

A DIALECTIC OF THEORY AND PRACTICE

Michel Foucault's participation in *Le Groupe d'information sur les prisons* (the Prisons Information Group, the GIP)—and the way in which he helped shape the structure of that militant organization—was a direct outgrowth of his theoretical elaborations over the 1960s. At the same time, his political practices associated with the GIP would fundamentally reshape his theoretical work. The influence of theory on practice, and of practice on theory is utterly remarkable—and extremely instructive for our own political practices and theorizing.

Thanks to a number of newly published texts, histories, images, and film documentaries, the history of this remarkable dialectic between theory and practice is coming to life today. The collection of shorter writings and commentaries, the *Dits et Écrits* published in 1994, had already assembled an important collection of Foucault's more politically engaged interventions, op-eds, and interviews. But more recently, we have seen the publication of Daniel Defert's oral history, *Une Vie politique*,¹ published in 2014; the doctoral thesis of Audrey Kiéfer from 2006 on the GIP, *Michel Foucault: le GIP, l'histoire et l'action*²; the documents collected by Philippe Artières, Laurent Quéro, and Michelle Zancarini-Fournel in the 2003 volume, *Le Groupe d'information sur les prisons: Archives d'une lutte, 1970–1972*,³ co-edited by Perry Zurn and Kevin Thompson; the new edition at Gallimard of the investigations of the GIP, *Les enquêtes: "Intolérable" du GIP*⁴; as well as new documenta-

ries such as the one we will be seeing this evening by Nicolas Drolc, *Sur les toits* (2014).⁵

THE DIALECTIC

What all these new materials—as well as the publication of the 1972–73 lectures at the Collège de France, *La Société punitive*—are showing, is the extent to which, for Foucault, the practices of the GIP were a direct outgrowth of his theoretical concerns. Most saliently: the form, structure, and practices of the GIP were a deliberate effort to instantiate the turn to discourse analysis that Foucault had inaugurated in the 1960s. As a historical matter, the idea of trying to give voice to or allow the discourse of prisoners to be heard is in direct continuity with Foucault's philosophical and methodological tenets.

It is important to understand the historical context that laid the conditions of possibility of this dialectic. It was triggered, in effect, by May '68. Following the student and worker uprisings, the French government cracked down on nonparliamentary political organizations. What followed was the massive arrest and detention of several hundred Maoist militants in French prisons. The Maoist political organization, *La Gauche Prolétarienne*, demanded at first that the prisoners receive political prisoner status. Danièle Rancière and Daniel Defert asked Foucault to conduct a tribunal to air these grievances. Foucault threw himself into the movement with full force, but in a slightly different way, preferring a more horizontal model to that of a popular tribunal. After much discussion among a number of intellectuals, the GIP emerged on the model of a discursive intervention: a vehicle to allow certain discourses to be heard, a way to allow prisoners, whose voice was still illegi-

ble, to become legible. The GIP was a theoretical articulation of the *Archaeology of Knowledge* and “The Order of Discourse”.

At the same time, Foucault’s interest in the prison more generally grew out of his attention to the question of “truth and juridical forms,” which itself was a direct outgrowth of his intellectual project at the Collège de France. The focus on the prison fit within a line of inquiry that Foucault set for himself in his yearly lectures: to explore the way in which societies over time have used different legal forms to produce truth. In those lectures, Foucault explored, reading Homer’s *Iliad*, how the ancient Greeks used agonistic competition between heroes to reestablish the social order; how early Germanic law used compensation to resolve the blood feud; how medieval jurists employed various ordeals or raw social status to render justice; and how we had graduated, in the West, to processes of examination and expertise to find and justify the truth in contested legal disputes—to tell justice, to engage in what he called *jurisdiction*.

On December 9, 1970, Foucault indicated, at the moment of his very first lesson at the Collège, that his research seminar (distinct from his main lectures) would focus on the production of truth in the context of nineteenth-century penalty: “*Le point précis de l’analyse sera l’insertion d’un discours à prétention scientifique (la médecine, la psychiatrie, la psychopathologie, la sociologie) à l’intérieur d’un système—le système pénal—jusqu’alors entièrement prescriptif.*”⁶ Only a few weeks later, Foucault would combine those intellectual interests with the declaration, on February 8, 1971, of the GIP manifesto.

