially pp. 55–6: 'We shall call "normal" those social conditions that are the most generally distributed, and the others "morbid" or "pathological".'

21 Foucault cites some marvelous examples such as the inverse analogy of plants to animals from Celaspino in the sixteenth century: plants as animals growing with their heads down; plants are like animals with their sutanice going in different directions, plants moving up and animals moving down. See *The Order of Things: An Archaeology of the Human Sciences* (1970) 21.

22 id., p. 219.
23 id., p. 253.
24 Sheridan, op. cit., n.1, p. 79.
25 id., p. 83.
26 Foucault, op. cit., n. 21, p. 328.
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28 This aspect of Foucault's approach to knowledge parallels the ethnomethodological analysis of the procedures through which knowledge is produced. For an overview of ethnomethodology, see P. Atkinson, 'Ethnomethodology: A Critical Review' (1988) 14 *Annual Rev. of Sociology* 441–565. Of most direct interest is Dorothy Smith's formulation of ideology as 'procedures not to know' in 'The Ideological Practice of Sociology' (1974) 8 *Catalyst* 39–54. For a concrete analysis of the ideological production of a criminal category, see M. Fishman, 'Crime Waves as Ideology' (1978) 25 *Social Problems* 531–43.
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82 id., p. 115.
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