But the influence worked in the other direction as well. Foucault's practical engagements shaped his thinking and theories, influencing importantly the writing of his book on prisons, *Discipline and Punish* (1975)—which Foucault himself explicitly recognized in the work itself. You will recall the passage in *Discipline and Punish* where Foucault writes, “*Que les punitions en général et que la prison relèvent d'une technologie politique du corps, c'est peut-être moins l'histoire qui me l'a enseigné que le présent. Au cours de ces dernières années, des révoltes de prison se sont produites un peu partout dans le monde.*”⁷

The influence of practice on theory operated at a number of levels. First, Foucault's practical engagements helped focus his theoretical analysis on the materiality, on the bodies of the prisoners—the bodies that form both the locus of punishment but also the source of resistance. What *Discipline and Punish* succeeds in doing is to augment the traditional Marxist political economy with what Foucault refers to expressly as “a political economy of the body.”

The GIP engagement also helped focus his analysis of the relationship between juridical forms and truth—which was the very project he set for himself at the Collège—on the juridical form of *imprisonment* that is tied inextricably to the form of *examination*. It also revealed to Foucault that his archaeological approach was not entirely sufficient to the task he had set himself, and that a genealogical method was necessary. Archaeology would have entailed the derivation of the prison from the theories of the eighteenth- and nineteenth-century reformers. Foucault discovered that was impossible, and instead he had to seek its development in a genealogy of morals. You can see this first in 1973 in *The Punitive Society*—

where you get a clear turn to the penitential; and of course we would receive the full articulation in 1975.

Finally, and perhaps most importantly, his GIP engagements turned his attention to the productive aspects of penalty. Right after he visits Attica Prison in New York State in April 1972—his first direct access to a prison, an experience that he describes as “overwhelming”⁸—Foucault would shift the focus of his analysis. Upset and “undermined” by this visit, Foucault began an analytical transition toward the “positive functions” of the penal system: “the question that I ask myself now is the reverse,” he would explain at the time. “The problem is, then, to find out what role capitalist society has its penal system play, what is the aim that is sought, and what effects are produced by all these procedures for punishment and exclusion. What is their place in the economic process, what is their importance in the maintenance and exercise of power? What is their role in the class struggle?”⁹

REACTUALIZING THE DIALECTIC

How then might we reactualize this dialectic in our own theorizing and practice today? The starting point, naturally, is to think critically about how we intervene in regard to issues such as mass incarceration. To think critically about questions of leaderlessness and the horizontality of resistance—on the model of Occupy, interrogating the family resemblances with the practices of the GIP itself. But also to critically explore other juridical forms as well, such as, for example, the grand jury especially in light of the tragic events in Ferguson, Missouri, leading to the death and cover-up of Michael Brown. Here it would be important to interrogate the grand jury as a

method of producing truth—precisely in relation to power-knowledge.

In Ferguson, the grand jury that no billed the indictment against police officer Darren Wilson in the shooting death of Michael Brown heard from sixty witnesses over the course of seventy-five hours. The grand jury met, off and on, for three months. The jurors deliberated for several days. The grand jury proceedings produced a voluminous transcript that reached almost 5,000 pages.

The Ferguson grand jury was a remarkable use of the jury form as a method to produce the truth of the encounter between Darren Wilson and Michael Brown. The use—or abuse—of the grand jury functioned to convince many Americans that there had actually been a jury verdict on the evidence; in fact, nothing could be further from the truth.

The no bill was a carefully orchestrated proceeding that was packaged and served to the American public to look like a trial on the evidence. In former days, we spoke of “show trials.” Well, this grand jury proceeding was just that—constructed behind the veil of grand jury secrecy, packaged in transcript form, and delivered to the American people without ever risking the adversarial process, the scrutiny of a single judge, or the searching eye of the public or the media.

The grand jury process in the Michael Brown shooting was, point-for-point, the contrary of what would usually occur in a homicide case, but it was brilliantly assembled to resemble a real jury trial.

First, prosecutors generally try to limit grand jury testimony in homicide cases to avoid creating impeachment testimony or exculpatory *Brady* evidence. In this case, the prosecutor did the exact opposite, putting on all the witnesses who testified inconsistently that Michael Brown was surrendering, falling, turning around, walking back, and simultaneously charging when the police officer fired the twelfth fatal shot.¹⁰

Second, grand jury proceedings are non-adversarial since the only lawyer in the room is the prosecutor, and that prosecutor generally does not cross-examine witnesses favorable to a prosecution. In this case, the prosecutor did the exact opposite, going so far as to tell one witness favorable to the prosecution, “Basically just about everything that you said on Aug. 13, and much of what you said today isn’t consistent with the physical evidence that we have in this case, OK.”

Third, prosecutors generally try to stick to vetted pattern jury instructions, given that no judge or defense counsel is present in the grand jury room to object or oversee. Again, the exact opposite happened here, with the prosecutor giving a patently incorrect instruction on police use of deadly force that had been ruled unconstitutional by the United States Supreme Court, and never properly correcting the error.¹¹

Fourth, grand jury proceedings are secret, closed to the public, and generally sealed. In fact, § 540.320 of the Missouri Statutes provides that “No grand juror shall disclose any evidence given before the grand jury” and that “any juror violating the provisions of this section shall be deemed guilty of a class A misdemeanor.” It is extremely rare for grand jury transcripts to be publicly available. In this case, the 5,000-page

transcript was released and made available online the same evening as the press conference.

Finally, grand juries have the task of either returning a true bill or no bill of indictment—not of returning a jury verdict. Here too, things were completely different, with the prosecutor, Robert McCulloch, trying to give the impression that there had been a verdict on the full evidence, and telling the American people, at his unusual press conference, “The grand jury worked tirelessly to examine and reexamine all of the testimony of the witnesses and all of the physical evidence. . . . They are the only people, the only people, who have heard and examined every witness and every piece of evidence.”

In this case, the packaged product succeeded in making many believe there had been a verdict of not guilty. That, of course, was the point.

And it worked.

Even the *New York Times* referred to the no bill as a “disputed verdict” in its front-page headline, above the fold, on November 29, 2014—when in fact, there was no verdict. A grand jury decision is not a “verdict.” A petit jury at a trial after hearing all the evidence returns a verdict—a statement of truth regarding all the evidence (*ver*-truth; *dict*-statement). A grand jury either true bills or no bills an indictment. Grand juries never return verdicts.

The St. Louis prosecuting attorneys orchestrated the jury’s “verdict” in the Michael Brown shooting death. Producing truth is what judicial systems do best.

CONCLUSION

What Foucault's involvement in the GIP also produced was a keen awareness of the seriousness of these struggles—something that would behoove us. Foucault's turn to the notion of “civil war” as the basic matrix to understand social order was a direct outgrowth of this period. It loomed largest in 1972 and 1973, right during and after the peak of the prison riots in France—the revolt in the Ney prison of Toul in December 1971, the Charles-III jail of Nancy January 15, 1972, and the prisons of Nîmes, Amiens, Loos, Fleury-Mérogis, among others.¹² After the revolt at Toul, on January 5, 1972, in a joint press conference of the GIP and the *Comité Vérité Toul*, Foucault declares, “what took place at Toul is the start of a new process: the first phase of a political struggle directed against the entire penitentiary system by the social strata that is its primary victim.”¹³ Civil war comes to the fore just at this time in his lectures at the Collège de France.

And it produces a keen awareness of the stakes. Foucault's lectures at the time are driven by indignation, almost anger, against those who misjudge the stakes of the political struggle:

We are forever in the habit of speaking of the “stupidity” of the bourgeoisie. I wonder whether the theme of the stupid bourgeois is not a theme for intellectuals: those who imagine that merchants are narrow-minded, people with money are mulish, and those with power are blind. Safe from this belief, moreover, the bourgeoisie is remarkably intelligent. The lucidity and intelligence of this class, which has conquered and kept power under conditions we know, produce many

effects of stupidity and blindness, but where, if not precisely in the stratum of intellectuals? We may define intellectuals as those on whom the intelligence of the bourgeoisie produces an effect of blindness and stupidity.¹⁴

And Foucault adds, in the margin of his manuscript: “*Those who deny this are public entertainers. They fail to recognize the seriousness of the struggle.*”¹⁵

NOTES

- 1 Daniel Defert, *Une Vie politique: Entretiens avec Philippe Artières et Eric Favereau, avec la collaboration de Joséphine Gross* (Paris: Seuil, 2014), 36–76.
- 2 Audrey Kiéfer, *Michel Foucault: le GIP, l'histoire et l'action*, thèse de philosophie (novembre 2006), Université de Picardie Jules Verne d'Amiens, 2009, 169–72.
- 3 Philippe Artières, Laurent Quéro, and Michelle Zancarini-Fournel, eds., *Le Groupe d'information sur les prisons: Archives d'une lutte, 1970–1972* (Paris: Éditions de l'IMEC, 2003).
- 4 Philippe Artières, ed., *Groupe d'information sur les prisons: Intolérable* (Paris: Verticale, 2013).
- 5 Cf. also *La Révolte de la prison de Nancy: 15 janvier 1972* (Paris: Le Point du jour, 2013).
- 6 Michel Foucault, *Leçons sur la volonté de savoir: Cours au Collège de France, 1970–1971* (Paris: Gallimard, 2011), 4.
- 7 Michel Foucault, *Surveiller et punir: Naissance de la prison* (Paris: Gallimard, 1975), 35.

- 8 John K. Simon, “Michel Foucault on Attica: An Interview” (translated and edited from a taped conversation), *Social Justice* 18, no. 3 (1991), 26 (reprinted from *Telos*, no. 19 [Spring 1974]); translated into French by F. Durand-Bogaert as M. Foucault, “À propos de la prison d’Attica” (interview with J. K. Simon), *Dits et Ecrits I* (Paris: Gallimard, 2001), no. 137, 1394.
- 9 *Ibid.*, 28; Foucault, “À propos de la prison d’Attica,” 1396.
- 10 Sandhya Somashekhar and Kimbriell Kelly, “Was Michael Brown Surrendering or Advancing to Attack Officer Darren Wilson?,” *Washington Post*, November 29, 2014, https://www.washingtonpost.com/politics/2014/11/29/b99ef7a8-75d3-11e4-a755-e32227229e7b_story.html
- 11 Lawrence O’Donnell, “Shocking Mistake in Darren Wilson Grand Jury,” *MSNBC*, November 26, 2014, https://www.washingtonpost.com/politics/2014/11/29/b99ef7a8-75d3-11e4-a755-e32227229e7b_story.html?utm_term=.82262fa8a4c7.
- 12 See *La Révolte de la prison de Nancy*. Foucault gave his unreserved support to political prisoners and common law prisoners without distinction. As he elaborated the notion of “civil war,” the very distinction—political prisoner and common law prisoner—no longer had any sense. This is an important aspect, both theoretical and practical, of Foucault’s intervention at this time. See Michel Foucault, “Sur la justice populaire. Débat avec les maos” (interview with Gilles et Victor, 5 February 1972, *Les Temps modernes*, no. 310 bis, 355–66), *Dits et Ecrits I*, no. 108, 1208–37; English translation by John Mepham, “On Popular Justice: A Discussion with Maoists,” in Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972–1977*, ed. Colin Gordon (Brighton: The Harvester Press, 1980).
- 13 *La Révolte de la prison de Nancy*, 19 (reproduction of the manuscript page).
- 14 Michel Foucault, *The Punitive Society: Lectures at the Collège de France 1972–1973*, ed. Bernard Harcourt, trans. Graham Burchell (New York: Palgrave Macmillan, 2015), 164–65.
- 15 *Ibid.*, 165, note * (Appendix to lecture 9, first sheet).